

Entered

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

BOBBY L. POPE,)
)
Plaintiff,)
)
v.)
)
AMERICAN SERVICE LIFE)
INSURANCE COMPANY, a)
Foreign Insurance Corporation,)
)
Defendant.)

No. 85-C-284-B

FILED

NOV 29 1985

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

O R D E R

NOW on this 29th day of Nov., 1985, plaintiff's
Application to Dismiss With Prejudice came on for hearing. The
Court being fully advised in the premises finds that said Application
should be sustained and the defendant, American Service Life Insurance
Company be dismissed from the above entitled action with prejudice.

WHEREFORE IT IS ORDERED, ADJUDGED AND DECREED, that plaintiff's
application to Dismiss With Prejudice be sustained and the above
captioned action be dismissed with prejudice.

THOMAS R. BRETT

THOMAS R. BRETT
JUDGE OF THE UNITED STATES DISTRICT COURT

has carefully examined plaintiff's complaint and concludes that it must be dismissed for the following reasons.

Plaintiff asserts that this court has jurisdiction of his complaint under 28 U.S.C. § 1346(b). That statute provides that the district courts shall have exclusive jurisdiction of civil actions on claims against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment. Neither the United States nor any federal agency or employee is named as a defendant in Plaintiff's complaint. Furthermore Plaintiff does not assert that he has suffered injury or property loss by the negligent or wrongful act of a government employee. Therefore the Court lacks jurisdiction under § 1346(b).

Plaintiff also asserts jurisdiction under 42 U.S.C. § 1983 which provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

A cause of action created by § 1983 does not in and of itself confer jurisdiction upon the federal district court to hear such a claim. Accordingly Plaintiff relies on 28 U.S.C. § 1343(3) to support his § 1983 claim. Section 1343 authorizes a

civil action to redress the deprivation of rights secured by the constitution of the United States or by any Act of Congress providing for equal rights of persons within United States jurisdiction.

Section 1343 confers jurisdiction on the district court if the underlying constitutional claim is of sufficient substance to support federal jurisdiction. To state a cause of action under § 1983 Plaintiff must establish two things: first that he has been deprived of a right secured by the constitution or laws of the United States; and second that the person who deprived Plaintiff of his right acted under color of state law. Gomez v. Toledo, 446 U.S. 635, 100 S.Ct. 1920 (1980).

Plaintiff claims that his constitutional rights have been violated because he was denied a grievance hearing concerning a routine inspection of his apartment. The denial of a grievance hearing on a routine maintenance matter does not rise to the level of a deprivation of Plaintiff's constitutional rights.

The Fair Housing Act of 1968, 42 U.S.C. § 3601 et seq. prohibits discrimination in housing on the basis of race, color, religion, sex, or national origin. Plaintiff's complaint in no way demonstrates such discrimination and therefore fails to state a claim under the Act.

To the extent that Plaintiff alleges that Defendants have denied him the opportunity to purchase his apartment; that Defendants refuse to install a public telephone outside the main office of the Cedar Ridge complex and that the apartment complex does not have a dollar bill changer machine or public washers and

dryers his complaint does not state a claim under either the constitution or laws of the United States. Having thoroughly examined all of Plaintiff's allegations, the Court finds that Plaintiff has not alleged that he has been personally deprived of any constitutional right.

The Court has reviewed the entire record and construing the pleadings in the light most favorable to Plaintiff finds that Plaintiff can prove no set of facts in support of his claim which would entitle him to relief. As Plaintiff has shown no substantial deprivation of right under the laws or constitution of the United States this Court does not have jurisdiction under § 1343. Having no federal jurisdiction over Plaintiff's claim the Court must dismiss all related pendent state claims.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the motions to dismiss Plaintiff's complaint for failure to state a claim upon which relief may be granted be and are hereby granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants Ming and Sharp's motion to quash service of process is moot.

Plaintiff's motion for default judgment is hereby denied. Plaintiff's motion to disqualify attorney is denied.

The initial status conference set for December 12, 1985 is hereby stricken.



JAMES G. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

THE BOARD OF TRUSTEES OF THE)
PIPELINE INDUSTRY BENEFIT FUND,)
)
Plaintiff,)
)
vs.)
)
HUMBLE PIPELINE CONSTRUCTORS,)
INC.,)
)
Defendant.)

NOV 27 1985 *ag*
Jack C. Silver, Clerk
U.S. DISTRICT COURT

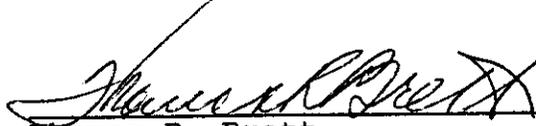
No. 85-C-460-B

JOURNAL ENTRY OF AGREED JUDGMENT

This matter came on for consideration on this 27th day of November, 1985. The plaintiff is represented by Kenneth L. Wire of the firm of Marsh & Armstrong, and the defendant is represented by Mr. M. S. Williams and Mr. David R. Milsten. The Court finds that the defendant has submitted a confession of judgment, which is attached to this Journal Entry. The Court further finds that as a result of this confession of judgment, the defendant admits the allegations in the Complaint, which must be accepted as true. The Court further finds that the amount of \$17,059.50 is due and owing the plaintiff as late charge assessment fees, for which the plaintiff should be granted judgment.

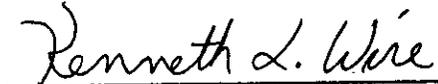
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff, Board of Trustees of the Pipeline Industry Benefit

Fund is granted judgment in the amount of \$17,059.50, an attorney's fee in the sum of \$1,200.00, and all costs of this action, accrued and accruing.



Thomas R. Brett
United States District Judge

APPROVED AS TO FORM AND CONTENT:



Kenneth L. Wire
Attorney for the Board of
Trustees of the Pipeline
Industry Benefit Fund



M. S. Williams



David R. Milsten
Attorneys for Humble Pipeline
Constructors, Inc.

October 14, 1985

Mr. M.S. Williams
Able & Berkel, P.C.
3450, Two Houston Center
Houston, Texas 77010

Mr. David R. Milsten
Attorney At Law
2825 East Skelly Drive
Suite 826
Tulsa, Oklahoma 74105

Gentlemen:

The Board of Directors of Humble Pipeline Constructors, having met, passed the following resolution. In the lawsuit of Pipeline Industry Benefit Fund v. Humble Pipeline Constructors, No. 85-C-460-B; pending in the United States District Court for the Northern District of Oklahoma, there is a little possibility of defense in this case. Therefore, the Board of Directors of Humble Pipeline Constructors, Inc., does hereby authorize M.S. Williams of the firm of Able & Berkel, Houston, Texas and/or David R. Milsten, Attorney At Law of Tulsa, Oklahoma to enter a Confession of Judgment in the cause against Humble Pipeline Constructors.

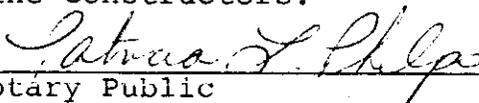


CONTROLLER AND SECRETARY TREASURER

STATE OF TEXAS)

COUNTY OF HARRIS)

BEFORE ME, the undersigned authority did appear Dwayne Pettyjohn, the same person who executed the above and foregoing document and who swore to me that this was the action of the Board of Directors of Humble Pipeline Constructors.



Notary Public

(Seal)

COMMISSION EXPIRES: 5-10-86

Entered

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

ROSE MARIE STARRETT,)
)
 Plaintiff,)
)
 v.)
)
 ROBERT W. WADLEY, individually)
 and in his official capacity as)
 Creek County Assessor; and)
 BOARD OF COUNTY COMMISSIONERS)
 OF CREEK COUNTY, OKLAHOMA, a)
 political subdivision of the)
 State of Oklahoma,)
)
 Defendants.)

No. 84-C-695-B ✓

FILED

NOV 27 1985 *ag*

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

ORDER OVERRULING DEFENDANTS' MOTION
FOR JUDGMENT NOTWITHSTANDING THE VERDICT

Before the Court are defendants' motions for judgment notwithstanding the verdict. The jury verdict included the plaintiff's claims for violation of her First and Fourteenth Amendment rights under 42 U.S.C. §1983 and the Oklahoma Political Subdivision Claims Act, 51 Okl.St. Ann. §151 et seq.

The plaintiff's claims under Title VII, 42 U.S.C. §2000e et seq., are for the Court to decide without a jury. As the Court has concluded the plaintiff was on the personal staff of County Assessor Robert E. Wadley, in accordance with 42 U.S.C. §2000e(f), the Court is without subject matter jurisdiction of plaintiff's Title VII claim. (See the Findings of Fact and Conclusions of Law filed herein.)

Concerning the defendants' motions for judgment notwithstanding the verdict, the standard requires that the Court

view the evidence in a light most favorable to the plaintiff. If there is sufficient evidence to create issues of fact for the jury's determination, the jury's verdict should not be disturbed. Bailey v. Slentz, 189 F.2d 406 (10th Cir. 1951); Wilkerson v. McCarthy, 336 U.S. 53 (1949); Sandoval v. U. S. Smelting, 544 F.2d 463 (10th Cir. 1976); Symons v. Mueller Co., 493 F.2d 972 (10th Cir. 1974); Hidalgo Prop., Inc. v. Wachovia Mortg. Co., 617 F.2d 196, 198 (10th Cir. 1980); and Downie v. Abex Corp., 741 F.2d 1235, 1238 (10th Cir. 1984).

The evidence supporting the jury's verdict is as follows: Over the approximately eighteen-month period (March 1982 - October 1983) the plaintiff, a married female, was employed as a deputy county assessor by the defendant, Robert E. Wadley, the duly elected County Assessor of Creek County, Oklahoma, he was experiencing alcohol related problems. He was often intoxicated while at work. When intoxicated, defendant Wadley had a penchant for making sexually harassing observations to female employees, including the plaintiff. Evidence of such harassment of plaintiff was his patting plaintiff on the bottom, inviting her to his motel room, and suggesting to her they spend time in a motel together. He also frequently invited the plaintiff to come to his home. There was evidence from which the jury could infer that plaintiff's continued employment was more likely had she responded affirmatively to Wadley's overtures.

The plaintiff rejected the plaintiff's sexual overtures and privately reported his intoxication and conduct to a member of

the Board of County Commissioners of Creek County, Oklahoma, and also to defendant Wadley's personal attorney, in an effort to correct and prevent it in the future. On October 3, 1983, the defendant, Robert E. Wadley, terminated the plaintiff's employment. Viewing the evidence in a light most favorable to plaintiff, evidence supports both the involuntary termination and that it was in retaliation for plaintiff's refusal to accept defendant's sexual overtures and was in retaliation for plaintiff's speaking out against defendant's alcoholism and discriminatory conduct.

The various grounds in support of motions for judgment notwithstanding the verdict of defendants, Robert E. Wadley and Board of County Commissioners of Creek County, Oklahoma, are hereafter discussed. The defendant, Robert E. Wadley, submits an affidavit from a juror stating that one-half of the \$75,000 verdict was for compensatory damages and the other one-half, contrary to law and the Court's instructions, was for plaintiff's attorney fee. The Court will not consider the affidavit and issue raised thereby as it violates Local Rule 8 of the court, i.e., counsel or a party communicating with a juror without approval of the Court. Also, a juror will not be heard to impeach his own verdict. McDonald v. Pless, 238 U.S. 264 (1915); Moore's Federal Practice, Vol. 6A, § 59.08[4], pp. 59-135-136.

The plaintiff was an employee of Creek County, Oklahoma, which had in excess of 15 employees to meet the Title VII jurisdictional requirement. Owens v. Rush, 636 F.2d 283 (10th

Cir. 1980). However, as a deputy assessor, plaintiff herein served on the personal staff of elected County Assessor Robert E. Wadley and was thereby exempt under Title VII-42 U.S.C. §2000e(f).

There was evidence to support plaintiff's speaking out to defendants Robert E. Wadley and the Board of County Commissioners, as well as to Wadley's personal attorney, involved matters of public concern protected by the First Amendment of the United States Constitution in violation of 42 U.S.C. §1983. Connick v. Meyers, 461 U.S. 138, 103 S.Ct. 1684, 1689, 75 L.Ed.2d 708 (1983); Givhan v. Western Line Consolidated School Dist., 439 U.S. 410, 99 S.Ct. 693, 58 L.Ed.2d 619 (1979); and Knapp v. Whitaker, 757 F.2d 827, 845 (7th Cir. 1985).

Evidence established violations of plaintiff's Fourteenth Amendment rights of equal protection under 42 U.S.C. §1983. There was evidence the Creek County, Oklahoma Assessor, Robert E. Wadley, made unwelcome sexual advances in the form of comments, gestures, physical contact with plaintiff, and the pattern of such conduct with other employees. Viewed separately, perhaps defendant Wadley's conduct would not be considered actionable sexual harassment, but in the overall context, a fact question was presented for the jury. 29 C.F.R. §1604.11; Bundy v. Jackson, 641 F.2d 934 (D.C. Cir. 1981); and Jeppsen v. Wunnicke, 37 F.E.P. Cases 994 (D. Ark. 1985).

Under §1983, in order to impose liability on the governmental entity, the plaintiff must establish that the

unconstitutional act was a result of a governmental policy, custom or practice or was inflicted by an individual "whose edicts or acts may fairly be said to represent official policy." Monell v. Dept. of Social Services, 436 U.S. 658, 694 (1978). There was evidence from which the jury could conclude the defendant Wadley was such an official, and that his unconstitutional acts of sexual discrimination and retaliation constituted the official policy of Creek County, Oklahoma.

Defendant Wadley raises for the first time the issue that he was not a proper party defendant under the Oklahoma Political Subdivision Tort Claims Act, 51 O.S. §163. This issue was not previously raised by answer or set out in the pretrial order. For this reason, it will not be considered at this time. The Court's instructions relative to the Oklahoma Political Subdivision Tort Claims Act, 51 O.S. §151 et seq., speak of liability on the part of the political subdivision, Creek County, Oklahoma, not the individual defendant, Robert E. Wadley. Robert E. Wadley was a proper party defendant concerning the plaintiff's alleged 42 U.S.C. §1983 claim.

The plaintiff's failure to sign a loyalty oath under 51 O.S. §36.1 does not defeat her status as an employee. Plaintiff had properly previously signed such an oath as an employee of the Creek County Treasurer's office, for whom she was employed shortly before her deputy assessor employment. 51 O.S. 36.4 imposes a duty on all elected officials to certify that employees on their payroll have signed and filed such an oath. Page three

of the defendant Board of County Commissioner's Exhibit 7 reflects the County Clerk and County Assessor certified plaintiff had complied with 51 O.S. §36.1. There was no issue presented herein relative to plaintiff's loyalty under 51 O.S. §36.1.

The above also responds to the issues raised by the defendant Board of County Commissioners of Creek County in its motion for judgment notwithstanding the verdict. The defendant Board of County Commissioners also asserts it was denied due process under the Oklahoma Constitution, Article 2, §7, and the United States Constitution, Fourteenth Amendment, by misconduct of plaintiff's counsel in administrative proceedings before the EEOC. The Court has reviewed this argument and considers it without sufficient merit to disturb the jury's verdict herein.

Therefore, the motions for judgment notwithstanding the verdict of the defendants, Robert E. Wadley and Board of County Commissioners of Creek County, Oklahoma, are hereby overruled.

IT IS SO ORDERED this 27 day of Nov., 1985.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

ROSE MARIE STARRETT,)
)
 Plaintiff,)
)
 v.)
)
 ROBERT E. WADLEY, individually)
 and in his official capacity as)
 Creek County Assessor; and BOARD)
 OF COMMISSIONERS OF CREEK COUNTY,)
 OKLAHOMA, a political subdivision)
 of the State of Oklahoma,)
)
 Defendants.)

No. 84-C-695-BT ✓

F I L E D

NOV 27 1985 *af*

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

O R D E R

In keeping with the Findings of Fact and Conclusions of Law entered this date, IT IS HEREBY ORDERED that the plaintiff Rose Marie Starrett's claim herein pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. is hereby dismissed against the defendants, Robert E. Wadley and the Board of County Commissioners of Creek County, Oklahoma. The parties are to pay their own respective costs and attorneys fees concerning said claim.

DATED this 27th day of Nov., 1985.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

ROSE MARIE STARRETT,)
)
 Plaintiff,)
)
 v.)
)
 ROBERT E. WADLEY, individually)
 and in his official capacity as)
 Creek County Assessor; and BOARD)
 OF COMMISSIONERS OF CREEK COUNTY,)
 OKLAHOMA, a political subdivision)
 of the State of Oklahoma,)
)
 Defendants.)

No. 84-C-695-BT ✓

F I L E D

NOV 27 1985 *af*

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

J U D G M E N T

In keeping with the verdict of the jury returned and filed herein on the 26th day of September, 1985, IT IS HEREBY ORDERED AND ADJUDGED the plaintiff, Rose Marie Starrett, is to have judgment against Robert E. Wadley and the Board of County Commissioners of Creek County, Oklahoma on her claim under 42 U.S.C. §1983, pre-judgment interest thereon at the rate of 15% per annum from the 8th day of July, 1984, until the date hereon, and postjudgment interest at the rate of 7.87% per annum from the date hereon, plus costs and attorneys fees, if timely applied for pursuant to local rule.

IT IS FURTHER ORDERED the plaintiff, Rose Marie Starrett, is to take nothing against said defendants on her alleged claim under Title VII, 42 U.S.C. §2000e et seq. pursuant to the Findings of Fact and Conclusions of Law and Order entered this date.

IT IS FURTHER ORDERED the plaintiff is to have judgment on the counterclaim of the defendant, Board of Commissioners of Creek County, Oklahoma, wherein said Board claimed \$14,895.26

173

in back wages from plaintiff.

DATED this 27th day of Nov., 1985.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

NOV 27 1985

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

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

JOANN ALRED AND LOTTIE PRATT,)
)
Plaintiffs,)
)
vs.)
)
JACK SHOEMATE, Superintendent)
of the Osage Indian Agency,)
et al.,)
)
Defendant.)

No. 83-C-729-E

JUDGMENT

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

IT IS ORDERED AND ADJUDGED that the decision of the Secretary be and hereby is affirmed, and that Defendants be awarded costs of action.

DATED at Tulsa, Oklahoma this 20th day of November, 1985.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

NOV 27 1985

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

CARI LYNN FRISBIE, by and)
through her father and next of)
kin, Claude Frisbie, and CLAUDE)
FRISBIE,)

Plaintiffs,)

v.)

Case No. 85-C-580-E ✓

JAMES A. PRITCHETT; VIRGINIA)
PRITCHETT; PRITCHETT'S CUSTOM)
BOAT DOCKS, INC., an Oklahoma)
corporation; IRENE W. MEDLINE;)
ROY L. MEDLIN, SR., and ROY L.)
MEDLIN, JR., d/b/a RED 11 PORT)
RESORT,)

Defendants.)

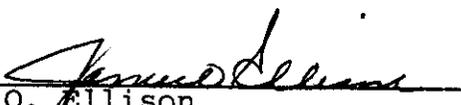
ORDER

NOW on this ^{27th}~~11th~~ day of ~~September~~^{November}, 1985, the above-entitled matter came on for Status Conference and resolution of the pending Motion by Plaintiffs to Assess Attorneys Fees as Costs against the Defendant Red 11 Port Resort, Irene and Roy Medlin. The Plaintiffs appeared by and through their attorney, N. Kay Bridger-Riley of ELLER, DETRICH, BRIDGER-RILEY & SMITH. The Defendant, Pritchett's Custom Boat Docks, Inc., appeared through its attorney, Steve Wilkerson of KNIGHT, WAGNER, STUART, WILKERSON & LIEBER, and the attorney for Roy L. Medlin, Sr., and Roy L. Medlin, Jr., d/b/a Red 11 Port Resort appeared not nor did that Defendant. The Court, having heard arguments of counsel, reviewed the file, and being fully advised in the premises, finds as follows:

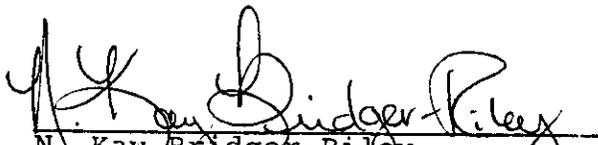
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JACK C. SILVER, CLERK
U. S. DISTRICT COURT

The rate of attorneys fees requested in Plaintiffs' Motion were reasonable, the amount of time spent was reasonable and Plaintiffs are entitled to an award of their attorneys fees.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiffs' counsel be awarded Six Hundred Eighty & 50/100 Dollars (\$680.50) pursuant to its Motion to Assess Attorneys Fees as Costs against the Defendants Irene W. Medlin, Roy L. Medlin, Jr., and Roy L. Medlin, Sr., d/b/a Red 11 Port Resort.


James O. Ellison
United States District Judge

APPROVED:


N. Kay Bridger-Riley
ELLER, DETRICH, BRIDGER-RILEY & SMITH

David P. Madden
WHITTEN, GOREE, DAVIES & MADDEN

Alfred B. Knight
KNIGHT, WAGNER, STUART,
WILKERSON & LIEBER

FILED

NOV 27 1985

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

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

McCARTNEY'S, INC.,)
)
Plaintiff,)
)
vs.)
)
UNITED FOOD & COMMERCIAL)
WORKERS LOCAL 76 AND RALPH)
CRAYCRAFT, an individual,)
)
Defendants.)

No. 85-C-282-E

JUDGMENT

This action came on for hearing on cross motions for summary judgment 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 arbitration award entered in this matter is hereby set aside and held for naught. Defendants' counterclaim is hereby dismissed.

DATED at Tulsa, Oklahoma this 27th day of November, 1985.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

NOV 26 1985

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

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

GARY PLUMMER,)	
)	
Plaintiff,)	
)	
v.)	Case No. 84-C-1025-E
)	
SAFECO INSURANCE COMPANY)	
OF AMERICA, a foreign)	
corporation,)	
)	
Defendant.)	

ORDER OF DISMISSAL

On Motion of the Plaintiff it is hereby ORDERED that the complaint of the Plaintiff and this action is hereby dismissed by the Court with prejudice to the bringing of another action upon the same cause or causes of action sued upon herein. Each party shall bear its own costs.

ENTERED this 25th day of Nov., 1985.

S/ JAMES O. ELLISON

JAMES O. ELLISON, District Judge

Rule 11, F.R.Crim.P., makes elaborate provision to ensure that a guilty plea is made voluntarily and with an understanding of the nature of the charge, the rights of the defendant, and the consequences of the plea. Brady v. U.S., 397 U.S. 742 (1970). The transcript of Movant's change of plea proceeding establishes that the Court complied fully with the procedures of Rule 11 in accepting Movant's plea of guilty.

To prevail on a claim of ineffective assistance of counsel, a claimant must show that his attorney failed to exercise the customary skill, judgment and diligence that a reasonably competent attorney would perform. U.S. v. Crouthers, 669 F.2d 635 (10th Cir. 1982). "When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." Strickland v. Washington, ___ U.S. ___, 104 S.Ct. 2052, 2065, 80 L.Ed.2d 674, 694 (1984). The inquiry is "whether counsel's assistance was reasonable considering all the circumstances." Id. at 2065. The Court further explained:

"A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The Court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance."

Id. at 2066. In making this determination, courts must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. Id.

In the instant case, defendant claims that counsel's advice with respect to the sentence he might expect on a guilty plea overcomes the presumption that counsel's conduct was within the range of reasonable professional service. The Court is not persuaded.

Movant offers only the bald assertion that his court-appointed counsel did not defend him "pursuant to reasonable standards." Movant asserts that his attorney told him a guilty plea would get him a 10-year sentence instead of the maximum 25-year sentence. Movant implies that this advice and his resulting 24-year sentence establish the ineffectiveness of his counsel. However, the standard for judging effectiveness of counsel does not demand errorless defense. Dyer v. Crisp, 613 F.2d 275 (10th Cir. 1982), cert. denied 445 U.S. 945. "Waiving trial entails the inherent risk that the good-faith evaluations of a reasonably competent attorney will turn out to be mistaken...." McMann v. Richardson, 397 U.S. 759, 770 (1969). For a guilty plea to be found to have been intelligently made it is not a requirement that all advice offered by defendant's lawyer "withstand retrospective examination in a post-conviction hearing." Id.

A review of the record in this case does not support Movant's contention. Movant was fully advised by the Court what the maximum punishment for armed robbery could be. Movant stated he understood this. Movant stated under oath that he felt his court-appointed lawyer, Mr. Howard R. Mefford, had fully and adequately represented him and stated that he had been made no promises or guarantees in return for his guilty plea.

At Movant's change of plea on November 26, 1984, the following exchange took place:

THE COURT: Should you enter a plea of guilty here, sir the Court could impose a maximum sentence of up to 25 years of confinement in the penitentiary and/or up to \$10,000 fine or both such imprisonment and fine. Do you understand that?

MOVANT: Yes, sir.

THE COURT: Have you had some discussion with your counsel about the maximum punishment that might be imposed in the event you entered a plea of guilty and if your plea of guilty was accepted?

MOVANT: Yes, sir, I have.

THE COURT: All right. Understanding the charges against you, Mr. Gariepy, and understanding the maximum punishment, both the imprisonment and the fine that might be imposed, how do you wish to plead to Count One of this indictment?

MOVANT: Plead guilty.

(Transcript of Change of Plea Proceedings, pp. 9-10)

Subsequently, the Movant was placed under oath and the following exchange took place:

THE COURT: Has anybody promised you anything whatsoever to get you to enter this plea of guilty?

MOVANT: No.

THE COURT: Have there been any assurances at all given you concerning what punishment that might be imposed in the event your plea of guilty is accepted by the Court?

MOVANT: No, sir.

THE COURT: You understand in a matter like this, Mr. Gariepy, that punishment is in the exclusive province of the Court? Do you understand that?

MOVANT: Yes.

THE COURT: It's left strictly up to the judge.

MOVANT: Yes.

THE COURT: And if you have been given any assurances about what punishment might be imposed by the Court, it wouldn't be binding on the Court in any way. Do you understand?

MOVANT: Yes, sir.

THE COURT: Throughout this matter have you been represented by your appointed counsel, Mr. Howard Mefford?

MOVANT: Yes, sir, I have.

THE COURT: Have you been satisfied with Mr. Mefford's representation of you in every respect?

MOVANT: Yes, sir.

THE COURT: In other words, as far as you're concerned, has he been a good, capable lawyer on your behalf?

MOVANT: Yes, sir, he has.

Id. at 11-13.

In view of the Movant's sworn testimony at his change of plea and at his sentencing, the Court finds no basis for Movant's claim of ineffective counsel or his contention that he was promised a 10-year sentence by his attorney. Movant's own testimony refutes these allegations. Movant stated under oath that he had been made no promises to get him to plead guilty. He stated that he understood that sentencing was entirely in the province of the Court and

that assurance, if any, about sentencing would not be binding on the Court. Movant also stated that he was satisfied with his counsel's representation in every respect. Although the record of Movant's change of plea proceeding is not necessarily conclusive on the issue of whether his plea was entered voluntarily and with full understanding of the consequences, Blackledge v. Allison, 431 U.S. 63, 74-75 (1977), it raises a strong presumption of verity. Id. at 74. In a case similar to this, the Tenth Circuit held that a defendant's statements denying any promises, threats or coercion and assuring the court of the voluntariness of his plea "are regarded as conclusive in the absence of a believable reason justifying departure from their apparent truth." U.S. v. Bambulas, 571 F.2d 525 (10th Cir. 1978); Hedman v. U.S., 527 F.2d 20, 22 (10th Cir. 1975).

Under Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts provides in pertinent part:

"If 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."

28 U.S.C. §2255.

A review of the record in this matter indicates no believable reason for the Court to ignore Movant's sworn statements that his guilty plea was entered knowingly and voluntarily with full understanding of its consequences, including possible maximum

sentence. The Court finds nothing to support Movant's claim of ineffective assistance of counsel. Therefore, Movant's Motion to Vacate sentence is dismissed.

IT IS SO ORDERED, this 25th day of November, 1985.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

DANIEL F. MILLS,)

Defendant.)

NOV 26 1985

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

CIVIL ACTION NO. 85-C-784-C

DEFAULT JUDGMENT

This matter comes on for consideration this 26 day of November, 1985, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Daniel F. Mills, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Daniel F. Mills, acknowledged receipt of Summons and Complaint on September 10, 1985. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, Daniel F. Mills, for the principal sum of \$1,356.02, plus accrued interest of \$116.36 as of May 19, 1985, plus interest on the principal sum

of \$1,356.02 at 7 percent from May 19, 1985, until judgment, plus interest thereafter at the current legal rate of 8.08 percent from date of judgment until paid, plus costs of this action.

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 STEVEN W. JACOBS,)
)
 Defendant.)

NOV 26 1985

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

CIVIL ACTION NO. 84-C-526-C

AGREED JUDGMENT

This matter comes on for consideration this 26 day
of Nov, 1985, the Plaintiff appearing by Layn R.
Phillips, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney, and the Defendant, Steven W. Jacobs, appearing pro se.

The Court, being fully advised and having examined the
file herein, finds that the Defendant, Steven W. Jacobs,
acknowledged receipt of Summons and Complaint on June 25, 1984.
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 Steven W. Jacobs in the amount of \$425.33, (less the
amount of \$90.00 which has been paid) plus interest at the rate
of 15.05 percent per annum and administrative costs of \$.61 per
month from August 10, 1983, and \$.68 per month from January 1,
1984, until judgment, plus interest thereafter at the legal rate

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Steven W. Jacobs, in the amount of \$425.33, (less the amount of \$90.00 which has been paid) plus interest at the rate of 15.05 percent per annum and administrative costs of \$.61 per month from August 10, 1983, and \$.68 per month from January 1, 1984, until judgment, plus interest thereafter at the current legal rate of 8.08 percent from the date of judgment until paid, plus the costs of this action.

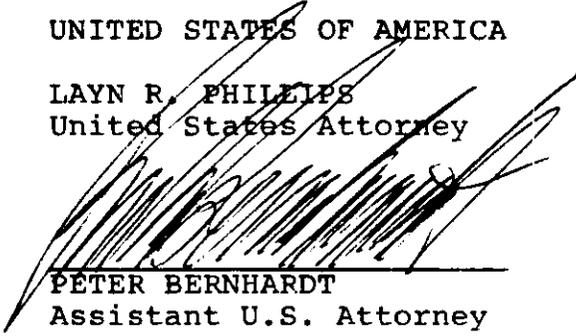
s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

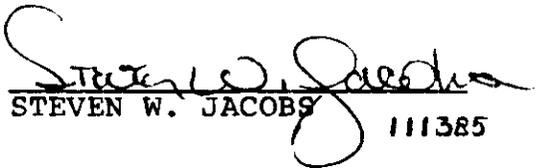
APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney



PETER BERNHARDT
Assistant U.S. Attorney



STEVEN W. JACOBS 111385

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

JAMES COLVARD,)
)
 Plaintiff,)
)
 v.)
)
 FLOYD INGRAM, Sheriff, et al.,)
)
 Defendant.)

FILED

83-C-828-C

NOV 26 1985

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

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed November 24, 1985, 1985 in which recommendations were made to settle Plaintiff's claims. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues presented, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

The Court hereby adopts the Findings and Recommendations of the Magistrate, and it is hereby Ordered that Case No. 83-C-828-C be dismissed with prejudice.

Dated this 26 day of November, 1985.


H. DALE COOK
CHIEF JUDGE

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

FILED

NOV 25 1985

SYLVIA D. HARRIS,)
)
 Plaintiff,)
)
 v.)
)
 FOURTH NATIONAL BANK OF TULSA,)
 N.A., a national banking)
 association,)
)
 Defendant.)

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

No. 85-C-495-B

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law filed this date, IT IS HEREBY ORDERED AND ADJUDGED that the defendant, Fourth National Bank of Tulsa, is hereby granted judgment against the plaintiff, Sylvia D. Harris, on plaintiff's claim herein. Costs are to be assessed against the plaintiff with each party to pay their own respective attorneys fees, if any.

DATED this 25th day of November, 1985.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered copy

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

FILED

NOV 25 1985 #

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

SYLVIA D. HARRIS,)
)
 Plaintiff,)
)
 v.)
)
 FOURTH NATIONAL BANK OF TULSA,)
 N.A., a national banking)
 association,)
)
 Defendant.)

No. 85-C-495-B ✓

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This alleged race discrimination in employment case, arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., came on for trial to the Court, without a jury, plaintiff appearing pro se, on November 6, 1985. Herein plaintiff contends that she was discharged from her employment as a teller for the defendant bank on January 27, 1984, in retaliation for her having previously filed on November 2, 1983, a charge of employment discrimination against the defendant with the Equal Employment Opportunity Commission ("EEOC"). After considering the evidence presented, the arguments made, and the applicable legal authority, the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The plaintiff, Sylvia D. Harris, is a black adult female, residing in Tulsa, Oklahoma, who, at all relevant times herein, was employed as a bank teller by the defendant until the date of her discharge.

2. The defendant, Fourth National Bank of Tulsa, is a national banking institution engaged in an industry affecting commerce and has employed fifteen or more employees at all material times herein.

3. Plaintiff was employed by defendant as a teller from January 7, 1980 until her discharge on January 27, 1984.

4. On November 2, 1983, the plaintiff filed a charge of employment discrimination with the EEOC alleging racial discrimination in promotion decisions by the defendant.

5. On January 27, 1984, plaintiff was discharged by defendant.

6. On February 13, 1984, plaintiff filed a second charge of employment discrimination with the EEOC alleging that her discharge was in retaliation for her having filed the original charge on November 2, 1983.

7. On April 10, 1984, the EEOC issued a "no cause" determination in the plaintiff's original charge of discrimination in promotions and provided plaintiff with a Notice of Right to Sue.

8. On July 11, 1984, plaintiff filed suit pursuant to the Notice of Right to Sue issued in conjunction with the original charge.

9. On February 3, 1985, the EEOC issued a "no cause" determination in the plaintiff's retaliatory discharge charge and provided plaintiff with a Notice of Right to Sue.

10. Plaintiff declined to consolidate her discharge action with the pending promotion action.

11. The discrimination in promotion case was tried before Judge James Ellison on May 6, 1985, and judgment for the defendant was announced by Judge Ellison from the bench at the conclusion of trial.

12. On May 17, 1985, plaintiff filed her complaint in the discharge case pursuant to the Notice of Right to Sue issued by the EEOC.

13. The plaintiff introduced evidence that over much of her four-year tenure as an employee, supervisory personnel and fellow employees harassed her by watching her and scrutinizing her work closely, writing her up by excessive documentation of mistakes, with being noncommunicative, failing to provide her with proper backup assistance in her teller duties, and lastly, discharging her on January 27, 1984, because she had filed the employment discrimination claim of November 2, 1983.

14. On the afternoon of January 25, 1984, the plaintiff was assigned, along with her co-worker, Shelly Keirse, to work the after-hours walk-up window from approximately 2 P.M. until 4 P.M., in the lobby of the bank. As business was light, with few customers coming to the after-hours walk-up window, Ms. Keirse left and went to the lower level of the bank stockroom to requisition supplies. When business increased at the walk-up window, the plaintiff asked the head teller, Mary Nicas, to have the other teller return to her teller window to assist, which she did.

15. When business again decreased, the line had been worked down and there were no customers to serve at the teller window, Ms. Keirsej again returned to the lower level stockroom concerning supply requisition. As business began to pick up again, the plaintiff became angry due to not having the assistance of Ms. Keirsej, and contrary to bank policy, closed her teller window with a customer or customers standing in line, and went to seek Ms. Keirsej.

16. The head teller, Mary Nicas, was required to re-open the teller window left by the plaintiff to service the remaining customer or customers in line. Afterwards, Ms. Nicas reported the incident to the bank's Vice-President of Operations, Steve Cole.

17. The plaintiff returned to her teller location in about 5 minutes after seeking out Ms. Keirsej and also going to the restroom. Mr. Cole approached the plaintiff to speak to her to advise her not to abandon her teller position with customers in line and also to talk to her supervisor if she had problems as a teller. The plaintiff angrily denied having left her teller window with a customer in line. Mr. Cole instructed the plaintiff not to leave her teller window and she insubordinately left anyway, advising she was going to tell her side of the story to Mr. Cole's superior.

18. Vice-President Cole reported the incident to the bank's Vice-President of Personnel, Barbara Glass, with the recommendation that plaintiff be terminated.

19. Over the following two days, Vice-President of Personnel Barbara Glass conducted a thorough investigation which included obtaining signed statements from bank personnel on duty in the lobby at the time of the incident. The statements of two fellow tellers, one black female teller and one white female teller, confirmed that the plaintiff had angrily left her teller window with a customer or customers waiting in line. Glass also documented the circumstances of the plaintiff's insubordinate response to Mr. Cole's attempted counseling.

20. Following completion of her investigation, Vice-President Glass consulted with other bank officials concerning the appropriate action to take regarding the plaintiff, a decision was made to discharge the plaintiff based on her conduct on January 25, 1984 and upon her previous marginal employment record. On January 27, 1984, Glass and Cole met with the plaintiff to inform her of the termination decision.

21. The plaintiff was considered to be a marginal employee of the defendant bank because of her frequent and excessive incidents in balancing her teller drawer at the end of each day, her tardiness, careless handling of paper work, excessive personal telephone usage, as well as problems with her personal checking account.

22. The Court finds that it was the plaintiff's conduct on January 25, 1984, which included the insubordination, coupled with her work history of prior misconduct and marginal performance, which prompted her discharge of January 27, 1984.

23. The Court finds that the evidence does not establish the existence of a motive on the part of the defendant's officials to retaliate against the plaintiff because of her original employment discrimination charge filed on November 2, 1983, or that the reasons given for the defendant's discharge of the plaintiff on January 27, 1984, were pretextual.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter herein pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., and 42 U.S.C. §1981.

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

3. The plaintiff has met the jurisdictional requirements for maintaining a lawsuit under Title VII by filing a timely Charge of Employment Discrimination with the EEOC and thereafter filing the instant lawsuit within 90 days of receipt of the Notice of Right to Sue.

4. The plaintiff established a prima facie case that she was discharged in retaliation for previously filing a charge of race discrimination in employment with the EEOC.

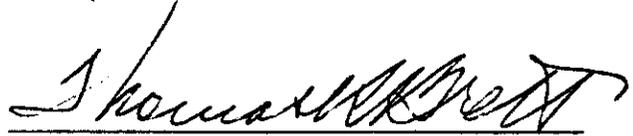
5. The defendant, however, has fulfilled its requirement under McDonnell Douglas Corp. v. Green, 411 U.S. 792, 36 L.Ed.2d 668, 93 S.Ct. 1817 (1973) by articulating a nondiscriminatory legitimate business justification for discharging the plaintiff on January 27, 1984.

6. The plaintiff has failed to carry her burden of demonstrating that the business justification articulated by the defendant was in reality a pretext for unlawful retaliation. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981).

7. The evidence herein has failed to establish that the defendant is legally liable to the plaintiff for back pay compensation and benefits arising from its discharge of the plaintiff on January 27, 1984, or that the plaintiff is entitled to the compensatory and punitive damages sought. Further, no injunctive relief is warranted herein.

8. A judgment in keeping with these Findings of Fact and Conclusions of Law shall be entered this date.

ENTERED this 25th day of November, 1985.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

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

NOV 25 1985

SATELLITE SYNDICATED SYSTEMS,)
INC., an Oklahoma corporation,)

Plaintiff,)

vs.)

CABLE SPORTS NETWORK, INC.,)
a Mississippi corporation,)

Defendant.)

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

Case No. 85-C-882 B

DEFAULT JUDGMENT

The Defendant, CABLE SPORTS NETWORK, INC., having failed to plead or otherwise defend in this action and its default having been entered,

Now, upon application of the Plaintiff and upon affidavit that Defendant is indebted to Plaintiff in the sum of TWO HUNDRED SIXTY-SIX THOUSAND, SIX HUNDRED SIXTY-EIGHT and 00/100 DOLLARS (\$266,668.00), that Defendant has been defaulted for failure to appear and that Defendant is not an infant or incompetent person, and is not in the military service of the United States, it is hereby

ORDERED, ADJUDGED AND DECREED that Plaintiff recover of Defendant the sum of TWO HUNDRED SIXTY-SIX THOUSAND, SIX HUNDRED SIXTY-EIGHT and 00/100 DOLLARS (\$266,668.00), [with interest at the rate of fifteen percent (15%) per annum from the day judgment is rendered], attorneys' fees in the sum of \$1,500.00 and costs in the sum of \$61.67.

Jack C. Silver, Clerk

R. J. [Signature]

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

DATED: Nov 25, 1985.

FILED

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

NOV 25 1985

WALTER E. HELLER & COMPANY,)
SOUTHEAST, INC.,)
)
Appellant,)
)
vs.)
)
KENNETH E. TUREAUD, et al.,)
)
Appellee.)

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

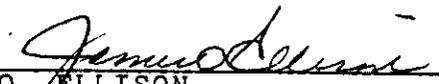
No. 85-C-52-E

JUDGMENT

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

IT IS ORDERED AND ADJUDGED that the Appellant Walter E. Heller & Company, Southeast, Inc. take nothing from the Appellee, R. Dobie Langenkamp, Trustee, that the action be dismissed on the merits, and that the Appellee R. Dobie Langenkamp, Trustee, recover of the Appellant Walter E. Heller & Company, Southeast, Inc. his costs of action.

DATED at Tulsa, Oklahoma this 25th day of November, 1985.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

NOV 25 1985

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

McCARTNEY'S, INC.,)
)
Plaintiff,)
)
vs.)
)
UNITED FOOD & COMMERCIAL)
WORKERS LOCAL 76 AND RALPH)
CRAYCRAFT, an individual,)
)
Defendants.)

No. 85-C-282-E

O R D E R

NOW on this 25th day of November, 1985 the Court has before it cross motions for summary judgment in this matter and the Court being fully advised in the premises finds as follows:

Plaintiff brought this action pursuant to 29 U.S.C. § 185, seeking to set aside and vacate an arbitration award under a collective bargaining agreement on the grounds that the arbitrator exceeded his authority under the agreement and improperly added new requirements to the contract.

Plaintiff, McCartney's, Inc., operates grocery stores throughout the state of Oklahoma. Defendant, Ralph Craycraft, was employed as a meatcutter by McCartney's, Inc. and is a member of Defendant United Food & Commercial Workers Local 76. In January of 1983 Plaintiff terminated Mr. Craycraft's employment.

The reason given by Plaintiff for the termination was that on or about July 16, 1982 Craycraft had lied to the company about his whereabouts and about a physician's statement he supplied asserting that he had been bedridden with the flu from July 12-

15, 1982. Plaintiff McCartney's, Inc. states that the reason for the delay in firing Craycraft was that he was legitimately off work due to a worker's compensation injury from a time almost immediately after his "fake flu" episode until January of 1983.

After his termination Craycraft filed a termination grievance through to arbitration as per the arbitration provision contained in the collective bargaining agreement in effect at the time. The arbitrator issued his opinion wherein he found that Craycraft had lied about his whereabouts on July 12-15, 1982 and that the need for discipline had been established. The arbitrator concluded, however, that the just cause provision in the collective bargaining agreement required that certain essential elements of due process be followed and that because McCartney's did not afford Craycraft an opportunity to present his explanation to the charge against him, Craycraft was not discharged for just cause. Therefore the arbitrator ordered that Craycraft be reinstated with back pay and benefits.

Plaintiff asserts that Arbitrator Nelson, in concluding there was a procedural due process deficiency in the discharge of Defendant Craycraft exceeded his authority under the agreement by improperly creating a hitherto non-existent contractual requirement of a pre-termination hearing before discharge on the grounds of dishonesty. Plaintiff further contends that the arbitrator ignored and rewrote the provisions in the agreement stating that management may discharge without prior notice for dishonesty and disruption of the work force.

Defendants contend that the arbitrator was acting within his

powers in issuing this award and that such award is valid and enforceable. Defendants also assert that Plaintiff's failure to comply with the arbitrator's award is a violation of the collective bargaining agreement and seek judgment directing Plaintiff to comply.

The scope of judicial review in evaluating an arbitration award is extremely narrow. An arbitration award must be upheld if it draws its essence from the collective bargaining agreement. An arbitration award will be upheld unless it is contrary to the express language of the contract or unless if viewed in the light of its language, context and other indicia of the parties intent it is without rational support. Fabricut, Inc. v. Tulsa General Drivers, Warehousemen & Helpers Local 523, 597 F.2d 227, 229 (10th Cir. 1979).

In United Steelworkers v. Enterprise Wheel & Carriage Corp., 363 U.S. 593, 80 S.Ct. 1358 (1960) the U.S. Supreme Court outlined the role of the arbitrator. Therein the court stated that "an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so far as it draws its essence from the collective bargaining agreement. When the arbitrator's words, manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award." 363 U.S. at 597, 80 S.Ct. at 1361.

The provisions of the collective bargaining agreement in

effect at the time this dispute arose insofar as significant to this action are as follows:

5.1 The Union has as one of its cardinal principles the protection of the Employer against inferior workmen and will assist the Employer in obtaining and retaining competent employees; however, the Company will continue to have the right to discharge any employee for good cause such as but not limited to dishonesty, intoxication, inability or failure to perform the work assigned without justifiable reason or the causing of dissension among employees which disrupts or impairs operations provided no employee shall be discriminated against, or discharged because of membership in the Union. It is further agreed that employees are limited to the classifications of this Agreement.

5.2 Disciplinary procedures: When an employee's conduct and/or work has been unsatisfactory over a period of time, the Company will notify the employee in writing and provide the Union with copies of such notices. If such condition re-occurs, the Company may take disciplinary action up to and including discharge. Such disciplinary action may include suspension from work without pay not to exceed five (5) days. However, in the event that an employee is guilty of an action which in itself justifies immediate discharge, such notice need not be given. This section is subject to the grievance procedure including arbitration.

6.4 The decision of the Arbitrator shall be final and binding on both parties. The Arbitrator shall not be vested with the power to change, add to, modify or alter the terms of the Agreement.

Defendants emphasize the arbitrator's statement that "In the so-called investigation of this incident, no one in management ever talked to Ralph Craycraft." Defendants would have the Court believe that an arbitrator's imposition of procedural due process requirements upon the parties to a collective bargaining agreement is not impermissibly adding to or modifying the

agreement nor is it an express violation of the terms of the agreement.

Defendants argue that the agreement in question provides for procedural fairness by its use of the term "good cause", and that because the agreement was silent as to what procedure must be followed, the arbitrator, being empowered to settle all controversies as to the interpretation or application of the provisions of the agreement, was free to look to many sources for guidance.

Defendants dispute Plaintiff's position that Mr. Craycraft's action justified immediate discharge. Defendants state that nowhere in the agreement is dishonesty listed as justifying immediate discharge. It is merely listed as one of several actions which constitute good cause for discharge.

Plaintiff argues that under § 5.1 Plaintiff has right to discharge any employee for good cause which includes dishonesty and that a combined reading of § 5.2 with § 5.1 clearly indicates that an action justifying immediate discharge, i.e. dishonesty does not require notice to be given. As one arbitrator wisely pointed out, "Application of the concepts of due process varies widely in our system of industrial democracy because of the nature of different agreements reached by the parties. The right to be heard before a decision is made is vastly different from trying to reverse a decision already made." Cameron Iron Works v. International Association of Machinists & Aerospace Workers, Lodge 15, 64 Lab.Arb. (BNA) 67 (1975). Denial of the right to be heard before a pre-discharge hearing when guaranteed by an

agreement, invariably warrants a remedy.

The crucial issue in this case is whether such a right is guaranteed by the collective bargaining agreement in this case. Section 5.2 of the agreement provides for graduated discipline in certain cases. That section also provides: "However, in the event that an employee is guilty of an action which in itself justifies immediate discharge, such notice need not be given. This section is subject to the grievance procedure including arbitration." (emphasis added).

There is no further mention in the agreement of actions justifying immediate discharge. The only reference to charges justifying discharge are those found in Article 5.1. The Court therefore concludes that the only reasonable interpretation of the agreement is that dishonesty is cause for immediate discharge under the contract. Such being the case the collective bargaining agreement did not guarantee a pre-termination hearing.

The Court finds this case to be analogous to the facts in Mistletoe Express v. Motor Expressmen's Union, 566 F.2d 692 (10th Cir. 1977). The collective bargaining agreement in that case provided that "Employees may be discharged for just cause, among which just causes are the following: ... failure to settle bills and funds collected for the company within twenty-four (24) hours." The appellate court in affirming the trial court's determination that the arbitrator's award was unauthorized stated:

... In a proper case an arbitrator, in reliance on custom or usage in an industry, may construe a 'just cause' provision of a labor contract to include a progressive

discipline requirement and may determine that certain conduct is 'just cause' for discipline but not for discharge.

The court noted however that the agreement in question explicitly says that failure to settle in 24 hours is just cause for discharge. That section was in sharp contrast with other provisions providing for graduated disciplinary measures culminating in discharge. The Court found that the parties could have provided for progressive discipline in the section regarding failure to report funds within 24 hours but they did not. Consequently the court concluded that nothing in the record justified a rational inference that the parties intended anything other than discharge when an employee violated the reporting of funds provision. In reducing the penalty from discharge to suspension, the arbitrator substituted his views of proper industrial relationships for the provisions of the contract.

In International Union of Operating Engineers, AFL-CIO, Local 670 v. Kerr-McGee Refining Corp., 618 F.2d (10th Cir. 1980) the arbitrator found a violation of the collective bargaining agreement section regarding dishonesty in sick leave. Once a violation of that section had been established, discharge of the appellant was expressly provided for by the agreement. The court found that the arbitrator had exceeded his authority under the collective bargaining agreement and stated that where such agreements expressly provide for discharge for abuse or misuse of sick leave benefits or false statements, and a violation of that provision of the agreement has been established, an arbitrator substitutes his views for the express provisions of the contract

by requiring the employer to prove excessive absenteeism. Thus the court held that the arbitration award requiring reinstatement of employees after five-day suspension was properly vacated.

In this case once it had been established that Defendant Craycraft had lied about his whereabouts on July 12-15, 1982, immediate discharge of Craycraft was provided for by the agreement. In reducing the penalty from discharge to suspension the arbitrator substituted his views of industrial fairness for the provisions of the contract.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's motion for summary judgment be and is hereby denied and Plaintiff's motion for summary judgment be and is hereby granted.

IT IS FURTHER ORDERED that the arbitrator's award in this case be and is hereby vacated.

IT IS FURTHER ORDERED that Defendants' counterclaim be and is hereby dismissed.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 25 1985

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 DINAH MCCAIN,)
)
 Defendant.)

CIVIL ACTION NO. 85-C-695-C

NOTICE 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, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 18th day of November, 1985.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

Nancy Nesbitt Blevins

NANCY NESBITT BLEVINS
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 25th day of November, 1985, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Dinah McCain, 9010 East 26th Court, Tulsa, Oklahoma.

Nancy Nesbitt Blevins
Assistant United States Attorney

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

FILED

NOV 26 1985

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

BETTY MEIXNER, individually)
and as personal representative)
of the heirs and estate of)
Karl Meixner, Deceased,)
Plaintiff,)
vs.)
A C & S, INC., et al.,)
Defendants.)

No. 84-C-911-E

O R D E R

NOW on this 25th day of November, 1985 comes on for hearing the above captioned matter and the Court, being fully advised in the premises finds:

The Court has before it the motion of Defendant Charter Consolidated P.L.C. (Charter) to quash service and dismiss the complaint pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure for lack of personal jurisdiction. Defendant contends that the Court cannot properly assert personal jurisdiction because Charter does not have minimum contacts with the State of Oklahoma, and because Charter is neither successor-in-interest nor the alter ego of Cape Industries P.L.C. (Cape), Charter's partially owned subsidiary. Plaintiff counters that sufficient facts exist to demonstrate that the Court has personal jurisdiction. In the alternative, Plaintiff argues that sufficient facts exist to entitle Plaintiff to require Charter to submit to discovery on the issue of personal jurisdiction.

The Tenth Circuit in Budde v. Ling-Tennco-Vought, Inc., 511 F.2d 1033, 1035 (10th Cir. 1975) stated that "[W]hen a defendant moves to dismiss for lack of jurisdiction, either party should be allowed discovery on the factual issue raised by that motion." A careful review of the pleadings demonstrates that discovery on the jurisdictional issue is appropriate in the present case.

Also before the Court is Plaintiff's motion for an expedited trial. This case was set for trial on May 19, 1986 in a scheduling order entered on February 14, 1985.

Plaintiff alleges that she is suffering severe emotional hardship due to the death of her husband, and states that expedited resolution of the case will assist her in coping with survivorship.

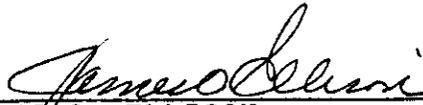
The Court finds that Plaintiff has failed to allege a sufficiently compelling reason to justify an expedited trial. Moreover, an examination of the Court's docket reveals that May 19, 1986, the originally scheduled trial date, is the earliest possible date upon which trial can be realistically scheduled. The Court notes few cases on the docket do not involve some hardship and the Court is not unmindful of that fact. However, it would do Plaintiff no service to place this case at the end of an existing docket knowing that to do so would probably result in the case being passed beyond its current setting. This Court encourages alternate methods of dispute resolution and would urge the parties in this case to expedite discovery so that those avenues may be explored.

Finally, before the Court for consideration is the motion of

Defendant, Fibreboard Corporation, on behalf of all Defendants to compel discovery pursuant to Rule 37 of the Federal Rules of Civil Procedure. Defendant seeks an order requiring Plaintiff to answer interrogatories number 96 through 112. Plaintiff claims she responded to Defendant's interrogatories in good faith, and seeks a Protective Order prohibiting Defendants from requiring Plaintiff to duplicate certain medical articles, trade journals and exhibits that are available for inspection in the office of Plaintiff's counsel.

From Plaintiff's response to Defendant's motion, attached to which are extensive lists of articles relating to asbestos and of exhibits to be used in Plaintiff's case in chief, it appears that Defendant's motion is now moot. If such is not the case, Defendant is granted leave to reurge its motion specifically stating which interrogatories and answers thereto remain in dispute.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant Charter Consolidated's motion to quash service and motion to dismiss be overruled with leave granted to reurge same pending conclusion of discovery; motion to compel is denied as moot with leave granted to reurge same; Plaintiff's motion for expedited trial is denied; Plaintiff's unopposed motion to dismiss Defendant United Insulation is granted.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

NOV 22 1985

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

THE FIRST NATIONAL BANK,)
PAWHUSKA, OKLAHOMA,)
)
Plaintiff,)
)
vs.)
)
DENIS WATTS, et al.,)
)
Defendants.)

No. 85-C-941-C

O R D E R

Now before the Court for its consideration is the motion of plaintiff The First National Bank, Pawhuska, Oklahoma, to remand, said motion filed herein October 17, 1985. The defendants' having responded, the matter is now ready for this Court's determination.

Plaintiff filed suit in the Osage County District Court on September 20, 1985, praying for judgment on promissory notes, foreclosure on personal property covered by a security agreement, and for foreclosure on real estate subject to a mortgage. Plaintiff is a national banking association with its only place of business in Pawhuska, Osage County, Oklahoma. Defendants are residents of Pawhuska, Oklahoma, as well, and appear pro se.

On October 15, 1985, defendants filed their petition for removal, alleging jurisdiction of the Court pursuant to 28 U.S.C §§1332 and 1443, 18 U.S.C §1964, and 42 U.S.C §1983. The petition for removal contains unspecific allegations that defendants believe their civil rights might be violated in the future by

virtue of plaintiff's request in state court for order of delivery and appointment of receiver and because defendants believe the state court may violate any right to trial by jury they may have. On October 17, 1985, plaintiff filed this motion to remand, alleging defendants lack jurisdiction and grounds to remove the lawsuit.

The Court first notes that there is clearly no basis for removal based upon diversity jurisdiction. All parties are citizens of Osage County.¹

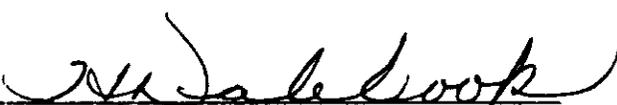
The allegations of possible future civil rights violations contained in the petition for removal are also inadequate to support removal jurisdiction of this Court. Where there is no diversity of citizenship between the parties, the removal must be viewed as to whether the case falls within the federal question jurisdiction of the United States District Court pursuant to 28 U.S.C. §1331. As the United States Supreme Court recently stated in Franchise Tax Bd. v. Laborers Vacation Trust, 463 U.S. 1 (1983): "For better or worse, under the present statutory scheme as it has existed since 1887, a defendant may not remove a case to federal court unless the plaintiff's complaint establishes that the case 'arises under' federal law. 'A right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of

¹Title 28 U.S.C. §1348 provides that a national banking association shall be deemed a citizen of the state in which it is located.

action," citing Gully v. First National Bank in Meridian, 299 U.S. 109 (1936). See also, Rath Packing Co. v. Becker, 530 F.2d 1295 (9th Cir. 1975) (removability to federal court cannot be created by defendant's pleading a counterclaim presenting federal question).

Because no federal question is presented in plaintiff's complaint, the Court hereby grants the motion of plaintiff to remand. The case is hereby remanded to the District Court of Osage County, Oklahoma, from which it was improvidently removed.

IT IS SO ORDERED this 21st day of November, 1985.


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

Entered

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

CHESTER PHILLIPS; WANDA)
PHILLIPS; DEANNA PHILLIPS,)
by and through her father)
and next friend; CHESTER)
PHILLIPS; DUANE PHILLIPS;)
JANET PHILLIPS,)
)
Plaintiffs,)

v.)

Case No.: 84-C-865-B

BOARD OF COUNTY COMMISSIONERS)
OF CREEK COUNTY, OKLAHOMA,)
BOB WHITWORTH, Sheriff of)
Creek County, Oklahoma, both)
individually and in his)
official capacity, JERRY)
SILER, under Sheriff of Creek)
County, Oklahoma, individual-)
ly and in his official capa-)
city,)
)
Defendants.)

FILED
NOV 22 1985
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER ALLOWING DISMISSAL

Upon written application of the Plaintiffs to dismiss Defendant Bob Whitworth as an individual without prejudice, said Motion is hereby granted this 22 day of November, 1985.

by Thomas E. Wells
U.S. DISTRICT COURT JUDGE

Entered

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

FILED

NOV 22 1985

NORMA L. YOUNG and A. J. YOUNG,)
)
 Plaintiffs,)
)
 v.)
)
 BURLINGTON NORTHERN RAILROAD)
 COMPANY, a Delaware corporation,)
)
 Defendant.)

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

No. 84-C-342-B

J U D G M E N T

This action came on for trial before the Court and a jury, and the issues having been duly tried and the jury having duly rendered its verdict on the 1st day of November, 1985;

IT IS ORDERED AND ADJUDGED that the defendant, Burlington Northern Railroad Company, have judgment against the plaintiffs, Norma L. Young and A. J. Young, and the plaintiffs take nothing on their claims herein, and that the action be dismissed on the merits; IT IS FURTHER ORDERED that the defendant, Burlington Northern Railroad Company, recover of the plaintiffs its costs of this action if timely applied for under the local rule.

DATED at Tulsa, Oklahoma, this 22nd day of November, 1985.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 22 1985

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

RUTH E. HURST,)
)
Plaintiff,)
)
vs.)
)
MARGARET M. HECKLER,)
Secretary of Health and)
Human Services,)
)
Defendant.)

CIVIL ACTION NO. 85-C-831-8

ORDER

Upon the Motion of the Defendant, Secretary of Health and Human Services, by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and for good cause shown, pursuant to the Social Security Disability Benefits Reform Act of 1984, it is hereby ORDERED that this case be remanded to the Secretary for readjudication.

Dated this 22 day of November, 1985.

5/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

LAYN R. PHILLIPS
United States Attorney

Phil Pinnell
PHIL PINNELL
Assistant U.S. Attorney

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

OKLAHOMA FIXTURE COMPANY, an
Oklahoma corporation,

Plaintiff,

v.

CONTAINER CARRIER CORPORATION,
et al.,

Defendants.

No. 84-C-661-L

FILED
NOV 22 1985
MICK C. SILVER, Clerk
U. S. DISTRICT COURT

ORDER FOR DISMISSAL

CAME ON TO BE CONSIDERED the Joint Motion of the Plaintiff,
Oklahoma Fixture Company, and the Defendant, Container Carrier
Corporation, for Dismissal and this Court having considered same
finds that it should be GRANTED.

IT IS ACCORDINGLY ORDERED that the respective causes of
action of said parties hereto are dismissed with prejudice to the
right of any party to refile the same or any part thereof. Each
party shall bear its costs of court.

SIGNED this 21st day of November, 1985.

S/ JAMES O. ELLISON

Judge James O. Ellison,
Presiding Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 BENNIE J. DOUGHTY,)
)
 Defendant.)

FILED
NOV 22 1985
Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 85-C-274-E

ORDER OF DISMISSAL

Now on this 21st day of November, 1985, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve Bennie J. Doughty have been unsuccessful.

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

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

OBA # 9600

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

FILED

NOV 22 1985

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

THE HANOVER INSURANCE COMPANY,)

Plaintiff,)

-vs-)

No. 85-C-24-C

SARAH HOOKER, GENE HOOKER,)

WILLIAM SHORTNANCY, OMA)

SHORTNANCY, KAREN HOOKER,)

GLADYS HOOKER, ANGELIQUE DAVIS,)

a minor, by and through her)

next friends and parents, GARY)

and OLGA DAVIS, GARY and OLGA)

DAVIS, Individually,)

Defendants.)

O R D E R

All matters are settled. Case is Dismissed with
Prejudice.

(Signed) H. Dale Cook

JUDGE

16

Entered

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 D. ELAINE ALEXANDER a/k/a Elaine)
 Alexander, a/k/a Elaine McClellan;)
 NORMAN DUANE McCLELLAN; FIDELITY)
 FINANCIAL SERVICES, INC.; COUNTY)
 TREASURER, Tulsa County, Oklahoma;)
 and BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma.)
)
 Defendants.)

No. 85-C-189-B ✓

FILED

NOV 21 1985 *WJ*

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

ORDER

On August 1, 1985, this matter came on for status conference before the Court, upon which the Court was advised the parties were to file papers with the Court dismissing the action within a week. No such papers were filed. Pursuant to the party's announcement, the Court sua sponte dismisses the action without prejudice.

IT IS SO ORDERED this 21 day of November, 1985.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

FREDDIE SCOTT,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

No. 85-C-402-B ✓

FILED

NOV 21 1985 *WJ*

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

O R D E R

This matter comes before the Court on the motion of plaintiff, Freddie Scott, for a new trial. Plaintiff's cause was dismissed on September 26, 1985, on defendant's Motion for Summary Judgment. Thus, the Court will consider plaintiff's motion as a Motion for Relief From Judgment under F.R.Civ.P. 60 rather than a Motion for New Trial under F.R.Civ.P. 59. For the reasons set forth below, plaintiff's motion is denied.

In filing his federal income tax return for 1983, plaintiff provided no information other than his name and address. Plaintiff did not provide financial information, asserting constitutional objections under the First, Fourth, Fifth, Seventh, Eighth, Ninth and Fourteenth Amendments to the United States Constitution. In February 1985, the Internal Revenue Service assessed a \$500 penalty for filing a frivolous return under 26 U.S.C. §6702. Plaintiff paid the required portion of the fine and then filed suit in this Court seeking a refund alleging the money paid was wrongfully and improperly extracted from him.

On September 26, 1985, this Court found there was no genuine issue of material fact regarding the frivolous nature of plaintiff's

return and granted the defendant's Motion for Summary Judgment. Plaintiff now asks this court to reconsider its order granting summary judgment. In support of his motion, plaintiff asserts that this Court erred in its interpretation of the Internal Revenue Code provision dealing with frivolous tax returns, 26 U.S.C. §6702, and erred in not granting plaintiff a jury trial.

After a review of the record, the Court finds that it did not err in interpreting the applicable statute and that, therefore, defendant's Motion for Summary judgment was properly granted on September 26, 1985. Decisions in two other district courts have held that a return such as plaintiff in this case filed was frivolous under 26 U.S.C. §6702. Clearly, the sort of tax return filed by plaintiff is the type which Congress intended to reach through the civil penalty provision of §6702. Summary judgment is appropriate where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Bruce v. Martin-Marietta, 544 F.2d 442, 445 (10th Cir. 1976). The Court finding no genuine issue of material fact with respect to the frivolous nature of plaintiff's tax return, plaintiff's Motion for Relief From Judgment is denied.

IT IS SO ORDERED, this 21 day of November, 1985.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

NOV 21 1985

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

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

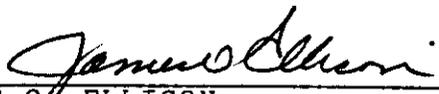
BUSINESS INTERIORS,)	
)	
Plaintiff,)	
)	
vs.)	No. 81-C-323-E
)	
THE AETNA CASUALTY AND)	
SURETY COMPANY,)	
)	
Defendant.)	

JUDGMENT

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

IT IS ORDERED AND ADJUDGED that the Plaintiff Business Interiors recover of the Defendant The Aetna Casualty and Surety Company the sum of \$19,123.07, reflecting a \$30,000 amount owed in September 30, 1980, with 6 percent prejudgment interest thereon, and subtracting the amount of payments received by Plaintiff at the time of receipt which were properly attributed to the Defendant, with interest thereon at the rate of 8.08 per cent as provided by law, and his costs of action.

DATED at Tulsa, Oklahoma this 20th day of November, 1985.



 JAMES O. ELLISON
 UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 21 1985

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 WILLIAM R. SATTERFIELD,)
 JOHNNIE L. SATTERFIELD,)
 et al.,)
)
 Defendants.)

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

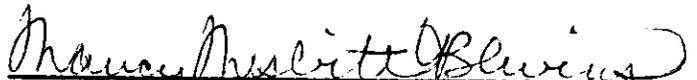
CIVIL ACTION NO. 85-C-176-C

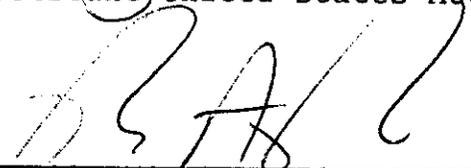
STIPULATION OF DISMISSAL

COME NOW the Plaintiff, United States of America, and
the Defendants, William R. Satterfield and Johnnie L.
Satterfield, by their respective counsel, and hereby stipulate
and agree that this action be dismissed pursuant to Rule
41(a)(1)(ii) of the Federal Rules of Civil Procedure.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney


NANCY NESBITT BLEVINS
Assistant United States Attorney


RANDY A. RANKIN
Attorney for Defendants
William R. Satterfield and
Johnnie L. Satterfield

()

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

J.M. GRAVES and ALLEN WEST,
Plaintiffs,
vs.

MARK L. NANCE and UNION
BANK AND TRUST COMPANY OF
OKLAHOMA CITY,
Defendants.

Case No. 85-C-107(2)-C

FILED

NOV 21 1985

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

ENTRY OF DEFAULT JUDGMENT

This cause came on for hearing on the Motion of Plaintiffs, J.M. Graves and Allen D. West, for Default Judgement against Defendant, Mark L. Nance, all purusant to Rule 55(b)(2) of the Federal Rules for Civil Procedure, and it appearing to the Court that the Amended Cross-Claim in above-entitled cause was filed in this Court on the 2nd day of August, 1985, and that the summons and Amended Cross-Claim were duly served upon Mark L. Nance on October 22, 1985.

It also appearing to this Court that no Answer or other defense has been filed by said Defendant, and that no proceedings have yet been taken by said Defendant, it is now ordered that Plaintiffs', J.M. Graves and Allen D. West, title be quieted as against all Defendant Mark L. Nance herein stated in the following property:

Southwest quarter (SW/4) of the Southeast quarter (SE/4) of the Southwest quarter (SW/4) of Section 15, Township 16 North, Range 9 East, and the Northwest quarter (NW/4) of the Southeast quarter (SE/4) of the Southwest

quarter (SW/4) of Section 15, Township 16
North, Range 9 East, situated in Creek County,
State of Oklahoma.

It is further ordered that said Defendant, Mark L. Nance, be adjudicated to have no right, title, or interest in or to the McSoud Number One (1) or McSoud Number Two (2), and for such other and further relief to which J.M. Graves and Allen D. West may be entitled as against said Defendant.

Dated this 21 day of June, 1985.

s/H. DALE COOK

UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT CLERK

UNITED STATES DEPUTY COURT CLERK

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

FILED

NOV 21 1985

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

THE DOW CHEMICAL COMPANY,)
)
Plaintiff,)
)
vs.) No. 84-C-1031
)
JAMES D. DURHAM and)
LYNN C. DURHAM,)
)
Defendants.)

J U D G M E N T

This matter came on for nonjury trial on a stipulated, submitted record to the Court. The issues having duly tried and a decision having been duly rendered in accordance with the Findings of Fact and Conclusions of Law entered simultaneously herewith, the Court hereby enters judgment on behalf of the plaintiff and against the defendants in the amount of \$239,335.21, plus interest thereon at the legal rate, costs, and reasonable attorney's fees.

Absent an affidavit from plaintiff's attorneys listing the factors enumerated in Waters v. Wisconsin Steel Works of Internat'l Harvester Co., 502 F.2d 1309, 1322 (7th Cir. 1974), the amount of the attorney fees cannot be determined. See also Love v. Mayor, City of Cheyenne, Wyo., 620 F.2d 235 (10th Cir. 1980); Comancho v. Colorado Electronic Tech. College, 590 F.2d 887 (10th Cir. 1979); State ex rel. Burk v. City of Oklahoma City, 598 P.2d 659 (Okla. 1979).

Plaintiff is hereby granted twenty (20) days within which to submit proper documentation to the Court regarding attorney fees

and costs. Defendant is granted ten (10) days thereafter in which to respond.

IT IS SO ORDERED this 21st day of November, 1985.


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

2

Entered

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

DESIGN RESEARCH ASSOCIATES, INC.,)

Plaintiff,)

vs.)

COOPER VISION SYSTEMS, INC.,)

Defendant.)

No. 84-C-272-B ✓
FILED
NOV 21 1985 *uf*

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

On October 8, 1985, the date set for status conference in the above-referenced action, the parties telephoned the Court and announced that plaintiff would dismiss the action without prejudice within ten (10) days thereof. Though no such papers have been filed with the Court, the Court dismisses the action without prejudice, pursuant to plaintiff's announcement.

IT IS SO ORDERED this 21 day of November, 1985.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

HERBERT E. BOWMAN, SR.
and HERBERT E. BOWMAN, JR.,

Plaintiffs,

v.

THE CITY OF TULSA, a
municipal corporation
and TULSA POLICE OFFICERS
J.D. WOODWARD, LORRAINE
AYE and C.D. SMITH,

Defendants.

Entered

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

No. 84-C-1023-BT ✓

FILED

NOV 21 1985 *WJ*

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

ORDER

The parties to this cause having announced settlement before
this Court on September 16, 1985, and no closing papers having
been filed, this matter is hereby dismissed

IT IS SO ORDERED, this 21 day of November, 1985.

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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
STEVEN A. MULLINS)
)
Defendant.)

NOV 21 1985

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

CIVIL ACTION NO. 85-C-766-B ✓

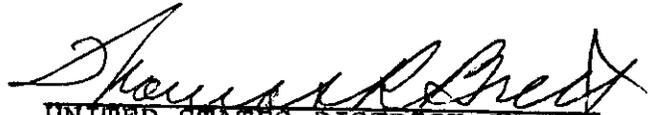
AGREED JUDGMENT

This matter comes on for consideration this 21
day of November, 1985, the Plaintiff appearing by Layn R.
Phillips, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States Attorney,
and the Defendant, Steven A. Mullins, appearing pro se.

The Court, being fully advised and having examined the
file herein, finds that the Defendant, Steven A. Mullins,
acknowledged receipt of Summons and Complaint on August 27, 1985.
The Defendant has not filed an Answer but in lieu thereof has agreed
that he is indebted to the Plaintiff in the amount alleged in the
Complaint and that judgment may accordingly be entered against him
in the amount of \$408.00, plus interest at the legal rate from the
date of judgment until paid, plus the costs of this action.

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

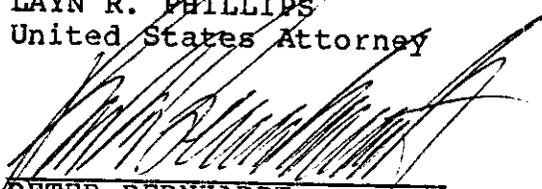
Steven A. Mullins, in the amount of \$408.00, plus interest at the current legal rate of 8.0% percent per annum from the date of judgment until paid, plus costs of this action.

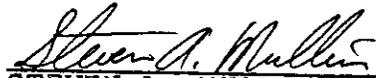

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney


PETER BERNHARDT


STEVEN A. MULLINS

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 RONALD D. NORRIS,)
)
 Defendant.)

NOV 21 1985
Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 85-C-785-B

ORDER OF DISMISSAL

Now on this 21 day of November, 1985, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve Ronald D. Norris have been unsuccessful.

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


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT

THOMAS J. HUMPHREYS

By Thomas M. Ladner
Thomas M. Ladner OBA #5161
HALL, ESTILL, HARDWICK, GABLE
COLLINGSWORTH & NELSON, INC.
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR THOMAS J. HUMPHREYS

af

FILED

NOV 20 1985

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

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

MICHAEL RUTSCH and LEE)
MURRAY,)
)
Plaintiffs,)
)
vs.)
)
BENJAMIN F. SPRINGER, d/b/a)
COLUMBIA OIL AND GAS,)
)
Defendants.)

Case No. 85-C-714-E

DISMISSAL

COME NOW the Plaintiffs, MICHAEL RUTSCH and LEE MURRAY, and hereby dismiss the above cause with prejudice.

Dated this 6th day of November, 1985.

William A. Bowles
WILLIAM A. BOWLES
Attorney for Plaintiffs
707 South Houston
Suite 406
Tulsa, Oklahoma 74127
(918) 587-5514

CERTIFICATE OF SERVICE

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

20th day of November, 1985.

Sandy Boyd

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

FILED

JOHN DESALVO,)
)
 Plaintiff,)
)
 vs.)
)
 INTERNAL REVENUE SERVICE,)
)
 Defendant.)

NOV 20 1985

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

No. 85-C-22-E

JUDGMENT

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

IT IS ORDERED AND ADJUDGED that the Plaintiff John DeSalvo recover nothing of the Defendant Internal Revenue Service, that the documentation submitted to the Court by Defendant indicates that the documents at issue are return information and that the Internal Revenue Service's decision to withhold the documentation is supported by the record and therefore was not an arbitrary or unconscionable abuse of discretion.

DATED at Tulsa, Oklahoma this 19th day of November, 1985.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED
IN OPEN COURT

NOV 20 1985

JENSEN INTERNATIONAL, INC.,)
)
Plaintiff,)
)
vs.)
)
KEN WILSON and)
SHELBY ENERGY, INC.,)
)
Defendants.)

W. C. Stone, Clerk

227
Case No. 85-C-277-E

JOURNAL ENTRY OF JUDGMENT

NOW, on this 20th day of November, 1985, the captioned matter comes before the Court pursuant to that Order entered herein on June 14, 1985. Upon review of the file of this matter maintained by the Clerk of this Court, the Court finds that Jensen International, Inc. should be, and hereby is, granted judgment against Shelby Energy, Inc. in the principal amount of \$41,642.00, plus interest thereon from July 10, 1984 until the date hereof at six percent per annum (\$3,399.81), its costs in the amount of \$60.00, a reasonable attorney's fee to be determined upon application therefor, and post-judgment interest on the said principal amount plus pre-judgment interest at the rate of 8.08 percent per annum.

W. James P. Edlison
Judge of the United States District Court

Submitted:

CHARLES W. SHIPLEY
STEPHEN E. SCHNEIDER
STEPHEN J. GREUBEL
3401 First National Tower
Tulsa, Oklahoma 74103
(918) 582-1720

ATTORNEYS FOR PLAINTIFF

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA **NOV 19 1985**

CANDACE JEAN WHITELEY,)
)
 Plaintiff,)
)
 vs.)
)
 STEVEN D. NOTTINGHAM and)
 RYDER TRUCK RENTAL, INC.,)
)
 Defendants.)

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

No. 85-C-633-E

DISMISSAL WITH PREJUDICE

Now, on this 18th day of November, 1985, came on for consideration the Stipulation of Dismissal with Prejudice submitted to the Court by all parties to the above-styled and numbered cause pursuant to Rule 41(A)(1) of the Federal Rules of Civil Procedure. The Court finds that all parties to these proceedings have stipulated that this action should be dismissed with prejudice.

IT IS THEREFORE ORDERED that the above-styled and numbered cause should be, and is hereby, dismissed with prejudice to the refiling thereof.

BY JAMES O. ELLISON

Honorable James Ellison
JUDGE OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OKLAHOMA

FILED

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

NOV 19 1985

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

WALTER E. HELLER & COMPANY,)
SOUTHEAST, INC.,)
Appellant,)
vs.)
KENNETH E. TUREAUD, et al.,)
Appellee.)

No. 85-C-52-E

O R D E R

This matter is before the Court on appeal from Order Authorizing the Sale of Property of River Ridge Development Corporation free and clear of liens, and Approving Management and Sales Agreement entered by the Bankruptcy Court for the Northern District of Oklahoma on January 9, 1985.

On October 15, 1982 an involuntary petition in bankruptcy, subsequently converted into a Chapter 11 proceeding, was initiated against Kenneth E. Tureaud. On November 12, 1982 Appellee was appointed Trustee to administer the estate. Trustee filed an application for order of substantive consolidation of the debtor's estate with River Ridge Development Corporation (River Ridge) and other corporations associated with the debtor on June 7, 1984. River Ridge owns a real estate development of approximately 177 lots in Martin County, Florida, known as River Ridge on the Loxahatchee. River Ridge is engaged in the business of selling single family dwelling lots in the development.

Walter E. Heller & Company, Southeast (Heller), Appellant, was a financier of River Ridge. Heller filed proof of claim as a

secured creditor for \$14,500,000 based on notes, mortgages and other documents allegedly executed by River Ridge to Heller.

After evidentiary hearings held on November 30, 1984 and December 3, 1984, the Bankruptcy Court took the application for consolidation under advisement.

On November 16, 1984 Trustee filed application for authority to sell River Ridge Development Corporation lots free and clear of liens. On December 28, 1984 Heller filed objections. On December 31, 1984 Heller moved to continue the application to sell pending ruling by the Court on the application for consolidation. Motion for continuance was denied.

The Court heard the application to sell on January 4, 1985. Immediately before the hearing the Court announced its decision to grant Trustee's application for consolidation and read its Findings of Fact and Conclusions of Law into the record. Hearing was then held on the application to sell. At the conclusion of the hearing the Court granted the application to sell, finding on the record that there was substantial dispute between the parties regarding Heller's claim. The Court directed that the proceeds of sale be held by the Court pending determination of the extent of the lienholders' interest in the property. The Court incorporated its findings, entered on the record, in the Order Authorizing Sale here at issue. The order also specifically approved a Management and Exclusive Sales Agreement executed by Trustee and Tequesta Properties, Inc. on November 2, 1984. The Court authorized Trustee to renew that Agreement, to terminate it and enter into similar agreements with

other realtors, or to sell the property without a realtor.

On appeal Heller argues that the Bankruptcy Court erred in its finding that the claim was in dispute, and by failing to provide adequate protection for Heller's interest in the River Ridge Property. Bankruptcy Rule 8013 requires the District Court accept findings of fact made by the Bankruptcy Court unless they are clearly erroneous. See also In re McGinnis, 586 F.2d 162 (10th Cir. 1978) and In re Anchor Exploration Co., 30 B.R. 802 (N.D. 1983). A Bankruptcy Court's findings will be overruled only if the record as a whole leaves the reviewing court with a "definite and firm conviction that a mistake has been made." United States v. United States Gypsum Co., 333 U.S. 364, 395 (1948). The District Court will, however, undertake an independent review of the legal conclusions reached by the Bankruptcy Court. Prudential Credit Services v. Hill, 14 B.R. 249 (S.D. Miss. 1981).

Trustee's application to sell was made pursuant to § 363(f)(4) of the Bankruptcy Code. 11 U.S.C. § 363 (1978). Section 363 provides:

. . . .

(f) [the] trustee may sell property ... free and clear of any interest in such property of an entity other than the estate, only if ...

(4) such interest is in bona fide dispute ...

The Court is empowered by § 363(e) to condition or prohibit a sale authorized by § 363(f) as is necessary adequately to protect the interest of creditors in the property to be sold.

Heller first argues that § 363(f) does not authorize the sale of River Ridge property free and clear of Heller's interest because that interest is not in bona fide dispute. Heller asserts that Trustee is precluded from establishing the existence of a bona fide claim because Trustee has not objected to Heller's proof of claim filed pursuant to § 501. Heller correctly asserts that under § 502 a claim is deemed allowed unless a party in interest objects subsequent to the filing of a proof of claim. 11 U.S.C. § 502(a). Heller errs, however, in its assertion that failure to file an objection to a creditor's proof of claim bars a § 363(f) sale. No such requirement appears on the face of § 363, nor has Heller cited a single case that supports so formalistic a reading of "bona fide dispute" as that phrase is used in § 364(f). At the hearing on Trustee's application to sell Trustee introduced testimony tending to show that River Ridge corporate records did not disclose authorization for the execution of certain mortgages to Heller. Other testimony suggested that payments from the Debtor to Heller may have been incorrectly credited by Heller. Trustee also made an offer of proof that a substantial promissory note and mortgage from Heller had been discharged. The testimony was not controverted by Heller, which introduced no evidence at the hearing aside from its proof of claim. This Court cannot say that the Bankruptcy Court was clearly erroneous in finding from the evidence presented that a bona fide dispute existed regarding Heller's claim.

Heller next contends that the Bankruptcy Court failed to

provide adequate protection for Heller's interest in the River Ridge property. Heller correctly asserts that it is the value of the creditor's interest in property that must be protected. In re American Manner Industries, Inc., 734 F.2d 426 (9th Cir. 1984). In arguing that the Court must, therefore value the creditor's interest before the interest can be adequately protected, however, Heller ignores the history and purpose of § 363(f)(4), concisely stated in the case of In re Farina:

Section 363(f)(4), which is based upon cases decided under the old Bankruptcy Act, provides for the situation where adjudication of the validity, perfection, amount and priority of a lien will result in a delay detrimental to the best interests of the estate. See Collier, 15th Ed., ¶ 363.01[1]. In such case the Court, after a finding that "such interest is in bona fide dispute", may, over the objection of a holder of such interest, order a sale free and clear of such interest, subject to a later resolution of the dispute prior to distribution of the proceeds from the sale.

9 B.R. 726 (Bky. D. Maine 1981); see also Coulter v. Blieden, 104 F.2d 29, 32 (8th Cir. 1939).

First Bank of Miller v. Weisler 45 B.R. 871 (D.S.Dak. 1985), on which Heller relies, is distinguishable. In Weisler creditor's security interest was in livestock and crops, proceeds from the sale of which debtors sought permission to use to meet expenses. Id., 45 B.R. at 872. As adequate protection, debtors offered to give creditor a replacement lien in their anticipated grain harvest and in livestock to be purchased in the future. The Weisler court found on these facts that a specific determination of the value of the creditor's interest was required before the adequate protection issue could be decided.

Id at 875. In reaching this conclusion, however, the Court emphasized that resolution was necessary because if debtor's motion to use cash collateral were granted, creditor's "existing, bargained-for collateral" would be gone, leaving creditor with only a replacement lien in future crops and as yet unpurchased livestock. Unlike the debtor in Weisler, the Trustee in the present case does not ask the court to approve use of the proceeds from the contemplated sale. Instead, to the extent its claim is valid, Heller will receive a lien on the proceeds from sale. A determination of the validity and extent of Heller's claim was therefore not a prerequisite to issuance of the order authorizing sale.

There remains Heller's claim that Heller has not been afforded adequate protection by the Court's order. Trustee bears the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(o). Although adequate protection is not defined in the Bankruptcy Code, the parties agree that it is a flexible concept dependent upon the facts and circumstances of each case. Section 361 of the Code establishes that adequate protection may be provided by requiring Trustee to make cash payments to the creditor or by providing the creditor with an additional or replacement lien. The Court may, in addition, grant any other relief resulting in the realization by creditor of the indubitable equivalent of its interest in the property to be sold. One method of providing creditor with the indubitable equivalent is to grant creditor a lien on the proceeds from the sale of the property. In the present case the Trustee proposed

this method of adequate protection in his motion for sale free and clear of liens.

Heller's argument that it was incumbent upon the Bankruptcy Court to make a specific finding of adequate protection is without support. The issue of adequate protection was placed before the Court by the Trustee's proposal that Heller's interest be protected by a lien on the proceeds from sale. Heller failed to submit any evidence suggesting that a lien on the proceeds would not adequately protect its interest. The Court's order clearly establishes that the sale of River Ridge property free and clear of liens was conditioned upon the attachment of Heller's lien to the proceeds from sale.

Finally Heller contends that the lien on proceeds does not afford adequate protection of its interest in River Ridge because the Court retained insufficient control over the terms and conditions upon which the Trustee was authorized to sell. Their argument ignores the Management and Exclusive Sales Agreement between the Trustee and Tequesta Properties, Inc., which the Court approved in its order authorizing sale. That agreement included a suggested sales price for each lot in the River Ridge development. Although the Bankruptcy Court's order did authorize the Trustee to sell River Ridge property without a realtor and without further order of the Court, the Court limited Trustee's discretion by requiring that any agreements entered by Trustee be similar to the Agreement with Tequesta Properties, Inc. Consequently, it is clear that Heller's characterization of Trustee's power to sell as "blanket authority" is erroneous.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that appeal from Bankruptcy be and is hereby denied. Order of the Bankruptcy Court filed January 9, 1985 is hereby affirmed in all respects.

Done this 19th day of November, 1985.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

NOV 19 1985

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

JAMES E. BRUCE AND JUANITA
BRUCE,)
)
Appellants,)

vs.)

No. 84-C-930-E

NORTHEASTERN PRODUCTION
CREDIT ASSOCIATION,)
)
Appellee.)

JAMES E. BRUCE AND JUANITA
BRUCE,)
)
Appellants,)

vs.)

No. 84-C-959-E

NORTHEASTERN PRODUCTION
CREDIT ASSOCIATION,)
)
Appellee.)

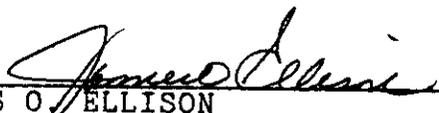
ORDER

NOW on this 18th day of November, 1985, the Court, upon its own motion, considers the appeals from the orders of the United States Bankruptcy Judge for the Northern District of Oklahoma dated November 26, 1984 denying confirmation of Debtor's Plan of Reorganization and dismissing the Chapter 11 proceeding captioned In Re: James E. Bruce and Juanita Bruce, Case no. 83-00143. The Court finds that a Notice of Appeal was filed in each of the above-styled cases, and that, by Order of March 7, 1985, entered April 2, 1985, the Emergency Motion for Temporary Stay and for Stay Pending Appeal was denied. No further action has been taken by the parties.

The Court, being advised in the premises, finds that this

action cannot proceed without the briefs required by Rule 8009, and that no extensions of time have been requested, and that the same should therefore be dismissed.

IT IS THEREFORE ORDERED AND ADJUDGED that the above styled and numbered appeals be and are hereby dismissed without prejudice.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

NOV 19 1985

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

JAMES E. BRUCE AND JUANITA
BRUCE,)
)
)
Appellants,)

vs.)

No. 84-C-930-E

NORTHEASTERN PRODUCTION
CREDIT ASSOCIATION,)
)
)
Appellee.)

JAMES E. BRUCE AND JUANITA
BRUCE,)
)
)
Appellants,)

vs.)

No. 84-C-959-E

NORTHEASTERN PRODUCTION
CREDIT ASSOCIATION,)
)
)
Appellee.)

ORDER

NOW on this 18th day of November, 1985, the Court, upon its own motion, considers the appeals from the orders of the United States Bankruptcy Judge for the Northern District of Oklahoma dated November 26, 1984 denying confirmation of Debtor's Plan of Reorganization and dismissing the Chapter 11 proceeding captioned In Re: James E. Bruce and Juanita Bruce, Case no. 83-00143. The Court finds that a Notice of Appeal was filed in each of the above-styled cases, and that, by Order of March 7, 1985, entered April 2, 1985, the Emergency Motion for Temporary Stay and for Stay Pending Appeal was denied. No further action has been taken by the parties.

The Court, being advised in the premises, finds that this

action cannot proceed without the briefs required by Rule 8009, and that no extensions of time have been requested, and that the same should therefore be dismissed.

IT IS THEREFORE ORDERED AND ADJUDGED that the above styled and numbered appeals be and are hereby dismissed without prejudice.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

AMCOLE ENERGY CORPORATION,)
)
 Plaintiff,)
)
 vs.)
)
 TRIOK, INC., an Oklahoma)
 corporation,)
)
 Defendant.)

No. 84-C-215-E

FILED

NOV 19 1985

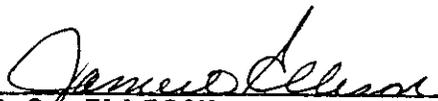
Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT

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

IT IS ORDERED AND ADJUDGED that the Plaintiff Amcole Energy Corporation recover of the Defendant Triok, Inc. the sum of \$50,000 plus prejudgment interest at a reasonable rate pursuant to 23 O.S. 1981 § 6 and with interest thereon at the rate of 8.08 per cent as provided by law, and its costs of action.

DATED at Tulsa, Oklahoma this 19th day of November, 1985.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

NOV 19 1985

MIDWESTERN PIPELINE PRODUCTS)
COMPANY, an Oklahoma)
corporation,)
)
Plaintiff,)
)
vs.)
)
MAYES BROTHERS, INC., et al.,)
)
Defendants.)

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

No. 85-C-319-E ✓

ORDER

Pursuant to this Court's order of July 29, 1985, and the Plaintiff having failed to serve Defendants John L. Fitch and Mayes Brothers, Inc., it is

HEREBY ORDERED AND ADJUDGED that this action be dismissed without prejudice as to Defendants Fitch and Mayes Brothers, Inc.

IT IS FURTHER ORDERED that Plaintiff have thirty (30) days from the date of this Order to address the default of Defendant Dennis Webb.

ORDERED this 19TH day of November, 1985.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

NOV 10 1985

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

CAROLYN A. ALFRED,

Plaintiff,

FRONTIER FEDERAL SAVINGS & LOAN
ASSOCIATION; ROBERT NOLOP, individually
and in his official capacity; and LOIS
REYNOLDS, individually and in her
official capacity,

Defendants.

No. 85-C-619-E

ORDER

This matter is before the Court on the Defendants' Motions to Dismiss the Individuals Robert Nolop and Lois Reynolds and for Partial Summary Judgment and the Plaintiff's Response to Defendants' Motions.

The motions were argued before the Court on the 5th day of November, 1985. The plaintiff was represented by her counsel, Lewis Barber and George Traviola. The defendants were represented by their counsel, Mona S. Lambird.

BEING FULLY ADVISED in the premises, the Court is of the opinion that defendants' motion to strike the individuals as parties defendants should be granted;

That the defendants' motion to strike the causes of action arising under 42 U.S.C. §2000(e) (Title VII) should be granted on the basis that the allegations were untimely filed;

The plaintiff is granted twenty (20) days in which to amend its complaint with respect to any timely allegations of discrimination against the corporate defendant, if any.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the motions striking the individual defendants are granted and that the allegations of the Complaint arising under 42 U.S.C. §2000(e) are dismissed as having been untimely raised.

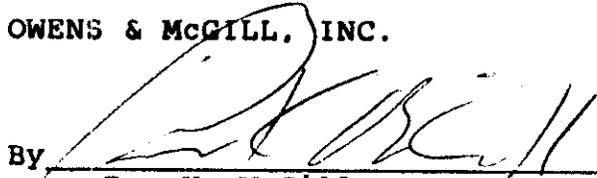
Plaintiff shall have twenty (20) days from November 5, 1985, in which to amend its Complaint.

ORDERED this 18th day of November, 1985.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

OWENS & MCGILL, INC.

By 

Ben K. McGill

#005989

Dona K. Broyles

#010222

1606 First National Bank Building
Tulsa, Oklahoma 74103
(918) 587-0021

ATTORNEYS FOR PLAINTIFFS

RUNNING & CULVER

By 

Jon R. Running

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One Williams Center
Tulsa, OK 74172
(918) 585-2904

ATTORNEY FOR STEVEN WOOD

MICHAEL MCHUGH

By 

Michael McHugh

5314 So. Yale
Suite 404
Tulsa, OK 74136
(918) 494-6007

ATTORNEY FOR DEFENDANTS
ORVILLE NICHOLS, NICHOLS
PETROLEUM, LARRY MANLEY, AND MIDWEST
PETROLEUM SUPPLY, INC.

BARKLEY, ERNST, WHITE & HARTMAN


Mike Barkley
Andrew S. Hartman

Oneok Plaza
Suite 410
100 West 5th Street
Tulsa, OK 74103

COUNSEL FOR THIRD PARTY DEFENDANTS
IRENE de HAYDU, ZOLTON de HAYDU,
and de HAYDU INVESTMENT SECURITES,
INC.

PRO SE:


Richard Nichols
5314 S. Yale #404
Tulsa, OK 74136

0319k/DKB
11/14/85

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA)
)
Plaintiff,)
)
vs.)
)
RONALD LEE McCONNELL, a/k/a)
RONALD L. McCONNELL, and)
JOANNE M. McCONNELL, husband)
and wife, and GEORGE M.)
BOLLINGER and CARILEEN L.)
BOLLINGER, husband and wife,)
)
Defendants.)

FILED

NOV 15 1985

Jack C. Silver, clerk *ag*
U. S. DISTRICT COURT

CIVIL ACTION NO. 85-C-222-B ✓

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 15
day of November, 1985. The Plaintiff appears by
Layn R. Phillips, United States Attorney for the Northern
District of Oklahoma, through Nancy Nesbitt Blevins, Assistant
United States Attorney; the Defendants, Ronald Lee McConnell,
a/k/a Ronald L. McConnell, and Joanne M. McConnell, husband
and wife, and George M. Bollinger, and Carileen L. Bollinger,
husband and wife, appear not, but make default.

The Court being fully advised and having examined
the file herein finds that Defendants, George M. Bollinger,
and Carileen L. Bollinger, husband and wife, acknowledged
receipt of Summons and Complaint on March 18, 1985.

The Court further finds that the Defendants, Ronald
Lee McConnell, a/k/a Ronald L. McConnell, and Joanne M.
McConnell were served by publishing notice of this action in
the Tulsa Daily Business Journal and Legal Record, a

newspaper of general circulation in Tulsa County, Oklahoma, once a week for six consecutive weeks beginning August 13, 1985, and continuing to September 17, 1985, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. §2004(C)(3) since counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Ronald Lee McConnell, a/k/a Ronald L. McConnell, and Joanne M. McConnell, husband and wife, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the Evidentiary Affidavit of Bonded Abstractor filed herein with respect to the last known address of the Defendants, Ronald Lee McConnell, a/k/a Ronald L. McConnell, and Joanne M. McConnell, husband and wife. The Court conducted an inquiry into the sufficiency of the Service by Publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, have fully exercised due diligence in ascertaining the true names and

identities of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that this Service by Publication is sufficient to confer jurisdiction upon this court to enter the relief sought by the Plaintiff, both as to the subject matter and the defendants served by publication.

It appears that the Defendants, Ronald Lee McConnell, a/k/a Ronald L. McConnell, and Joanne M. McConnell, husband and wife, and George M. Bollinger, and Carileen L. Bollinger, husband and wife, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Three (3), Block Two (2), SOUTH PARK ESTATES SECOND, and Addition to the City of Broken Arrow, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

That on March 18, 1983, Ronald Lee McConnell and Joanne M. McConnell, executed and delivered to Shearson/American Express Mortgage Corporation their Mortgage Note in the amount of \$92,700.00, payable in monthly installments, with interest thereon at the rate of twelve (12) percent per annum.

That as security for the payment of the above-described note, Ronald Lee McConnell and Joanne M. McConnell, husband and wife, executed and delivered to Shearson/American Express Mortgage Corporation a mortgage dated March 18, 1983, covering the above-described property. Said mortgage was recorded on March 24, 1983, in Book 4678, Page 2750, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 11, 1984, Shearson/American Express Mortgage Corporation assigned the mortgage described above to the Administrator of Veterans Affairs, together with the note secured by said mortgage. This assignment of mortgage was recorded on June 26, 1984, in Book 4799, Page 1768, in the Records of Tulsa County, Oklahoma.

The Court further finds that Defendants, Ronald Lee McConnell, a/k/a Ronald L. McConnell, and Joanne M. McConnell, husband and wife, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the defendants Ronald Lee McConnell, a/k/a Ronald L. McConnell, and Joanne M. McConnell, husband and wife, are indebted to the Plaintiff in the sum of \$100,834.46 as of October 1, 1983, plus interest thereafter at the rate of twelve (12) 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 any interest that the Defendants George M. Bollinger, and Carileen L. Bollinger, husband and wife, may claim in the property being foreclosed is subject to and inferior to the first mortgage lien of the Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against defendants, Ronald Lee McConnell, a/k/a Ronald L. McConnell, and Joanne M. McConnell, husband and wife, in the sum \$100,834.46 as of October 1, 1983, plus interest thereafter at the rate of twelve (12) percent per annum until judgment, plus interest thereafter at the current legal rate of 8.08 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 said defendants, Ronald Lee McConnell, a/k/a Ronald L. McConnell, and Joanne M. McConnell, husband and wife, 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 the costs of 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, 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.


UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney


NANCY NESBITT BLEVINS
Assistant United States Attorney

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

EXXON CORPORATION,)
a Corporation,)
)
Plaintiff,)
)
v.)
)
HARVEY RAY THOMPSON and)
RUTH THOMPSON,)
)
Defendants.)

NO. 85-C-1007-B

FILED
NOV 15 1985

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

JUDGMENT FOR PERMANENT INJUNCTION

On this 15th day of November, 1985, there comes on for hearing the Complaint filed herein by the plaintiff, **EXXON CORPORATION**, for an Injunction against the defendants, **HARVEY RAY THOMPSON** and **RUTH THOMPSON**. The Court thereupon proceeded to hear said Complaint, with plaintiff being represented by its attorney, Val R. Miller, of the firm, Crowe & Dunlevy, and the defendants not being represented by counsel, but the Court having determined that they have heretofore examined and approved this form of Judgment and consented to the entry thereof at this time.

THE COURT FURTHER FINDS that this matter was instituted by the filing of a verified Complaint on behalf of the plaintiff, and that the evidence has established that

plaintiff is the owner of a valid and subsisting Oil and Gas Mining Lease covering the following-described land situated in Creek County, Oklahoma, to-wit:

The E/2 of the E/2 of Section
15, Township 17 North, Range
7 East,

which was originally executed on January 23, 1912, and is recorded in Book 51 First, Page 319, in the office of the County Clerk, Creek County, Oklahoma. Said Lease was acquired by the plaintiff by an assignment from Grace Petroleum Corporation dated January 1, 1985, which is recorded in Book 192 at Page 1836 in the County Clerk's office of Creek County, Oklahoma. Under and by virtue of the terms and provisions of said Oil and Gas Lease, as assigned to the plaintiff, it has the right to enter upon the land hereinabove described for the purpose of exploring, operating and developing the same for oil and gas purposes.

THE COURT FURTHER FINDS that recently the plaintiff attempted to enter upon said land for the purpose of drilling several wells thereon and reworking other wells and laying pipe lines and power lines and otherwise exploring, developing and operating said leasehold estate in accordance with the rights established by the Lease. Defendants, as the owners of the surface of said property, ordered plaintiff off of said land and refused plaintiff ingress and egress thereto for the purpose of operating said property for

oil and gas purposes. Such act and action on the part of the defendants was in violation of the plaintiff's rights, and caused plaintiff to suffer damages, which would continue and would be irreparable, unless the defendants be enjoined from interfering with the rights of plaintiff to enter upon said land for the purpose of developing and operating the same for oil and gas purposes.

THE COURT FURTHER FINDS that defendants have agreed to the entry of a permanent Injunction herein, and plaintiff has agreed to give up any claim for actual damages by reason of the prior refusal of the defendants to permit plaintiff to have ingress and egress to said land for the purpose of operating its oil and gas leasehold estate.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. Defendants, and each of them, their agents and employees, are hereby permanently enjoined and restrained from directly or indirectly interfering with the plaintiff in the exercise of its contractual right to enter upon the above-described land for the purpose of exploring, developing and operating its oil and gas leasehold estate covering said land, including, but not limited to, the right to drill additional wells and work over any other wells already existing on said property, and laying pipe lines and power lines and otherwise using said property for such purposes as are ordinarily necessary and required

in order that said land be developed for oil and gas purposes under the existing Oil and Gas Lease.

2. The plaintiff's claim for damages resulting from prior acts and actions on the part of defendants, is hereby dismissed.

3. Jurisdiction of this cause is retained by this Court for the purpose of giving full force and effect to this Judgment, and for the purpose of making such further Orders and Decrees, or the taking of such further action, if any, as may become necessary or appropriate to carry out and enforce this Judgment.

4. The costs heretofore expended in this cause shall be borne by the plaintiff.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AND CONSENTED TO:

Harvey Ray Thompson
HARVEY RAY THOMPSON

Ruth Thompson
RUTH THOMPSON

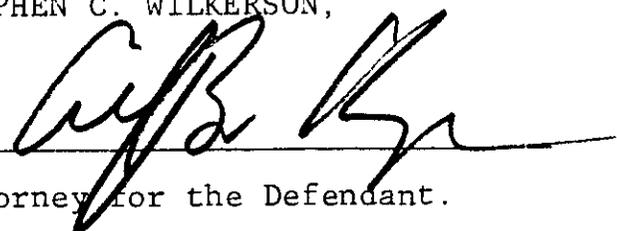
Val R. Miller
-Of the Firm-
CROWE & DUNLEVY
ATTORNEYS FOR PLAINTIFF,
EXXON CORPORATION

JOHN L. HARLAN,



Attorney for the Plaintiff,

STEPHEN C. WILKERSON,



Attorney for the Defendant.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

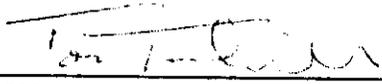
NOV 15 1985

CINDA KAY HUMPHREY,)
Plaintiff,)
vs.)
SKAGGS COMPANIES, INC.,)
a Delaware Corporation)
doing business in)
Oklahoma,)
Defendant.)

Case No. 85-C-1003
JACK C. SILVER, CLERK
DISTRICT COURT

DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff by and through her attorney of record, Tom Tannehill, and does herewith dismiss without prejudice her cause of action against the Defendant herein.


TOM TANNEHILL, OBA #8840
2627 E. 21st Street, Ste. 112
Tulsa, Oklahoma 74114
(918) 749-4694

FILED

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

NOV 15 1985

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

DONALD D. FELLHAUER AND)
DORIS FELLHAUER,)

Plaintiffs,)

vs.)

No. 85-C-246-E

DON WOODS, Deputy Sheriff of)
Creek County, Oklahoma; BOB J.)
WHITWORTH, Sheriff of Creek)
County, Oklahoma; AND WAYNE)
DAVIS, Police Officer of the)
City of Bristow, Oklahoma,)

Defendants.)

O R D E R

THIS MATTER comes before the Court upon the motion of the Plaintiff for partial summary judgment, the motion of Defendant Don Woods to dismiss counts 4 and 5 of the amended complaint, and questions raised during the hearing of October 3, 1985 with regard to the representation of Don Woods.

Plaintiffs urge this Court to grant partial summary judgment on the issue of the alleged unlawful arrest and the liability arising therefrom against Defendants Don Woods and Wayne Davis in count 1, against Defendant Woods in count 4 and against defendant Davis in count 6. Plaintiff Donald Fellhauer was arrested on September 9, 1984 on a bench warrant issued for failure to appear at a disposition docket with regard to two traffic related offenses. Plaintiff asserts that he was arrested by Defendants Don Woods and Wayne Davis in contravention of Oklahoma law,

specifically Title 22 O.S. § 189 which prohibits the serving of a misdemeanor warrant during the night time hours without the specific endorsement of the Magistrate for service at night. Plaintiff argues that such an unlawful arrest is a clear violation of his constitutional rights, and that he is entitled therefore to a judgment of liability against these Defendants.

Defendant Wayne Davis controverts Plaintiff's assertion that the warrant was executed at night, citing conflicting testimony as to the time of arrest. Defendant Davis also asserts that the deposition excerpts cited by Plaintiff in his brief in support of partial summary judgment established that Davis was not the arresting officer.

Defendant Woods also denies the execution of the warrant at night, and in addition, argues that, even if Plaintiff could establish a violation of Title 22 O.S. § 189, Plaintiff has failed to establish a violation of his constitutional rights. Plaintiff has failed to cite any authority to the Court in support of his contention that the service of an arrest warrant on a citizen at night amounts to either a constitutional or a federal statutory deprivation.

The threshold requirement for a claim for relief under § 1983 is the deprivation of a right secured by the constitution and laws of the United States. Wise v. Bravo, 666 F.2d 1328 (10th Cir. 1981). Cases cited by the Plaintiff for the proposition that damages are recoverable under § 1983 for violations of the 4th amendment protections against unlawful arrest concern the deprivation of liberty without due process of

law, or unreasonable search and seizure. None of these cases stand for the proposition that an arrest allegedly in violation of a statute of the State of Oklahoma is per se a violation of the United States Constitution.

Even if Plaintiff could support such an argument, it is clear that a dispute exists with regard to the exact time of arrest, and that therefore the question of whether or not the warrant was served "at night" is one for the jury. It is to be noted here that Plaintiff does not attack the validity of the warrant itself, or the probable cause for the issuance of the warrant, as was done in Smith v. City of Oklahoma City, 696 F.2d 784 (10th Cir. 1983), but attacks instead the manner and method of service of the warrant.

The Court next considers the motion of Defendant Woods to dismiss counts 4 and 5 of the complaint for failure to state a claim and lack of subject matter jurisdiction. This motion was filed with regard to Plaintiff's first amended complaint, and was reserved and reurged through the answer of Defendant to the amended complaint and the answer to the second amended complaint.

In counts 4 and 5, Plaintiffs separately seek money judgments against Defendant Don Woods as Deputy Sheriff of Creek County, Oklahoma for the commission of an alleged tort upon the person of Donald Fellhauer. It is alleged that Deputy Woods, "within the scope of his employment as a duly appointed deputy sheriff" committed an "intentional, wanton, malicious, unlawful, brutal and unprovoked assault and battery" upon Plaintiff during

an unlawful arrest on a bench warrant.

Defendant argues that the Oklahoma Tort Claims Act, Title 51 O.S. § 152 et seq., does not provide for liability for intentional torts. Defendant cites § 155 of the Act which exempts from liability for a loss or claim which results from "execution or enforcement of the lawful orders of any court". In addition, Defendant argues that, under Holman v. Wheeler, 677 P.2d 645 (Okla. 1983) the protection of the Political Subdivision Tort Claims Act does not extend to an employee who conducts himself in a willful and wanton manner.

Plaintiff responds that the Holman case is distinguishable since in that case the defendant employee sought the protection of the Tort Claims Act, which provides immunity from liability to employees of governmental agencies for torts committed while performing discretionary functions within the scope of their employment. The case, however, is not limited to the immunity of the employee, but instead held that the allegations of the Plaintiff with reference to the willful and wanton conduct of the Defendant placed the Defendant outside the scope of his employment, and therefore outside the protection of the Tort Claims Act. Since willful and wanton conduct was outside the Act, the tort claims were not within the purview of the Torts Claims Act, and its other provisions did not apply.

The bare statement in Plaintiff's claim that Defendant Woods acted "within the scope of his employment" is not determinative here. What Plaintiff is actually alleging is that the Defendant acted in an intentional way, and committed a wanton, malicious

and unlawful assault upon him. Such conduct is clearly not within the scope of employment under Holman, and not covered by the Tort Claims Act.

At the hearing on pending motions held on the 3rd of October, 1985 Plaintiff again questioned the propriety of the current representation of Defendant Woods. By previous order of this Court, Defendant Woods was given additional time to obtain substitute counsel, to avoid any potential conflict of interest on the part of District Attorney David Young, in the representation of Mr. Woods, the county, and Sheriff Whitworth. Subsequent to that time Defendant Woods obtained private counsel. Plaintiff argued to the Court that, since its claims against Defendant Woods included allegations under the Oklahoma Tort Claims Act, and that such allegations implicate the interests of the county, that the representation of Woods in his individual capacity may conflict with the representation of Woods in his capacity as deputy sheriff. Since this Court has dismissed counts 4 and 5 of the second amended complaint alleging claims under the Oklahoma Tort Claims Act, there are left only claims against Defendant Woods for the alleged use of excessive force during the arrest. Plaintiff's concerns with regard to development of possible conflicts are thereby rendered moot.

The Court also notes Defendant Whitworth's resubmission of his motion to dismiss or in the alternative for summary judgment. The Plaintiffs have requested a stay of consideration

of this motion until the completion of discovery, and reurged that request at the October 3 motion hearing. Pursuant to request, the Court takes the motion to dismiss or for summary judgment under advisement and stays consideration until the completion of discovery on May 30, 1986.

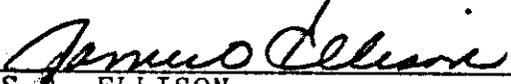
IT IS THEREFORE ORDERED AND ADJUDGED that the motion of Plaintiffs for partial summary judgment be and the same is hereby denied.

IT IS FURTHER ORDERED that the motion of Defendant Woods to dismiss be and the same is hereby granted as to counts 4 and 5 of Plaintiffs' second amended complaint.

IT IS FURTHER ORDERED that, in view of the dismissal of counts 4 and 5, Plaintiffs' request with regard to the representation of Defendant Woods has been rendered moot.

IT IS FURTHER ORDERED that consideration of the motion of Defendant Whitworth to dismiss or in the alternative for summary judgment be stayed pending the completion of discovery on the 30th of May, 1986.

ORDERED this 14th day of November, 1985.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

NOV 15 1985

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

THE FIRST NATIONAL BANK AND)
TRUST COMPANY OF VINITA,)
Vinita, Oklahoma, a National)
Banking Association,)
Plaintiff,)

vs.)

Case No. 85-C-522-E

GENERAL TIRE COMPANY OF)
PHOENIX, d/b/a REDBURN)
TIRE COMPANY, an Arizona)
corporation,)
Defendant and)
Counterclaimant,)

THE FIRST NATIONAL BANK AND)
TRUST COMPANY OF VINITA,)
Vinita, Oklahoma, a National)
Banking Association,)
Third Party)
Plaintiff,)

vs.)

COMMERCIAL BANK & TRUST)
COMPANY, of Muskogee,)
Oklahoma, an Oklahoma)
corporation,)
Third Party)
Defendant.)

STIPULATION OF DISMISSAL
OF THIRD PARTY COMPLAINT

COMES NOW, The First National Bank and Trust Company
of Vinita, Plaintiff, and, pursuant to Rule 41(a)(1)(i),
herewith tenders this as its Dismissal of the subject

Third Party Complaint against the Third Party Defendant,
Commercial Bank & Trust Company, Muskogee, Oklahoma; and
Plaintiff would further show as follows:

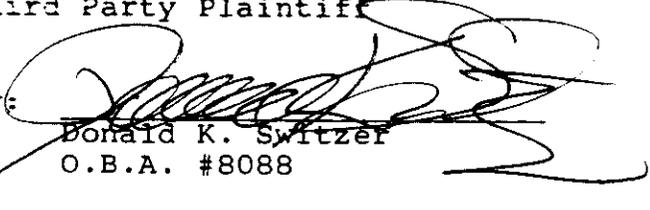
1. That the Third Party Defendant has not yet served
an Answer or a Motion for Summary Judgment relative to the
Third Party Complaint and has not "appeared" herein.

2. This Dismissal is without prejudice to the institu-
tion of further proceedings at a later date.

Respectfully submitted,

LOGAN, LOWRY, JOHNSTON,
SWITZER, WEST & McGEADY
P. O. Box 558
Vinita, Oklahoma 74301
(918) 256-7511

Attorneys for Plaintiff and
Third Party Plaintiff

By: 
Donald K. Switzer
O.B.A. #8088

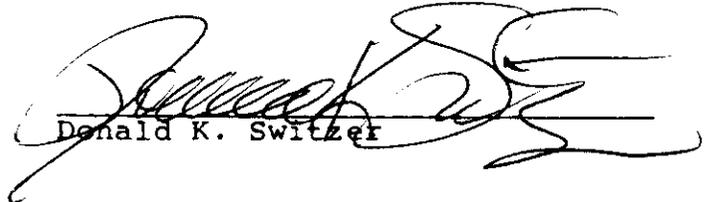
CERTIFICATE OF MAILING

I, Donald K. Switzer, do hereby certify that on this
15th day of November, 1985, I mailed a true and correct copy
of the above and foregoing "Stipulation Of Dismissal Of
Third Party Complaint" to:

J. Ron Wright, Esquire
Kennedy, Kennedy, Wright & Stout
P. O. Box 707
Muskogee, Oklahoma 74402-0707
(Attorneys for Commercial Bank & Trust
Company, of Muskogee, Oklahoma)

J. David Jorgenson, Esquire
Conner & Winters
2400 First National Tower
Tulsa, Oklahoma 74103
(Attorneys for General Tire Company of
Phoenix, d/b/a Redburn Tire Company)

with proper postage thereon fully prepaid.



Donald K. Switzer

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

FILED

NOV 15 1985

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

THE FIRST NATIONAL BANK)
AND TRUST COMPANY OF)
VINITA, Vinita, Oklahoma,)
a National Banking)
Association,)

Plaintiff,)

vs.)

GENERAL TIRE COMPANY OF)
PHOENIX, d/b/a REDBURN)
TIRE COMPANY, an Arizona)
corporation,)

Defendant and)
Counterclaimant,)

THE FIRST NATIONAL BANK)
AND TRUST COMPANY OF)
VINITA, Vinita, Oklahoma,)
a National Banking)
Association,)

Third Party)
Plaintiff,)

vs.)

COMMERCIAL BANK & TRUST)
COMPANY, of Muskogee,)
Oklahoma, an Oklahoma)
corporation,)

Third Party)
Defendant.)

Case No. 85-C-522-E

STIPULATION OF DISMISSAL

COMES NOW, The First National Bank and Trust Company of Vinita, Plaintiff, and General Tire Company of Phoenix, d/b/a Redburn Tire Company, and, pursuant to Rule

41(a)(1)(ii), hereby jointly stipulate to the dismissal of the subject action; and the said parties, would further show as follows:

1. They are the only parties who have yet appeared in this cause and may, therefore, dismiss the same.

2. The dismissal as to each of the claims that the parties hereto has against the other shall be with prejudice.

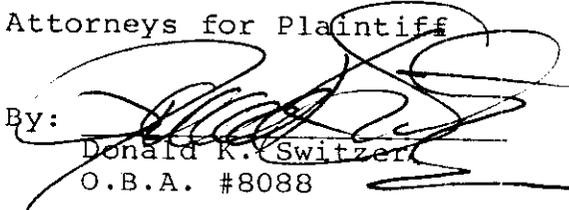
3. The dismissal of the action shall, however, be without prejudice to any rights that Plaintiff may have against the Third Party Defendant, Commercial Bank & Trust Company, which has not yet entered an appearance in the cause.

Respectfully submitted,

LOGAN, LOWRY, JOHNSTON,
SWITZER, WEST & McGEADY
P. O. Box 558
Vinita, Oklahoma 74301
(918) 256-7511

Attorneys for Plaintiff

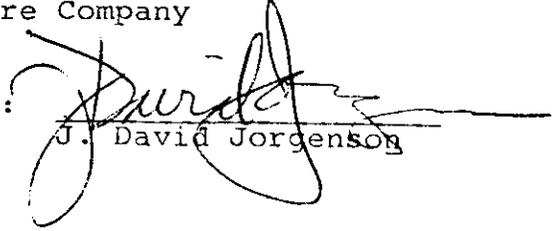
By:


Donald K. Switzer
O.B.A. #8088

CONNER & WINTERS
2000 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

Attorney for Defendant
General Tire Company of
Phoenix, d/b/a Redburn
Tire Company

By:


J. David Jorgenson

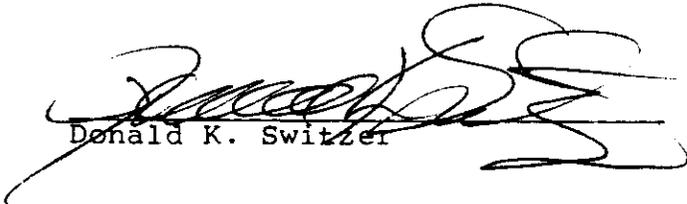
CERTIFICATE OF MAILING

I, Donald K. Switzer, do hereby certify that on this 15th day of November, 1985, I mailed a true and correct copy of the above and foregoing "Stipulation Of Dismissal" to:

J. Ron Wright, Esquire
Kennedy, Kennedy, Wright & Stout
P. O. Box 707
Muskogee, Oklahoma 74402-0707
(Attorneys for Commercial Bank & Trust
Company, of Muskogee, Oklahoma)

J. David Jorgenson, Esquire
Conner & Winters
2400 First National Tower
Tulsa, Oklahoma 74103
(Attorneys for General Tire Company of
Phoenix, d/b/a Redburn Tire Company)

with proper postage thereon fully prepaid.


Donald K. Switzer

94

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 15 1985

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

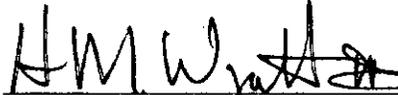
JAMES L. SPEIGHTS, et al.,)	
)	
Plaintiffs,)	
v.)	Case No. 85-C-21-E
)	
OZARK FINANCIAL SERVICES, et al.,)	
)	
Defendants.)	

DISMISSAL

COME NOW the parties, by and through their attorneys, and pursuant to F.R.Civ.P 41 stipulate that the above-entitled cause shall be dismissed with prejudice, the parties to bear their respective costs.

Respectfully submitted,

H. M. WYATT, III

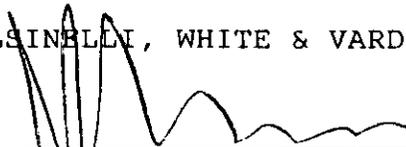


7th Avenue Center
123 West 7th Suite 201
P.O. Box 2707
Stillwater, Oklahoma 74076
(405) 743-4555

ATTORNEY FOR PLAINTIFF

POLSINELLI, WHITE & VARDEMAN

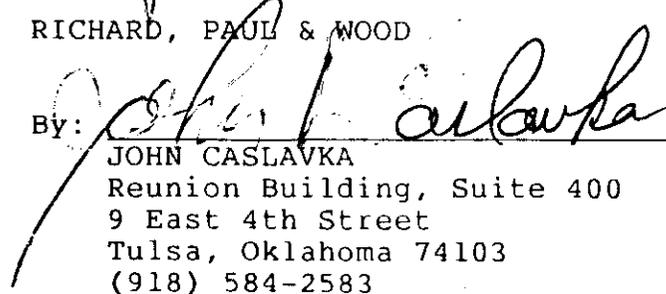
By:



JOSEPH R. COLANTUONO
4705 Central
Kansas City, Missouri 64112
(816) 931-3353

RICHARD, PAUL & WOOD

By:



JOHN CASLAVKA
Reunion Building, Suite 400
9 East 4th Street
Tulsa, Oklahoma 74103
(918) 584-2583

ATTORNEYS FOR DEFENDANT

FILED

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

NOV 15 1985

BURLINGTON NORTHERN RAILROAD)
COMPANY,)
)
Plaintiff,)
)
vs.)
)
W. J. LAMBERTON, et al.,)
)
Defendants.)

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

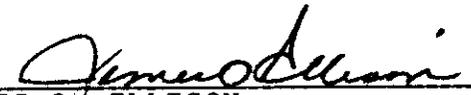
No. 85-C-13-E

ORDER

This matter is before the Court upon oral motion in conference by Defendant American Cyanamid for dismissal. The Court, upon arguments of counsel, and good cause being shown therefore, finds that the same should be granted.

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

ORDERED this 14th day of November, 1985.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

NOV 15 1985

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

MAXINE HAMILTON,)
)
 Plaintiff,)
)
 vs.)
)
 ALLSTATE LIFE INSURANCE COMPANY,)
 an Illinois corporation,)
)
 Defendant.)

No. 85-C-654-C

ORDER OF DISMISSAL WITH PREJUDICE

Plaintiff and Defendant having compromised and settled all issues in the action and having stipulated that the Complaint and the action may be dismissed with prejudice,

IT IS THEREFORE ORDERED that the Complaint and this cause of action are, by the Court, dismissed with prejudice to the bringing of another action upon the same cause or causes of action.

Entered this 14th day of November, 1985.

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

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

FILED

NOV 15 1985

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

JOSEF E. KERCSO, et al.,)
)
Plaintiffs,)
)
v.)
)
BRIGHT, NICHOLS, ZRENDA & DUHN)
and JOHN NICHOLS, et al.,)
)
Defendants,)
)
v.)
)
IRENE DeHAYDU and ZOLTAN)
DeHAYDU, et al.,)
)
Third Party)
Defendants.)

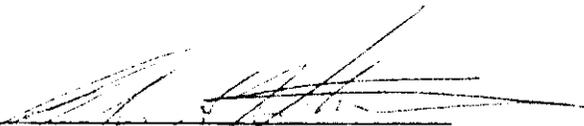
NO. 84-C-837-C

NOTICE OF DISMISSAL WITH PREJUDICE

COME NOW Third-Party Defendants Irene DeHaydu and Zoltan DeHaydu, pursuant to Rule 41 of the Federal Rules of Civil Procedure, by and through their attorney of record, Barkley, Ernst, White, Hartman & Rodolf, and hereby dismiss (with prejudice) their claim filed in the above-referenced action against Third-Party Plaintiffs Bright, Nichols, Zrenda & Durn and John Nichols.

WHEREFORE, Third-Party Defendants Irene DeHaydu and Zoltan DeHaydu dismiss their claim with prejudice against the above-named Third-Party Plaintiffs.

BARKLEY, ERNST, WHITE,
HARTMAN & RODOLF

By: 

Andrew S. Hartman
100 W. 5th Street, Suite 410
Tulsa, Oklahoma 74103
(918) 599-9991

Attorneys for Third-Party
Defendants Irene DeHaydu and
Zoltan DeHaydu

CERTIFICATE OF MAILING

I do hereby certify that on the 15th day of November, 1985, I mailed a true, correct and exact copy of the above and foregoing Notice of Dismissal With Prejudice to:

Richard P. Hix, Esquire
DOERNEE, STUART, SAUNDERS,
DANIEL & ANDERSON
1000 Atlas Life Building
Tulsa, Oklahoma 74103

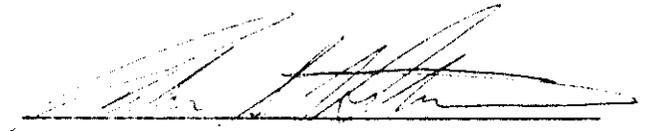
Ben K. McGill, Esquire
Dona K. Broyles, Esquire
OWENS & MCGILL, INC.
1606 First National Bank Building
Tulsa, Oklahoma 74103

Jon R. Punning, Esquire
1700 Bank of Oklahoma Tower
415 South Boston Avenue
Tulsa, Oklahoma 74103

Michael L. McHugh, Esquire
5314 South Yale, Suite 404
Tulsa, Oklahoma 74135

Shane K. Cortright, Esquire
KURAHARA, MOREISSEY & STREET
2335 Oakland Road
San Jose, California 95131

with proper postage thereon fully prepaid.

A handwritten signature in black ink, appearing to read "Shane K. Cortright", written over a horizontal line.

Centered

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

VIRGINIA G. MAY,)
)
 Plaintiff,)
)
 vs.)
)
 AUTO CONVOY COMPANY, et al.,)
)
 Defendant,)
)
 and)
)
 ALLSTATE INSURANCE COMPANY,)
 an Illinois corporation,)
)
 Intervenor,)
)
 AND)
)
 JOHN W. MAY,)
)
 Plaintiff,)
)
 vs.)
)
 AUTO CONVOY COMPANY, et al.,)
)
 Defendant,)
)
 and)
)
 ALLSTATE INSURANCE COMPANY,)
 an Illinois corporation,)
)
 Intervenor.)

No. 84-950-B

FILED

NOV 15 1985

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

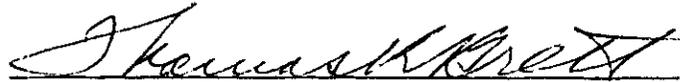
No. 84-951-B

ORDER OF DISMISSAL

UPON APPLICATION by the Parties, and for good cause shown,
the Court finds that the above-styled and numbered causes of
action should be dismissed with prejudice to refileing in the

future as to the defendants, and without prejudice as to the intervenor.

IT IS SO ORDERED this 15 day of ^{November}~~October~~, 1985.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

ORDERED this 14th day of November, 1985.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

TITAN SERVICES, INC.,)
a Delaware corporation,)
)
Plaintiff,)
)
vs.)
)
RICHARD KITCHELL and)
RICHARD KITCHELL d/b/a CANYON)
EXPLORATION,)
)
Defendant.)

No. 85-C-947-E

FILED

NOV 15 1985

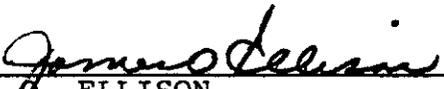
**Jack C. Silver, Clerk
U. S. DISTRICT COURT**

JUDGMENT OF DEFAULT

Defendant, Richard Kitchell and Richard Kitchell d/b/a Canyon Exploration, has been served with process. He has failed to appear and answer the Plaintiff's Complaint filed herein. The default of Defendant, Richard Kitchell and Richard Kitchell d/b/a Canyon Exploration, has been entered. It appears from the Affidavit in Support of Entry of Judgment of Default that the Plaintiff is entitled to judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff recover from Defendant, Richard Kitchell and Richard Kitchell d/b/a Canyon Exploration, the sum of \$16,302.19, plus interest as of September 5, 1985 in the amount of \$1,890.69 plus interest at the rate of 18% per annum thereafter until judgment, plus interest accruing thereafter at the rate of 8.08 % per annum until paid, a reasonable attorneys' fee to be set upon application, and the costs of this action.

ORDERED this 14th day of November, 1985.



JAMES P. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

NOV 15 1985

Bay West Limited Partnership)
d/b/a Bay West Yacht And)
Marine Club,)
)
Plaintiff,)
)
vs.)
)
Doug Johnson d/b/a)
Wichita Auto Brokers,)
)
Defendant.)

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

CASE NO. 85-C-780-B

DEFAULT JUDGMENT

This matter comes on for consideration this 15th day of November, 1985, the Plaintiff appearing by Robert D. Neilson, and the Defendant, Doug Johnson d/b/a Wichita Auto Brokers, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Doug Johnson d/b/a Wichita Auto Brokers, was served with Summons and Complaint on the 21st day of August, 1985. 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.

The Court finds that the allegations and statements of fact contained in the Plaintiff's Complaint are deemed to be true and correct.

The Court has examined the Defendant's confession of judgment executed by Doug Johnson and notarized by Rex M. Johnson on October 3, 1985, which has been filed in this case as an attachment to the Affidavit For Entry Of Default Judgment.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, Doug Johnson d/b/a Wichita Auto Brokers, in the sum of \$3,700.00.

IT IS FURTHER, ORDERED, ADJUDGED AND DECREED that post judgment interest at the legal rate shall commence on January 1, 1986, if this judgment is not fully paid and satisfied by December 31, 1985.

IT IS FURTHER, ORDERED, ADJUDGED AND DECREED that the allegations and statements of fact contained in the Plaintiff's Complaint are deemed to be true and correct.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

FILED

NOV 15 1985

IN THE UNITED STATES DISTRICT COURT FOR
NORTHERN DISTRICT OF OKLAHOMA

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

JOSEF E. KERCSO, et al.)
)
 Plaintiffs,)
)
vs.)
)
NICHOLS PETROLEUM COMPANY,)
et al,)
)
 Defendants,)
)
vs.)
)
DeHAYDU INVESTMENT)
SECURITIES, et al.)
)
 Third Party Defendants.)

No. 84-C-837-C

NOTICE OF DISMISSAL

Please take notice that the claims of Plaintiff David Pressman asserted against Ricardo Ramirez, Coast County Securities, Inc., and David Simcho, in the above entitled action are hereby dismissed without prejudice, pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure.

DATED November 15, 1985.

Respectfully submitted,

OWENS & MCGILL, INC.

By *Dona K. Broyles*

Ben K. McGill 005989

Dona K. Broyles 010222

1606 First National Bank Building
Tulsa, Oklahoma 74103
(918) 587-0021

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF MAILING

I hereby certify that on the 15 day of November, 1985, a true and correct copy of the above and foregoing Notice of Dismissal was mailed, with postage fully prepaid thereon, to:

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

Jon R. Running
Forsman & Running
1700 Bank of Oklahoma Tower
One Williams Center
Tulsa, OK 74172

Michael L. McHugh
5314 South Yale, Suite 404
Tulsa, OK 74136

Andrew S. Hartman
Barkley, Ernst, White & Hartman
Oneok Plaza, Suite 410
100 W. 5th Street
Tulsa, OK 74103

Shane Cortright
Kurahara, Morressey and Street
2355 Oakland Road
San Jose, CA 95131

Richard Nichols
5314 So. Yale
Tulsa, OK 74136

0503k/DKB
11/15/85

Dona K. Seayles

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

FILED

NOV 14 1985

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

D.L. CURL, individually, and)
doing business as ABUNDANT LIFE)
TABERNACLE,)
)
Plaintiff,)
)
vs.)
)
FEDERAL KEMPER INSURANCE)
COMPANY,)
)
Defendant.)

No. 85-C-890-C

O R D E R

Now before the Court for its consideration is the motion of defendant Federal Kemper Insurance Company to dismiss, said motion filed on October 22, 1985. The Court has no record of a response to this motion from plaintiff D. L. Curl. Rule 14(a) of the local Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

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

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

Accordingly, it is the Order of the Court that defendant's motion to dismiss should be and hereby is granted.

IT IS SO ORDERED this 14~~th~~ day of November, 1985.


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

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

THE ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY, a corporation,

Plaintiff,

vs.

ECONO-THERM ENERGY SYSTEMS
CORPORATION, a Successor-in-
Interest to Mohawk Steel Company,

Defendant.

CASE NO. 85-C-1009E

FILED

NOV 13 1985

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

TO: Don A. Peterson
1125 Grand Avenue, Suite 915
Kansas City, Missouri 64106

NOTICE OF DISMISSAL

Please take notice that the above-entitled action is hereby
dismissed.

RAINEY, ROSS, RICE & BINNS

By: _____

H. D. BINNS, JR.
MARC R. PITTS
735 First National Center West
Oklahoma City, Oklahoma 73102
(405) 235-1356
ATTORNEYS FOR PLAINTIFF

STIPULATION APPROVED AS TO FORM AND CONTENT:



Phil R. Richards
ATTORNEY FOR DEFENDANT
STEVEN D. NOTTINGHAM

OF COUNSEL:
RICHARDS, PAUL & WOOD
9 East 4th Street, Suite 400
Tulsa, OK 74103
(918) 584-2583



Donald Church
ATTORNEY FOR DEFENDANT
RYDER TRUCK RENTAL, INC.

OF COUNSEL:
CHURCH & ROBERTS
501 Philtower Building
Tulsa, OK 74103
(918) 583-8156

X

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

FILED

GEORGE T. HARRISON,

Plaintiff,

vs.

L. B. JACKSON COMPANY, an
Oklahoma corporation,

Defendant.

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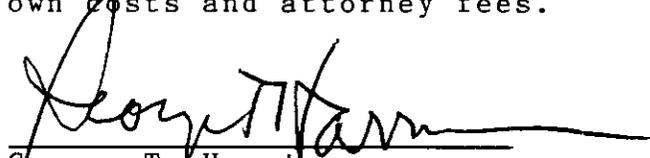
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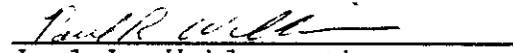
**Jack C. Silver, Clerk
U. S. DISTRICT COURT**

No. 85-C-920

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Fed.R.Civ.P. 41, each party hereby dismisses with prejudice the above captioned action, each party to bear his own costs and attorney fees.


George T. Harrison,
Plaