FILED

OCT 31 1984

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

RAY LEVACY, Plaintiff	)	
v.	)	CIVIL NO. 84-C-690-BT
GARY L. COLLINS; ROBERT WALTER; RICHARD WHITBURN; T. J. WILSON; and SARAH BRIGGS, Revenue Agents, Defendants	)	

ORDER

The plaintiff having filed a Motion to Dismiss his action and the defendants having agreed to dismissal with prejudice to the refiling of this action, and the Court having considered the Motion and found good cause for the same, it is hereby ORDERED that this action be dismissed with prejudice.

ENTERED: Oct. 30th, 1984

Thomas R. Brett

UNITED STATES DISTRICT JUDGE

Entered

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

DAVE MAHER & ASSOCIATES, INC., and ROBINSON GLASS CONTRACTING, INC.,	)	
Plaintiffs,	)	
vs.	)	
MIAMI WALL SYSTEMS, INC.,	)	
Defendant.	)	No. 83-C-1050-E

Notice of DISMISSAL

The Defendant, Miami Wall Systems, Inc., hereby dismisses its Counterclaim without prejudice in the above-styled and numbered cause.

HOUSTON AND KLEIN, INC.

By: Richard Kinkel for
KEVIN T. GASSAWAY - #3281
3200 University Tower
1722 South Carson
P. O. Box 2967
Tulsa, Oklahoma 74101
(918) 583-2131

CERTIFICATE OF MAILING

I hereby certify that on this 31 day of October, 1984, a true and correct copy of the above and foregoing was deposited into the United States Mail with proper postage thereon prepaid, addressed to:

Donald L. Kahl
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, OK 74172

Richard Kinkel for
Kevin T. Gassaway

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

IN RE:	)	
	)	
LOUIS PORTER,	)	NO. 83-00716
	)	NO. 83-C-542-BT
Debtor.	)	

ORDER

This matter having come on to be heard this 30th day of October, 1984, upon motion of the Debtor for an order authorizing the debtor to withdraw his notice of intent to appeal and to withdraw his request for order staying proceedings, the Court finds good cause exists for granting said motion.

It is, therefore, ordered, adjudged and decreed that the debtor be and is hereby authorized to withdraw his notice of intent to appeal and to withdraw his request for order staying proceedings.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

FILED

OCT 31 1984

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

SALES AND ADVERTISING PROMOTION, INC., an Oklahoma corporation,	)	
Plaintiff,	)	
v.	)	No. 84-C-152-B
DONREY, INC., a Nevada corporation,	)	
Defendant.	)	

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered by the Court this date, Judgment is hereby entered in favor of the defendant, Donrey, Inc., a Nevada corporation, and against the plaintiff, Sales and Advertising Promotions, Inc., an Oklahoma corporation, the plaintiff's action is hereby dismissed and costs are assessed against the plaintiff. The parties are to pay their own respective attorneys fees.

DATED this 31 ST day of October, 1984.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

FILED

OCT 31 1984

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

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

JERRY L. BURGGRAF TIRE CO., INC., Plaintiff,	)	
vs.	)	
CHAMPLIN PETROLEUM CO., Defendant,	)	Case No. 83-C-733-BT
vs.	)	
JERRY L. BURGGRAF TIRE CO., INC., et al Third Party Defendants.	)	

ADMINISTRATIVE CLOSING ORDER

The Plaintiff/ & Third Party Defendants 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 31st day of OCTOBER, 1984.

Thomas R. Brett

UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

OCT 31 1984

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

SUN REFINING & MARKETING CO.	)	
Plaintiff,	)	
vs.	)	Case No. 84-C-670-BT
TONKAWA REFINING CO.	)	
Defendant.	)	

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 31st day of OCTOBER, 1984.

UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

Entered

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA OCT 31 1984

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

MORRELL, HERROLD & WEST, INC.	)	
Plaintiff &	)	
vs. Garnishor	)	
PACER PHENIX CORP.,	)	
	)	Case No. 83-C-305-BT
Defendant,	)	
REPUBLIC FINANCIAL CORP.,	)	
Garnishee	)	

ADMINISTRATIVE CLOSING ORDER

The Garnishee 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 31st day of OCTOBER, 1984.

UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

Entered

FILED

OCT 30 1984

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

CHATTANOOGA CORPORATION, Plaintiff,	)	
vs.	)	Case No. 84-C-~~8~~24-B
HERITAGE MEDICAL, INC., Defendant.	)	

JUDGMENT

This matter came on for hearing before the undersigned District Judge, and upon the Stipulation of the parties filed herein,

IT IS ORDERED AND ADJUDGED that plaintiff recover of defendant the sum of $31,476.75, costs of this action in the amount of $60.00 and attorney's fees in the amount of $1,000.00.

Dated at Tulsa, Oklahoma this 30th day of Oct., 1984.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

SIDNEY K. SWINSON
1810 Mid-Continent Tower
Tulsa, OK 74103
(918) 582-6131

ATTORNEY FOR PLAINTIFF

H. I. ASTON
Heritage Medical, Inc.
3010 S. Harvard, Suite 210
Tulsa, OK 74114
(918) 749-8523

ATTORNEY FOR DEFENDANT

Entered

IN THE UNITED STATES COURT FOR THE NORTHERN
DISTRICT OF OKLAHOMA

DON L. PHILLIPS and CONNIE PHILLIPS, Husband and wife,	)	
Plaintiffs,	)	
vs.	)	Case No.: 84-C-513-B
WILLIAM D. STONE and RITE-WAY LEASING a/k/a RITE-WAY TRUCKING RENTAL,	)	
Defendants.	)	

FILED
OCT 1984

ORDER OF DISMISSAL

ON This 30th day of October, 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, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against ~~the~~ each defendant be and the same hereby is dismissed with prejudice to any future action.

S/ THOMAS R. BRETT

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

APPROVAL:

F. H. MARTIN,

F. H. Martin

Attorney for the Plaintiffs,

6

RICHARD D. WAGONER,

_____

Attorney for the Defendants.

Entered

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

FILED

OCT 30 1984

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

TRIPLE J STEEL CORPORATION, Plaintiff,	)	
-vs-	)	No. 84-C-186-B
WISE TRANSPORTATION, INC., an Oklahoma corporation, Defendant.	)	

ORDER OF DISMISSAL

For good cause shown and upon motion of the plaintiff herein, the above styled and numbered action is hereby dismissed with prejudice toward the bringing of any further action.

Thomas R. Brett
UNITED STATES DISTRICT JUDGE

APPROVED:

G. Lawrence Fox

Craig W. Hoster
G. Lawrence Fox
13th Floor, One Boston Plaza
Tulsa, Oklahoma 74103
Attorneys for Plaintiff

John R. Couch

John R. Couch
Stephanie Mather Croy
P. O. Box 26350
Oklahoma City, Oklahoma 73126
Attorneys for Defendant

9

Entered

FILED

OCT 30 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.	)	
	)	
DARRELL K. CAMPBELL,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 83-C-867-B

AGREED JUDGMENT

This matter comes on for consideration this 30th day of October, 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, Darrell K. Campbell, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Darrell K. Campbell, acknowledged receipt of Summons and Complaint. The Defendant has not filed his Answer but in lieu thereof has agreed that he is indebted to the Plaintiff in the amount alleged in the Complaint and that judgment may accordingly be entered against Darrell K. Campbell in the amount of $1,100.00 plus interest thereafter at the legal rate from the date of judgment until paid, plus costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Darrell K. Campbell, in the amount of $1,100.00, plus interest thereafter at the current legal rate of 10.33 percent from the date of judgment until paid, plus costs of this action.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

NANCY NESBITT BLEVINS
Assistant U.S. Attorney

DARRELL K. CAMPBELL

FILED

OCT 19 1984

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

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

SERVICE DRILLING CO.,	)	
Plaintiff,	)	
vs.	)	No. 84-C-667-E
COLUMBIA GAS TRANSMISSION CORP.,	)	
Defendant.	)	

JUDGMENT DISMISSING ACTION BY REASON OF SETTLEMENT

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

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

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

DATED this 19th day of October, 1984.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

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

BILLY J. C. INGRAM and MARSALETE INGRAM,	)	
Plaintiffs,	)	
vs.	)	No. 83-C-890-B
FIBREBOARD CORPORATION, et al.,	)	
Defendants.	)	

ORDER OF DISMISSAL OF H. B. FULLER
COMPANY AND PITTSBURG-CORNING CORPORATION

NOW, on this 30th day of October, 1984, the Court being advised that a resolution has been reached between the Plaintiffs and the named Defendants, the Court hereby orders that the captioned case be dismissed with prejudice as to the Defendants, H. B. Fuller Company, and Pittsburg-Corning Corporation, only. This Dismissal is neither intended to be nor is it a Dismissal of Johns-Manville Sales Corporation, Ryder Industries, Inc. or Nicolet Industries, Inc.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

LAW OFFICES
UNGERMAN, CONNER & LITTLE
MIDWAY BLDG.
2727 EAST 21 ST.
SUITE 400
P. O. BOX 2099
TULSA, OKLAHOMA
74101

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

RONALD L. CONNER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 83-C-1029-E

O R D E R

The Court hereby finds 1) that this action[1] was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this 29th day of October, 1984, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

[1] Plaintiff's Social Security Number is 202-30-1763.

the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

EVERETT E. ALMY, Plaintiff, vs. MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America, Defendant.	)	FILED OCT 29 1984 Jack C. Silver, Clerk U. S. DISTRICT COURT CIVIL ACTION NO. 83-C-959-C

O R D E R

The Court hereby finds 1) that this action[1] was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this 29 day of Oct., 1984, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

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[1] Plaintiff's Social Security Number is 445-12-9624.

the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

UNITED STATES DISTRICT JUDGE

Entered

FILED

OCT 29 1984

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

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

EDDIE BARNWELL and LEANN BARNWELL, husband and wife,	)	
Plaintiffs,	)	
v.	)	No. 84-C-207-B
JIMMIE C. GAITHER,	)	
Defendant.	)	

DISMISSAL WITH PREJUDICE

COME NOW the plaintiffs, Eddie Barnwell and Leann Barnwell, and dismiss this cause with prejudice to the right to the bringing of any other future action.

Eddie Barnwell
Eddie Barnwell
Plaintiff

Leann Barnwell
Leann Barnwell
Plaintiff

Terrill V. Landrum
Terrill V. Landrum
Attorney for Plaintiffs

Entered

IN THE FEDERAL DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 29 1984

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

AMERICAN HOT ROD ASSOCIATION, a Kansas corporation, Plaintiff, vs. AMERICAN DRAG RACING ASSOCIATION, an unincorporated association, and BERNIE LONGJOHN, BOB IPSON, JIM TICE, JR., FRANK DUVAL, CHUCK HARMON, GEORGE EISEHART, GORDON SHEADE, GEORGIA MILLER, ORVILLE L. MOE, GERALD PRITCHARD, BILL NEW and GERALD JOHNS, individuals, Defendants.	No. 84-C-589-C ORDER DISMISSING PENDENT CLAIMS AND CERTAIN DEFENDANTS

Based on the Order of the above-entitled Court as set forth in the Status Conference Hearing on September 12, 1984, and based on the records and files herein,

IT IS HEREBY ORDERED that all pendent causes of action, Counts II through VII of the Complaint, are hereby dismissed and the individual defendants, BERNIE LONGJOHN, BOB IPSON, JIM TICE, FRANK DUVAL, CHUCK HARMON, GEORGE EISEHART, GORDON SHEADE, GEORGIA MILLER, ORVILLE L. MOE, GERALD PRITCHARD, BILL NEW and GERALD JOHNS are hereby dismissed, leaving only the AMERICAN DRAG RACING

PAINE, HAMBLEN, COFFIN & BROOKE
1200 WASHINGTON TRUST FINANCIAL CENTER
SPOKANE, WASHINGTON 99204
Phone 455-6000

ASSOCIATION, INC., as a Defendant herein.

DONE IN OPEN COURT this 29 day of October, 1984.

s/H. DALE COOK

JUDGE

PRESENTED BY:

GIBBON, GLADD & ASSOCIATES

By /S/
Richard D. Gibbon

PAINE, HAMBLEN, COFFIN & BROOKE

By
Curtis L. Shoemaker

Attorneys for Defendants

APPROVED AS TO FORM AND NOTICE OF PRESENTMENT WAIVED:

J. Stephen Welch

Attorney for Plaintiff

PAINE, HAMBLEN, COFFIN & BROOKE
1200 WASHINGTON TRUST FINANCIAL CENTER
SPOKANE, WASHINGTON 99204 Phone 455-6000

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 28 1984

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	
MICHAEL E. BRADEN and RUBY V. BRADEN; COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Creek County, Oklahoma,	)	
Defendants.	)	CIVIL ACTION NO. 84-C-587-B

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 28th 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, Creek County, Oklahoma, appear by David Young, District Attorney, Creek County, Oklahoma; and the Defendants, Michael E. Braden and Ruby V. Braden, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Michael E. Braden, acknowledged receipt of Summons and Complaint on July 15, 1984; and that the Defendant, Ruby V. Braden, acknowledged receipt of Summons and Complaint on July 15, 1984.

It appears that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have filed

their Answer on July 24, 1984; and that the Defendants, Michael E. Braden and Ruby V. Braden, have failed to answer and their default has been entered by the Clerk of this Court on August 7, 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 Creek County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Six (6) and the North Ten (10) feet of Lot Seven (7), Block One Hundred Fourteen (114), in the Original Town now City of Sapulpa, in Creek County, State of Oklahoma, According to the Recorded Plat thereof.

THAT on June 27, 1980, Michael E. Braden and Ruby V. Braden executed and delivered to the Oklahoma Mortgage Company, Inc., their promissory note in the amount of $34,000.00, payable in monthly installments with interest thereon at the rate of 11.45 percent per annum. This note was assigned by Oklahoma Mortgage Company, Inc., to Bank of Oklahoma, N.A., as Trustee for the Creek County Home Finance Authority, on July 23, 1980; and was further assigned by Bank of Oklahoma, N.A., as Trustee for the Creek County Home Finance Authority, to the United States of America, acting through the Administrator of Veterans Affairs, on September 29, 1983.

That as security for the payment of the above described note, Michael E. Braden and Ruby V. Braden executed and delivered to Oklahoma Mortgage Company, Inc., a real estate mortgage dated June 27, 1980, covering the above described property. Said

mortgage was recorded in Book 86, Page 659, in the records of Creek County, Oklahoma. This mortgage was assigned by Oklahoma Mortgage Company, Inc., by written assignment dated June 27, 1980, to Bank of Oklahoma, N.A., as Trustee for the Creek County Home Finance Authority, which assignment was filed on June 30, 1980, in Book 86, Page 663, in the records of Creek County, Oklahoma. This mortgage was further assigned by Bank of Oklahoma, N.A., as Trustee for the Creek County Home Finance Authority, by written assignment dated September 29, 1983, to the United States of America, acting through the Administrator of Veterans Affairs, which assignment was filed on November 3, 1983, in Book 148, Page 1261, in the records of Creek County, Oklahoma.

The Court further finds that the Defendants, Michael E. Braden and Ruby V. Braden, 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 Defendants, Michael E. Braden and Ruby V. Braden, are indebted to the Plaintiff in the principal sum of $34.181.00, plus interest at the rate of 11.45 percent per annum from January 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 the Defendant, County Treasurer, Creek County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes due and owing for the year 1982 in the amount of $6.91 and for the year 1983 in the amount of $11.69 for a total

of personal taxes due and owing of $18.60. Said lien is inferior and subject to the first mortgage lien of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Michael E. Braden and Ruby V. Braden, in the principal amount of $34,181.00, plus interest at the rate of 11.45 percent per annum from January 1, 1983, until judgment, plus interest thereafter at the current legal rate of 11.36 percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Creek County, Oklahoma, have and recover judgment in the amount of $18.60 for personal property taxes due and owing on the subject property, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Michael E. Braden and Ruby V. Braden, 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;

Third:

In payment of the Defendant, County Treasurer, Creek County, Oklahoma, in the amount of $18.60, for personal property taxes for the years 1982 and 1983 which are presently due and owing on said real property.

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/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney

PETER BERNHARDT
Assistant United States Attorney

DAVID YOUNG
District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Creek County, Oklahoma

Entered

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

FILED

OCT 2 1984

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

DENNIS L. WADSWORTH, SR., and RITA WADSWORTH, individually and as parents and next friends of LORI MARIE WADSWORTH and DENNIS LYNN WADSWORTH, JR., Minor Children,	)	
Plaintiffs,	)	
vs.	)	No. 84-C-~~685~~ 658-E
SUN EXPLORATION AND PRODUCTION COMPANY, a Delaware corporation,	)	
Defendant.	)	

ORDER OF DISMISSAL WITH PREJUDICE

WHEREAS, the parties have stipulated that all questions and issues existing between the parties have been fully and completely disposed of by settlement, and have requested the entrance of an order of dismissal with prejudice.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the cause should be and the same is hereby dismissed with prejudice and the matter fully, finally, and completely disposed of.

Dated this 25th day of October, 1984.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED:

Dale J. Briggs
Attorney for Plaintiffs.

Richard Carpenter
Attorney for Defendant.

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE

OCT 26 1984

NORTHERN DISTRICT OF OKLAHOMA

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

KAISER-FRANCIS OIL COMPANY, Plaintiff,	)	
v.	)	No. 84-C-569-E
APMC PROPERTIES, INC., Defendant.	)	

ORDER OF DISMISSAL

Plaintiff, Kaiser-Francis Oil Company ("Kaiser-Francis"), and Defendant, APMC Properties, Inc. ("APMC"), by their undersigned attorneys of record, having filed a Stipulation of Dismissal, and the Court being advised of premises;

IT IS HEREBY ORDERED, that the Complaint filed herein by Kaiser-Francis and each count thereof, is dismissed with prejudice as to APMC, each party to bear its own costs.

S/ JAMES O. ELLISON

JUDGE OF THE DISTRICT COURT

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 26 1984

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

J. B. DYE,	)	
Plaintiff,	)	
vs.	)	
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,	)	
Defendant.	)	CIVIL ACTION NO. 84-C-77-E

O R D E R

The Court hereby finds 1) that this action[1] was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this 26th day of October, 1984, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

---

[1] Plaintiff's Social Security Number is 440-32-8176.

the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 26 1984

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

BEATRICE L. TANNER,	)	
Plaintiff,	)	
vs.	)	
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,	)	
Defendant.	)	CIVIL ACTION NO. 84-C-113-E

O R D E R

The Court hereby finds 1) that this action[1] was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this 26th day of October, 1984, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

---

[1] Plaintiff's Social Security Number is 446-38-1795.

the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 26 1984

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

WILLIAM L. DEES, JR.,	)	
Plaintiff,	)	
vs.	)	
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,	)	
Defendant.	)	CIVIL ACTION NO. 84-C-68-E

O R D E R

The Court hereby finds 1) that this action[1] was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this 26th day of _____, 1984, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

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[1] Plaintiff's Social Security Number is 266-24-9267.

the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

S/ JAMES O. BROWN

UNITED STATES DISTRICT JUDGE

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

KATHRYN K. SHELTON,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 84-C-63-E
	)	
BILLY LEE SHELTON,	)	
	)	
Appellee.	)	

MEMORANDUM OPINION
AND
ORDER

This matter is before the Court upon an appeal from an order entered on February 6, 1984 by the United States Bankruptcy Court for the Northern District of Oklahoma.

Appellant Kathryn K. Shelton sought the avoidance of a lien pursuant to 11 U.S.C. § 522(f)(1) under Bankruptcy Rule 4003, by motion before the Bankruptcy Court. Subsequent to a hearing on the motion, the Court entered its order finding that the legislative intent in the enactment of § 522(f)(1) was to allow a debtor to avoid "the lien of money judgments held by judgment creditors who could levy upon an execution as against any property (other than exempt property) of the judgment debtor, and not a lien representing a division of property of the parties in a marital dissolution proceeding." Order of February 6, 1984.

Upon a review of the arguments and authorities submitted by the parties, this Court finds that the Order of the Bankruptcy Court must be affirmed.

On August 31, 1983 a decree of divorce was entered in the

District Court for Tulsa County, Oklahoma, which decree determined that the parties had acquired during their marriage a certain piece of real property and a double wide mobile home and certain other structures upon the real property, all valued at the sum of $57,250.00. The decree awarded to Kathryn Shelton the real property as a part of the division of jointly acquired property, together with the mobile home and improvements. As his share of jointly acquired property, the decree awarded Billy Lee Shelton a lien against the real property, mobile home, and improvements in the amount of $20,339.00, due and payable upon the occurrence of certain events. Appellant Kathryn K. Shelton seeks lien avoidance under 11 U.S.C. § 522(f). Section(f) provides in pertinent part as follows:

> Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled ... If such lien is -
> (1) a judicial lien ...

In order for the Defendant to succeed in avoiding a lien under § 522(f), therefore, three conditions must be met. First, the lien must have been fixed "on an interest of the debtor in property"; second, the lien must impair "an exemption to which the debtor would have been entitled"; and third the lien must be a "judicial lien".

The United States Bankruptcy Court for the Western District of Oklahoma, in the case of <u>In re Scott</u>, 12 BR 613 (1981), reviewed the legislative history of § 522(f), and determined that the intent behind the judicial lien avoidance provision was to

allow the removal of judicial liens obtained by creditors on a debtor's exempt property. In re Scott, 12 BR 615. The Court determined that the implication of the language of 522 was that Congress intended the avoidance of liens that became fixed after the debtor acquired an interest in the subject property. Such would not be the case in regard to an interest created subject to a lien to secure payment of a share of a property settlement in a divorce decree. The interest of the appellant was created subject to appellee's lien, and therefore the lien involved herein was not fixed after the debtor acquired her interest in the real property.

Pursuant to the above, it is this Court's finding that 11 U.S.C. § 522(f) is not applicable to the lien created in favor of the appellee by the divorce decree.

IT IS THEREFORE ORDERED AND ADJUDGED that the Order of February 6, 1984 entered by United States Bankruptcy Court for the Northern District of Oklahoma be and the same is hereby affirmed.

ORDERED this 26th day of October, 1984.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

OCT 26 1984

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

JAMES K. NAVE, Plaintiff,	)	
vs.	)	
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America, Defendant.	)	CIVIL ACTION NO. 83-C-1054-E

O R D E R

The Court hereby finds 1) that this action[1] was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this 26TH day of October, 1984, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

[1] Plaintiff's Social Security Number is 443-30-3734.

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the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 26 1984

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

DONALD W. ALEXANDER,	)	
Plaintiff,	)	
vs.	)	
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,	)	
Defendant.	)	CIVIL ACTION NO. 84-C-445-E

O R D E R

The Court hereby finds 1) that this action[1] was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this 26th day of October, 1984, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

[1] Plaintiff's Social Security Number is 542-46-3012.

the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 25 1984

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

SHIRLEY K. BARKER,	)	
Plaintiff,	)	
vs.	)	
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,	)	
Defendant.	)	CIVIL ACTION NO. 83-C-770-E

O R D E R

The Court hereby finds 1) that this action[1] was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this 25 day of Oct, 1984, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

[1] Plaintiff's Social Security Number is 499-44-6949.

the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 26 1984

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

ROBERT B. BOWMAN, Plaintiff,	)	
vs.	)	
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America, Defendant.	)	CIVIL ACTION NO. 83-C-847-E

ORDER

The Court hereby finds 1) that this action[1] was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this 26th day of October, 1984, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

[1] Plaintiff's Social Security Number is 448-30-0944.

the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 26 1984

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

SAM L. WADSWORTH,	)	
Plaintiff,	)	
vs.	)	
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,	)	
Defendant.	)	CIVIL ACTION NO. 83-C-597-E

O R D E R

The Court hereby finds 1) that this action[1] was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this 26th day of October, 1984, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

[1] Plaintiff's Social Security Number is 441-34-0706.

the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

UNITED STATES DISTRICT JUDGE

Entered

FILED

OCT 26 1984

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

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

MICKEY MANTLE HOLT,	)	
Plaintiff,	)	
vs.	)	No. 84-C-551-E
FRANK THURMAN, et al.,	)	
Defendants.	)	

O R D E R

The Court has now before it the motions of Defendants Frank Thurman, Larry Meachum, Oklahoma Department of Corrections and Jimmy Dean Stohler to dismiss for failure to state a claim and for lack of subject matter jurisdiction.

Plaintiff Mickey Mantle Holt is an inmate presently incarcerated at the Lexington Correctional Center in Lexington, Oklahoma. Suit was filed June 20, 1984 upon forms supplied by the Court for actions pursuant to 42 U.S.C. § 1983 for violation of civil rights. Plaintiff seeks damages from all Defendants for injuries received in an alleged assault by another inmate while both were incarcerated in the Tulsa County Jail. Plaintiff was located at the Tulsa County Jail at the time awaiting adjudication on an escape charge. In addition to damage prayers as to each Defendant, the Plaintiff requests this Court to order the Department of Corrections to immediately release him from custody and to be responsible for payment of all medical treatment.

The first task of the Court is to determine to what extent

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Plaintiff's complaints in effect request release from custody under a writ of habeas corpus pursuant to 22 U.S.C. § 2254. "The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and the traditional function of the writ is to secure release from illegal custody." Preiser v. Rodriguez, 93 S.Ct. 1827, 1833 (1973). As part of his complaint, Plaintiff requests the Court to order his immediate release for failure of the Department of Corrections to process his appeal of internal charges and punishment for escape. It is clear that the grievance in this instance is that he is being unlawfully subjected to physical restraint, and habeas corpus is the accepted instrument to obtain release from such confinement. Preiser, supra at page 1834. This Court cannot exercise jurisdiction over a petition for a writ under § 2254 until the petitioner has exhausted presently available state remedies. Wood v. Crouse, 389 F.2d 747 (10th Cir. 1968).

Defendant Jimmy Dean Stohler moves to dismiss for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Defendant Stohler argues that, in order to recover under § 1983, the plaintiff must show that a private person acted "under color of state law." Purely private conduct is not actionable under § 1983. District of Columbia v. Carter, 409 U.S. 418 (1973). Plaintiff alleges in his complaint that on or about the 9th day of May, 1984 Defendant Stohler attacked the Plaintiff in the Tulsa County Jail and that the Plaintiff suffered neck and back

injuries as a result. It is also alleged that since the assault the Defendant Stohler has made threats against Plaintiff's life. Plaintiff, however, has failed to allege any facts or circumstances which would in any way indicate that the Defendant Stohler was acting on behalf of the state or any other governmental entity or at the direction of any state actor or through any scheme or plan. Such would be necessary to recover under 42 U.S.C. § 1983, and therefore the complaint against Defendant Stohler must be dismissed. The Court, by this ruling, does not intimate that Plaintiff has no remedy for an alleged assault upon his person, but must rule under the law that that remedy is not available in a suit in United States District Court for violation of civil rights under color of state law.

Defendant Tulsa County Sheriff Frank Thurman moves to dismiss pursuant to Rule 12(b) for failure to state a claim under § 1983. One of Plaintiff's complaints is that the Tulsa County Jail personnel allowed an attack to be committed upon him by Defendant Stohler in the jail corridor causing him personal injuries. Plaintiff also asserts that jail personnel have failed to provide him with adequate medical care.

"Deliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983." Estelle v. Gamble, 429 U.S. 97, 103-105 (1976). Medical malpractice, however, being ordinary negligence is not actionable under this standard.

> To have a § 1983 case it is not sufficient to show that a physician has exposed a person to

> an unreasonable risk of harm or simple negligence. It must appear there has been a violation of a constitutional or fundamental right guaranteed by the 14th Amendment or perhaps of the 8th Amendment incorporated into the 14th.

Daniels v. Gilbreath, 668 F.2d 477, 480 (10th Cir. 1982). Plaintiff, in his complaint, demonstrates that he was examined and treated by the jail doctor, and that he was later transported by the Department of Corrections for an additional examination to the Oklahoma Osteopathic Hospital. Plaintiff complains that he did not receive appropriate treatment from the doctors. However he was seen by two doctors and given medication. The complaint alleges no more than a difference of opinion in the medical treatment he received and is not actionable under § 1983. Randall v. Wyrick, 642 F.2d 304 (8th Cir. 1981).

Plaintiff additionally alleges that the jail personnel allowed an assault to be committed upon him in a jail corridor. Defendant asserts that Plaintiff has failed to allege any material facts which would establish an "affirmative link between the complained of conduct and the named defendant." Rizzo v. Goode, 96 S.Ct. 598 (1976). The Tenth Circuit in Kite v. Kelly, 546 F.2d at 337-38 defines the required affirmative link as follows:

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

Defendant asserts that Plaintiff has failed to allege any direct participation or acquiescence in the assault. However a reading

of Plaintiff's complaint indicates that Plaintiff alleges that Sheriff Thurman and members of his staff allowed Defendant Stohler "free run" of the jail, and that the jail guards refrained from taking any action, verbal or otherwise, to restrain Defendant Stohler from assaulting Plaintiff. Upon such allegations, this Court cannot find that Plaintiff has failed to allege a cause of action against Defendant Thurman for violation of Plaintiff's 8th Amendment rights to be free from cruel and unusual punishment, or his right to due process of law.

Plaintiff additionally attacks the conditions of his confinement in the Tulsa County Jail, in that he alleges having been incarcerated in a jail cell where "I have no shower, no room to move about for any exercise nor fresh air, live bugs in my food, trash in my living and eating room, no fire exit, ..."

These allegations of unconstitutional jail conditions, among others, were considered by this Court in a three-judge panel in Clayton v. Thurman, 79-C-723-B (N.D. Okla. Aug. 2, 1983). The Court granted Plaintiff's request for injunctive relief, and required the officials in charge of the Tulsa County Jail to remedy the unconstitutional conditions. Plaintiff here has requested no relief going to his allegations of unconstitutional conditions of confinement, however. He has requested relief in the form of damages only for pain and suffering and personal injuries flowing from the alleged assault and threats on his life. Without specific request for damages, this Court must rule that any injunctive relief available to Plaintiff for alleged

conditions of confinement has already been granted by this Court.

Defendant Larry Meachum, Director of the Department of Corrections, moves to dismiss under Rule 12(b)(6) for failure to state a claim. The Defendant Oklahoma Department of Corrections also moves to dismiss for failure to state a claim.

Plaintiff's complaints against Defendants Meachum and Department of Corrections concern allegations that the Department left him in the Tulsa County Jail despite orders remanding him to their custody and denied him his right to appeal a department hearing on his punishment for escape. Such allegations go to the propriety of confinement, and do not allege a cause of action under § 1983. As allegations properly considered under a petition for a writ of habeas corpus, they would not be properly directed toward the Department of Corrections or Defendant Meachum, in that neither has custody of the person of Plaintiff. Such allegations under habeas petitions must be directed toward the warden of the prison.

In addition, the Plaintiff has failed to allege any direct connection under Rizzo, supra between Defendant Meachum and the conduct complained of. The State of Oklahoma Department of Corrections is immune from damage actions under the 11th Amendment to the Constitution, and has not waived its soverign immunity as to this type of action. See Neal v. Donahue, 611 P.2d 1125 (Okla. 1980). This action is properly dismissed therefore as to Defendants Larry Meachum and Oklahoma Department of Corrections.

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

IT IS FURTHER ORDERED that the motion of Defendant Thurman to dismiss as to the issue of improper medical treatment be and the same is hereby granted.

IT IS FURTHER ORDERED that the motion of Defendant Thurman to dismiss as to the claim of violations of Plaintiff's constitutional rights under the 8th and 14th Amendments, in connection with the alleged assault, be and the same is hereby denied.

It appearing to the Court that a complaint has been filed under 42 U.S.C. § 1983, claiming a violation of civil rights by a person serving a custodial sentence in an institution of the State of Oklahoma, and it appearing that proper effective judicial processing of the claim cannot be achieved without additional information from appropriate state officials of the Department of Corrections, State of Oklahoma,

IT IS ORDERED:

1. An answer to the complaint, including the report herein required, shall be filed no later than 45 days from the date hereof.
2. No answer or motions addressed to the complaint shall be filed until the measures set forth herein shall have been taken and completed.

3. Officials responsible for the operation of the Tulsa County Jail are directed to undertake a review of the subject matter of the complaint

   A. To ascertain the facts and circumstances;

   B. To consider whether any action can and should be taken by the institution or other appropriate officials to resolve the subject matter of the complaint; and

   C. To determine whether other like complaints, whether pending in this court or elsewhere, are related to this complaint and should be taken up and considered together.

4. In the conduct of the review, a written report shall be compiled and filed with the Court. Authorization is granted to interview all witnesses including the Plaintiff and appropriate officers of the institution. Wherever appropriate, medical or psychiatric examinations shall be made and included in the written report.

5. All reports made in the course of the review shall be attached to and filed with Defendants' answers to the complaint.

6. The answers shall restate in separate paragraphs the allegations of the complaint. Each restated paragraph shall be followed by Defendants' answer thereto.

7. A copy of this Order shall be transmitted to the Plaintiff by the Clerk forthwith.

8. A copy of this order together with a copy of Plaintiff's complaint shall be transmitted to the Attorney General for the State of Oklahoma forthwith by the Clerk.

IT IS FURTHER ORDERED that the motion of Defendant Larry Meachum, Director of the Department of Corrections to dismiss be and the same is hereby granted.

IT IS FURTHER ORDERED that the motion of the Defendant Oklahoma Department of Corrections to dismiss be and the same is hereby granted.

ORDERED this 26th day of October, 1984.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 26 1984

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

MELVIN J. EVANS, Plaintiff, vs. MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America, Defendant.	))))))))))))	CIVIL ACTION NO. 83-C-431-E

O R D E R

The Court hereby finds 1) that this action[1] was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this 26th day of October, 1984, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

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[1] Plaintiff's Social Security Number is 448-34-5925.

the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

/s/ Douglas O. ELLISON

UNITED STATES DISTRICT JUDGE

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

CAYMAN EXPLORATION CORPORATION, Plaintiff,	)	
v.	)	No. 83-C-427-B
SAMSON RESOURCES COMPANY, Defendant.	)	

J U D G M E N T

In keeping with the verdicts of the jury entered this date, judgment is hereby entered for the defendant, Samson Resources Company, and against the plaintiff, Cayman Exploration Corporation, on the plaintiff's claim; the plaintiff's claim is hereby dismissed and costs are awarded to the defendant; further, in keeping with the verdict of the jury entered this day on the counterclaim of the defendant Samson Resources Company, judgment is hereby entered for Samson Resources Company and against the plaintiff, Cayman Exploration Corporation, in the amount of Forty-Four Thousand Eight Hundred Ninety-Nine and 37/100 Dollars ($44,899.37), plus postjudgment interest at the rate of 11.36% per annum and the costs of the action.

DATED this 25th day of October, 1984.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MARY H. JONES,	)	
Plaintiff,	)	
vs.	)	
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,	)	
Defendant.	)	CIVIL ACTION NO. 83-C-433-C

O R D E R

The Court hereby finds 1) that this action[1] was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this 25th day of October, 1984, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

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[1] Plaintiff's Social Security Number is 442-32-9033.

the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

[Signed] H. Dale Cook

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
vs.	)	
JIMMIE D. WRIGHT,	)	
Defendant.	)	CIVIL ACTION NO. 84-C-498-E

ORDER OF DISMISSAL

Now on this 24th day of October, 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, Jimmie D. Wright, be and is dismissed without prejudice.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

CHARLENE SUE MORRIS and THOMAS J. MORRIS, Plaintiffs	)	
vs.	)	No. 83-C-493-C
PUBLIC SERVICE COMPANY OF OKLAHOMA; RUTH JACOBS; JEWELL A. HAYES; JOHN D. HARPER, Jr.; BETSY POWERS; JOHN P. WINTERS; MICHAEL W. FRY; and T. D. "PETE" CHURCHWELL, Defendants.	)	

ORDER OF DISMISSAL

Pursuant to the agreement of the parties, this suit is dismissed with prejudice as to all Defendants.

(Signed) H. Dale Cook
H. DALE COOK, UNITED STATES DISTRICT JUDGE

APPROVED:

CHARLES L. WOODSTOCK, INC.

By C L Woodstock
Charles L. Woodstock

COUNSEL FOR PLAINTIFFS

DOERNER, STUART, SAUNDERS, DANIEL & ANDERSON

By Charles S. Plumb
Charles S. Plumb

CLARK, WEST, KELLER, BUTLER & ELLIS

By Allen Butler
Allen Butler
Michael P. Maslanka

COUNSEL FOR DEFENDANTS

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

NATIONAL INSURANCE SERVICES, INC., AND CHARLES S. KOPP,	)	
Plaintiffs,	)	
vs.	)	No. 82-C-1213-E
AMERICAN INTERNATIONAL GROUP, et al.,	)	
Defendants.	)	

JUDGMENT

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

IT IS ORDERED AND ADJUDGED that the Plaintiffs National Insurance Services, Inc. and Charles S. Kopp take nothing from the Defendants American International Group, AIG Risk Management, Inc., American International Companies and American International Adjusting Corporation, on their claim, that the action of the Plaintiffs be dismissed on the merits, and that the Defendants American International Group, AIG Risk Management, Inc., American International Companies and American International Adjusting Corporation, recover of the Plaintiffs National Insurance Services, Inc. and Charles S. Kopp their costs of action on Plaintiffs' claim.

DATED at Tulsa, Oklahoma this 24TH day of October, 1984.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LORENZO JONES,	)	
Plaintiff,	)	
vs.	)	
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,	)	
Defendant.	)	CIVIL ACTION NO. 84-C-446-C

O R D E R

The Court hereby finds 1) that this action[1] was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this 24th day of October, 1984, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

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[1] Plaintiff's Social Security Number is 444-46-1014.

the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JIMMIE KEELING,	)	
Plaintiff,	)	
vs.	)	
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,	)	
Defendant.	)	CIVIL ACTION NO. 84-C-422-B

O R D E R

The Court hereby finds 1) that this action[1] was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this 23rd day of October, 1984, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

[1] Plaintiff's Social Security Number is 448-32-7062.

the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MICHAEL R. HILBURN,	)	
Plaintiff,	)	
vs.	)	
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,	)	
Defendant.	)	CIVIL ACTION NO. 84-C-364-B

O R D E R

The Court hereby finds 1) that this action[1] was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this 23rd day of October, 1984, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

[1] Plaintiff's Social Security Number is 442-62-3214

the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LOUISE M. ADAMS,	)	
Plaintiff,	)	
vs.	)	
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,	)	
Defendant.	)	CIVIL ACTION NO. 84-C-347-B

O R D E R

The Court hereby finds 1) that this action[1] was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this 23rd day of October, 1984, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

[1] Plaintiff's Social Security Number is 446-30-8068.

the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

Entered

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

W. G. PERKINS, Administrator of the Estate of ROGER LEE PERKINS, Deceased,	)	
Plaintiff,	)	
-vs.-	)	
FRANK THURMAN, *et al.*,	)	
Defendants.	)	No. 84-C-346-B

STIPULATION OF DISMISSAL AS TO CITY GROUP OF DEFENDANTS

The Plaintiff, W.G.PERKINS, hereby dismisses his Complaint as to the Group of Defendants representing or employed by the City of Tulsa. The City Group consists of the following: James Inhofe, individually and as Commissioner of the City of Tulsa; Walter Hall, individually and as Commissioner of the City of Tulsa; Roy Gardner, individually and as Commissioner of the City of Tulsa; James Hewgley, individually and as Commissioner of the City of Tulsa; Patty Eaton, individually and as Commissioner of the City of Tulsa; and, The City of Tulsa.

This voluntary Dismissal is made by Stipulation under Rule 41(a)(1) of the Federal Rules of Civil Procedure, and is made with the consent of all of the Parties who have appeared in this action.

Respectfully submitted
as of October 23, 1984

John Echols
Echols & Echols, Inc.
P.O. Box 2984

Tulsa, OK 74101
918/599-0091

Attorneys for W.G. PERKINS individually and as Administrator of the estate of ROGER LEE PERKINS.

STIPULATION OF CONSENT TO DISMISSAL OF CITY GROUP OF DEFENDANTS

On behalf of the City Group of Defendants:

David L. Pauling, Esq.
Assistant City Attorney
200 Civic Center
Tulsa, OK 74103
918/592-7717

On behalf of the County Group of Defendants (all remaining Defendants):

Dick Blakely, Esq.
Assistant District Attorney
Tulsa County Courthouse
500 South Denver
Tulsa, OK 74103
918/584-0440

CERTIFICATE OF MAILING OR DELIVERY

I certify that on October 23, 1984, I caused a true and correct copy of the foregoing to be delivered or mailed with sufficient postage affixed to:

John Lieber, Esq.
Knight, Wagner, Stuart, Wilkerson & Lieber
233 West 11th Street
Tulsa, OK 74119

David L. Pauling, Esq.
Assistant City Attorney
200 Civic Center
Tulsa, OK 74103

Dick Blakely, Esq.
Assistant District Attorney
Tulsa County Courthouse
500 South Denver
Tulsa, OK 74103

John Echols

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ALICE G. POWELL,	)	
Plaintiff,	)	
vs.	)	
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,	)	
Defendant.	)	CIVIL ACTION NO. 84-C-447-C

O R D E R

The Court hereby finds 1) that this action[1] was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this 23rd day of October, 1984, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

---

[1] Plaintiff's Social Security Number is 260-54-4062.

the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

[Signed] H. Dale Cook

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

J. L. FRENCH,	)	
Plaintiff,	)	
vs.	)	
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,	)	
Defendant.	)	CIVIL ACTION NO. 83-C-925-C

O R D E R

The Court hereby finds 1) that this action[1] was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this 23rd day of October, 1984, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

---

[1] Plaintiff's Social Security Number is 570-32-6567.

the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

O'DANIEL B. ANDERSON,	)	
Plaintiff,	)	
vs.	)	
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,	)	
Defendant.	)	CIVIL ACTION NO. 83-C-885-C

O R D E R

The Court hereby finds 1) that this action[1] was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this 23rd day of October, 1984, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

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[1] Plaintiff's Social Security Number is 444-36-5608.

the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

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

GEORGE ROBERT HARL, JR.,	)	
Plaintiff,	)	
vs.	)	Case No. 84-C-519-C
JERRY G. McFARLAND, et al.,	)	
Defendants.	)	

NOTICE OF DISMISSAL ~~STIPULATION~~

Pursuant to F.R.C.P. 41(a)(1), Plaintiff confirms that at a Status Conference held on September 12, 1984, Plaintiff orally moved to dismiss as defendants, Tulsa County, the City of Tulsa, Police Officers S.L. Merchant, T.H. Reece, G.E. Johnson, City Commissioners, Terry Young, Walter Hall, Ray Gardner, J.D. Metcalfe, Patty Eaton and David Moss, Tulsa County District Attorney as defendants under 41 U.S.C. § 1983. Bob Mullins, Mark Bisson and Michael Milby are dismissed without prejudice under 41 U.S.C. § 1983. The City of Tulsa, as a defendant under the Oklahoma Political Subdivision Tort Claims Act, was not dismissed.

Kay Hoover

Kay Hoover
Attorney for Plaintiff
2617 E. 21st, Suite 200
Tulsa, OK 74114
(918) 745-6672

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
vs.	)	
MALCOLM L. PRESTON,	)	
Defendant.	)	CIVIL ACTION NO. 84-C-217-C

DEFAULT JUDGMENT

This matter comes on for consideration this 22nd day of October, 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, Malcolm L. Preston, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Malcolm L. Preston, was served with Summons and Complaint on May 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, Malcolm L. Preston, in the amount of $900.33, plus interest at the rate of 15.05 percent per annum and administrative costs of $.61 per month from August 12, 1983, until judgment, plus interest thereafter at the current legal rate of 11.36%

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

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	No. 84-C-8~~7~~2-B No. 83-CR-60-B
LEONARD CECIL JONES, Movant.	)	

O R D E R

This matter comes before the Court on the motion to vacate sentence filed by Leonard C. Jones, pursuant to 28 U.S.C. §2255. Jones, who was convicted in this Court in the case of United States of America v. Leonard Cecil Jones, Case No. 83-CR-60-B, now challenges the conviction and sentence on a number of grounds. The government has responded to Jones' motion to vacate. For the reasons set forth below, the motion is overruled.

On June 16, 1983, Jones entered a plea of guilty to three counts of forgery in violation of 18 U.S.C. §495. On July 21, 1983, he was sentenced to six years imprisonment on Count 1 and three years probation as to Counts 2 and 3, to run consecutively to the prison term. On October 5, 1984, Jones filed a motion to vacate the sentence on the following grounds:

1) Jones contends he filed a motion to reduce sentence pursuant to F.R.Cr.P. 35 more than a year ago and has gotten no response;

2) Jones claims there was a disparity in sentences given him and female codefendants;

2

3) Jones contends his counsel was ineffective;

4) Jones contends the parole board was in error in evaluating him.

The Court can find no record whatsoever of a Rule 35 motion being filed in Jones' case at any time. Therefore, it must reject plaintiff's complaint concerning failure to respond to a motion to reduce sentence.

With regard to Jones' complaint concerning disparity of sentences, the Court notes Jones was the sole defendant in 83-CR-60-B; therefore, there can be no "sexual discrimination" against him as he complains.[1]

With regard to adequacy of representation, Jones contends:

> "My former attorney failed to advise me of matters denied due process of law and post conviction relief and in fact had hemself (sic) arrested me many time previous to attempting any defense in my behalf."

The Court has reviewed the transcript of the change of plea and sentencing of Mr. Jones and concludes his attorney adequately represented him. The Court further concludes Mr. Jones was fully apprised of his constitutional rights, including a right to jury trial and the consequences of his plea. With regard to representation, the following conversation took place:

> COURT: Throughout this matter, have you been represented by Mr. Wesley Johnson?

---

1 Jones was alleged to have been involved in a loosely connected, large-scale check cashing ring. Two other persons who were alleged to have been involved in the ring - Cheryl Patricia Stokes and Linda Mae McClure - were charged in separate criminal cases (83-CR-61 and 83-CR-19), for separate crimes.

MR. JONES: Yes sir.

COURT: Have you been satisfied with Mr. Johnson's representation of you as your lawyer?

MR. JONES: Yes sir.

COURT: In all phases of this matter?

MR. JONES: Yes sir.

COURT: You've been completely satisfied?

MR. JONES: Yes sir.

The Court finds petitioner was adequately represented and there is no basis for his complaint concerning his attorney. Peabody v. United States, 394 F.2d 175 (9th Cir. 1968), cert. den. 393 U.S. 1033, rehearing den. 394 U.S. 955; Richards v. United States, 371 F.2d 611 (5th Cir. 1967).

Finally, with regard to his sentence, petitioner states:

> "The parole board exceeded my guidelines and is in error on my salient score and even included my 'Brother's' record in judgments and it was placed in my P.S.I. report!"

The petitioner appears to be referring to the presentence investigation report of the Probation Department of the United States District Court for the Northern District of Oklahoma. The Court has reviewed the presentence report and finds no error; it further concludes the salient score given to Mr. Jones was proper, and there is no basis for his complaint. Further, the sentence given Mr. Jones was authorized by applicable law. Therefore, it is not reviewable under §2255. Steele v. United States, 362 F.2d 536 (10th Cir. 1966).

The Court concludes Mr. Jones' motion to vacate sentence filed pursuant to 28 U.S.C. §2255 should be and is hereby overruled.

ENTERED this 19th day of October, 1984.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 1984

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

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
vs.	)	
D & D EQUIPMENT COMPANY, JOE ALLEN JETER and MCCLURE EQUIPMENT COMPANY,	)	
Defendants.	)	CIVIL ACTION NO. 84-C-64-B

AGREED JUDGMENT

This matter comes on for consideration this 16th day of October, 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, D & D Equipment Company appearing by its attorney Ollie W. Gresham.

The Court, being fully advised, finds that the Defendant, D & D Equipment Company has agreed that judgment may be entered against it in the amount of $15,000.00, without interest. It has further been agreed that execution will not issue on said sum for a period of one hundred and twenty (120) days from the date of this judgment and no payment will otherwise be required on same for such period of time. It has further been agreed that upon the expiration of said 120 day period, Defendant D & D Equipment Company will commence payments on this judgment at the rate of $100.00 per month, unless the parties agree to a greater payment.

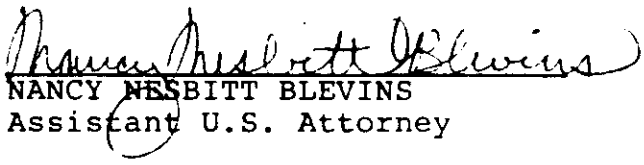
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, D & D Equipment Company, in the amount of $15,000.00, without interest. No execution will issue on this judgment for a period of one hundred and twenty (120) days. Upon the expiration of said 120 day period, Defendant D & D Equipment Company will commence payments on this judgment at the rate of $100.00 per month, unless the parties agree to a greater payment.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney


NANCY NESBITT BLEVINS
Assistant U.S. Attorney


OLLIE W. GRESHAM
Attorney for Defendant
D & D Equipment Company

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
D & D EQUIPMENT COMPANY,	)	
JOE ALLEN JETER and	)	
MCCLURE EQUIPMENT COMPANY,	)	
	)	
Defendants.	)	CIVIL ACTION NO. 84-C-64-B

STIPULATION OF DISMISSAL

COMES NOW the Plaintiff United States of America, by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, the Defendant McClure Equipment Company by its attorney James R. Johnson, and the Defendant D & D Equipment Company, by its attorney Ollie W. Gresham, and hereby stipulate and agree that the Plaintiff's cause of action herein against the Defendant McClure Equipment Company, may be and is hereby dismissed with prejudice.

LAYN R. PHILLIPS
United States Attorney

Nancy Nesbitt Blevins

NANCY NESBITT BLEVINS
Assistant United States Attorney

James R. Johnson

JAMES R. JOHNSON
Attorney for Defendant
McClure Equipment Company

Ollie W. Gresham

OLLIE W. GRESHAM
Attorney for Defendant
D & D Equipment Company

Entered

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

BIGHEART PIPELINE CORPORATION, an Oklahoma corporation, Plaintiff, v. THE UNITED STATES OF AMERICA, (INTERNAL REVENUE SERVICE); HOMESTEAD OIL COMPANY, INC., HIS INDUSTRIES, INC.; DUNCAN PETROLEUM, CORE ENERGY, INC.; DELORES BRIGHTWELL; HERMAN WILSON; and CHARLES DUGGAR, Defendants.	)	No. 83-C-891-B

O R D E R

This matter comes before the Court on cross motions for summary judgment filed by defendant United States of America and defendant Core Energy,Inc. A hearing on the motions has been held. For the reasons set forth below, the motion for summary judgment of Core Energy, Inc., is overruled and the motion for summary judgment of the United States of America is sustained.

This is an interpleader action filed by Bigheart Pipe Line Corporation, the purchaser of oil runs from the "Hammer K" lease in Mayes County, Oklahoma, to determine entitlement to proceeds from the oil purchases. Defendants all claim some right to proceeds from the sale of oil to Bigheart.

The lawsuit has its origin in the failure of Homestead Oil Co. to pay certain federal employment taxes owed for its taxable quarters in 1981, 1982, and 1983. These unpaid taxes were

assessed against Homestead by the Internal Revenue Service on the following dates and in the following amounts:

Date of Assessment	Tax Period	Type of Tax	Principal Amount
11/1/82	4th Qtr/1981	FICA/Withholding	$62,368.69
11/1/82	1st Qtr/1982	FICA/Withholding	39,119.34
11/1/82	2nd Qtr/1982	FICA/Withholding	43,845.81
11/22/82	3rd Qtr/1982	FICA/Withholding	20,648.49
2/21/83	4th Qtr/1982	FICA/Withholding	31,416.74
2/21/83	4th Qtr/1982	FUTA	6,169.13
7/4/83	1st Qtr/1983	FICA/Withholding	10,138.71

Homestead is currently indebted to the United States for the total sum of $247,532.37, plus statutory additions as allowed by law.

On November 17, 1982, Homestead assigned to Core Energy a 78.125 percent interest in an undeveloped oil and gas lease in Mayes County, named the "Hammer K" lease. On November 29, 1982 and December 27, 1982, the United States filed of record Notices of Federal Tax Lien against all property or rights to property of Homestead with the County Clerk, Mayes County, Oklahoma, in connection with the federal tax liabilities of Homestead. On January 20, 1983--after the filing of the Notice of Federal Tax Lien--the assignment from Homestead to Core Energy was filed of record with the County Clerk, Mayes County, Oklahoma.

Core Energy commenced drilling on the property on May 1, 1983. Production of oil from the lease began in June 1983. All crude oil produced on the lease was sold to Bigheart Pipe Line Corporation from June through November 1983.

On August 31, 1983, the Internal Revenue Service served a Notice of Levy upon Bigheart with respect to funds in its possession covering the purchase price of the crude oil sold to it by Core Energy. On October 21, 1983, Bigheart filed this interpleader action, depositing $27,271.59 with the Clerk of the Court,

and requesting a Court determination of proper distribution of the funds. Defendants Core Energy and the United States of America have filed cross motions for summary judgment on the issue of whether the general federal tax lien filed by the Internal Revenue Service attached to the funds paid into the Court.

Effect Of Federal Tax Lien

The Internal Revenue Code, 26 U.S.C. §6321, provides:

> "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person." (Emphasis added)

The lien arises at the time the tax is assessed, and continues until the liability is satisfied or becomes unenforceable. 26 U.S.C. §6322.

Under 26 U.S.C. §6323, the United States, through filing of its tax lien, may obtain priority over other claimants to the same property except for certain protected parties such as purchasers. To qualify as a protected "purchaser" under §6323, a third party who acquires an interest in property of the taxpayer must be protected against subsequent purchasers without actual notice under local law. §6323(h)(6). The parties agree that Core Energy, having failed to file its assignment of record until after the United States filed its Notice of Federal Tax Lien, did not qualify as a "purchaser" under §6323 until after January 20, 1983, the date it filed the assignment of record. Thus, the only

question for resolution is whether the tax liens can attach to monies in the Registry of the Court as "property or rights to property" of Homestead under §6321.

The Government may not take one person's property to satisfy another person's tax obligations, and unless it is established that the taxpayer, at the time the tax lien was filed, was the owner of or had some interest in the property on which the levy is sought to be made, the government cannot enforce the lien against such property. United States v. Kaufman, 267 U.S. 408 (1925); In re Carlson, 580 F.2d 1365, 1369 (10th Cir. 1978). The question then becomes whether and to what extent a taxpayer had "property" or "rights to property" to which the lien could attach under §6321. Aquilino v. United States, 363 U.S. 509 (1960). In answering this question, courts must look to state law. In re Carlson, supra, 580 F.2d at 1368-69. The tax lien statute creates no property rights, but it does attach consequences, which are federally defined, to rights created under state law. United States v. Durham Lumber Co., 363 U.S. 522 (1960).

The parties have agreed that under Oklahoma law, an oil and gas lessee has an incorporeal interest known as a profit a prendre. A lease does not vest in the lessee the title to the oil and gas in the land, but is simply a grant of a right to prospect for oil and gas, no title vesting until the oil or gas is reduced to possession by extracting the same from the earth. Kolochny v. Galbreath, 26 Okla. 772, 110 P. 902 (1910); Frank Oil Co. v. Belleview Gas & Oil Co., 29 Okla. 719, 119 P. 260 (1911). Therefore, the parties agree, the right to prospect for oil and

gas, as defined by Oklahoma law, is a "contingent interest." The dispute between the parties centers on whether the federal tax lien could attach to a contingent interest.

The Court believes under §6321 and applicable case law, a federal tax lien clearly may attach to a contingent interest. The statute itself provides a lien in favor of the United States can attach upon all property or "rights to property." In Randall v. H. Nakashima & Co., 542 F.2d 270 (5th Cir. 1976), the court held a taxpayer's contract right was a property interest to which a federal lien could attach. In so ruling, the court stated:

> "Because the taxpayer's contract right was a valuable and transferable interest, it would be scholastic indeed to deny that it was a property interest to which the federal tax lien might attach. The statutory purpose of assuring collection strongly suggests that such interests should be subject to the lien to discourage transfers by the taxpayer aimed at defeating the rights of the government."

Id. at 274. As further support of its decision, the court stated:

> "In holding that the taxpayer's contract right was property or a property right for purposes of 26 U.S.C. §6321, we recognize that property is an expanding concept. Modern commercial transactions have spawned species of rights that the common law of years anon could not have envisaged. The era of seisen and tail has long vanished. Puts and calls, hedges and options are, analytically, property insofar as their possessor may realize someting from their transfer. 'Property' is not to be confined in a juridical straitjacket.
>
> * * *
>
> "The drafters of the §6321 were wise in using the words 'property . . . or rights to property' instead of enumerating attributes or varieties of property rights. By this device, they allowed the words that expansiveness, flexibility, and potential for growth with which our commercial world endows them in the marts of trade. A contingency that conditions acquisition of legal title does not render empty or valueless a contract right in the

> "property sought to be acquired. The concept of property is not bound to the present. Congress, in enacting §6321, knew that the forms and varieties of property would remain in flux, and that a definition capable of precisely capturing those valuable interests for the tax gatherers' harvest would elude it.
>
> "Congress did not attempt to define the commercial cosmos. Rather, it was perfectly willing to let contemporary transactions be analyzed to determine whether or nor (sic) the delinquent taxpayer had any part of a bundle of rights of commercial value, to which the tax lien would then attach."

Id. at 277-278. Other courts have also held a federal tax lien can attach to contingent interests. See United States v. Trigg, 465 F.2d 1264, 1268 (8th Cir. 1972); Seaboard Surety Company v. United States, 306 F.2d 855, 859 (9th Cir. 1962); Atlantic National Bank v. United States, 536 F.2d 1354, 1356 (Ct.Cl. 1976); Nevada Rock and Sand Company v. United States, 376 F.Supp. 161 (Nev. 1974); George W. Ultch Lumber Co. v. Hall Plastering, Inc., 477 F.Supp. 1060 (W.D.Mo. 1974).

The fact situation here is analogous to that of Randall, supra. The taxpayer had under the terms of the lease the right to drill for and produce oil and gas. Although the right might not be "property" in a strict sense, it was a valuable, transferable interest and thus was an "interest in property" under the terms of §6321. Therefore, the federal tax liens filed by the Internal Revenue Service attached to the right transferred from Homestead to Core, and the government has priority over Core with respect to the funds interplead in this Court. Core could have established its priority by timely filing its assignment in keeping with 16 O.S. §15 but did not do so.

Rule 56 of the Federal Rules of Civil Procedure provides summary judgment is proper where no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law. Bruce v. Martin-Marietta, 655 F.2d 442, 445 (10th Cir. 1976). The Court hereby concludes the United States of America is entitled to summary judgment on its claim that the general federal tax liens filed by the Internal Revenue Service attached to the proceeds from production paid into this Court. Therefore, the motion for summary judgment of the United States is sustained; the motion for summary judgment of Core Energy is overruled.

Entry of judgment in this matter will be delayed pending resolution of the claims of remaining parties. This matter is set for status conference October 25, 1984, at 8:30 a.m.

ENTERED this 18th day of October, 1984.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

FILED

OCT 1 1984

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

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

BRUNSWICK CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 83-C-253-E
	)	
SPINIT REEL COMPANY, an Oklahoma corporation, and DON MCINTIRE,	)	
	)	
Defendants.	)	

AMENDED JUDGMENT

This action came on for hearing before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues raised by post-judgment motions urging amendment of Findings of Fact and Conclusions of Law which were granted in part and denied in part having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiff Brunswick Corporation recover judgment of the Defendants Spinit Reel Company and Don McIntire and that Plaintiff be awarded its costs of action pursuant to Amended Findings of Facts and Conclusions of Law filed on the 11th day of October, 1984.

DATED at Tulsa, Oklahoma this 17th day of October, 1984.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

69

Entered

FILED
OCT 18 1984
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

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

WINSTON HOMES, INC., a Delaware Corporation, Plaintiff,	)	
v.	)	No. 84-C-643-B
CHARLES L. PLUMMER; JAMES B. McDUFFIE; C. R. McKEAN and JOAN C. McKEAN, Defendants,	)	
and	)	
GENE PIERCE, d/b/a QUALITY MOBILE HOMES and JERRY R. HILTZMAN, MARTHA McDUFFIE, and TOTAL CONCEPT MANUFACTURED HOMES, INC., Additional Defendants.	)	

J U D G M E N T

In regard to defendant's crossclaim and counterclaim and plaintiff's second ground for relief,

IT IS HEREBY ORDERED AND ADJUDGED, that the defendant/counterclaimant, Gene Pierce, d/b/a Quality Mobile Homes, recover from plaintiff Winston Homes, Inc., the sum of Nine Thousand Seven Hundred Twenty-One and 44/100 Dollars ($9,721.44), with post-judgment interest thereon at the rate of 11.36%, and the costs of the action assessed against the plaintiff.[1/] This judgment shall not be a final judgment until the issues in this action are concluded against the alleged defendant guarantors.

1/ Once judgment is satisfied in favor of defendant Pierce in the amount of $9,721.44, the judgments will be satisfied as to plaintiffs in both cases consolidated before this Court, No. 84-C-644-B and No. 84-C-643-B.

14

ENTERED this 18th day of October, 1984.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

TIDWELL INDUSTRIES, INC., Plaintiff,	
v.	84-C-643-B cons. No. 84-C-644-B
CHARLES L. PLUMMER; JAMES B. McDUFFIE; C. R. McKEAN and JOAN C. McKEAN, Defendants,	
and	
GENE PIERCE, d/b/a QUALITY MOBILE HOMES and JERRY R. HILTZMAN, MARTHA McDUFFIE, and TOTAL CONCEPT MANUFACTURED HOMES, INC., Additional Defendants.	

J U D G M E N T

In regard to defendant's crossclaim and counterclaim and plaintiff's second ground for relief,

IT IS HEREBY ORDERED AND ADJUDGED, that the defendant/counterclaimant, Gene Pierce, d/b/a Quality Mobile Homes, recover from the bond posted by plaintiff, Tidwell Industries, Inc., the sum of Nine Thousand Seven Hundred Twenty-One and 44/100 Dollars ($9,721.44), with postjudgment interest thereon at the rate of 11.36%, and the costs of the action assessed against the plaintiff.[1/] This judgment shall not be a final judgment until the issues in this action are concluded against the alleged defendant guarantors.

1/ Once judgment is satisfied in favor of defendant Pierce in the amount of $9,721.44, the judgments will be satisfied as to plaintiffs in both cases consolidated before this Court, No. 84-C-644-B and No. 84-C-643-B.

ENTERED this 18th day of October, 1984.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

TIDWELL INDUSTRIES, INC., Plaintiff,	)	84-C-643-B consol.
v.	)	No. 84-C-644-B
CHARLES L. PLUMMER; JAMES B. McDUFFIE; C. R. McKEAN and JOAN C. McKEAN, Defendants,	)	
and	)	
GENE PIERCE, d/b/a QUALITY MOBILE HOMES and JERRY R. HILTZMAN, MARTHA McDUFFIE, and TOTAL CONCEPT MANUFACTURED HOMES, INC., Additional Defendants.	)	

J U D G M E N T

In regard to defendant's crossclaim and counterclaim and plaintiff's second ground for relief,

IT IS HEREBY ORDERED AND ADJUDGED, that the defendant/counterclaimant, Gene Pierce, d/b/a Quality Mobile Homes, recover from the bond posted by plaintiff, Tidwell Industries, Inc., the sum of Nine Thousand Seven Hundred Twenty-One and 44/100 Dollars ($9,721.44), with postjudgment interest thereon at the rate of 11.36%, and the costs of the action assessed against the plaintiff.[1/] This judgment shall not be a final judgment until the issues in this action are concluded against the alleged defendant guarantors.

1/ Once judgment is satisfied in favor of defendant Pierce in the amount of $9,721.44, the judgments will be satisfied as to plaintiffs in both cases consolidated before this Court, No. 84-C-644-B and No. 84-C-643-B.

16

ENTERED this 18th day of October, 1984.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

OCT 18 1984

DOROTHY A. EVANS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA

In Re:	)	
DELTA CATTLE CORPORATION,	)	
Debtor,	)	
BORG WARNER ACCEPTANCE CORPORATION,	)	
Plaintiff,	)	
vs.	)	Case No. 84-00348
ROBERT E. MILES, TRUSTEE,	)	
Defendant.	)	Adversary No. 84-0202
and	)	84-C-819-E
ROBERT E. MILES, TRUSTEE,	)	
Plaintiff,	)	
vs.	)	
BORG WARNER ACCEPTANCE CORPORATION,	)	
Defendant.	)	

FILED

OCT 22 1984

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

STIPULATION OF DISMISSAL OF APPEAL

COMES NOW Borg-Warner Acceptance Corporation, by its attorney, Thomas G. Marsh, and Robert Miles, Trustee, by his attorney, Sidney K. Swinson, and stipulate that the Appeal of Borg Warner Acceptance Corporation to the ruling of the Court

on September 21, 1984, ordering sale of vehicle, is dismissed without prejudice.

BORG WARNER ACCEPTANCE CORPORATION

By: Thomas G. Marsh
Thomas G. Marsh
Its Attorney

ROBERT MILES, TRUSTEE

By: Sidney K. Swinson
Sidney K. Swinson
His Attorney

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

MERCURY AVIATION CORPORATION, an Oklahoma corporation, Plaintiff,	)	
vs.	)	No. 84-C-455-B
MICHIGAN NATIONAL BANK, a national banking association, Defendant.	)	

ORDER

On October 15, 1984, there was presented to the Court the Stipulation for Dismissal of the captioned case pursuant to Rule 41(a) - Federal Rules of Civil Procedures which was approved by the parties. Pursuant to the stipulation of the parties

IT IS ORDERED that the captioned case is dismissed with prejudice to the refiling of same and without costs or fees.

Thomas R. Brett
United States District Judge

23

Entered

FILED

OCT 18 1984

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

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

PEARL HANCOCK,	)	
Plaintiff,	)	
vs.	)	No. 84-C-556-E
PATRICK L. CONLEY, D.O., et al.,	)	
Defendants.	)	

O R D E R

NOW on this 10th day of October, 1984 comes on for hearing the motion to dismiss filed by Defendant Baptist Health Care Corporation d/b/a Grand Valley Hospital and the Court being fully advised in the premises finds the same should be granted.

The dispositive issue is whether Plaintiff may avail itself of the provisions of 12 O.S. 1981 § 100 in order to avoid the running of the statute of limitations.

The Court has reviewed the case of Morris v. Wise, Okl., 293 P.2d 547 (1956) wherein the Court held that the right to refile a formerly dismissed action under the "saving statute" as found in 12 O.S. 1981 § 100 is limited to actions filed originally in the State of Oklahoma and finds no authority to allow deviation from the Supreme Court's decision in that case. Further, no facts exist in the case at bar to justify a change in position by this Court.

This case involves a case originally filed in the United States District Court for the Northern District of Texas which

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was dismissed for lack of jurisdiction and improper venue. Shortly thereafter this action was filed. Plaintiff asserts the filing of the case in Texas tolled the statute of limitations. Morris however specifically rules that rights under 12 O.S. 1981 § 100 accrue only when the original action is brought in an Oklahoma court and then disposed of other than on the merits.

The Court notes a motion to dismiss was also filed by the individually named doctors in this action which is based on the statute of limitations and which should also be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants' motions to dismiss be and are hereby granted.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

FILED

OCT 18 1984

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

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

CLARK RESOURCES, INC. Plaintiff, vs. READD SUPPLY COMPANY, a Texas corporation; MARWIL, d/b/a CAL METAL, a California partnership; TECRIM CORPORATION; MILLSTEEL; DURHAM INDUSTRIES, INC.; and RUTLAND, LTD.; MIKE WILKINSON, Individually, KAISER PIPE & CASING, INC., a Nevada corporation, Defendants.	)	Case No. 83-C-844-E

Notice of
DISMISSAL WITHOUT
PREJUDICE OF KAISER PIPE & CASING, INC.

COMES NOW the Plaintiff Clark Resources, Inc., ("Clark"), and dismisses all claims pending against Defendant Kaiser Pipe & Casing, Inc., without prejudice to refiling same.

SNEED, LANG, ADAMS,
HAMILTON, DOWNIE & BARNETT

By: _____
William J. Wenzel
OBA I.D. #9480
J. Vince Hightower
OBA I.D. #10333
Sixth Floor
114 East Eighth Street
Tulsa, Oklahoma 74119
(918) 583-3145

Attorneys for Plaintiff
Clark Resources, Inc.

CERTIFICATE OF MAILING

I, J. Vince Hightower do hereby certify that on the 18th day of October, 1984, I caused to be mailed a true and correct copy of the above and foregoing instrument, proper postage thereon prepaid, to:

Jack Y. Goree, Esq.
Whitten, Goree, Davies & Madden
Suite 410 City Plaza West
5310 East 31st Street
Tulsa, Oklahoma 74135

Paul C. Duncan, Esq.
Derryberry Duncan Gray & Quigley
4420 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

Neal B. Thompson, Jr., Esq.
Ball, Hunt, Hart, Brown & Baerwitz
120 Linden Avenue
Long Beach, California 90801

J. Vince Hightower

Entered

FILED

OCT 1 0 1984

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

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

ACORN, a non-profit Arkansas corporation, JEFF MURRAY AND ZAK POLLETT,	)	
Plaintiffs,	)	
vs.	)	No. 83-C-835-E
THE CITY OF TULSA,	)	
Defendant.	)	

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 Plaintiffs Acorn, Jeff Murray and Zak Pollett take nothing from the Defendant The City of Tulsa, that the action be dismissed on the merits, and that the Defendant The City of Tulsa recover of the Plaintiffs Acorn, Jeff Murray and Zak Pollett their costs of action.

DATED at Tulsa, Oklahoma this 17th day of October, 1984.

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

19

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

PATRICIA RULE, an individual, and GREGORY SANDELLA, an individual,	)	
Plaintiffs,	)	
vs.	)	Case No. 84-C-350-E
MOODY'S JEWELRY, INCORPORATED, an Oklahoma corporation, ERNEST MOODY, JR., an individual, and DETECTIVE J. BROWN, an individual,	)	
Defendants.	)	

STIPULATION OF
DISMISSAL

COMES NOW the plaintiff, Gregg Sandella, through his attorney of record, and the defendants, Moody's Jewelry, Incorporated, Ernest Moody, Jr. and Detective J. Brown, and each of them, and stipulate as follows:

That, pursuant to the provisions of Rule 41, F.R.C.P., the plaintiff, Gregg Sandella, does, by these presents, dismiss his causes of action, included in the Complaint herein, against the named defendants and each of them.

That the Plaintiff, Patricia Rule, relinquishes no rights, nor is she in any way affected in her position with regard to her claims contained in the Complaint, by the instant dismissal.

IT IS SO STIPULATED.

PLAINTIFF
Gregg Sandella,

By: _____
JOSEPH L. HULL, III

Attorney of Record

DEFENDANT
Moody's Jewelry, Incorporated,
an Oklahoma Corporation

By: _____
PAUL BOUDREAUX

DEFENDANT
J. Brown

By: _____
JAMES SECREST

Entered

FILED

OCT 1 0 1984

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

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

ACORN, a non-profit Arkansas corporation, JEFF MURRAY AND ZAK POLLETT,	)	
Plaintiffs,	)	
vs.	)	No. 83-C-835-E
THE CITY OF TULSA,	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Plaintiff Acorn is a non-profit organization which engages in various forms of community organization and activity. The corporation is organized under the laws of Arkansas and registered to do business in the State of Oklahoma. Jeff Murray was organizing director for Acorn in Oklahoma, and Zak Pollett was the regional staff director during the time of the incidents described in this case. In the fall of 1982 Acorn determined that it would hold various public demonstrations calling attention to policies implemented by the Reagan administration and the impact that these policies were having on the national economy and on individual citizens. The organization determined that such demonsrations should include the nation-wide holding of public rallies complete with tent cities reminiscent of former "Hoovervilles" and named "Reagan Ranches". Acorn began to plan similar events locally. It was the desire of the group to create a Reagan Ranch on public property in Tulsa for symbolic

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purposes. The ranch would be created by the erection of tent structures on a temporary basis. No camping activities were planned. The organization had an agreement with the Salvation Army Mabee Center to hold the rally on their property. The Mabee Center subsequently changed its mind and revoked such permission. The group then made an agreement with a local Catholic church to hold the rally on its property. On the 25th of October the church cancelled the rally after a statement of the mayor broadcast on radio that the plaintiffs would not be allowed to hold their protest on public property. On Wednesday the 27th the group decided to request permission from the Park Board of the City of Tulsa to hold the rally on park property. Plaintiff Jeff Murray met with Assistant Park Director Max Weins and requested a permit to construct Reagan Ranches in Springdale Park from Thursday, October 28 to Saturday, October 30, 1982. Mr. Weins quoted to Plaintiff the City Ordinance which prohibited camping in the parks and stated that such a permit could not be granted until he had spoken to the legal department. Less than an hour later Mr. Weins produced a copy of the Criminal Code which prohibited the erection of dwellings on public land. Although he could not grant the Plaintiffs a permit to erect their tents he suggested that they attend an informal Park Board meeting the following afternoon. The Park Board members informed Plaintiff Murray that only the Tulsa Board of Commissioners could grant authority to pitch tents. They also informed him that he could post no banners at any rally he might hold. The Park Board offered the Plaintiffs the alternative site of Mohawk Park where

camping is permitted. Plaintiff was further advised by the attorney for the Park Board that it needed no permit to hold the type of demonstration described if no tents were erected and the park curfew obeyed. However the Park Board was without authority to grant a permit as requested because the Board could take no official action at that session and only the Board of City Commissioners could waive the ordinances prohibiting the erection of tents on public property. Plaintiff requested a permit from the Director of Parks and Recreation, Hugh McKnight. Mr. McKnight stated that he had no authority to grant such a permit.

No request for permit or waiver was made before the Board of City Commissioners on Friday the 29th.

On October 29, 1982 Acorn erected a tent city and held the rally on private property at 76 North Yorktown in Tulsa.

Upon dismissal of the individual Defendants and thereby the claims of unconstitutional application of the ordinances, this Court is left with Plaintiff's request for injunctive relief and damges from the City of Tulsa, Oklahoma.

The Defendant asserts that the Plaintiffs cannot proceed in this action to attack the constitutionality of the ordinances on their face or as applied because of their failure to exhaust administrative remedies. As to the pro se constitutional attack, the emerging rule would appear to be that "since the administrative remedy cannot resolve the constitutional challenge, exhaustion will not be required unless the administrative action might make judicial determination of the

constitutional question unnecessary." Metcalf v. Swank, 444 F.2d 1353, 1356 (7th Cir. 1971); see Public Utilities Commission v. United States, 78 S.Ct. 446 (1958).

However, when faced with a challenge to the application of an ordinance, this Court must decline to consider Plaintiff's arguments against the City when no opportunity was allowed the executive body to grant or deny the requested permit. See Metcalf, supra at pages 356 and 357; Matters v. City of Ames, 219 N.W.2d 718 (Iowa 1974).

Title 27, Tulsa Revised Ordinances, § 514 relating to city public grounds, provides:

> It shall be an offense for any person to maintain, erect or permit the erection of any building, hut, hotel, shanty, tent or other structure under his control upon any street, sidewalk, alley or other public grounds.

Title 26 § 2 provides as follows:

> It shall be an offense for any person to perform any of the following acts within any public park or other area under the control of the Park and Recreation Board unless the doing of such act is authorized by the said Board or the Park Superintendent.
>
> (a) To give any theatrical entertainment, moving picture show, parade, procession, public gathering or public meeting of any kind, post or display any sign, banner or advertisement upon any tree, post, building or other structure.

In 1981 the penal code in § 511 of Title 26, Tulsa Revised Ordinances was amended to allow structures on park lands and other public property if consent was granted by the Board of City Commissioners. Section 511 provides in part as follows:

> A. It shall be an offense for any person to do any of the following acts upon any public street, highway, alley, public place or upon or to any other property, real, personal or mixed, belonging to the City of Tulsa, regardless of the purpose for which such property was dedicated, acquired or purchased, without the consent of the Board of Commissioners of the City of Tulsa:
>
> > ... (2) To take up one's abode on said property; (3) to build any structure of any kind upon any of said property.

The question before this Court is whether the ordinances of the City of Tulsa in effect at the time of the permit request are an unconstitutional infringement upon the rights of free speech of Plaintiffs.

> Expression, whether oral or written or symbolized by conduct, is subject to reasonable time, place, and manner restrictions. We have often noted that restrictions of this kind are valid provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.

Clark v. Community for Creative Nonviolence, 52 U.S.L.W. 4986, 4987 (June 29, 1984). The City of Tulsa submits that the ordinances are defensible either as time, place or manner restrictions or as regulation of symbolic conduct. "Symbolic expression of this kind may be forbidden or regulated if the conduct itself may constitutionally be regulated, if the regulation is narrowly drawn to further a substantial governmental interest, and if the interest is unrelated to the suppression of free speech." Clark supra at pages 4987-88. The

City does not ban camping or the pitching of tents generally or in all parks. There are established areas for camping. The City also allows demonstrations and rallies in any park with the permission of the Park Board or Park Superintendent. The ordinances also permit the building of a structure on public property with the consent of the Board of City Commissioners. Ample alternative channels for communication of the information are allowed.

The City has a substantial governmental interest in maintaining its parks in an attractive and intact condition and available to the members of the public. An ordinance requiring the permission of the Park Superintendent for a public gathering or of the City Commission for the erection of a structure upon public property is a proper restriction upon the conduct of persons and is sufficiently narrowly drawn to avoid an overbroad restriction on such conduct. As the Supreme Court makes clear in Clark, supra, there is a substantial governmental interest in conserving park property, and that interest is plainly served by measures such as the prescription of the erection of tents designed to limit property damage and wear and tear.

The ordinances of the city do not make reference to the content of any communication, but instead prohibit the erection of structures without permission in all instances.

Plaintiffs contend that the city ordinances are overly broad and vague and that persons should not have to guess at their meanings. "Where conduct and not merely speech is involved, we

believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statutes plainly legitimate sweep". Broaderick v. Oklahoma, 93 S.Ct. 2908, 2918 (1973). The fact that Mr. Pollett and Mr. Murray are reluctant to approach the City for permission to use the parks does not by itself indicate that the ordinances prescribing the erection of tents are overbroad.

The "overbreadth" doctrine has its source in Thornhill v. Alabama, 60 S.Ct. 736 (1940). In that case the court concluded that the very existence of some broadly written statutes may have such a deterrent effect on free expression that they should be subject to challenge even by a party whose own conduct may be unprotected. However there must be "a realistic danger that the statute itself will significantly compromise recognized first amendment protection of parties not before the court for it to be facially challenged on overbreadth grounds." Members of City Council v. Taxpayers for Vincent, 104 S.Ct. 2118, 2126 (1984). Had circumstances allowed the Plaintiffs adequate time to consider the wording of the statutes and to follow their direction to seek permission of the City Commission, this Court is convinced that Plaintiffs would have had no difficulty in following their direction. This Court cannot find, upon a reading of the clear language of the ordinances, that they are unconstitutionally overbroad.

Nor are the ordinances sufficiently vague to vest officials with undue discretion. The ordinances give the ordinary person a reasonable opportunity to know what is prohibited. Their

meanings are not so uncertain as to "inevitably lead citizens to steer far wider of the unlawful zone ... than if the boundaries of the forbidden areas were clearly marked." Grayned v. City of Rockford, 92 S.Ct. 2294, 2299 (1972) citing Baggett v. Bullitt, 84 S.Ct. 1316, 1323 (1964).

The Court is convinced, upon a review of the record and evidence submitted, and the arguments and authorities of counsel, that the referenced ordinances of the City of Tulsa are not unconstitutionally vague, and do not impermissibly infringe upon first amendment freedoms. The ordinances are sufficiently narrowly tailored to serve a "significant government interest," and they "leave open ample alternative channels for communication of the information." See Clark, supra.

It is therefore the opinion of this Court that the challenge of Plaintiffs to the ordinances of the City of Tulsa cannot stand.

This Memorandum Opinion and Order shall constitute Findings of Fact and conclusions of law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure.

It is so ORDERED this 17th day of October, 1984.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

MARY MORTON JOSLIN, Plaintiff,	)	
vs.	)	No. 84-C-501-E 83-C-577-E (Consolidated)
JOHNNY WAKES, et al., Defendants,	)	
and	)	
MEARION JAMES HORTON, Plaintiff,	)	
vs.	)	
GARY DALE WATKINS, et al., Defendants.	)	

ORDER

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

The defendant Wakes' motion to dismiss as to plaintiff Joslin is therefore granted. The action against defendant Wakes is dismissed in case number 84-C-501-E only.

DATED this 17th day of October, 1984.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

FILED

OCT 1 8 1984

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

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

SHIRLEY KEATON AND JAMES ROBERT KEATON,	)	
Plaintiffs,	)	
vs.	)	No. 84-C-493-E
FARMERS INSURANCE COMPANY OF AMERICA AND JIMMY D. MARSHALL,	)	
Defendants.	)	

ORDER

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

The motion of Defendant Marshall to dismiss is therefore granted.

DATED this 17TH day of October, 1984.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

10

Entered

FILED

OCT 13 1984

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

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

CLARK RESOURCES, INC. Plaintiff, vs. READD SUPPLY COMPANY, a Texas corporation; MARWIL, d/b/a CAL METAL, a California partnership; TECRIM CORPORATION; MILLSTEEL; DURHAM INDUSTRIES, INC.; and RUTLAND, LTD.; MIKE WILKINSON, Individually, KAISER PIPE & CASING, INC., a Nevada corporation, Defendants.	)	Case No. 83-C-844-E

notice of
DISMISSAL WITHOUT
PREJUDICE OF MIKE WILKINSON

COMES NOW the Plaintiff Clark Resources, Inc., ("Clark"), and dismisses all claims pending against Defendant Mike Wilkinson without prejudice to refiling same.

SNEED, LANG, ADAMS,
HAMILTON, DOWNIE & BARNETT

By: _____

William J. Wenzel
OBA I.D. #9480
J. Vince Hightower
OBA I.D. #10333
Sixth Floor
114 East Eighth Street
Tulsa, Oklahoma 74119
(918) 583-3145

Attorneys for Plaintiff
Clark Resources, Inc.

CERTIFICATE OF MAILING

I, J. Vince Hightower do hereby certify that on the 18th day of October, 1984, I caused to be mailed a true and correct copy of the above and foregoing instrument, proper postage thereon prepaid, to:

Jack Y. Goree, Esq.
Whitten, Goree, Davies & Madden
Suite 410 City Plaza West
5310 East 31st Street
Tulsa, Oklahoma 74135

Paul C. Duncan, Esq.
Derryberry Duncan Gray & Quigley
4420 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

Neal B. Thompson, Jr., Esq.
Ball, Hunt, Hart, Brown & Baerwitz
120 Linden Avenue
Long Beach, California 90801

J. Vince Hightower

Entered

OCT 17 1984

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

ARSCO DISTRIBUTING COMPANY,	)	
Plaintiff,	)	
v.	)	CASE NO. 84-C-53 B
DANIEL RADIATOR CORPORATION,	)	
Defendant.	)	

ORDER OF DISMISSAL

Upon consideration of the Joint Stipulation for Dismissal filed herein, it appearing to the Court that the parties have reached a private settlement and thereby discharged all claims existing between themselves as of the date of such settlement,

IT IS HEREBY ORDERED that this action be and is dismissed with prejudice and that each party shall bear its own costs.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

James F. Bullock
PRAY, WALKER, JACKMAN
WILLIAMSON & MARLAR
Attorneys for Plaintiff

Roger R. Scott
LAWRENCE & SCOTT
Attorneys for Defendant

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FILED

OCT 17 1984

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

FRANK RAHEAL BROWN,	)	
Petitioner,	)	
vs.	)	No. 84-C-204-E
JERRY SUNDERLAND, et al.,	)	
Respondents.	)	

ORDER

NOW on this 16th day of October, 1984 comes on for hearing writ of habeas corpus filed by Petitioner pursuant to 28 U.S.C. § 2254 and the Court, being fully advised in the premises finds the same should be denied.

Petitioner asserts two grounds for habeas corpus relief; that his conviction was obtained from an unconstitutionally selected and empaneled jury and that the jury was prejudiced by remarks made during closing argument by the prosecuting attorney.

The Court finds the issues raised involve interpretation of state law and therefore fall outside the scope intended by Congress for habeas corpus relief. Further the Court finds no violation of federally protected rights raised by Petitioner. Engle v. Isaac, 456 U.S. 107 (1982). Federal courts have no supervisory powers over state trial proceedings and in order for this Court to review state proceedings, trial court error must have been so egregious as to render the entire trial fundamentally unfair.

This Court has therefore reviewed the substantative claims

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of Petitioner to determine if the trial in this case was fundamentally unfair and concludes it was not under the rationale of Washington v. State, 568 P.2d 301 (Okl.Cr. 1977); Davis v. State, 634 P.2d 752 (Okl.Cr. 1981); and Frick v. State, 634 P.2d 738 (Okl.Cr. 1981).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner's Writ of Habeas Corpus be and is hereby denied.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

RICHARD COREY, Plaintiff,	)	
vs.	)	No. 81-C-637-C
CURTIS A. WOLFER, et al., Defendants.	)	

FILED
IN OPEN COURT

OCT 17 1984

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

ORDER

This action comes before the Court for dismissal. This action was commenced by the named Plaintiff as representative of a class of investors in certain oil and gas properties situated in Okmulgee County, Oklahoma. Upon motion by Plaintiff and examination by the Court, the class was certified herein. Thereafter settlement was entered into between the Plaintiff class and certain Defendants herein with regard to the matters in dispute in this lawsuit. Pursuant to order of the Court, notice of the proposed settlement was given to members of the Plaintiff class and after a hearing and an opportunity for comment, the settlement entered into between the Plaintiff class and Defendants was approved and made the judgment of this Court. Thereafter the Court retained jurisdiction of this action for the purpose of supervising the receiver appointed to manage the properties the subject of this action and to conduct certain litigation in state court to secure proper determination of the interests of various members of the Plaintiff class in the oil and gas properties. The Court has since been advised by the receiver that such litigation

and determination has been completed, that the properties in question have been managed and the affairs entrusted to the receiver have been completed. The Court has received the final report and accounting of the receiver and the receiver's application for discharge. The Court has approved the final report and accounting of the receiver and granted the application for discharge of the receiver herein. It appearing to the Court that all matters in this action have been concluded and that there is no need for the Court to retain further jurisdiction herein;

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

Done this 17 day of Oct, 1984.

(Signed) H. Dale Cook

H. Dale Cook, Chief Judge
United States District Court
Northern District of Oklahoma

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

ELIZABETH ANNE ODOM, a minor, as the sole surviving child and next of kin of CHARLES THOMAS ODOM, deceased, by and through her mother and guardian, KIMBERLY JUNE ODOM,	)	
Plaintiff,	)	
vs.	)	Case No. 83-C-50-E
AMERICAN HOIST & DERRICK COMPANY, a foreign Corporation,	)	
Defendant.	)	

JOURNAL ENTRY OF JUDGMENT

NOW on this 17th day of October, 1984, this cause came on for hearing and trial by jury was waived in open Court by the parties hereto. Plaintiff appeared in person and by and through her Attorney of Record, James E. Frasier; the Defendant appeared by its Attorney of Record, S. M. Fallis, Jr. Both parties thereupon presented their evidence; after oral argument and the Court being fully advised in the premises, the Court finds that the parties hereto have entered into an agreed settlement for a total sum of one hundred fifty thousand dollars ($150,000.00). The Court further finds that this sum is reasonable and that it should be approved.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that this Plaintiff have judgment against Defendant in the sum of

seven thousand six hundred eighteen dollars and forty three cents ($7,618.43), for the benefit of Frasier, Frasier & Gullekson, Plaintiff's attorneys, as out-of-pocket expenses advanced in this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that Plaintiff have judgment against Defendant in the sum of fifty six thousand nine hundred fifty two dollars and sixty three cents ($56,952.63) for the benefit of Frasier, Frasier & Gullekson, as attorney's fees herein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that Plaintiff have judgment against Defendant in the sum of eighty five thousand four hundred twenty eight dollars and ninety four cents ($85,428.94).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that the settlement herein is approved in all respects.

JAMES O. ELLISON
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

James E. Frasier
Attorney for Plaintiff

S. M. Fallis, Jr.
Attorney for Defendant

Entered

FILED

OCT 1 1984

Jack C. Silver
U.S. District Court

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

MID AMERICA GAS LINE CORPORATION,	)	
Plaintiff,	)	
vs.	)	No. 82-C-1095-E
EMPIRE PIPELINE CORPORATION,	)	
Defendant.	)	

JUDGMENT

NOW on this 16TH day of October, 1984 comes on for hearing the above-styled case and the Court being fully advised in the premises finds as follows:

This case came on for trial on the 26th day of September, 1984 and the parties, after the Court had called a special panel of jurors, advised that the case was settled whereupon the Court granted the parties twenty (20) days to submit settlement papers and assessed cost of bringing in the jury of $600.00 to be paid by the parties, each party to pay $300.00 pursuant to Rule 12(d) of the Local Rules.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that each party in the above-styled case be and is hereby ordered to pay $300.00 to the Clerk of the Northern District for transmittal to the Treasury of the United States pursuant to Rule 12(d) of the Local Rules of the Northern District of Oklahoma for a total of $600.00 and that this case be dismissed by reason of settlement,

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the settlement papers to be submitted within twenty (20) days of September 26, 1984.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

OCT 1 1984

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

ROBERT E. COTNER,	)	
Plaintiff,	)	
vs.	)	No. 80-C-707-E
CITY OF BIXBY, et al.,	)	
Defendants.	)	

Closes

ORDER

NOW on this 10th day of October, 1984 comes on for hearing objections to Findings and Recommendations of the Magistrate and the Court, being fully advised in the premises finds the same should be overruled.

The Court has reviewed the Findings and Recommendations of the Magistrate and finds them to be extensive and based upon the evidence and the law as this Court must apply it. The Court therefore adopts the Findings and Recommendations of the Magistrate and finds accordingly Defendant's Motion to Dismiss be and is hereby sustained thereunder.

It is so Ordered.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

FILED

OCT 1 1984

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

RICKY J. CORBETT, Plaintiff,	)	
vs.	)	Civil Action No. 83-C-703-E
MICKEY L. HURT, MIKE E. ROMINE, CHARLES WILLIAMS, JACK McKENZIE, and the CITY OF SAPULPA, Oklahoma, a municipal corporation, Defendants.	)	

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW the plaintiff by and through his attorneys of record, by Don E. Gasaway; defendant City of Sapulpa, Oklahoma, a municipal corporation, by and through its attorney of record, C.M. Gibson; defendant Charles Williams, by and through his attorney of record, C.M. Gibson; defendant Jack McKenzie, by and through his attorney of record, Lester D. Henderson, and defendants Mickey L. Hurt and Mike E. Romine, by and through their attorney of record, William S. Hall and stipulate as follows:

Plaintiff, having examined the motions for summary judgment with affidavits and briefs filed by defendants Charles Williams, Jack McKenzie and the City of Sapulpa, Oklahoma, a municipal corporation, confesses said motions for summary judgment and stipulates the defendants Williams, McKenzie and City of Sapulpa be dismissed, with prejudice to plaintiff's right to hereafter reinstate such

action as to said defendants, the parties stipulating that each shall bear their respective costs and attorneys fees under all applicable federal and state laws.

Ricky Corbett
Ricky J. Corbett, Plaintiff

J. PETER MESSLER
2815 E. Skelly, Suite 821
Tulsa, OK 74105
(918) 742-9517

and

GASAWAY, GREEN & HARRIS, P.A.

BY: [signature]
Don E. Gasaway
P.O. Box 14070
Tulsa, OK 74159
(918) 742-0548

ATTORNEYS FOR PLAINTIFF

CHARLES WILLIAMS
CITY OF SAPULPA, Oklahoma,
a municipal corporation

BY: Charles M. Gibson
Charles M. Gibson, attorney
for defendants Williams and
City of Sapulpa
P.O. Box 205
Sapulpa, Oklahoma 74067
(918) 227-2733

JACK McKENZIE

BY: Lester D. Henderson
Lester D. Henderson, attorne
for defendant McKenzie
P.O. Box 205
Sapulpa, Oklahoma 74067
(918) 227-2733

MICKEY L. HURT
MIKE E. ROMINE

FELDMAN, HALL, FRANDEN,
WOODARD & FARRIS,

BY: [signature]
Williams S. Hall, attorney
for defendants Hurt and
Romine
816 Enterprise Building
Tulsa, OK 74103
(918) 583-7129

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

Entered

ANDREW T. PARKER, Plaintiff,	)	
v.	)	NO. 83-C-937-B
MARGARET HECKLER, Secretary of Health and Human Services, Defendant.	)	

ORDER

On October 4, 1984, the Court entered an order and judgment affirming the Secretary's decision discontinuing Social Security benefits. In accordance with the Tenth Circuit Court of Appeals' decision in Jackson v. Heckler, Secretary, ___F.2d___, No. 84-1193, filed October 11, 1984, the Court hereby vacates its judgment of October 4, 1984, and remands this case to the Secretary for further consideration.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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IN T . NITED STATES DISTRICT CC
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Entered

FILED

OCT 17 1984

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

BOBBY G. JACKSON, Plaintiff, v. MARGARET M. HECKLER, Secretary, Department of Health and Human Services, Defendant.	)	NO. 83-C-644-B

ORDER

In keeping with the order of the Tenth Circuit Court of Appeals, filed October 11, 1984, the Court hereby orders the judgment in this case vacated and remands the case to the Secretary of the Department of Health and Human Services for further consideration.

ENTERED this 17th day of October, 1984.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

11

Entered

FILED

OCT 17 1984

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

MELVIN LAWRENCE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 82-C-1172-E
	)	
SAFEWAY STORES, INC.,	)	
	)	
Defendant.	)	

AMENDED 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% from date of judgment plus prejudgment interest at the rate of 15% per annum and his costs of action.

DATED at Tulsa, Oklahoma this 16th day of October, 1984.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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R

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

Entered

FILED

OCT 17 1984

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

LARRY D. KETCHER, Plaintiff, v. MARGARET M. HECKLER, Secretary of Health and Human Services, Defendant.	)	NO. 83-C-812-B

ORDER

In keeping with the order of the Tenth Circuit Court of Appeals, filed October 11, 1984, the Court hereby orders the judgment in this case vacated and remands the case to the Secretary of the Department of Health and Human Services for further consideration.

ENTERED this 17th day of October, 1984.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
OCT 16 1984
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
vs.	)	
HERMAN L. BLACK and STELLA V. BLACK, husband and wife,	)	
Defendants.	)	CIVIL ACTION NO. 84-C-677-E

NOTICE OF DISMISSAL

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

Dated this 12th day of October, 1984.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

Nancy Nesbitt Blevins

NANCY NESBITT BLEVINS
Assistant United States Attorney
460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 16th day of October, 1984, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

Herman L. Black
1542 North Evanston
Tulsa, Oklahoma 74110

Stella V. Black
1542 North Evanston
Tulsa, Oklahoma 74110

Kenneth Hicks, Esq.
P.O. Box 881
Wagoner, Oklahoma 74467

Nancy Nesbitt Williams
Assistant United States Attorney

Entered

FILED

OCT 16 1984

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

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

GARY MITCHELL, RON PRATI, MICHAEL MATHENY and PAUL BOND	&	
	&	
V.	&	CAUSE NO. 83-C-962-B
	&	
COMMUNICATIONS RESALE CORPORATION and FRED GARNER	&	

JUDGMENT

On this day came on for trial the above styled and numbered cause. The parties, by and through their respective attorneys of record, represented to the Court that an agreement had been reached among the parties as to the disposition of the case and requested the Court to enter judgment in accordance therewith. The Court is of the opinion the agreed judgment should be entered.

IT IS, THEREFORE, ORDERED that Plaintiffs' causes of action as set forth in Counts One, Two and Three of their Complaint, together with the factual and jurisdictional allegations referred thereby, are hereby dismissed with prejudice against any or all of Plaintiffs refiling same or any part thereof.

It is further ordered that Plaintiffs have and recover judgment against Defendants with respect to Count Four of their Complaint the sum of $74,000.00 in actual damages and $31,000.00 in exemplary damages.

All costs of suit are adjudged against the party incurring same.

SIGNED this 16th day of October, 1984

S/ THOMAS R. BRETT

JUDGE PRESIDING

AGREED:

JAMES K. SECREST, II
Attorney for Plaintiffs

JOE CHUMLEA
Attorney for Defendants

Entered

FILED

OCT 16 1984

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

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

SOURCE SERVICES CORPORATION, a Delaware corporation, Plaintiff,	)	
vs.	)	No. 84-C 793-B
ROLAND FRAIER, an individual, and PERSONNEL RESOURCES, INC., d/b/a ExecuSOURCE, an Oklahoma corporation, Defendants.	)	

ORDER OF DISMISSAL

Now on this 16th day of October, 1984, this matter came on for consideration of the Stipulation to Dismiss Without Prejudice filed herein on October 12, 1984. The court, upon consideration of the stipulation of the parties, finds that this cause should be dismissed without prejudice pursuant to the parties' stipulation, in accordance with Fed. R. Civ. P. 41(a)(1)(ii).

IT IS THEREFORE ORDERED that the above-captioned matter be and it is hereby dismissed without prejudice, subject to the parties' stipulation that this case may be reinstated before this court on a motion by either party alleging that the other has breached the Settlement Agreement previously entered into by the parties.

Thomas R. Brett
Judge of the United States District Court for the Northern District of Oklahoma

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

ROBERT BROWN and ELOISE BROWN, Plaintiffs, vs. HOFER, INC., a Kansas corporation, and MAVERICK TRANSPORTATION, INC., an Arkansas corporation, Defendants, and, LUFKIN INDUSTRIES, INC., and WEBB DIVISION OF MARMON INDUSTRIES, INC., Third party Defendants,	No. 82-C-1101-B
IRENE HAHN, HAROLD HAHN, and SUE LYNN WATKINS, Plaintiffs, vs. HOFER, INC., a Kansas corporation, and MAVERICK TRANSPORTATION, INC., an Arkansas corporation, Defendants, and, LUFKIN INDUSTRIES, INC., AND WEBB DIVISION OF MARMON INDUSTRIES, INC., Third Party Defendants.	No. 83-C-40-B

FILED

OCT 16 1984

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

ORDER

NOW on this 16th day of October, 1984, the joint application of Hofer, Inc., and Maverick Transportation, Inc., for an Order of Dismissal With Prejudice of the cross claims of Hofer, Inc., against Maverick Transportation, Inc., and Maverick Transportation, Inc., against Hofer, Inc., came on before the Court for hearing. The Court finds that Hofer, Inc., and Maverick Transportation, Inc., has settled all disputes each has with the other

and that said application should be sustained.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED, that the cross claim of Hofer, Inc., against Maverick Transporation, Inc., is Dismissed With Prejudice to refiling. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the cross claim of Maverick Transportation, Inc., vs. Hofer, Inc., it is hereby Dismissed With Prejudice to refiling.

It is further the Order of the Court that all other pending cross petitions, third party petitions and third party actions are reserved for a later determination.

S/ THOMAS R. BRETT
THOMAS R. BRETT
UNITED STATES DISTRICT COURT JUDGE

APPROVED AS TO FORM:

Dennis King
DENNIS KING
Attorney for Maverick Transportation, Inc.

Donald Church
DONALD CHURCH
Attorney for Hofer, Inc.

Entered

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

CATHA L. BARTHOLIC, a minor, by and through her father and next friend, BOB K. BARTHOLIC, Plaintiffs,	)	
vs.	)	No. 84-C-271-B
MISSOURI PACIFIC RAILROAD, a Delaware corporation, Defendant.	)	

ORDER DISMISSING CASE
WITH PREJUDICE

This matter came on before me, the undersigned Judge, on the parties' joint Stipulation for Dismissal With Prejudice. The Court, being fully advised in the premises, finds that the above captioned action has been settled and compromised by the parties.

IT IS THEREFORE ORDERED that the same be dismissed with prejudice as to the refiling of same.

Dated this 15th day of October, 1984.

S/ THOMAS R. BRETT

Thomas R. Brett
United States District Judge

Entered

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 12 1984

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

HEATHER SMITH,	)	
Plaintiff,	)	
vs.	)	
ORAL ROBERTS EVANGELISTIC ASSOCIATION, INC., an Oklahoma corporation, DAVID MOORE, and MATT CONNOLLY,	)	
Defendants.	)	No. 82-C-658-E

ORDER

It appearing to the satisfaction of this 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 11 day of October, 1984;

IT IS ORDERED AND ADJUDGED that the above-entitled action be, and it is hereby, dismissed without cost to either party and with prejudice to the Plaintiff.

DATED this 12 day of October, 1984.

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

IN THE UNITED STATES DISTRICT COURT WITHIN AND FOR THE

NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 12 1984

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

RONN FRITZ,	)	
Plaintiff,	)	
vs.	)	Case No. 83-C-1052-C
JIM NELSON FORD, INC., an Oklahoma Corporation,	)	
Defendant.	)	

JUDGMENT

THIS action came on for Trial before the Court and a jury, Honorable H. Dale Cook, District Judge, presiding, and the issues having been duly tried and the jury having rendered its verdict, it is ordered and adjudged that the Plaintiff, Ronn Fritz, recover of the Defendant, Jim Nelson Ford, Inc., the sum of Two Hundred Fifty Dollars ($250.00), with interest thereon at the rate of 11.98 percent as provided by law, his costs of action, and an attorney's fee to be set by the Court upon proper application.

DATED at Tulsa, Oklahoma, this 27th day of September, 1984.

s/H. DALE COOK

H. DALE COOK, United States District Judge

APPROVED AS TO FORM:

STEVEN R. HICKMAN, Attorney for Plaintiff

MARION M. DYER, Attorney for Defendant

FILED

OCT 12 1984

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

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

IRENE HAHN, HAROLD HAHN and SUE LYNN WATKINS,	)	
Plaintiffs,	)	
vs.	)	
HOFER, INC., a Kansas corporation; and MAVERICK TRANSPORTATION, INC., an Arkansas corporation,	)	82-C-1161-B No. 83-C-40-BT
Defendants,	)	
and,	)	
LUFKIN INDUSTRIES, INC., and WEBB DIVISION OF MARMON INDUSTRIES, INC.,	)	
Third Party Defendants.	)	

JOINT APPLICATION FOR DISMISSAL WITH PREJUDICE

Come now the plaintiffs, Irene Hahn, Harold Hahn and Sue Lynn Watkins, by and through their attorney of record, and Hofer, Inc., and Maverick Transportation, Inc., by and through their attorneys of record, and for their Joint Application to dismiss the above styled and numbered cause of action with prejudice to a refiling, show the Court and stipulate as follows:

That the Complaint was filed by the plaintiffs and federal jurisdiction invoked by reason of diversity of citizenship of the parties. That the suit is a civil action for damages as the result of a vehicular accident April 9, 1982 in Mayes County, Oklahoma wherein the plaintiffs seek a money judgment

against the defendants.

That the parties hereto have agreed to a compromise settlement of all claims, subject to the approval of the Court, wherein the said defendants have agreed to pay and the said plaintiffs have agreed to accept the following:

> The sum of $23,000.00 is to be paid Irene Hahn, Harold Hahn and Sue Lynn Watkins, and Joseph F. Glass and Craig F. Lowther, their attorneys, in full compromise settlement of all their claims against the defendants.

That the foregoing compromise provision constitutes a full, final and complete settlement of any and all claims of the plaintiffs, Irene Hahn, Harold Hahn and Sue Lynn Watkins, and their attorneys against the said defendants arising out of the matter sued on.

Joseph F. Glass, attorney for the plaintiffs

Craig F. Lowther, attorney for the plaintiffs

Donald Church, attorney for Hofer, Inc.

Ray H. Wilburn, attorney for Maverick Transportation, Inc.

Entered

FILED

OCT 12 1984

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

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

JEM ENGINEERING & MANUFACTURING COMPANY Plaintiff,	)	
vs.	)	No. 84-C-255 E
AETNA CASUALTY & SURETY COMPANY, Defendant.	)	

ORDER OF DISMISSAL

ON This 11th day of October, 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 Compalint and have requested the Court to dimsiss 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 are dismissed with prejudice to any future action.

S/ JAMES O. ELLISON

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

APPROVAL:

DARRELL E. WILLIAMS,

Darrell E. Williams

Attorney for the Plaintiff

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 12 1984

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

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
vs.	)	
JOHNNY LEE THOMAS and MRS. JOHNNY LEE THOMAS, husband and wife,	)	
Defendants.	)	CIVIL ACTION NO. 84-C-689-B

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 12th day of October, 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; and the Defendants, Johnny Lee Thomas and Mrs. Johnny Lee Thomas, a/k/a Karen F. Thomas, appear not, but make default.

The Court being fully advised and having examined the file herein finds that Defendant, Johnny Lee Thomas acknowledged receipt of Summons and Complaint on August 21, 1984, and that the Defendant Mrs. Johnny Lee Thomas, a/k/a Karen F. Thomas, acknowledged receipt of Summons and Complaint on September 1, 1984.

It appears that the Defendants Johnny Lee Thomas, and Mrs. Johnny Lee Thomas, a/k/a Karen F. Thomas, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

> Lots Three (3) and Four (4), Block One (1), in Shook's Addition to the City of Miami, Ottawa County, Oklahoma, according to the recorded plat thereof.

That on February 16, 1978, Johnny Lee Thomas executed and delivered to Modern American Mortgage Corporation, his mortgage note in the amount of $27,900.00, payable in monthly installments, with interest thereon at the rate of 8.5 percent per annum.

That as security for the payment of the above-described mortgage note, Johnny Lee Thomas executed and delivered to Modern American Mortgage Corporation a mortgage dated February 16, 1978, covering the above-described property. Said mortgage was recorded in the records of Ottawa County, Oklahoma, in Book 376, Page 510.

The Court further finds that on April 14, 1978, Modern American Mortgage Corporation assigned all of its right, title, and interest in the above-described mortgage note and mortgage, to the New York Bank for Savings. This assignment was recorded in the records of Ottawa County, Oklahoma, in Book 379, Page 36.

The Court further finds that on February 18, 1981, the New York Bank for Savings assigned all of its right, title, and interest in the above-described mortgage note and mortgage to the Administrator of Veterans Affairs. This assignment was recorded in the records of Ottawa County, Oklahoma, in Book 409, Page 381.

The Court further finds that on September 30, 1981, the Defendant Johnny Lee Thomas executed and delivered to the

Administrator of Veterans Affairs, a Modification and Reamortization Agreement, by which Defendant Johnny Lee Thomas agreed to an increase in the amount of the monthly payments due on the above-described mortgage note.

The Court further finds that Defendant Johnny Lee Thomas made default under the terms of the aforesaid mortgage note, mortgage, and Modification and Reamortization Agreement, by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof, the Defendant Johnny Lee Thomas is indebted to the Plaintiff in the sum of $29,353.81 as of September 1, 1983, plus interest thereafter at the rate of 8.5 percent per annum 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 Mrs. Johnny Lee Thomas, a/k/a Karen F. Thomas, has an interest in the real property which is the subject of this action by virtue of her homestead interest in such property. 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 Defendant Johnny Lee Thomas in the sum of $29,353.81 as of September 1, 1983, plus interest thereafter at the rate of 8.5 percent per annum until judgment, plus interest thereafter at the current legal rate of 11.36 percent per annum until paid, plus the costs of this action, accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that upon the failure of the Defendant Johnny Lee Thomas 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 which is the subject of this action 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 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.

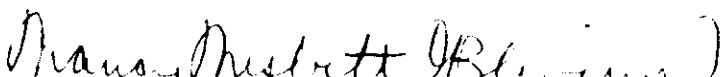
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right,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

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney



NANCY NESBITT BLEVINS
Assistant United States Attorney

Entered

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

J. L. Brien, Plaintiff,	)	
vs.	)	
A & W Production Company, a Wyoming Corporation, Spiro Armenis, individually and Richard H. Williams, individually, Defendants.	)	No. 84-C-601-B

~~STIPULATION~~ Notice OF DISMISSAL

Comes now the plaintiff J. L. Brien and would show to the Court that he gives notice hereby of dismissal of each of his causes of action against the defendants Richard H. Williams, individually, and Spiro Armenis, individually, each as to them only, and further leaving everyone of the cause of actions to go forward as to the defendant A & W Production Company, a Wyoming Corporation; and further show to the Court that this is by stipulation with counsel for the defendant A & W Production Company, a Wyoming Corporation.

WHEREFORE, the plaintiff shows to the Court by notice of stipulation that the complaint herein is dismissed as to the defendants Richard H. Williams, individually and Spiro Armenis, individually, only, and further that each and everyone of the causes of actions

are to go forward as to the defendant A & W Production Company, a Wyoming Corporation, and gives stipulation of dismissal as to defendants Richard H. Williams and Spiro Armenis, only.

J. L. BRIEN

By s/ _____
Charles D. Arney
Attorney for Plaintiff
P. O. Drawer 570
Cleveland, OK 74020
(918) 358-3210

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing instrument by certified mail, return receipt requested, to Karen L. Howick, Attorney for Defendant A & W Production Company, a Wyoming Corporation, 2630 NW Expressway, Suite A, Oklahoma City, Oklahoma, 73112, on this 11th day of October, 1984, with postage duly prepaid.

s/ _____
Charles D. Arney

OCT - 1 1984

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

J. HOYL LOCKETT,	)	
Plaintiff,	)	
vs.	)	No. 82-C-1127-E
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

O R D E R

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

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant United States of America's motion for directed verdict be and is hereby sustained. Plaintiff's action is therefore dismissed. Defendant is awarded judgment on its counterclaim. Defendant is awarded costs and is given ten (10) days to submit an agreed form of judgment.

DATED at Tulsa, Oklahoma this 28th day of September, 1984.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

FILED

OCT 11 1984

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

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

SOMA SYSTEMS, INC., AND KENNETH E. POPE,	)	
Plaintiffs,	)	
vs.	)	No. 84-C-409-E
MOOG, INC.,	)	
Defendant.	)	

O R D E R

This matter is before the Court upon Plaintiffs' motion to remand and Defendant's motion to transfer. Suit was filed in Wagoner County District Court and removed to the Northern District of Oklahoma on May 9, 1984. The removal was made in error in that Defendants mistakenly believed that Wagoner County was in the Northern District of Oklahoma. 28 U.S.C. § 1441 allows an action to be removed "to the district court of the United States for the district and division embracing the place where such action is pending."

Plaintiff urges the Court to remand this action to the Wagoner County District Court. In support Plaintiff argues that there exists no statute allowing the transfer of an action which has been improperly removed. Plaintiff cites Polizzi v. Cowles Magazines, Inc., 73 S.Ct. 900 (1953), which determined that the proper venue statute for removed actions was § 1441(a) and that the general venue statute, § 1391(c), was inapplicable in that it provided for venue of actions which were "brought" in the

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district court. The Court chose between two venue statutes based upon the distinction of whether or not the case was "brought" in the federal court or "brought" in a state court and removed to the district court. Plaintiff wishes this distinction to be extended to a transfer statute cited by Defendant in support of its motion to transfer.

28 U.S.C. § 1361 provides for the transfer of a civil action filed in a court when such court finds that there is a want of jurisdiction, if it is in the interest of justice. Plaintiff urges this Court to extend a distinction made by the Supreme Court in Polizzi between two venue statutes, and based upon a definition of the word "brought" to the word "filed" in § 1631. This Court, however, is in full agreement with the Middle District of Louisiana when it states as follows:

> There is nothing in the language of the statute, its legislative history or the cases cited above to indicate that the Congress intended such a restrictive construction of remedial legislation. Such a holding would directly conflict with the purpose of the statute which is plainly designed to minimize burden, delay and expense for both the courts and the litigants. Moreover, the legislative history of § 1631 indicates that the "language ... is broadly drafted to permit transfer between any two federal courts." U.S.C. Congressional and Administrative News, 97th Congress, 2nd Session 21 (1982).

This Court concludes that § 1631 grants it jurisdiction to transfer this action to the proper court, since it is clearly "in the interest of justice" to do so, in that if this case is remanded Defendant's right of removal will thereby be destroyed.

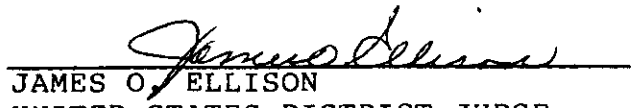
IT IS THEREFORE ORDERED AND ADJUDGED that the motion of

Plaintiffs to remand be and the same is hereby denied.

IT IS FURTHER ORDERED that Defendant's motion to transfer to the Eastern District of Oklahoma be and the same is hereby granted.

IT IS FURTHER ORDERED that the above styled and numbered cause be transferred to the United States District Court for the Eastern District of Oklahoma.

ORDERED this 10TH day of October, 1984.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

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

PHIL GREER & ASSOCIATES, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 82-C-462-B
	)	
RAHMCO OIL & GAS, INC.,	)	
	)	
Defendant.	)	

ORDER OF DISMISSALS WITH PREJUDICE

NOW ON this 10th day of October, 1984, upon being shown by the parties that this case has been settled, it is hereby ordered that the Complaint of the Plaintiff, Phil Greer & Associates, Inc., be and is hereby dismissed with prejudice and that the Counterclaim of the Defendant, Rahmco Oil & Gas, Inc., be and is hereby dismissed with prejudice, with both parties to bear their own costs and attorney fees.

S/ THOMAS R. BRETT

THOMAS R. BRETT
United States District Judge

Entered

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

FILED

OCT 10 1984

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

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	No. 80-CR-42-B
RONALD FLOYD WHITE, Defendant.	)	No. 84-C-825

ORDER

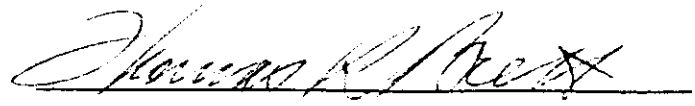
Before the Court is defendant's motion under 28 U.S.C. § 2255 to vacate or set aside the Court's reinstatement of the jury's verdict and sentence of June 15, 1982. The Court sentenced defendant to probation for a period of four years and ordered defendant to make restitution in the amount of $15,000.00. Defendant claims the Double Jeopardy Clause of the Fifth Amendment should have barred review by the Tenth Circuit and the subsequent judgment and sentencing by this court, since the original trial judge sustained defendant's motion for judgment of acquittal and set aside two verdicts against the defendant. For the reasons set forth below, the Court finds that defendant's motion should be summarily dismissed.

Under Rule 4(a) of the Rules Governing Proceedings in the United States District Courts Under Section 2255, defendant's motion should be assigned "to the judge who was in charge of that part of the proceedings being attacked by the movant." Defendant attacks both the review by the Tenth Circuit and subsequent judgment and sentencing proceedings by this court.

Because the movant is not attacking actions taken by the original trial judge, consideration of defendant's motion is properly before this, the sentencing court.

Rule 4(b) of the Governing Rules directs the Court to promptly examine the motion and "[i]f it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the movant to be notified." From a review of the Tenth Circuit's opinion in this case it is clear that the motion must be dismissed. In United States v. White, 673 F.2d 299 (1982), the appellate court addressed the issue of whether the Double Jeopardy Clause barred the government's appeal of the trial judge's order. The Court noted that the Double Jeopardy Clause prohibits appeal only when there is a danger of subjecting a defendant to a second trial for the same offense. See United States v. Jenkins, 420 U.S. 358, 365 (1975). Here, because there was no such danger, the Court held that the government's appeal was constitutional. Defendant was not subjected to another trial; this Court simply reinstated the verdict and conducted sentencing proceedings. The Tenth Circuit's constitutional determination is Res Judicata as against defendant's claim in this action. Defendant's motion is hereby summarily dismissed.

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



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

OCT 10 1984

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

CURTIS JIM LEE,	)	
Plaintiff,	)	
vs.	)	
STATE FARM FIRE & CASUALTY CO., an Insurance Corporation,	)	
Defendant.	)	Case No. 83-C-723-E

ORDER

ON the 3rd day of October, 1984, the above captioned matter comes on before the Court on the defendant, State Farm Fire & Casualty Company's Motion for Sanctions pursuant to Rule 37 (b) (2)(C) of the Federal Rules of Civil Procedure. This cause comes on regular for hearing after notice given. The matter being caused for hearing the plaintiff appears not. The defendant appears by and through it's attorneys, Williams, Clark and Earl, P.A. by Joseph F. Clark, Jr. After considering the premises and review of the file material and hearing argument of counsel, the Court finds that the above captioned matter should be dismissed for the failure of the plaintiff to comply with an order entered on the second day of February, 1984, for the production of certain income tax records. That pursuant to Rule 37(b)(2)(C) of the Federal RUles of Civil Procedure, the above captioned matter is dismissed without prejudice of the filing of another cause of action. The attorney for the defendant is further instructed to have this order submitted to the Court and filed of record prior to the closing of the business of October 5, 1984 and afford a copy of same to the plaintiff by certified mail, return receipt requested.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above captioned matter is dismissed without prejudice to the filing of another cause of action and that the defendant is instructed to mail a copy of this order to the plaintiff by certified mail, return receipt requested on or before October 5, 1984.

S/ JAMES O. ELLISON
JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

FILED

OCT 10 1984

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

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

ZIEGLER CORPORATION, A Kansas corporation,	)	
Plaintiff,	)	
vs.	)	No. 83-C-679-E
CITY OF BARTLESVILLE, OKLAHOMA,	)	
Defendant.	)	

JUDGMENT DISMISSING ACTION BY REASON OF SETTLEMENT

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

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

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

DATED this 10th day of October, 1984.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

11

Entered

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

FILED

OCT 10 1984

[illegible] Silver, Clerk
U. S. DISTRICT C[illegible]

BILL'S COAL COMPANY, INC., et al., Plaintiffs, v. BOARD OF PUBLIC UTILITIES OF SPRINGFIELD, MISSOURI, et al., Defendants.	
CITY OF SPRINGFIELD, MISSOURI, Plaintiff and Counter-Defendant, and BOARD OF PUBLIC UTILITIES OF SPRINGFIELD, MISSOURI, Counter-defendant, v. BILL'S COAL COMPANY, INC., et al., Defendants and Counter-Claimants.	Consolidated Civil Action Nos. 80-C-187-E, 80-C-580-E and 81-C-127-E
BILL'S COAL COMPANY, INC., et al., Plaintiffs, v. BOARD OF PUBLIC UTILITIES OF SPRINGFIELD, MISSOURI, et al., Defendants.	

ORDER GRANTING SELLER'S MOTION TO VOLUNTARILY DISMISS BILL PATCH AS A PARTY LITIGANT

For good cause appearing and on the motion of Seller, it is hereby

ORDERED that Seller's motion to voluntarily dismiss Bill Patch as a party litigant be, and it is hereby granted, and Bill Patch is hereby dismissed without prejudice from this litigation.

S/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Tulsa, Oklahoma

Date: _____

FILED

OCT 5 1984

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

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

GEORGE ROBERTS AND LEANNE ROBERTS,	)	
Plaintiffs,	)	
vs.	)	No. 83-C-818-E
DONALD N. HALLOCK, et al.,	)	
Defendants.	)	

JUDGMENT

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

IT IS ORDERED AND ADJUDGED that the Plaintiffs George Roberts and Leanne Roberts take nothing from the Defendants, that the action be dismissed on the merits, and that the Defendants recover of the Plaintiffs George Roberts and Leanne Roberts the costs of action.

DATED at Tulsa, Oklahoma this 5TH day of October, 1984.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

REPUBLIC TRUST AND SAVINGS, Appellant, vs. JAMES C. HARDY AND LIBERTY TOWERS CONDOMINIUMS, Appellees.	)	No. 83-C-1028-E
REPUBLIC TRUST AND SAVINGS, Appellant, vs. JAMES C. HARDY AND LIBERTY TOWERS CONDOMINIUMS, Appellees.	)	No. 83-C-1065-E

MEMORANDUM OPINION AND ORDER

This matter is before the Court on appeals filed from two separate orders of the United States Bankruptcy Court for the Northern District of Oklahoma in adversary proceeding number 83-0273, James C. Hardy, Plaintiff vs. Republic Trust and Savings and Liberty Towers Condominiums, Inc., Defendants.

On January 26, 1983 James C. Hardy commenced an individual proceeding under Chapter XI of the Bankruptcy Code. Liberty Towers Condominiums, Inc. commenced a Chapter XI proceeding on June 13, 1983. On April 6, 1983 James C. Hardy as Plaintiff filed an adversary proceeding, numbered 83-0273, which complaint sought a turnover of a certificate of deposit held by Republic Trust & Savings, pursuant to 11 U.S.C. § 542(a). Defendant

Republic filed an answer and counter-claim on July 6, 1983 seeking relief from the automatic stay pursuant to Title 11 U.S.C. §§ 362(d)(1) and (d)(2) so that Republic could commence foreclosure proceedings.

On February 1, 1981 Liberty Towers Condominiums, Inc., executed and delivered to Republic a note in the amount of $566,421.00 with interest to accrue at the rate of 18% per annum. On February 11, 1982, renewing and extending the original note, Liberty Towers executed and delivered a deferral and extension agreement in the amount of $566,421.00 payable on or before February 6, 1983 or on demand. As security for the note Liberty Towers executed and delivered to Republic a real estate mortgage covering the following property:

> Units 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23H, 23J, 23K, 23L and 23M, Liberty Towers Condominiums, according to the declaration of unit ownership estates dated June 17, 1980 and recorded in Book 4480 at page 765 in the Office of the Tulsa County Clerk and situated on the following described property.
>
> Lots 1, 2, 3, 4, and 5 Block 3 Stansberry Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

As further security Liberty granted to Republic a security interest and assignment of certificates of deposit. Thereafter Liberty and James Hardy executed and delivered to Republic a security agreement whereby Liberty and Hardy agreed to substitute another certificate of deposit. Liberty Towers in in default under its obligations under those notes.

At a pre-trial conference on September 17, 1983 the parties

entered into stipulations of fact and framed the issues of law to be decided by the Bankruptcy Court upon the filing of cross motions for summary judgment. At the conference the parties stipulated that the fair market value of the property as of June 30, 1983 was $650,000.00. The parties further stipulated that Liberty Towers was in default under the note and there remained a balance of principle and interest due and owing as of September 16, 1983 of $648,802.38 with interest continuing to accrue at the rate of $284.85 per day.

In its order of October 24, 1983 the Bankruptcy Court adopted these stipulations and considered background information submitted by the parties. The Court ordered Liberty Towers to convey the premises to Republic on that date by General Warranty Deed and Republic credited the debt of Liberty Towers and Hardy with the sum of $650,000.00. The Court set up a briefing schedule and a hearing date for determining any further allowed claims of Republic which could be satisfied out of the certificate of deposit.

Republic filed a proof of claim and the debtors filed their objections to the allowance of claim. On December 12, 1983 upon hearing by the Court it was ordered that Republic recover interest in the sum of of $9,892.03 (as of October 24, 1983) and delinquent ad valorem taxes for the year 1982 in the sum of $6,214.03. The Court denied all other claims of Republic. The Court ordered Republic to deduct the sum of $16,016.06 from the total amount of principle and accrued interest on the certificate of deposit on the next maturity date and to transmit the balance

to Liberty Towers.

First appeal was filed with this Court on November 3, 1983 contesting the October 24 order of the Court. Republic contends that, as a matter of law, it was entitled to an Order granting it relief from automatic stay as to the real estate and the certificate of deposit pursuant to §§ 362(d)(1) and (d)(2). Republic also asserts that the Bankruptcy Court in instructing debtor to convey the property by deed exceeded the limits of its authority as such authority is defined by the case of Northern Pipeline Co. v. Marathon Pipeline Co., 102 S.Ct. 2858 (1982) and Local Rule M-128. The Appellant Hardy argues that Republic not only received the right to foreclose on its mortgage and to recover the mortgaged property, but that it received the property itself, and the right to prove the balance of its claim and to collect that balance from the certificate of deposit. Hardy argues that, in any event, Republic has received everything that they would have been entitled to under a release from automatic stay, and in addition were saved the expense and time of a foreclosure sale by the submission of a deed in lieu of foreclosure. Secondly Appellee argues that the Court did not exceed its allowed power in that it merely granted adequate protection in the form of approval of a conveyance of the property for its stipulated value and the right to offset the balance of the claim against the certificate of deposit.

This Court has carefully reviewed the entire record in both

cases, and has considered the arguments and authorities presented by the parties. This Court finds that the conveyance of the property must stand, and that the claims allowed under the certificate of deposit were proper with the exception of certain additional claims which should be allowed, as will be further set forth below.

Title 11 U.S.C. § 362(d)(1) allows a party relief from automatic stay when it is shown to the Court that there is a lack of adequate protection for the intersts of the party. The value of a secured position as it existed at the commencement of a case is to be protected throughout the case in order to avoid the impairment of a creditors property rights, which include an adequate equity cushion between the value of the property and the debt. Most adequate protection problems are litigated when a debtor wishes to retain the property for purposes or reorganization, and the Court must fashion relief which will protect the creditor's claim adequately during the pendency of the bankruptcy, or must allow the creditor relief from stay. The purpose of these policies is to insure that a secured creditor receives in value essentially what was bargained for, or its "indubitable equivalent". See In re Mural Holding Company, 75 F.2d 941 (2nd Cir. 1935).

Appellant in this action wishes this Court to overturn the decision and order of the Bankruptcy Court so that it may deed back the property to the debtor and then proceed under state statutes to foreclose on the property and to collect the sale price plus all of its costs of foreclosure sale, including

interest and attorney fees up to the value of the secured property.

On April 6, 1983 when James Hardy petitioned the Court to require Republic to turn over the certificate of deposit, the debt was approximately $602,000.00 principal plus interest. The record is clear that both parties insisted upon their respective positions, Republic refusing to turn over the certificate of deposit, and Hardy refusing to convey the property without the turn over. On June 30, 1983 Republic caused the units to be appraised. This appraisal was received on July 14, 1983 stating an as is value of $650,000.00. At this time the amount of debt including interest was approximately $630,000.00. By the time of pre-trial conference, when Republic revealed for the first time the amount of its appraisal, the debt had grown to $648,802.38. The debtor immediately stipulated to the appraised value even though it was argued that the value was too low and requested that the units be conveyed to Republic in satisfaction of the debt. By the time of the hearing set for October 24, 1983 principal and accrued interest on the debt totaled $659,892.03. At the time of hearing counsel for the debtor requested that Republic be given its "ultimate relief" immediately so that the accumulation of interest could be stopped as of that date. If Republic was granted relief from the stay the time necessary to file a foreclosure action in state court and to perfect a sale would insure that the interest charge would exceed the value of units and certificate of deposit, thereby depriving the unsecured

creditors of any of the then available funds in the certificate. Republic argued that the Oklahoma statutes provide that judgment must be rendered for the amount due plus interest and that they also provide for the determination of the fair market value of the property to be made as of the date of the sale. The Court stated that if the property was conveyed to the creditor that the "date of sale" would be "today". It became apparent thereafter that the concern of Republic was that it receive good title to the property. Counsel for Republic states, on page 18 of the transcript of proceedings had on October 24, 1983, in response to a proposal that the units could be conveyed by warranty deed and that if there were additional expenses Republic could quiet the title at the expense of the certificate of deposit, "we have no problem with that understanding your Honor. The concern is in § 686, (sic) refers to the date of sale as opposed to the date of the conveyance. I am not aware of any particular statutory provision, but, at that point if we do have good title to the property and we do have the property, the title requirements are satisfied, at that point the debt would be credited with the fair market value of the property. We have no problem with that. The only remaining consideration with that would be the deficiency balance at that particular point ..." By the end of the hearing it was agreed between the parties that Republic would receive the property and would credit the debt with $650,000.00, that interest would cease running as of that moment because the value of the property exceeded the amount of principal, and that the debtor would have to pay whatever it cost

to get good title. Counsel for Republic continued to argue that it was entitled to costs as of the date of sale including the cost of the sale and that it would file a claim with the Court. The certificate of deposit remained under the control of the Court until such time as a proper claim could be filed and acted upon.

The debtor delivered a general warranty deed on October 24, 1983 and Republic recorded that deed in the office of the County Clerk of Tulsa County on October 28, 1983. At the time of recording Republic affixed documentary stamps in the amount of $975.00, indicating a purchase price of $650,000.00.

As a review of the record in both appeals indicates, the certificate of deposit was made available to the creditor for the satisfaction of all of its claims in excess of $650,000.00. A relief from stay and a foreclosure sale pursuant to a judgment in Tulsa County District Court would have allowed the creditor the costs of sale and interest to the date of sale minus credit for the fair market value as of that date. The creditor would have been allowed to go against the certificate of deposit for any deficiency judgment. The agreement of the parties and the conveyance of a deed in lieu of foreclosure pursuant to the October 24 hearing, and the subsequent submission of claims by the creditor which were satisfied out of the certificate of deposit gave the creditor exactly the same relief that it is allowed under Oklahoma law. It is clear from the transcript of the October 24 hearing that the creditor could produce no

credible argument for the court's refusal to allow the conveyance of a deed in lieu of foreclosure. Such a refusal would have been an elevation of form over substance entirely repugnant to the equitable foundations upon which the jurisdiction of the Bankruptcy Court is built. This Court's concern is that the creditor be allowed the benefit of its bargain, but that it not be allowed more.

The Court must now consider the claims filed against the certificate of deposit by the creditor and discussed on December 12, 1983.

The debtor stipulated that it owed $9,607.68 in accrued interest over and above the $650,000.00 value of the property. From additional evidence adduced at the hearing it was shown that interest on the note accumulated at a rate of $284.85 per day. As of December 12, 1983 an additional $13,957.65 in interest had accrued. The creditor argued that it was entitled to interest on the principal until the entire debt had been paid. The Court correctly disallowed this claim in that the principal amount had been paid by deed in lieu of foreclosure in October of 1983.

Delinquent taxes for the year 1982 in the amount of $6,214.03 were awarded. The Court however refused to award taxes for the year 1983 because the amount was then unknown. It is clear that the creditor should be awarded delinquent taxes up to the date of conveyance of the deed. Upon proper application such taxes shall be awarded out of the funds available from the certificate of deposit.

The Court refused to award $1,588.38 per month for the months of November and December for homeowners dues on the property because the property, during those months, belonged to the creditor and not the debtor. This refusal was entirely proper. The Court in addition properly refused to award other costs, including utilities incurred after the date of the deed.

The creditor requested attorney fees in the amount of $8,156.60 incurred by it through October 31, 1983. The only evidence presented to the Court was a statement by a witness for the creditor that it had paid attorney fees to the firm of Pritchard, Norman, and Wohlgemuth of $8,156.63 through the 31st of October, 1983. The Court had before it no evidence of the reasons for the accumulation of these fees, the work that was done, the requested compensation per hour, or any other information which would have allowed the Court to make a judgment upon the reasonableness of the fees. The creditor should be allowed a reasonable attorney fee incurred by it in the collection of amounts owed upon the notes. Such fee will be awarded out of the remaining funds in the certificate of deposit upon proper application to the Bankruptcy Court.

The creditor presented evidence that an estimated brokerage commission at 7% on a sales price of $650,000 would be $45,500. The Court properly refused to award a speculative brokerage commission because the creditor had incurred no brokerage fees in its acquisition of the property, and had incurred no brokerage fees in the sale of the property to a third party. Such fees could only be allowed upon proof that the parties had contracted

for the payment of brokerage fees in the sale of the property by the creditor to a third party, and upon proof that such fees had been incurred in fact.

Upon consideration of the record and the arguments and authorities of counsel, and pursuant to the above, it is:

THEREFORE ORDERED AND ADJUDGED that the Order of the United States Bankruptcy Court for the Northern District of Oklahoma entered October 24, 1983 approving the transfer of a deed in lieu of foreclosure be and the same is hereby affirmed.

IT IS FURTHER ORDERED that the Order of the United States Bankruptcy Court for the Northern District of Oklahoma entered December 12, 1983 be and the same is hereby affirmed in part and overruled in part as is further set forth below:

> The Court should allow a reasonable attorney fee incurred by the creditor for the collection of the note upon proper application and supporting affidavits.
>
> The Court should allow the payment of delinquent ad valorem taxes for the year 1983 until the date of conveyance of the deed upon proper application.

ORDERED this 5TH day of October, 1984.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

REPUBLIC TRUST AND SAVINGS, Appellant, vs. JAMES C. HARDY AND LIBERTY TOWERS CONDOMINIUMS, Appellees.	)	No. 83-C-1028-E
REPUBLIC TRUST AND SAVINGS, Appellant, vs. JAMES C. HARDY AND LIBERTY TOWERS CONDOMINIUMS, Appellees.	)	No. 83-C-1065-E

MEMORANDUM OPINION AND ORDER

This matter is before the Court on appeals filed from two separate orders of the United States Bankruptcy Court for the Northern District of Oklahoma in adversary proceeding number 83-0273, James C. Hardy, Plaintiff vs. Republic Trust and Savings and Liberty Towers Condominiums, Inc., Defendants.

On January 26, 1983 James C. Hardy commenced an individual proceeding under Chapter XI of the Bankruptcy Code. Liberty Towers Condominiums, Inc. commenced a Chapter XI proceeding on June 13, 1983. On April 6, 1983 James C. Hardy as Plaintiff filed an adversary proceeding, numbered 83-0273, which complaint sought a turnover of a certificate of deposit held by Republic Trust & Savings, pursuant to 11 U.S.C. § 542(a). Defendant

Republic filed an answer and counter-claim on July 6, 1983 seeking relief from the automatic stay pursuant to Title 11 U.S.C. §§ 362(d)(1) and (d)(2) so that Republic could commence foreclosure proceedings.

On February 1, 1981 Liberty Towers Condominiums, Inc., executed and delivered to Republic a note in the amount of $566,421.00 with interest to accrue at the rate of 18% per annum. On February 11, 1982, renewing and extending the original note, Liberty Towers executed and delivered a deferral and extension agreement in the amount of $566,421.00 payable on or before February 6, 1983 or on demand. As security for the note Liberty Towers executed and delivered to Republic a real estate mortgage covering the following property:

> Units 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23H, 23J, 23K, 23L and 23M, Liberty Towers Condominiums, according to the declaration of unit ownership estates dated June 17, 1980 and recorded in Book 4480 at page 765 in the Office of the Tulsa County Clerk and situated on the following described property.
>
> Lots 1, 2, 3, 4, and 5 Block 3 Stansberry Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

As further security Liberty granted to Republic a security interest and assignment of certificates of deposit. Thereafter Liberty and James Hardy executed and delivered to Republic a security agreement whereby Liberty and Hardy agreed to substitute another certificate of deposit. Liberty Towers in in default under its obligations under those notes.

At a pre-trial conference on September 17, 1983 the parties

entered into stipulations of fact and framed the issues of law to be decided by the Bankruptcy Court upon the filing of cross motions for summary judgment. At the conference the parties stipulated that the fair market value of the property as of June 30, 1983 was $650,000.00. The parties further stipulated that Liberty Towers was in default under the note and there remained a balance of principle and interest due and owing as of September 16, 1983 of $648,802.38 with interest continuing to accrue at the rate of $284.85 per day.

In its order of October 24, 1983 the Bankruptcy Court adopted these stipulations and considered background information submitted by the parties. The Court ordered Liberty Towers to convey the premises to Republic on that date by General Warranty Deed and Republic credited the debt of Liberty Towers and Hardy with the sum of $650,000.00. The Court set up a briefing schedule and a hearing date for determining any further allowed claims of Republic which could be satisfied out of the certificate of deposit.

Republic filed a proof of claim and the debtors filed their objections to the allowance of claim. On December 12, 1983 upon hearing by the Court it was ordered that Republic recover interest in the sum of of $9,892.03 (as of October 24, 1983) and delinquent ad valorem taxes for the year 1982 in the sum of $6,214.03. The Court denied all other claims of Republic. The Court ordered Republic to deduct the sum of $16,016.06 from the total amount of principle and accrued interest on the certificate of deposit on the next maturity date and to transmit the balance

to Liberty Towers.

First appeal was filed with this Court on November 3, 1983 contesting the October 24 order of the Court. Republic contends that, as a matter of law, it was entitled to an Order granting it relief from automatic stay as to the real estate and the certificate of deposit pursuant to §§ 362(d)(1) and (d)(2). Republic also asserts that the Bankruptcy Court in instructing debtor to convey the property by deed exceeded the limits of its authority as such authority is defined by the case of Northern Pipeline Co. v. Marathon Pipeline Co., 102 S.Ct. 2858 (1982) and Local Rule M-128. The Appellant Hardy argues that Republic not only received the right to foreclose on its mortgage and to recover the mortgaged property, but that it received the property itself, and the right to prove the balance of its claim and to collect that balance from the certificate of deposit. Hardy argues that, in any event, Republic has received everything that they would have been entitled to under a release from automatic stay, and in addition were saved the expense and time of a foreclosure sale by the submission of a deed in lieu of foreclosure. Secondly Appellee argues that the Court did not exceed its allowed power in that it merely granted adequate protection in the form of approval of a conveyance of the property for its stipulated value and the right to offset the balance of the claim against the certificate of deposit.

This Court has carefully reviewed the entire record in both

cases, and has considered the arguments and authorities presented by the parties. This Court finds that the conveyance of the property must stand, and that the claims allowed under the certificate of deposit were proper with the exception of certain additional claims which should be allowed, as will be further set forth below.

Title 11 U.S.C. § 362(d)(1) allows a party relief from automatic stay when it is shown to the Court that there is a lack of adequate protection for the intersts of the party. The value of a secured position as it existed at the commencement of a case is to be protected throughout the case in order to avoid the impairment of a creditors property rights, which include an adequate equity cushion between the value of the property and the debt. Most adequate protection problems are litigated when a debtor wishes to retain the property for purposes or reorganization, and the Court must fashion relief which will protect the creditor's claim adequately during the pendency of the bankruptcy, or must allow the creditor relief from stay. The purpose of these policies is to insure that a secured creditor receives in value essentially what was bargained for, or its "indubitable equivalent". See In re Mural Holding Company, 75 F.2d 941 (2nd Cir. 1935).

Appellant in this action wishes this Court to overturn the decision and order of the Bankruptcy Court so that it may deed back the property to the debtor and then proceed under state statutes to foreclose on the property and to collect the sale price plus all of its costs of foreclosure sale, including

interest and attorney fees up to the value of the secured property.

On April 6, 1983 when James Hardy petitioned the Court to require Republic to turn over the certificate of deposit, the debt was approximately $602,000.00 principal plus interest. The record is clear that both parties insisted upon their respective positions, Republic refusing to turn over the certificate of deposit, and Hardy refusing to convey the property without the turn over. On June 30, 1983 Republic caused the units to be appraised. This appraisal was received on July 14, 1983 stating an as is value of $650,000.00. At this time the amount of debt including interest was approximately $630,000.00. By the time of pre-trial conference, when Republic revealed for the first time the amount of its appraisal, the debt had grown to $648,802.38. The debtor immediately stipulated to the appraised value even though it was argued that the value was too low and requested that the units be conveyed to Republic in satisfaction of the debt. By the time of the hearing set for October 24, 1983 principal and accrued interest on the debt totaled $659,892.03. At the time of hearing counsel for the debtor requested that Republic be given its "ultimate relief" immediately so that the accumulation of interest could be stopped as of that date. If Republic was granted relief from the stay the time necessary to file a foreclosure action in state court and to perfect a sale would insure that the interest charge would exceed the value of units and certificate of deposit, thereby depriving the unsecured

creditors of any of the then available funds in the certificate. Republic argued that the Oklahoma statutes provide that judgment must be rendered for the amount due plus interest and that they also provide for the determination of the fair market value of the property to be made as of the date of the sale. The Court stated that if the property was conveyed to the creditor that the "date of sale" would be "today". It became apparent thereafter that the concern of Republic was that it receive good title to the property. Counsel for Republic states, on page 18 of the transcript of proceedings had on October 24, 1983, in response to a proposal that the units could be conveyed by warranty deed and that if there were additional expenses Republic could quiet the title at the expense of the certificate of deposit, "we have no problem with that understanding your Honor. The concern is in § 686, (sic) refers to the date of sale as opposed to the date of the conveyance. I am not aware of any particular statutory provision, but, at that point if we do have good title to the property and we do have the property, the title requirements are satisfied, at that point the debt would be credited with the fair market value of the property. We have no problem with that. The only remaining consideration with that would be the deficiency balance at that particular point ..." By the end of the hearing it was agreed between the parties that Republic would receive the property and would credit the debt with $650,000.00, that interest would cease running as of that moment because the value of the property exceeded the amount of principal, and that the debtor would have to pay whatever it cost

to get good title. Counsel for Republic continued to argue that it was entitled to costs as of the date of sale including the cost of the sale and that it would file a claim with the Court. The certificate of deposit remained under the control of the Court until such time as a proper claim could be filed and acted upon.

The debtor delivered a general warranty deed on October 24, 1983 and Republic recorded that deed in the office of the County Clerk of Tulsa County on October 28, 1983. At the time of recording Republic affixed documentary stamps in the amount of $975.00, indicating a purchase price of $650,000.00.

As a review of the record in both appeals indicates, the certificate of deposit was made available to the creditor for the satisfaction of all of its claims in excess of $650,000.00. A relief from stay and a foreclosure sale pursuant to a judgment in Tulsa County District Court would have allowed the creditor the costs of sale and interest to the date of sale minus credit for the fair market value as of that date. The creditor would have been allowed to go against the certificate of deposit for any deficiency judgment. The agreement of the parties and the conveyance of a deed in lieu of foreclosure pursuant to the October 24 hearing, and the subsequent submission of claims by the creditor which were satisfied out of the certificate of deposit gave the creditor exactly the same relief that it is allowed under Oklahoma law. It is clear from the transcript of the October 24 hearing that the creditor could produce no

credible argument for the court's refusal to allow the conveyance of a deed in lieu of foreclosure. Such a refusal would have been an elevation of form over substance entirely repugnant to the equitable foundations upon which the jurisdiction of the Bankruptcy Court is built. This Court's concern is that the creditor be allowed the benefit of its bargain, but that it not be allowed more.

The Court must now consider the claims filed against the certificate of deposit by the creditor and discussed on December 12, 1983.

The debtor stipulated that it owed $9,607.68 in accrued interest over and above the $650,000.00 value of the property. From additional evidence adduced at the hearing it was shown that interest on the note accumulated at a rate of $284.85 per day. As of December 12, 1983 an additional $13,957.65 in interest had accrued. The creditor argued that it was entitled to interest on the principal until the entire debt had been paid. The Court correctly disallowed this claim in that the principal amount had been paid by deed in lieu of foreclosure in October of 1983.

Delinquent taxes for the year 1982 in the amount of $6,214.03 were awarded. The Court however refused to award taxes for the year 1983 because the amount was then unknown. It is clear that the creditor should be awarded delinquent taxes up to the date of conveyance of the deed. Upon proper application such taxes shall be awarded out of the funds available from the certificate of deposit.

The Court refused to award $1,588.38 per month for the months of November and December for homeowners dues on the property because the property, during those months, belonged to the creditor and not the debtor. This refusal was entirely proper. The Court in addition properly refused to award other costs, including utilities incurred after the date of the deed.

The creditor requested attorney fees in the amount of $8,156.60 incurred by it through October 31, 1983. The only evidence presented to the Court was a statement by a witness for the creditor that it had paid attorney fees to the firm of Pritchard, Norman, and Wohlgemuth of $8,156.63 through the 31st of October, 1983. The Court had before it no evidence of the reasons for the accumulation of these fees, the work that was done, the requested compensation per hour, or any other information which would have allowed the Court to make a judgment upon the reasonableness of the fees. The creditor should be allowed a reasonable attorney fee incurred by it in the collection of amounts owed upon the notes. Such fee will be awarded out of the remaining funds in the certificate of deposit upon proper application to the Bankruptcy Court.

The creditor presented evidence that an estimated brokerage commission at 7% on a sales price of $650,000 would be $45,500. The Court properly refused to award a speculative brokerage commission because the creditor had incurred no brokerage fees in its acquisition of the property, and had incurred no brokerage fees in the sale of the property to a third party. Such fees could only be allowed upon proof that the parties had contracted

for the payment of brokerage fees in the sale of the property by the creditor to a third party, and upon proof that such fees had been incurred in fact.

Upon consideration of the record and the arguments and authorities of counsel, and pursuant to the above, it is:

THEREFORE ORDERED AND ADJUDGED that the Order of the United States Bankruptcy Court for the Northern District of Oklahoma entered October 24, 1983 approving the transfer of a deed in lieu of foreclosure be and the same is hereby affirmed.

IT IS FURTHER ORDERED that the Order of the United States Bankruptcy Court for the Northern District of Oklahoma entered December 12, 1983 be and the same is hereby affirmed in part and overruled in part as is further set forth below:

> The Court should allow a reasonable attorney fee incurred by the creditor for the collection of the note upon proper application and supporting affidavits.
>
> The Court should allow the payment of delinquent ad valorem taxes for the year 1983 until the date of conveyance of the deed upon proper application.

ORDERED this 5th day of October, 1984.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

ROGERS COUNTY BANK,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 83-C-440-E
	)	
FREDERICK HAMILTON NORTHRUP,	)	
	)	
Appellee.	)	

O R D E R

This matter is before the Court on an appeal of an order of the United States Bankruptcy Court for the Northern District of Oklahoma. This appeal arises from adversary proceeding number 82-0092 in regard to Frederick Hamilton Northrup, debtor.

On December 14, 1981 in case number 81-01348 in the United States Bankruptcy Court for the Northern District of Oklahoma, Frederick Hamilton Northrup filed a voluntary debtor's petition and schedules requesting relief in accordance with Chapter VII of the United States Bankruptcy Code. Thereafter the creditor Rogers County Bank objected to the discharage in bankruptcy by complaint in adversary proceeding number 82-0092. The Plaintiff in that case, Rogers County Bank, Appellant herein, prayed that the Court deny the Defendant's discharge in bankruptcy pursuant to the provisions of 11 U.S.C. § 727.

Trial was conducted by the Bankruptcy Court on December 7, 8 and 9, 1982. A formal judgment was entered on December 9, 1982 which judgment denied the discharge of the debtor. Rogers County Bank filed a bill of costs with the Court and an application for

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an order of payment of attorney fees as a prevailing party in the amount of $14,430. An evidentiary hearing was conducted on January 5, 1983. During this hearing, the Court from the bench made it clear that it considered the amount of the fees reasonable and necessary for the prosecution of the case including the amount expended on expert testimony. The Court additionally stated that it was of the opinion that a party who pursues this type of complaint successfully and under these circumstances should be compensated for such.

In addition the Court noted that the pattern of activity presented at the trial on the merits convinced the court that there had been conscious preparation for the ultimate filing of the bankruptcy petition. Although fifteen of the seventeen alleged grounds for barring a discharge were not sustained by the Court, they were considered material to the establishment of a pattern of conduct on the part of the debtor.

In its order of May 12, 1983, the Court noted that the evidence supported a finding that the services of the Plaintiff's attorney were reasonable and necessary to the prosecution of the complaint. However the Court further noted the general rule under federal practice that attorney fees are not ordinarily recoverable in the absence of a statute or enforceable contract providing therefor. May 12, 1983 Order at page 2. The only apparent statutory authority for the allowance of the fee found by the Court was 28 U.S.C. §§ 1920(5) and 1923(a). § 1923(a) provided for attorneys fees in the amount of $20 on trial or final hearing of a civil case. The Court found that former Title

11 U.S.C. § 104 was not authority for taxing such costs against a bankrupt who unsuccessfully litigated his right to a discharge. The Court further found that there was no authority under 11 U.S.C. § 503 for the award of attorney fees in this case.

The strongest support for the Plaintiff's position was found by the Court to be in the case of First National Bank in Sioux Falls v. L. T. Dunham, 471 F.2d 712 (8th Cir. 1973). The Dunham case involved conduct by the debtor which forced the creditor to litigate with third parties in order to vindicate its rights. The Court distinguished that case on its facts concluding that the debtor's course of conduct prior to bankruptcy herein was not sufficient to amount to the kind of conduct (attempted bribery, hinderence, falsification of records, etc.) that caused the Dunham court to award attorney fees.

This Court must agree with the court below that "until such time as Congress may provide for an award of attorney fees in proceedings relating to a debtor's right to discharge under Title 11 U.S.C., the rule of Alyeska Pipeline Co. v. Wilderness Society, 421 U.S. 240 (1974), must prevail." May 12, 1983 order at page 4.

This Court considered the possibility that "the common fund doctrine" may apply to the actions of the creditor in this case. Such cases involve the award of attorney fees out of a fund created by a litigant for the benefit of a class of persons, under the theory that all persons in the class should be made to share in the costs of the recovery of the fund. Here, however, after the adversary proceeding was concluded, the parties were

left in the position they were in before the bankruptcy proceeding was filed. No additional fund was procured by the creditor and made a part of the estate for the benefit of all. In view of the statutory nature of the bankruptcy code, and its explicit provision for attorney fees in some instances and not in others, this Court is reticent to extend the common fund doctrine to the fact situation herein.

This Court must agree with the bankruptcy court's analysis of the law, in that there is no provision under the code for attorney fees to this creditor, and no exception to the American rule applies. This Court finds therefore that the findings and recommendations of the bankruptcy court and the entry of judgment based thereon must be affirmed.

IT IS THEREFORE ORDERED AND ADJUDGED that the judgment of the United States Bankruptcy Court for the Northern District of Oklahoma entered May 12, 1983 be and the same is hereby affirmed.

ORDERED this 5TH day of October, 1984.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

OCT 8 1984

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

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

FREDERICK HAMILTON NORTHRUP,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 82-C-1182-E
	)	
ROGERS COUNTY BANK,	)	
	)	
Appellee.	)	

O R D E R

This matter is before the Court on an appeal from an order of the United States Bankruptcy Court for the Northern District of Oklahoma.

Appellant Frederick Hamilton Northrup filed a Voluntary Debtor's Petition and Schedules requesting relief under Chapter VII of the Bankruptcy Code on the 14th of December, 1981. He scheduled in excess of $862,000 in debts and assets of only $159,846.50. Thereafter a creditor, Appellee Rogers County Bank, objected to the discharge in bankruptcy by adversary proceeding number 82-0092. Rogers County Bank, Plaintiff in the adversary proceeding, prayed that the Court deny the Defendant Northrup's discharge in bankruptcy pursuant to the provisions of Title 11 U.S.C. § 727. In count 1 of the complaint the bank alleged that the debtor, with intent to hinder, delay, and defraud his creditors, including the bank, transferred his one-eighth interest in a medical clinic (lots 3 and 4, block 13, Clarland Acres Addition to Tulsa) to Cyrus A. Northrup, his attorney and brother. The bank additionally alleged sixteen other counts of

conduct with the intent to hinder, delay or defraud creditors.

The bankruptcy court found against the plaintiff and in favor of the debtor defendant on 15 of those 16 counts and in favor of the bank on count 1 as alleged above and a second count which alleged that the defendant debtor transferred certain contracts for deed, promissory notes, and mortgages with the intent to defraud creditors.

By its order of judgment of December 9, 1982 the bankruptcy court denied debtor's discharge from debts under Title 11 U.S.C. §727.

The Appellant Northrup appealed to this Court, arguing that "there was not a scintilla of evidence introduced to suggest or infer that the debt of $7,650 demanded by his attorney/brother was anything but a reasonable fee ...", and that the finding of the trial court to the contrary was not supported by the evidence.

Rule 810 of the Bankruptcy Rules provides as follows:

> The Court shall accept the referee's findings of fact unless they are clearly erroneous, and shall give due regard for the opportunity of the referee to judge the credibility of the witnesses.

Appellant Northrup admits the transfer of his one-eighth interest in the clinic property to his brother within one year of the filing of the voluntary petition in the bankruptcy court. The court had before it evidence that the debtor had listed his interest in the medical clinic in a financial statement prepared

in 1979 at $125,000. The Court also had before it evidence that the debt of the debtor's brother was in the amount of $7,650. There was also evidence that an additional $9,900 debt was owed for legal services which the debtor could not remember having been rendered.

An independent appraisal was conducted on the property by Mr. Otis H. Eversole, whom the Court found to be experienced and qualified in the area of real estate appraisal. Mr. Eversole appraised the value of the entire property at $814,636. He appraised the debtor's equity in his one-eighth interest at over $48,000. In addition, the Court had before it evidence that, at the time debtor did not have access to sufficient funds to pay his brother an attorney fee of approximately $7,000, he had sufficient funds to prepay over $47,000 on his homestead mortgage.

Appellant argues that the transfer was proper in that the one-eighth interest had never sold for more than $10,000, that the interest sold in 1978 for $6,000, and that the appraiser was unaware that the property had been in a flood.

This Court cannot find, upon the evidence available to the Bankruptcy Court, that the findings of fact are clearly erroneous. The opportunity of the trial court to view all of the evidence, including the demeanor of the witnesses, must be respected by this Court. The Court also finds that a determination that the interest in the medical property was transferred with the intent to defraud creditors is sufficient to prevent the debtors discharge in bankruptcy and therefore this

Court need not consider whether, in fact, the debtor transferred any interest in the notes and mortgages.

IT IS THEREFORE ORDERED AND ADJUDGED that the decision of the United States Bankruptcy Court for the Northern District of Oklahoma be and the same is hereby affirmed.

ORDERED this 5TH day of ~~September~~ OCTOBER, 1984.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

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

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

JAMES ALFORD DONALD, JR., Plaintiff,	)	
v.	)	No. 84-C-70-BT
MARGARET LAMM, JOEL JOHNSON and MARTIN HART, Defendants.	)	

O R D E R

This matter comes before the Court on plaintiff's motion to compel discovery, motion to amend the motion to retain defendant Hart, motion to reconsider the order and alternative motion for certification, and motion to amend the complaint by adding another defendant. For the reasons set forth below, the motion to compel discovery, motion to amend the motion to retain defendant Hart, motion to reconsider the order and motion to amend the complaint are overruled, and the Court hereby issues a certificate of probable cause pursuant to 28 U.S.C. §2253.

Plaintiff filed this action under 42 U.S.C. §1983 for alleged civil rights violations stemming from his conviction in Tulsa County District Court for Uttering a Forged Instrument After Former Conviction of Two or More Felonies, Case No. CRF-81-3770. Plaintiff, who was convicted after jury trial, alleged his defense attorney Martin Hart, the presiding judge Margaret Lamm, and the court reporter Joel Johnson violated his constitutional right to a fair trial. On May 2, 1984, the Court

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entered orders dismissing defendant Lamm on the basis of judicial immunity, dismissing defendant Johnson on the basis that plaintiff had not demonstrated Johnson had deprived him of a right secured by the United States Constitution; and dismissing defendant Hart on the basis that Hart had not acted under color of state law. Furthermore, on April 27, 1984, the Court overruled plaintiff's motion to add as a defendant Roger Hardesty. Subsequently, plaintiff filed a number of motions as follows:

MOTION TO AMEND MOTION TO RETAIN DEFENDANT HART

The Court on May 2, 1984, ruled that plaintiff did not have a cause of action against his defense attorney, Hart, since Hart, in his capacity as a public defender, had not acted under color of state law. See Polk County v. Dodson, 454 U.S. 312, 318 (1981). Plaintiff now seeks to amend his motion to retain defendant Hart by filing an affidavit. The affidavit, signed by plaintiff, states that the information in the motion to retain defendant Hart is true. The Court finds the affidavit in no way establishes that Hart acted under color of state law. Since the affidavit is irrelevant, the motion to amend the motion to retain defendant Hart is overruled.

MOTION TO COMPEL DISCOVERY OF DEFENDANT HART

Plaintiff has moved to compel the defendant Hart to answer interrogatories. Since defendant was dismissed from this lawsuit May 2, 1984, the Court finds this motion moot and hereby overrules it.

MOTION TO RECONSIDER ORDER

Plaintiff moves the Court to reconsider the orders dismissing defendants Johnson and Lamm from the lawsuit. Plaintiff specifically requests that defendant Johnson remain as a defendant and that Lamm be required to answer interrogatories (although plaintiff does not ask that she be retained as a defendant). Plaintiff presents no additional argument or authority in support of his motion to reconsider dismissal of Johnson, and the Court concludes the motion should be overruled. Further, since Lamm is no longer a party to this lawsuit, the Court is without authority to order her to answer interrogatories; therefore, this request is denied.

MOTION FOR LEAVE TO AMEND COMPLAINT

Plaintiff has sought leave to amend his complaint to add Roger Hardesty as a defendant to this suit. Plaintiff contends Hardesty conspired with his defense attorney, Hart, to deprive him of his constitutional rights by giving Hart money to bribe the jury foreperson. As the Court stated in its previous order of April 27, 1984, a plaintiff who alleges a conspiracy between persons acting under color of state law and a private actor must sufficiently allege the existence of a nexus or entanglement between them in relation to the steps taken by each to fulfill the objects of the conspiracy. Shaffer v. Cook, 634 F.2d 1259 (10th Cir. 1980); Norton v. Liddell, 620 F.2d 1375 (10th Cir. 1980). In this case, the Court has held the defendant Hart did not act under color of state law. Therefore, plaintiff's

contention that Hardesty conspired with Hart to deny him his civil rights must fail. The motion for leave to amend the complaint to add Roger Hardesty is overruled.

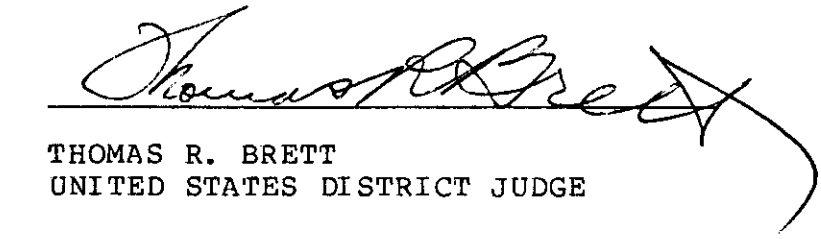
REQUEST FOR CERTIFICATE OF PROBABLE CAUSE

A certificate of probable cause may be issued when the issue raised is not frivolous and raises a question of some substance. Gardner v. Pogue, 558 F.2d 548 (9th Cir. 1977). The Court has reviewed the record and concludes the questions raised by plaintiff have some substance. Therefore, a certificate of probable cause is warranted.

CONCLUSION

Plaintiff's motion to compel discovery, motion to amend the motion to retain defendant Hart, motion to reconsider and motion to amend the complaint are overruled. A certificate of probable cause is hereby issued for appeal purposes.

ENTERED this 5 day of October, 1984.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

BS&B ENGINEERING COMPANY, INC., a corporation, BLACK, SIVALLS, & BRYSON (NEDERLAND, B.V.), a corporation, and BLACK, SIVALLS, & BRYSON (FRANCE), S.A., a corporation,	)	
Plaintiffs,	)	
vs.	)	No. 80-C-408-E
COMBUSTION ENGINEERING, INC., a corporation, C.E. LUMMUS (NEDERLAND), B.V., a corporation C.E. NATCO (NETHERLANDS) B.V., a corporation, FRITZ BOSCHITSH, an individual, J.J. VAN DILLEWIJN, an individual, G.P. CANTADORE, an individual, W.L. DE BRUYN, an individual, J.M. DEN HARTOG, an individual,	)	
Defendants.	)	

NOTICE OF DISMISSAL

Plaintiffs hereby dismiss their Complaint against Fritz Boschitsh, J.J. Van Dillewijn, G.P. Cantadore, W.L. De Bruyn and J.M. Den Hartog as moot. No responsive pleading to the Complaint has been filed on behalf of any of the defendants against whom the Complaint is hereby dismissed.

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Richard C. Ford

BEN L. BURDICK
RICHARD C. FORD OBA #3028

Of the Firm:
CROWE & DUNLEVY
1800 Mid-America Tower
20 North Broadway
Oklahoma City, Oklahoma 73102
(405) 235-7700

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 1984, a true and correct copy of the above and foregoing Notice of Dismissal was mailed, postage prepaid, to Douglas L. Inhofe, Conner, Winters, Ballaine, Barry & McGowen, 2400 First National Tower, Tulsa, Oklahoma 74103, attorney for defendants herein.

Richard C. Ford
RICHARD C. FORD

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 8 1984

Jack C. Silver, Clerk
DISTRICT COURT

LLOYD D. REYNOLDS,	)	
Plaintiff,	)	
vs.	)	
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,	)	
Defendant.	)	CIVIL ACTION NO. 84-C-285-E

O R D E R

The Court hereby finds 1) that this action[1] was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this 24th day of October, 1984, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

[1] Plaintiff's Social Security Number is 448-40-9080.

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the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

UNITED STATES DISTRICT JUDGE

MSD:cb

Entered

FILED
OCT -5 1984
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

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

UNITED STATES FIDELITY AND GUARANTY COMPANY, a Maryland corporation, Plaintiff, v. TERRY HYLE, BILL L. GREENE, TERESA GREENE, WARREN HACKER and ARDETH HACKER, as parents and next of kin of KELLY HACKER, deceased, and THE STATE OF OKLAHOME, ex rel DEPARTMENT OF HUMAN SERVICES, et al., Defendants.	)	CASE NO.: 83-C-343-B

STIPULATION OF DISMISSAL

COMES NOW the parties and jointly stipulate that each, every, and all matters have been disposed of and hereby stipulate their dismissal hereof of this suit.

Mark S. Darrah
MARK S. DARRAH

Scott T. Knowles
SCOTT T. KNOWLES

J. Richard Johnson, Jr.
J. RICHARD JOHNSON, JR.

Amy Kempfert
AMY KEMPFERT

Peggy L. Beal for

ANGELA GULLAT

Entered

FILED

OCT - 5 1984

Jack C. Silver
U. S. DISTRICT

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

RICHARD B. KERZEE, Plaintiff, vs. ROLLINS INC., a corporation, Defendant.	)	Case No. 84-C-494-B

ORDER TO TRANSFER

COMES ON for hearing this October 2, 1984, the Defendant, ROLLINS INC.'s Motion to Dismiss or Transfer filed August 21, 1984; and the Plaintiff, Richard B. Kerzee being represented by Robert Green and the Defendant, ROLLINS INC. being represented by John M. Imel, and the Plaintiff having filed a Response on October 2, 1984, which confesses that part of the Defendant's Motion To Transfer, and by further agreement of the parties, it is hereby;

ORDERED that the Defendant, ROLLINS INC.'s Motion To Transfer this case to the Western Judicial District of Oklahoma and in the interest of justice and for the convenience of the parties and witnesses, it is hereby sustained.

SO ORDERED this 5th day of October, 1984.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

Robert L. Green

Attorney for Plaintiff

John M. Imel

Attorney for Defendant

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT -5 1984

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

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
vs.	)	
D & D EQUIPMENT COMPANY, JOE ALLEN JETER and McCLURE EQUIPMENT COMPANY,	)	
Defendants.	)	CIVIL ACTION NO. 84-C-64-B

STIPULATION OF DISMISSAL

COMES NOW the Plaintiff United States of America, by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, the Defendants Joe Allen Jeter and McClure Equipment Company, by their attorney James R. Johnson, and the Defendant D & D Equipment Company, by its attorney Ollie W. Gresham, and hereby stipulate and agree that the Plaintiff's cause of action herein against the Defendant Joe Allen Jeter, may be and is hereby dismissed with prejudice.

LAYN R. PHILLIPS
United States Attorney

Nancy Nesbitt Blevins
NANCY NESBITT BLEVINS
Assistant United States Attorney

James R. Johnson
JAMES R. JOHNSON
Attorney for Defendants
McClure Equipment Company
and Joe Allen Jeter

Ollie W. Gresham
OLLIE W. GRESHAM
Attorney for Defendant
D & D Equipment Company

Entered

FILED

OCT - 5 1984

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

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

ANTLERS EXPLORATION CORPORATION, an Oklahoma Corporation,	)	
Plaintiff,	)	
VS.	)	Case No. 83-C-1035-B
S. A. TUREAUD, an individual,	)	
Defendant.	)	

ADMINISTRATIVE CLOSING ORDER

Now on this 5th day of October, 1984 comes on the captioned matter, and the Court being fully advised in the premises,

THE COURT FINDS that the parties have settled this matter pursuant to the Settlement Agreement, attached as Exhibit "A" (the "AGREEMENT"), and Agreed Journal Entry of Judgment, a copy of which is attached as Exhibit "B" (the "JUDGEMENT"),

NOW, THEREFORE, 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 contemplated by the Agreement or necessary for the entry of the Judgment or other final determination of the litigation.

If within 60 days of December 20, 1986 the parties have not reopened this action for the purpose of entering the Judgment or obtaining any other final determination herein, this action shall be deemed dismissed with prejudice.

If Defendant breaches the Agreement or is otherwise in default of any payments due Plaintiff thereunder, Plaintiff may apply to the Court at any time

prior to 60 days from December 20, 1986, upon notice to Defendant, for an Order reopening this action and directing the entry of the Judgment.

IT IS SO ORDERED this 5th day of October, 1984.

S/ THOMAS R. BRETT

United States District Judge
Thomas R. Brett

APPROVED AS TO FORM AND CONTENT

Charles R. Cox
Attorney for Plaintiff

Grey W. Satterfield

Grey W. Satterfield, Jr.
Attorney for Defendant

S. A. Tureaud

S. A. Tureaud, Defendant

SETTLEMENT AGREEMENT

An action has been begun by the Plaintiff, Antlers Exploration Company ("ANTLERS"), in the United States District Court for the Northern District of Oklahoma, Case No. 83-C-1035-B against the Defendant, S. A. Tureaud, for breach of a letter agreement dated September 27, 1982; and

It has been agreed between the parties that S. A. Tureaud should pay the principal sum of Eighteen Thousand Seven Hundred Fifty-Six and 69/100 ($18,756.69), court costs in the principal sum of $349.00, plus interest at the statutory rate from the date of this agreement in full satisfaction of all damages and costs suffered and incurred by Antlers on account of the breach of said letter agreement and in the prosecution of this action.

The principal sum, court costs, and interest are to be paid upon the following terms: S. A. Tureaud shall pay to Antlers at Barlow & Cox, 406 South Boulder, Suite 740, Tulsa, Oklahoma 74103, or at such other place as designated by Antlers, the sum of $1,000.00 on the 20th day of every fourth month commencing on the 20th day of December, 1984 for a period of one (1) year and eight (8) months, being six (6) separate payments of $1,000.00. On December 20, 1986, S. A. Tureaud shall pay to Antlers the balance of the amount owed including the interest accrued on such amount less all accrued and accruing net revenue after current operating expense from the Fixico #1 Well on the Castle II Prospect on the E/4, Section 15, Township 12 North, Range 9 East, Okfuskee County, Oklahoma which is attributed to S. A. Tureaud's 12.5% working interest in the lease discribed in that certain Letter Agreement dated September 27,, 1982 between Antlers and S. A. Tureaud. All of such accrued and accruing net revenue shall be applied by Antler's to the payment of such amount.

In consideration thereof, Antlers agrees to stay and discontinue any further proceedings in said action, including any entry of judgment or execution thereon.

EXHIBIT A

The breach of this agreement by S. A. Tureaud will result in the filing of an Agreed Journal Entry of Judgment in said matter, and shall entitle Antlers to immediately execute thereon, according to the terms of the Agreed Journal Entry of Judgment.

DATE: 8/25/84

S. A. TUREAUD

ANTLERS EXPLORATION CORPORATION

By: Jeff Welch, President

STATE OF OHIO)
) ss.
COUNTY OF LUCAS)

Before me, a Notary Public in and for said county and state, on this 25 day of August, 1984, personally appeared S. A. Tureaud, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

Notary Public, Lucas County, Ohio
Salli Rinker-Olwan

My Commission Expires:

11/22/86

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

Before me, a notary public in and for said county and state, on this 11th day of September, 1984, personally appeared Jeff Welch, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Notary Public

My Commission Expires:

1-19-87

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

ANTLERS EXPLORATION CORPORATION, an Oklahoma corporation,	)	
Plaintiff,	)	
-vs-	)	NO. 83-C-1035-B
S. A. TUREAUD, an Individual,	)	
Defendant.	)	

AGREED JOURNAL ENTRY OF JUDGMENT

ON this ___ day of _____, 1984, the Plaintiff, having filed this action, and the Defendant, S. A. Tureaud, a/k/a Sylvan A. Tureaud, not willing to contest it, have agreed to have judgment taken against her in the amount of Eighteen Thousand Seven Hundred Fifty-Six and 69/100 Dollars ($18,756.69), together with interest at the statutory rate from the date of judgment, together with the costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff should be, and is hereby awarded judgment against the Defendant, Sylvan Tureaud, in the amount of $18,756.69, together with interest at the statutory rate from the date of judgment, plus the costs of this action.

_____
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM AND CONTENT:

Charles R. Cox
CHARLES R. COX
Attorney for Plaintiff

Grey W. Satterfield Jr.
GREY W. SATTERFIELD, JR.
Attorney for Defendant

S. A. Tureaud
S. A. TUREAUD
Defendant

EXHIBIT B

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

FILED
OCT -5 1984
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, Petitioner,	)	
v.	)	NO. 84-C-606-B
ARTHUR YOUNG & COMPANY, Respondent,	)	
and	)	
CITIES SERVICE OIL AND GAS CORPORATION, Intervenor.	)	

ORDER

The petitioner, pursuant to Section 645 of the Department of Energy Organization Act, 42 U.S.C. §7255, and Section 13(e)(2) of the Federal Energy Administration Act, 15 U.S.C. §772(e)(2), petitions for an order requiring Respondent (Arthur Young & Company) to produce documents requested by subpoena served in furtherance of a Department of Energy (DOE) investigation of Intervenor's crude oil purchase and sale transactions. The Intervenor, Cities Service Oil and Gas Corporation (successor to Cities Service Company, hereafter referred to as "Cities"), as the principal party in interest as well as the Respondent independent auditing firm resist the subpoena and assert the subject documents are impressed with attorney work product privilege.

There is no issue concerning the rights of the plaintiff to subpoena relevant documents pertaining to the investigation; the

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issue centers in whether the subject documents or excerpts thereof are impressed with the attorney work product privilege. Having reviewed the documents in camera, it is the Court's conclusion that with the exception of the redacted sentence in paragraph 1 of T 244, the entire page designated T 291 and the first four sentences of paragraph 2 on page T 292, the subject written documents are impressed with attorney work product privilege and not subject to discovery by Petitioner from either Respondent or Intervenor. The excepted portions mentioned should forthwith be turned over to Petitioner by Respondent; and Intervenor's and Respondent's objection to discovery of and production of said documents is otherwise sustained.

The basic reasoning of the Court's Order hereinafter follows: The documents the Government seeks were prepared either by Cities' attorneys or Arthur Young ("AY") personnel and concern the subject matter of a lawsuit that Cities filed in April 1980 seeking a declaratory judgment against DOE that certain Cities crude oil transactions were in compliance with DOE regulations. The case was reported as Cities Service Company v. DOE, 520 F.Supp. 1132 (D. Del. 1981), aff'd, T.E.C.A. No. 3-28 (Temp. Emer.Ct.App. August 27, 1982) and was ultimately determined to be a case or controversy not ripe for judicial review. During the course of said action, Cities requested a DOE interpretation of the lawfulness of the transactions and the DOE declined because all of the facts were not known to the DOE.

AY produced many documents pursuant to the DOE subpoena but withheld production of certain documents or portions thereof pursuant to Cities' asserted work product privilege. The documents at issue were generated in connection with AY's annual audit of Cities as a publicly held corporation whose stock was registered on a national securities exchange pursuant to Section 12(b) of the Securities and Exchange Act of 1934, 15 U.S.C. §78l(b). As part of the audit in keeping with generally accepted auditing standards, AY was required to evaluate the pending Cities-DOE lawsuit and its implications concerning future claims against or liabilities of Cities.

The subject documents fall into four categories:

(1) AY Subpoena Inventory Items T283-289, T281-282, T273-279, T264-267 and T251-256 are attorney opinion letters from Mr. Charles V. Wheeler, Cities' then general counsel, or Fulbright & Jaworski, Cities' outside counsel in the Cities-DOE action, to AY or to Mr. P. J. Reilly, Cities' Controller, providing the addressees with counsel's analysis and mental impressions of the then-pending Cities-DOE

action and the possible effect thereof on Cities' financial position.[1]

(2) AY Subpoena Inventory Item T257-263 is a communication to Cities from Fulbright & Jaworski concerning the then-pending Cities-DOE action.

(3) AY Subpoena Inventory Items T240-241 and T249-250 are documents which were produced to the DOE by AY, but with portions redacted because they disclose oral communications with Cities' counsel concerning (1) and (2) above.

(4) The remainder of the documents consist of either handwritten notes or memoranda of AY disclosing Cities' attorneys' oral comments concerning (1) above.

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1 AY's subpoena Inventory Items T283-289, T281-282, and T273-279 are the letters, copies of which Judge Sterling found in United States v. Gulf Oil Corporation, C.A. No. H-84-553 (S.D.Tex. Apr. 11, 1984), are exempt from disclosure to the DOE by virtue of Cities' work product privilege. Gulf Oil Corporation had obtained these documents from Cities as a result of their merger discussions which were never culminated. The Government was attempting to reach the documents in the hands of Gulf Oil Corporation. Due to the privity between Gulf Oil Corporation and Cities, and the same or similar documents being involved, Cities urges the doctrine of estoppel by judgment to bind this Court in the instant matter. Judge Sterling's order is now on appeal to the Temporary Emergency Court of Appeals. See United States v. Gulf Oil Corporation, Docket No. 5-108 (filed May 10, 1984). Although it is arguable the estoppel by judgment concept may have some application here, the undersigned bases the holding herein upon the independent conclusion the particular written communications are impressed with a cognizable attorney work product privilege.

In Hickman v. Taylor, 329 U.S. 495 (1947) the Supreme Court held that discovery of the fruits of a lawyer's efforts and the lawyer's "mental processes" should not be countenanced because this would have a chilling effect on the lawyer's proper performance as an advocate and would result in "inefficiency, unfairness and sharp practices." Id. at 510-11. "Discovery was hardly intended to enable a learned profession to perform its functions . . .on wits borrowed from the adversary." Id. at 516 (Jackson, J., concurring). As subsequently codified, the work product immunity protects "mental impressions, conclusions, opinions ... of an attorney concerning the litigation." F.R.Civ.P. 26(b)(3). See Upjohn Co. v. United States, 449 U.S. 383, 397-402 (1981). The rule is founded upon strong public policy, Id. at 398, and applies in civil litigation involving private or governmental litigants, Id. at 398-99.

The essential purpose of the work product immunity is to safeguard the adversary process, not to protect client confidences. United States v. American Telephone and Telegraph Co., 642 F.2d 1285, 1299 (D.C.Cir. 1980).

The Government herein urges the lawyer communications involved were not made expressing opinions concerning litigation or anticipated litigation, and further, that there is now no

pending litigation.[2] The Government also states at page 13 of its memorandum reply brief:

> "... The recognized privileges, i.e., attorney work-product and attorney-client, are manifestations of the public policy favoring protection of those disclosures. See Hickman v. Taylor, 329 U.S. at 510; see also, Upjohn Co. v. United States, 449 U.S. 383 (1981). It is well-settled, however, that the business purposes inherent in the auditor-client relationship do not carry the same public policy concerns warranting protection from disclosure to administrative agencies. United States v. Arthur Young & Co., 104 S.Ct. 1495 (1984)."

There is no waiver of the work product privilege where, as here, the documents were provided to AY under a specific assurance of confidentiality. The auditor is to "hold in strict confidence all information concerning a client's affairs which he acquires in the course of his engagement." American Institute of Certified Public Accountants, Professional Standards, FT §54.02 (1980); United States v. American Telephone & Telegraph, 642 F.2d 1285 (D.C. Cir. 1980); American Standard, Inc. v. Bendix Corporation, 71 F.R.D. 443 (W.D.Mo. 1976); Duplan Corp. v. Deering Milliken, Inc., 397 F.Supp. 1146, 1172 (D.S.C. 1974); Burlington Industries v. Exxon Corporation, 65 F.R.D. 26, 45-46 (D.Md. 1974) (work product is not lost where joint licensees share information); In re John Doe Corp., 675 F.2d 482, 492 (2nd Cir. 1982); and Permian Corporation v. United States, 665 F.2d 1214 (D.C.Cir. 1981).

---

2 This Court believes the Government is mistaken in that regard because the written communications reviewed concern pending litigation or anticipated litigation. The specific exceptions noted early in this Order is because those written communications do not qualify as attorney opinions or impressions protected by the work product privilege.

Clearly, the DOE by way of its investigative subpoena is entitled to all materials in the hands of the Respondent which are reasonably relevant to the subject of the investigation. United States v. First City National Bank of El Paso, 598 F.2d 594, 599 (Temp.Emer.Ct.App. 1979) (applying this standard to a DOE subpoena); United States v. Morton Salt Co., 338 U.S. 632, 652 (1950); F.R.Civ.P. 26(b)(1); United States v. Fitch Oil Co., 676 F.2d 673, 679 (Temp.Emer.Ct.App. 1982); United States v. Security State Bank and Trust, 473 F.2d 638 (5th Cir. 1973); Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186, 208-209 (1946).

The stated purpose of the subject investigation is to determine Cities' compliance with relative DOE price and allocation regulations regarding "purchases, sales, exchanges, or other transfers of crude oil." (See Petition at paragraph 1; Koester Affidavit, paragraph 6). The DOE needs and is entitled to all factual data relevant to the inquiry. In its Interpretation 1980-43 during the Cities-DOE action, the DOE stated it could not determine the legality of the subject transactions "... because many pertinent portions of the transactions are factually unclear." (Exhibit 1 to Barnes Affidavit at page 56,834). The Court concludes that to the extent facts were contained in the documents the DOE is seeking here, the facts have been produced but the attorneys' opinions and mental impressions concerning the dispute have been withheld. From the Court's in camera review of the subject documents it is

concluded the DOE's reference to the subject documents as being "necessary" factual information to its investigation is a mischaracterization. The opinions and mental impressions of Cities' counsel concerning compliance or noncompliance with the DOE regulations is not "necessary" factual information relevantly probative. The Government has not articulated any legitimate purpose for discovering the subject lawyer opinions and mental impressions.

The specific redacted or omitted documents were provided by Cities to the Respondent independent auditing firm in compliance with federal securities laws. The audit process required Cities' counsel to provide the Respondent with candid assessments and opinions of pending and potential litigation. See ABA Statement of Policy Regarding Lawyers' Responses' to Auditors' Requests for Information ¶5 (1976). The Supreme Court said in Hickman v. Taylor:

> "[w]ere [attorneys' opinions and mental impressions] open to opposing counsel on mere demand, much of what is now put down in writing would remain unwritten."

329 U.S. at 511. In the case of Duplan Corporation v. Moulinage et Retorderie de Chavanoz, 509 F.2d 730, 736 (4th Cir. 1974), cert. denied, 420 U.S. 997 (1975), the Court stated:

> "[I]f attorneys may not freely and privately express and record mental impressions, opinions, conclusions, and legal theories, in writing, and clients may not freely seek them, then there is justice for no one, and truth, instead of being more readily ascertainable, will become lost in the murky recesses of the memory in the minds of men..."

In Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186, 213 (1946), the Supreme Court stated matters such as involved herein should be decided in a way to secure public interest while at the same time assuring the interests of men are free from officious intermeddling, whether because irrelevant to any lawful purpose or because unauthorized by law.

At page 23 of the Government's reply memorandum filed on September 12, 1984, it quotes from United States v. Arthur Young and Co., supra. A portion of the quote states:

> "...To insulate from disclosure a certified public accountant's interpretations of the client's financial statements would be to ignore the significance of the accountant's role as a disinterested analyst charged with public obligations." (104 S.Ct. at 1502).

Herein the accountant's interpretations of the client's financial statements are discoverable wherein relevant, but it is the lawyer interpretations, mental impressions and opinions that are protected by this Order.

The office of Federal Rule of Evidence 403 prevents the jury from receiving evidence, although relevant, if its probative value is substantially outweighed by the danger of unfair prejudice. If some theory of relevance can be advanced concerning the documents under review, the Court would conclude its probative value is substantially outweighed by the danger of unfair prejudice and public interest concerns.

Courts may deny discovery of information notwithstanding some claim of relevance when the balancing of the benefit is outweighed by the harm to other interests. See e.g., In Re Grand

Jury Subpoena Dated January 4, 1984, 583 F.Supp. 991 (E.D.N.Y. 1984); Richards of Rockford, Inc. v. Pacific Gas and Electric Co., 71 F.R.D. 388 (N.D.Cal. 1976); Apicella v. McNeill Laboratories, Inc., 66 F.R.D. 78 (E.D.N.Y. 1975); Baker v. F & F Investment, 470 F.2d 778 (2d Cir. 1972), cert. denied, 411 U.S. 966 (1973).

The Court should be quick to point out it is not herein saying all communications between corporate counsel and its independent auditing firm are impressed with the attorney work product privilege. Each case must be judged in light of its particular facts and circumstances. The Court has determined the particular redacted or omitted documents do involve corporate counsel opinions or mental impressions concerning a matter in litigation or in anticipation of litigation and are, therefore, protected from discovery by the work product privilege.

ENTERED this 5th day of October, 1984.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

RCH/sl
10-3-84

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

FILED

OCT 5 1984

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

TERRY FOWLER,	)	
Plaintiff,	)	
vs.	)	
SPEED-CUT, INC.,	)	
Defendant,	)	
MID-CONTINENT CASUALTY CO., INC.,	)	
Intervenor.	)	NO. 81-C-370-E

ORDER OF DISMISSAL

Upon the application of the plaintiff and the intervenor in the above entitled action and for good cause shown, this action is dismissed with prejudice.

Entered this 5th day of October, 1984.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

GDG:mwc
10/1/84

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

KEN WEBEL,	)	
Plaintiff,	)	
v.	)	No. 83-C-998-C
AMERICA'S CUP, INC.,	)	
Defendant and Third-Party Plaintiff,	)	
v.	)	
MERCURY MARINE, a Division of BRUNSWICK CORPORATION, a Delaware Corporation; and WOOD MANUFACTURING COMPANY, INC., an Arkansas Corporation,	)	
Third-Party Defendants.	)	

ORDER OF DISMISSAL WITH PREJUDICE

The above matter comes on to be heard this 4th day of October, 1984, upon the written stipulation of the parties for a dismissal of the third-party action by America's Cup, Inc. against Mercury Marine, with prejudice. The Court, having examined said Stipulation, finds the parties have entered into a compromise settlement covering all claims involved in the action and have requested the Court to dismiss said action with prejudice to further action. The Court being fully advised in the premises, finds said action should be dismissed pursuant to said Stipulation.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the third-party action of America's Cup, Inc. filed herein against third-party defendant, Mercury Marine, be and the same is hereby dismissed with prejudice to any further action.

s/H. DALE COOK
UNITED STATES DISTRICT JUDGE

APPROVED:

By _____
Joseph M. Best and Michael P Atkinson
of
Best, Sharp, Thomas, Glass & Atkinson
300 Oil Capital Building
507 South Main
Tulsa, Oklahoma 74103

ATTORNEYS FOR DEFENDANT, AMERCIA'S CUP, INC.

By _____
David W. Edmonds and Greg D. Givens
of
NIEMEYER, EDMONDS, NOLAND, ALEXANDER & HARGRAVE
Three Hundred Northg Walker
Oklahoma City, Oklahoma 73102
Telephone: (405) 232-2725

ATTORNEYS FOR THIRD-PARTY DEFENDANT, MERCURY MARINE.

Entered

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

ANDREW T. PARKER, Plaintiff,	)	
v.	)	No. 83-C-937-B
MARGARET M. HECKLER, Secretary of Health and Human SErvices of the United States of America, Defendant.	)	

J U D G M E N T

In accordance with the Court's Order entered this date, Judgment affirming the decision of the defendant, Margaret M. Heckler, Secretary of Health and Human Services of the United States of America, is hereby entered.

DATED this 5th day of October, 1984.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

ROBERT S. SINN, JAN S. MIRSKY, SIXTH GEOSTRATIC ENERGY DRILLING PROGRAM 1980, SEVENTH GEOSTRATIC ENERGY DRILLING PROGRAM 1980, EIGHTH GEOSTRATIC ENERGY DRILLING PROGRAM 1980, FIRST ANCOR-GEOSTRATIC DRILLING PARTNERSHIP 1980, SECOND ANCOR-GEOSTRATIC DRILLING PARTNERSHIP 1980, and THIRD ANCOR-GEOSTRATIC DRILLING PARTNERSHIP 1980, Plaintiffs, vs. HARRY E. McPHAIL, JAMES EZZELL, and GLINDA DIANE McPHAIL, a/k/a DIANE JONES, Defendants.	FILED OCT 3 1984 19 Jack C. Silver, Clerk U. S. DISTRICT COURT 81-C-577-B Case No. CIV-81-836-B Case No. CIV ~~83~~ 81-C-576-B (consolidated number)

ORDER APPROVING
JOINT STIPULATION OF DISMISSAL

This cause having come before the Court pursuant to a Joint Stipulation of Dismissal, and it appearing to the Court that the stipulating parties have mutually agreed to a dismissal of their respective claims, and it further appearing to the Court that such stipulation should be granted, it is, therefore,

ORDERED, ADJUDGED AND DECREED that the mutual claims of Plaintiffs and Defendants Harry E. McPhail and Glinda Diane McPhail a/k/a Diane Jones arising out of the transactions forming the subject matter of this action and those consolidated with it,

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and either asserted or unasserted, should be, and hereby are, DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that each party shall bear its own attorney fees and costs incurred in this action.

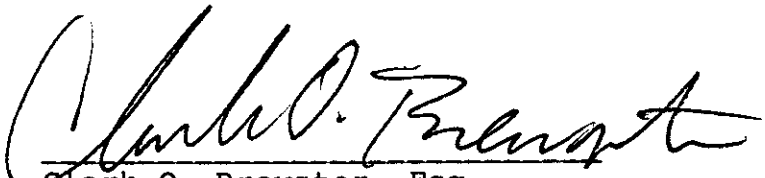
IT IS FURTHER ORDERED that Plaintiffs' claims against James C. Ezzell are not decided by the terms of this dismissal and are specifically excepted from this order and remain pending.

So ordered this 3rd day of October, 1984.

United States District Court
Judge

Approved as to form
and content:

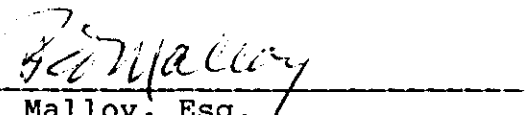
Robert S. Sinn, et al.:



Clark O. Brewster, Esq.
Michael F. Kuzow, Esq.
of Brewster and Shallcross
Suite 600, Park Towers
5314 South Yale
Tulsa, Oklahoma 74135
(918) 494-5935

Attorneys for Robert S. Sinn, et al.

Harry E. McPhail and
Glinda Diane McPhail a/k/a
Diane Jones:



Pat Malloy, Esq.
of Malloy & Malloy
810 Utica Bank Tower
1924 South Utica
Tulsa, Oklahoma 74104

Attorneys for Harry E. McPhail and
Glinda Diane McPhail a/k/a
Diane Jones

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing Joint Stipulation of Dismissal in the above-captioned case to Mr. James Ezzell, Post Office Box 299, Jenks, Oklahoma 74037 on this ____ day of September, 1984 with proper postage thereon fully prepaid.

Michael F. Kuzow

1:64:sinn.ord

Entered

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

ROBERT S. SINN, JAN S. MIRSKY, SIXTH GEOSTRATIC ENERGY DRILLING PROGRAM 1980, SEVENTH GEOSTRATIC ENERGY DRILLING PROGRAM 1980, EIGHTH GEOSTRATIC ENERGY DRILLING PROGRAM 1980, FIRST ANCOR-GEOSTRATIC DRILLING PARTNERSHIP 1980, SECOND ANCOR-GEOSTRATIC DRILLING PARTNERSHIP 1980, and THIRD ANCOR-GEOSTRATIC DRILLING PARTNERSHIP 1980, Plaintiffs, vs. HARRY E. McPHAIL, JAMES EZZELL, and GLINDA DIANE McPHAIL, a/k/a DIANE JONES, Defendants.	FILED OCT 3 1984 19 Jack C. Silver, Clerk U. S. DISTRICT COURT Case No. CIV-81-836-B Case No. CIV ~~83-C-576~~ 81-B (consolidated number)

ORDER APPROVING
JOINT STIPULATION OF DISMISSAL

This cause having come before the Court pursuant to a Joint Stipulation of Dismissal, and it appearing to the Court that the stipulating parties have mutually agreed to a dismissal of their respective claims, and it further appearing to the Court that such stipulation should be granted, it is, therefore,

ORDERED, ADJUDGED AND DECREED that the mutual claims of Plaintiffs and Defendants Harry E. McPhail and Glinda Diane McPhail a/k/a Diane Jones arising out of the transactions forming the subject matter of this action and those consolidated with it,

389

and either asserted or unasserted, should be, and hereby are, DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that each party shall bear its own attorney fees and costs incurred in this action.

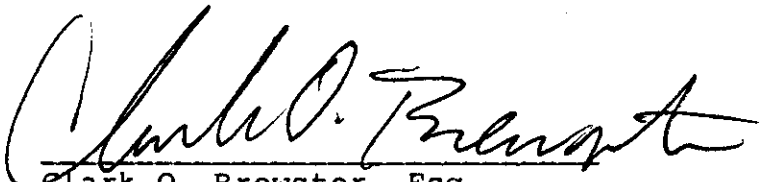
IT IS FURTHER ORDERED that Plaintiffs' claims against James C. Ezzell are not decided by the terms of this dismissal and are specifically excepted from this order and remain pending.

So ordered this 3rd day of October, 1984.

United States District Court
Judge

Approved as to form
and content:

Robert S. Sinn, et al.:



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Attorneys for Robert S. Sinn, et al.

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Diane Jones:

Pat Malloy

Pat Malloy, Esq.
of Malloy & Malloy
810 Utica Bank Tower
1924 South Utica
Tulsa, Oklahoma 74104

Attorneys for Harry E. McPhail and
Glinda Diane McPhail a/k/a
Diane Jones

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing Joint Stipulation of Dismissal in the above-captioned case to Mr. James Ezzell, Post Office Box 299, Jenks, Oklahoma 74037 on this ____ day of September, 1984 with proper postage thereon fully prepaid.

Michael F. Kuzow

1:64:sinn.ord

Entered

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

JOHN WHEATLEY,)

PLAINTIFF,)

VS)

AL FREDENDALL,)

DEFENDANT

No. 84-C-182-C

NOTICE OF

PLAINTIFF'S DISMISSAL

COMES now the Plaintiff, John Wheatley, and dismisses this cause with prejudice, in that the parties have settled and compromised all claims.

WHEREFORE, Plaintiff requests the Court to allow said dismissal with each party to pay their respective costs.

JOHN WHEATLEY

James R. Hays
Ellison, Hays & Nelson
Attorneys for Plaintiff
4815 S. Harvard, Suite 534
Tulsa,Ok. 74135
918/749-1673

Certificate of Mailing

I hereby certify that a true and correct copy of this Dismissal was mailed with correct postage on the 3 day of October, 1984 to:

Michael L. Seymour
1710 S. Boston Ave.
Tulsa,Ok. 74119

James R. Hays

Entered

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

DOLORES MARIA VALENCIA,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	
	)	NO. 84-C-14-C
CONSUELO SIDNEY BOYCE,	)	
	)	
Defendant.	)	

ORDER OF DISMISSAL

ON this 3rd day of October, 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, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

(Signed) H. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

JEFFERSON GREER
Attorney for Plaintiff

RAY H. WILBURN
Attorney for Defendant

Entered

FILED

OCT 3 1984

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

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

GRACE BALDWIN,	)	
Plaintiff,	)	
vs.	)	No. 83-C-843-B
BILLY L. BARNETT, et al,	)	
Defendants.	)	

ORDER OF DISMISSAL

This matter came on for consideration on this 3rd day of ~~September~~ October, 1984, upon the Joint Application For Dismissal With Prejudice filed herein. The Court being duly advised in the premises, finds that said Application For Dismissal is in the best interest of justice and should be approved, and the above styled and numbered cause of action dismissed with prejudice to a refiling.

It is, therefore, Ordered, Adjudged and Decreed by the Court that the Joint Application For Dismissal With Prejudice by the parties be and the same is hereby approved and the above styled and numbered cause of action and Complaint is dismissed with prejudice to a refiling.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

O.K.:

James E. Frasier
Attorney for plaintiff

Donald Church
Attorney for defendants

Civ 31
Rev. 12/81

JUDGMENT ON JURY VERDICT

United States District Court FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOHNA ANDERSON

CIVIL ACTION FILE NO. 83-C-887-C

FILED

OCT 3 1984

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

vs.

SKAGGS COMPANIES, INC.

This action came on for trial before the Court and a jury, Honorable H. DALE COOK, United States District Judge, presiding.

The issues having been duly tried and the jury having duly rendered its verdict, it is ordered and adjudged

that judgment be entered in favor of the defendant and against the plaintiff and that the plaintiff take nothing.

Dated at Tulsa, Oklahoma, this 3rd day of October, 19 84.

H. Dale Cook
Clerk of Court

H. Dale Cook
Chief Judge

38.

Entered

FILED
OCT -3 1984

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

SCHALLOCK PETERSEN & ASSOCIATES, INC., A Wisconsin Corporation, Plaintiff, -vs- TAYLOR BUILDING PARTNERSHIP, LTD., An Oklahoma Limited Partnership; CHARLES E. JONES, An Individual; THE CITIZENS BANK OF DRUMRIGHT, OKLAHOMA, An Oklahoma Banking Corporation; FIRST NATIONAL BANK OF CUSHING, OKLAHOMA, A National Banking Association; And WILBUR J. "SNOOKIE" TAYLOR, An Individual, Defendants.	)	NO. 83-C-503-C

ORDER OF DISMISSAL

NOW, on this 3rd day of October, 1984, upon joint motion of the plaintiffs and defendants for dismissal of the Complaint and Counter-Claim herein, IT IS HEREBY ORDERED that captioned action be, and the same is hereby DISMISSED.

UNITED STATES DISTRICT JUDGE

APPROVED:

Counsel For Plaintiff

Counsel For Defendants

21

Entered

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

ROBERT S. SINN, JAN S. MIRSKY, SIXTH GEOSTRATIC ENERGY DRILLING PROGRAM 1980, SEVENTH GEOSTRATIC ENERGY DRILLING PROGRAM 1980, EIGHTH GEOSTRATIC ENERGY DRILLING PROGRAM 1980, FIRST ANCOR-GEOSTRATIC DRILLING PARTNERSHIP 1980, SECOND ANCOR-GEOSTRATIC DRILLING PARTNERSHIP 1980, and THIRD ANCOR-GEOSTRATIC DRILLING PARTNERSHIP 1980, Plaintiffs, vs. HARRY E. McPHAIL, JAMES EZZELL, and GLINDA DIANE McPHAIL, a/k/a DIANE JONES, Defendants.	)	FILED OCT 3 1984 Jack C. Silver, Clerk U. S. DISTRICT COURT Case No. CIV-81-836-B Case No. CIV 83-C-576-B (consolidated number)

ORDER APPROVING
JOINT STIPULATION OF DISMISSAL

This cause having come before the Court pursuant to a Joint Stipulation of Dismissal, and it appearing to the Court that the stipulating parties have mutually agreed to a dismissal of their respective claims, and it further appearing to the Court that such stipulation should be granted, it is, therefore,

ORDERED, ADJUDGED AND DECREED that the mutual claims of Plaintiffs and Defendants Harry E. McPhail and Glinda Diane McPhail a/k/a Diane Jones arising out of the transactions forming the subject matter of this action and those consolidated with it,

and either asserted or unasserted, should be, and hereby are, DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that each party shall bear its own attorney fees and costs incurred in this action.

IT IS FURTHER ORDERED that Plaintiffs' claims against James C. Ezzell are not decided by the terms of this dismissal and are specifically excepted from this order and remain pending.

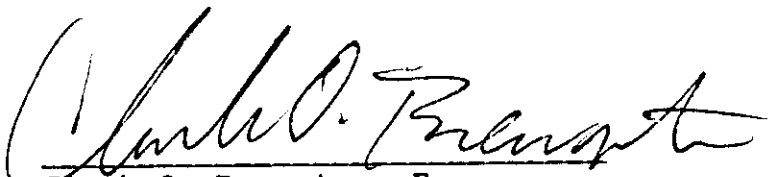
So ordered this 3rd day of October, 1984.

S/ THOMAS R. BRETT

United States District Court
Judge

Approved as to form
and content:

Robert S. Sinn, et al.:



Clark O. Brewster, Esq.
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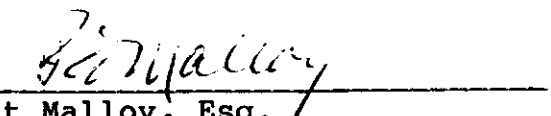
Tulsa, Oklahoma 74135
(918) 494-5935

Attorneys for Robert S. Sinn, et al.

Harry E. McPhail and
Glinda Diane McPhail a/k/a
Diane Jones:



Pat Malloy, Esq.
of Malloy & Malloy
810 Utica Bank Tower
1924 South Utica
Tulsa, Oklahoma 74104

Attorneys for Harry E. McPhail and
Glinda Diane McPhail a/k/a
Diane Jones

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing Joint Stipulation of Dismissal in the above-captioned case to Mr. James Ezzell, Post Office Box 299, Jenks, Oklahoma 74037 on this ____ day of September, 1984 with proper postage thereon fully prepaid.

Michael F. Kuzow

1:64:sinn.ord

Entered

FILED

OCT -2 1984

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

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

UTICA NATIONAL BANK & TRUST COMPANY, a National Banking Association,	)	
Plaintiff,	)	
vs.	)	No. 84-C-717-B
DELAWARE ENERGY SHARES, INC., a Delaware Corporation; LONNIE M. DUNN, JR., an individual; and JOHN W. OHANIAN, JR., an individual,	)	
Defendants.	)	

JUDGMENT

The Defendants, Delaware Energy Shares, Inc., Lonnie M. Dunn, Jr., and John W. Ohanian, Jr., having failed to plead or otherwise defend in this action and their default having been entered,

NOW, upon Application of the Plaintiff and upon Affidavit that the Defendant, Delaware Energy Shares, Inc., is indebted to the Plaintiff in the sum of $2,795,734.03, plus interest through July 31, 1984, in the amount of $503,302.72, and interest accruing thereafter at the rate of $1,242.54 per day; that Defendant, Lonnie M. Dunn, Jr., is indebted to the Plaintiff in the sum of $2,125,000 plus interest accruing thereon at the same rate of interest as that accruing on the debt of Defendant, Delaware Energy Shares, Inc.; that Defendant, John W. Ohanian, Jr., is indebted to the Plaintiff in the sum of $3,000,000 plus interest accruing thereon at the same rate of interest as that

accruing against Defendant, Delaware Energy Shares, Inc., provided, however, that the indebtedness of Defendants Dunn and Ohanian owing to the Plaintiff, jointly and severally, shall not exceed that indebtedness owed by the Defendant, Delaware Energy Shares, Inc.; that the Defendants have been defaulted for failure to appear and that the Defendants are not infants or incompetent persons, and are not in the military service of the United States, it is hereby

ORDERED, ADJUDGED AND DECREED that Plaintiff recover from the Defendant, Delaware Energy Shares, Inc., the sum of $2,795,734.03, plus accrued interest through July 31, 1984, in the amount of $503,302.72, plus interest accruing thereafter at the rate of $1,242.54 per day; that Plaintiff recover from Defendant, Lonnie M. Dunn, Jr., the sum of $2,125,000, plus interest accruing thereon at the same rate of interest as that accruing against the Defendant Delaware Energy Shares, Inc.; that Plaintiff recover from Defendant, John W. Ohanian, Jr., the sum of $3,000,000 plus interest accruing thereon at the same rate of interest as that accruing against the Defendant Delaware Energy Shares, Inc.; provided, however, that the recovery on the judgment against the Defendants Dunn and Ohanian, jointly and severally, not exceed the total sums owed by Defendant Delaware Energy Shares, Inc., to the Plaintiff; interest upon all of which judgments will run until paid in full; costs in the sum of

$1,403.00; and a reasonable attorneys' fee to be set by the Court upon application by the Plaintiff.

DATED this 2nd day of October, 1984.

Jack C. Silver, Clerk

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

By H. Miller, Ch. Deputy

Entered

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

FILED

OCT 2 - 1984

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

BRIAN KEITH LOGAN, JACK DUCHAN, and AGNES AMELIA DUCHAN, next of kin of SUZANNE WENDY JONES LOGAN, deceased,	)	
Plaintiffs,	)	
-vs-	)	No. 84-C-459-E
THE ESTATE OF CHRISTOPHER BERNARD WILDER, now deceased, through his administrator RICHARD A. HEROLD,	)	
Defendant.	)	

ORDER

This matter comes before the Court on Defendant's Motion to Transfer pursuant to 28 U.S.C. 1404 (a). The Plaintiffs do not oppose the motion.

After good cause being shown and the Court having reviewed the files, the Court concludes that the Motion to Transfer should and hereby is sustained. Therefore, the Court orders that the above entitled case is transferred to the United States District Court for the Southern District of Florida, Ft. Lauderdale Division.

ENTERED this 2nd day of ~~September,~~ October 1984.

S/ JAMES O. ELLISON

HONORABLE JAMES ELLISON
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF MAILING

The undersigned does hereby certify that on this 27th day of September, 1984, a true and correct copy of the above and foregoing Order was mailed to John R. Woodard, III, 816 Enterprise Building, Tulsa, Oklahoma, 74103, with proper postage thereon, fully prepaid.

WILLIAM J. MUSSEMAN

Entered

FILED

OCT 2 1984

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

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

JAMES D. BUTCHER, Plaintiff,	)	
v.	)	No. 83-C-826-B
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America, Defendant.	)	

J U D G M E N T

In accordance with the Court's Memorandum Opinion entered this date, Judgment affirming the decisions of the defendant, Margaret M. Heckler, Secretary of Health and Human Services of the United States of America, is hereby entered.

ENTERED this 1ST day of October, 1984.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
IN OPEN COURT
OCT 2 1984
Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
OKLAHOMA GRAIN, COLLINSVILLE STOCKYARDS, and ARKANSAS VALLEY STATE BANK,	)	
	)	
Defendants.	)	CIVIL ACTION NO. 84-C-595-E

O R D E R

Good cause having been shown, it is hereby ORDERED, ADJUDGED AND DECREED that the above-referenced action is hereby dismissed without prejudice.

Dated this 2d day of October, 1984.

UNITED STATES DISTRICT JUDGE

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

Entered

FILED
OCT -2 1984
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

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

JAMES D. BUTCHER, Plaintiff, v. MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America, Defendant.	)	No. 83-C-826-B

MEMORANDUM OPINION

The plaintiff, James D. Butcher, has filed a complaint seeking judicial review and reversal of a decision of the defendant, Margaret M. Heckler, Secretary of Health and Human Services ("Secretary") denying disability benefits or supplemental security income under the provisions of 42 U.S.C. §405(g). The Secretary filed a certified copy of the transcript of record with his answer on May 9, 1983 (hereinafter designated as TR-___).

In conducting this judicial review, it is the responsibility of the Court to examine the facts contained in the record, evaluate conflicts, and make a determination therefrom as to whether the facts support the several elements which make up the ultimate administrative decision. Heber Valley Milk Co. v. Butz, 503 F.2d 96 (10th Cir. 1974); Nickol v. United States, 501 F.2d 1389 (10th Cir. 1974).

17

I.

On August 8, 1983, the Appeals Council, Office of Hearings and Appeals, concluded there was no basis for granting a review (TR-2) of the decision of the Administrative Law Judge. Thus, the decision of the Administrative Law Judge of June 29, 1983, became the final decision of the Secretary. The Administrative Law Judge therein made the following findings:

1) The claimant filed an application for a period of disability and disability insurance benefits August 2, 1982, alleging disability from March 15, 1979.

2) The claimant met the special earnings and requirements of the Social Security Act, as amended, on March 15, 1979, and continued to meet said requirements through December 31, 1981, but not thereafter.

3) The claimant had previously filed applications for disability insurance benefits on February 20, 1979 and April 17, 1980, which were denied by decisions of administrative law judges on February 1, 1980 and April 16, 1980, respectively.

4) The administrative law judges' prior decisions of February 1, 1980 and April 16, 1981, are res judicata, and therefore the only period of time to be considered by the administrative law judge is from April 16, 1981 through December 31, 1981.

5) The medical evidence establishes that the claimant has osteoarthritis of the cervical spine and that he retained the residual physical disablity to engage in sedentary or light work activity through December 31, 1981.

6) The claimant was born July 5, 1932, has a ninth grade education, and has worked as a butcher.

7) In accordance with the Secretary's rules and regulations, a younger individual with a limited education who is found to have the residual physical ability to engage in light work, is not disabled.

8) The claimant was not under a disability as defined in the Social Security Act, as amended, at any time prior to December 31, 1981.

On the initial and reconsideration disability determinations, the disability examiners found the plaintiff was not disabled (TR-154-155, 157). On May 24, 1983, plaintiff appeared with his attorney for hearing before the Administrative Law Judge, and his testimony is summarized as follows:

The plaintiff lives in Bartlesville, Oklahoma, and formerly worked as a butcher. In his job, he was required to lift heavy weights, ranging up to 180-200 pounds. He is now unable to lift such weights due to pain in his back, hips, right knee and neck. The pain, plaintiff testified, is "...a feeling just like someone have a knife that's real hot, and they stuck it in your back and they're turning it." The pain first began early in 1979, and has worsened since. If he is not careful getting up from a chair, plaintiff experiences pain. He was experiencing pain during the hearing in his right knee, lower back and neck.

Plaintiff testified he takes no prescription medicine for his condition. He takes arthritis strength Anacin, mainly when he has a headache.

The Administrative Law Judge, in reviewing plaintiff's claims of disability, noted claimant had filed prior applications

on February 20, 1979, and April 17, 1980, which were denied by the Social Security Administration through all levels of the administrative appeals process (TR-7). The Administrative Law Judge found the decision of April 16, 1981, was res judicata with respect to the claimant's current application for the period from March 15, 1979 to April 16, 1981, and date of the last decisions (TR-7), and focused his consideration on the question of whether or not the claimant was disabled at any time from April 16, 1981 through December 31, 1981, when he last met the insured status requirements of the Act (TR-7). No report of examination or medical treatment for the period from April 16, 1981 through December 31, 1981. The claimant was examined by Richard F. Munn, D.O., on October 12, 1982. Dr. Munn, in a letter dated November 8, 1982, reported as follows:

Mr. Butcher's history and x-rays indicate a diffuse arthritic condition, with symptoms which are getting progressively worse. Dr. Munn diagnosed plaintiff as having ankylosing spondylitis, a disease he stated is progressive and permanently impairing, with the future prognosis guarded. Dr. Munn stated in his opinion the plaintiff is 100 percent permanently impaired as a result of the disease. (Exhibit C-14).

In addition, the following medical evidence, upon which the denials of plaintiff's first two applications were based, was submitted:

1) Report of Elvin M. Amen, M.D. of April 2, 1979 (Exhibit 10) -- Plaintiff visited Dr. Amen December 13, 1978,

complaining of back pain with radiation down into the hips. Medication was prescribed but no relief obtained, so x-rays were taken February 19, 1978. On March 9, 1979, Mr. Butcher returned to Dr. Amen, complaining that due to heavy lifting required, he had been totally unable to perform the duties of his custom meat packing plant. Dr. Amen declined to make a recommendation of complete total disability without consultation with an orthopedic surgeon or physician specializing in treatment of arthritis. The radiological report, dated February 19, 1979, noted as impressions: "1. A slight amount of left lumbar scoliosis; and 2. Very early osteoarthritis in the lumbar spine."

2) Letter from R.J. Wolf, D.O., of May 16, 1979 (Exhibit 19) -- Dr. Wolf stated he examined plaintiff on April 10, 1979 and felt plaintiff deserved the benefit of an evaluation by the Social Security Administration to determine if he qualifies for disability benefits.

3) Report of R. J. Wolf, D.O., of June 29, 1979 (Exhibit 11) -- In response to an inquiry from the Social Security Administration, Dr. Wolf wrote: "There is not a damn thing wrong with this man!"

4) Report of James C. Walker, M.D., of November 1, 1979 (Exhibit 12) -- The physician reported the neurological examination of plaintiff was normal including the low back syndrome with normal degrees of straight-leg raising and back motility." He concluded, "I can find no clinical evidense (sic) of neurological deficit or dysfunction to account for the patients subjective complaint."

5) Report of Gordon H. Skinner, D.C., of December 14, 1979 (Exhibit 17) -- The chiropractic physician diagnosed plaintiff as suffering from musculo-skelto-neuro involvement of the lumbo-sacral-ilia areas along with the cervical area; accompanied by para-vertebral muscle spasms, grade I reverse spondylolisthesis and grade II sciatica; associated with decreased lumbar flexion and extension, decreased lateral flexion in both directions and circumduction, along with arthritic build-up and alternating neuralgia and hypo-esthesia, with calcium build up in the cervical vertebrae along with cervical misalignment, decreased cervical motion and cephalgia. Dr. Skinner concluded it would be at least 12 months before Mr. Butcher would be a candidate for gainful employment, and treatment was necessary consisting of ultra-sound, diathermy, manipulations and bed rest.

6) Report of Gordon H. Skinner, D.C. of April 9, 1980 (Exhibit B-12) -- Upon re-examination of plaintiff, Dr. Skinner reported x-rays showed severe misalignment of the vertebra, calcium spurring and arthritic conditions, cervical disc syndrome, and due to cervical misalignment, serious insult to the integrity of the ligamenta structures.

7) Letter from Gordon H. Skinner, D.C., of April 23, 1980 (Exhibit B-13) -- Dr. Skinner stated Mr. Butcher's back problem disabled him from doing substantially gainful work and could be expected to do so for a period of at least 12 months.

8) Report of Gordon H. Skinner, D.C. of April 28, 1980 (Exhibit B-14) -- Dr. Skinner reported plaintiff was treated from October 22, 1979 through April 2, 1980 and returned April 9, 1980, complaining of headaches, neck pain, stiffness and tightness in the cervical area. Examination and x-rays revealed severe misalignment of the vertebrae, calcium spurring and arthritic conditions, cervical syndrome and serious insult to the ligamenta structure due to cervical misalignment. Dr. Skinner concluded plaintiff's condition disabled him from doing substantial gainful work and could be expected to do so for at least 12 months.

9) Report of Robert T. Rounsaville, M.D. of May 27, 1980 Exhibit B-17) -- Dr. Rounsaville stated that upon examination, Mr. Butcher complained of tenderness in the sacral area on both sides over to the iliac crest areas, the entire lumbar area, the entire paraspinal area and the thoracic region up to the base of the neck. The examination results were normal, except that forward flexion was limited on one occasion. The doctor stated, "His back complaints appear to be mainly subjective." The doctor further concluded, "In my opinion, this patient has functional difficulties from the neck and back. From his previous record, apparently this patient's wife has passed away and he has lost his business and is apparently dissatisfied to attempt to go into another business. The patient's findings are at a minimum, thus, he is considered to be able to perform ordinary manual labor."

10) Report of Don L. Hawkins, M.D. of October 11, 1980 (Exhibit B-18) -- The physician stated Mr. Butcher was examined July 24, 1980, and September 16, 1980. On the first examination, the range of motion of the cervical spine was less than 50% in any direction. He had some limitation of motion in his shoulders. X-rays showed diffuse calcification throughout the spine and particularly the cervical spine. There was collapse of the disc spaces with calcification in the anulus fibrosis. There was also diffuse calcification throughout the ligamentous structures of the facet joints. The lumbar spine showed signs of some calcification, but it was not as severe as the cervical spine. The sacroiliac joints had early calcification, ossification with signs of sacroilitis. Mr. Butcher returned September 16 complaining of severe pain, primarily in the neck. Dr. Hawkins concluded he probably had a seronegative rheumatoid arthritis variant. There were multiple deformities in the spine with collapse of the disc spaces and partial ankylosis, and possibly some instability developing in the upper cervical region.

11) Report of Don L. Hawkins, M.D. of December 8, 1980 (Exhibit B-19) -- Dr. Hawkins reported plaintiff had seen a rheumatologist, who concluded he didn't have rheumatoid type arthritis disorder but had significant arthritis primarily of the spine, etiology unknown. Plaintiff had been placed on Naprosyn 375 mg. twice daily. Dr. Hawkins rated plaintiff as 75% permanent/partial impaired, based upon the ranges of motion,

severe arthritic changes of the cervical spine with degenerative disc, the collapse of the disc, subluxation of the vertebra. He recommended plaintiff not return to any strenuous activity requiring lifting, bending or excesive activity. His condition would probably last one year and patient would have some pain off and on in his spine forever.

12) Report of Paul A. April, M.D. of March 3, 1981 (Exhibit B-22) -- X-rays showed a narrowing of C1-2, 3-4, 4-5, subluxation of C-4 and C-5, shoulder x-rays were normal but for narrowed joint space on left, chest x-ray was normal, pelvis and hip x-ray was normal but for narrowing of L5-S1. Examination revealed full flexion of the neck but only within 20 degrees extension and left or right turning possible. No lateral bending was possible. In the back, there was mild loss of lumbar dordosis with forward leaning posture and no muscle spasm. There was tenderness along the entire lumbar spine, with flexion to within 30 degrees; further movement was prevented by pain. There was pain with hyperextension, right or left lateral bending, but not with torsion.

II.

In support of his complaint and request for judicial review, the plaintiff contends the Secretary's decision was not supported by substantial evidence. The scope of the Court's review authority is narrowly limited by 42 U.S.C. §405(g). The Secretary's decision must be affirmed if supported by substantial evidence. Gardner v. Bishop, 362 F.2d 917 (10th Cir. 1966);

Stevens v. Mathews, 418 F.Supp. 881 (W.D. Okla. 1976). Substantial evidence is more than a scintilla and it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389, 401 (1971). However, substantial evidence is less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not preclude a finding that substantial evidence supports the Secretary's decision. Consolo v. Federal Maritime Comm., 383 U.S. 607, 620 (1966). In addition, the district court must review the findings of the Secretary to determine whether the Secretary applied the proper standards in reaching her decision. McCarty v. Richardson, 459 F.2d 3 (5th Cir. 1972); Bocian v. Mathews, 411 F.Supp. 1200 (N.D. Iowa 1976); de la Cruz Sanchez v. Weinberger, 382 F.Supp. 901 (D.P.R. 1974); Hope v. Secretary of Health, Education and Welfare, 347 F.Supp. 1048 (E.D.Tex. 1972).

The Social Security Act provides every individual who is under the age of 65, suffers from a disability, and meets special earnings requirements is entitled to disability insurance benefits. 42 U.S.C. §423(a)(1) (1976). A disability is an "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months..." 42 U.S.C. §423(d)(1)(A) (1976). An impairment is not deemed severe when "it does not significantly

limit an individual's physical or mental capacity to perform basic work-related functions." Lofton v. Schweiker, 653 F.2d 215, 217 (5th Cir. 1981).

A person claiming the right to disability benefits has the burden of proving his disability under the Social Security Act. Kelbach v. Harris, 634 F.2d 1304 (10th Cir. 1980). In order to prove disability, plaintiff must show he is so functionally impaired by his back trouble that he is precluded from engaging in any substantial gainful activity. Roberts v. Schweiker, 682 F.2d 743 (8th Cir. 1982). In determining whether a disability exists, the administrative law judge is required to consider a claimant's subjective evidence of pain. Thorne v. Weinberger, 530 F.2d 580 (4th Cir. 1976). However, plaintiff's inability to work without some pain or discomfort is not in itself sufficient to establish disability. Laffoon v. Califano, 558 F.2d 253 (5th Cir. 1977); Gaultney v. Weinberger, 505 F.2d 943 (5th Cir. 1974). A person capable of performing some light to sedentary work, despite back trouble, is not disabled under the Act. Callais v. Schweiker, 694 F.2d 427 (5th Cir. 1982).

The grid regulations of the Social Security Administration, 20 C.F.R. §§404.1501 et seq. (1982), provide for the sequential evaluation of disability claims. The first step in evaluating disability is to determine whether the claimant is working and whether the work he is doing is "substantial gainful activity." 20 C.F.R. §404.1520(b). If it is found the claimant is engaged in substantial gainful activity, the claim is denied without

reference to subsequent steps in the sequence. If claimant is not employed, the second inquiry is whether claimant has "any impairment(s) which significantly limit(s) [claimant's] physical or mental ability to do basic work activities." 20 C.F.R. §404.1520(c). If not, the claim is denied. If the administrative law judge finds a claimant has such an impairment, the third inquiry is whether the impairment meets or equals an impairment listed in Appendix I. If so, disability is automatic. 20 C.F.R. 404.1520(d). Fourth, if the impairment does not fall within Appendix I, does the impairment prevent claimant from doing past relevant work? 20 C.F.R. §404.1520(e). Fifth, if claimant is unable to perform past relevant work, does the impairment prevent him from doing any other work? 20 C.F.R. §404.1520(f).

Once a claimant has shown he cannot perform his past relevant work, the burden of going forward with the evidence shifts to the Secretary. The Secretary must then show that the claimant has the residual ability to do some kind of work. Kelbach v. Harris, 634 F.2d 1304 (10th Cir. 1980). In meeting this burden, the administrative law judge is to apply vocational regulations which became effective February 26, 1979. 20 C.F.R. §404, Appendix 2, §200.00 (1982). In applying these regulations, findings are made as to the claimant's residual functional capacity, age, education, and work skills to determine his profile. If the profile matches one of the rules set out in the tables in Appendix 2, the rule indicates whether or not the

claimant is disabled. 20 C.F.R., Part 404, Subpart P, Appendix 2 §200.00(a) (1982). In this case, the Secretary concluded light work was within plaintiff's residual functional capacity. His age and education thus directed a finding of "not disabled" under Rule 202.18, which provides that younger individuals with limited education who have nontransferable skills are not to be considered disabled.

In order to qualify for benefits, plaintiff must establish that he became disabled before the expiration of his insured status on December 31, 1981. Gibson v. Secretary of HEW, 678 F.2d 653 (6th Cir. 1982). 42 U.S.C. §§416(i)(3), 423(c) (1976). An impairment which had its onset or became disabling after the special earnings test was last met cannot serve as the basis for a favorable finding of disability. Sampson v. Califano, 551 F.2d 881 (1st Cir. 1977); Tietze v. Richardson, 342 F.Supp. 610 (S.D. Tex. 1972). Application of the doctrine of res judicata is appropriate in Social Security matters where there has been a previous determination by the Secretary concerning an application for benefits under the Act with respect to the rights of the same party on the same issue or issues which has become a final judgment either by judicial acclamation or by failure of the claimant to request judicial review. Teague v. Califano, 560 F.2d 615 (4th Cir. 1977); Janka v. Secretary of Health, Education and Welfare, 589 F.2d 365 (8th Cir. 1978).

The Administrative Law Judge found that no new and material evidence had been presented to justify reopening and revising the

previous administrative law judges' decisions of February 1, 1980 and April 16, 1981, pursuant to 20 C.F.R. 404.988-.989. Therefore, the Administrative Law Judge concluded those decisions were res judicata with respect to plaintiff's claim of disability before April 16, 1981. His consideration then focused on whether claimant was disabled between April 16, 1981 and December 31, 1981, the date claimant last met special earnings requirements. Plaintiff submitted one medical report from Richard F. Munn, D.O., who examined plaintiff October 12, 1982, and concluded plaintiff suffered from ankylosing spondylitis and that in his opinion plaintiff was 100% impaired.

The Administrative Law Judge concluded that although claimant had osteoarthritis of the cervical spine, he retained the residual physical ability to engage in sedentary or light work activity through December 31, 1981.

The Court is convinced after reviewing the record the Administrative Law Judge considered and evaluated the appropriate factors in assessing plaintiff's claim of disability. The grid regulations promulgated in 20 C.F.R. §404.1500 et seq. have been considered and properly applied.

The Court is further persuaded that substantial evidence supports the Administrative Law Judge's findings, first, that the previous two determinations of no disability were res judicata with respect to disability claimed through April 16, 1981, and second, that the plaintiff was not disabled within the meaning of the Social Security Act for the period from April 16, 1981,

through December 31, 1981. Although the plaintiff suffered from back problems, there was no showing that during the period in question, the problems were of a degree so debilitating that plaintiff was precluded from engaging in light or sedentary work.

After thoroughly examining the administrative record before it, the Court is of the opinion that substantial evidence is contained therein to support the Secretary's decision that plaintiff is not disabled within the pertinent provisions of the Social Security Act.

Accordingly, the Secretary's decisions should be affirmed and judgment of affirmance will be entered this date.

ENTERED this 1st day of October, 1984.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

FILED

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

ROBERT S. SINN, JAN S. MIRSKY, SIXTH GEOSTRATIC ENERGY DRILLING PROGRAM 1980, SEVENTH GEOSTRATIC ENERGY DRILLING PROGRAM 1980, EIGHTH GEOSTRATIC ENERGY DRILLING PROGRAM 1980, FIRST ANCOR-GEOSTRATIC DRILLING PARTNERSHIP 1980, SECOND ANCOR-GEOSTRATIC DRILLING PARTNERSHIP 1980, and THIRD ANCOR-GEOSTRATIC DRILLING PARTNERSHIP 1980, Plaintiffs, vs. HARRY E. MCPHAIL, JAMES EZZELL, and GLINDA DIANE MCPHAIL, a/k/a DIANE JONES, Defendants.	)	Case no. CIV-81-C-836-B Case no. CIV-81-C-576-B (Consolidated number)

JOINT STIPULATION OF DISMISSAL

COME NOW all of the above-named Plaintiffs and the remaining Defendant James Ezzell, and stipulate to the dismissal, with prejudice, of the above captioned case and the claims, either asserted or unasserted, arising out of the transactions forming the subject matter of the action and those consolidated with it. This voluntary dismissal is in consideration of the settlement agreement entered into among and between these respective parties and made pursuant to Fed. R. Civ. P. 41(a)(1).

Each party hereto stipulates to the Court that each respective party should bear their own attorney fees and costs incurred in connection with this action.

WHEREFORE, the Plaintiffs, through their counsel and James Ezzel proceeding pro se, set their hands with the intent to be so bound.

Respectfully Submitted,

By: Michael F. Kuzow

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James C. Ezzell

James C. Ezzell
Pro Se

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Entered

FILED

OCT - 1 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.	)	
JERRY W. GORDON,	)	
Defendant.	)	CIVIL ACTION NO. 84-C-247-B

NOTICE OF DISMISSAL

COMES NOW the United States of America by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Peter Bernhardt, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 1 day of October, 1984.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

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

CERTIFICATE OF SERVICE

This is to certify that on the 28th day of Sept., 1984, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Jerry W. Gordon, Route 4, Box 589, Grove, Oklahoma 74344.

Assistant United States Attorney

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

JOHN D. DAWSON, ROYCE ROBERTSON, SID COWLES, and JOHN BRADSHER,	)	
Plaintiffs,	)	
v.	)	Case No. 84-C-593-E
THE RESOURCE SCIENCES CORPORATION EMPLOYEES' INVESTMENT PLAN; WILLIAMS BROTHERS ENGINEERING COMPANY, a Delaware corporation; and RONALD E. GUSTAFSON, individually and in his capacity as Plan Administrator of the RESOURCE SCIENCES CORPORATION EMPLOYEES' INVESTMENT PLAN,	)	
Defendants.	)	

ORDER

On presentation of a Stipulation for Dismissal filed in the within proceeding;

IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. Plaintiffs' Complaint, including all claims therein, shall be and is hereby dismissed with prejudice.

2. Each party shall bear their or its own costs in this matter.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE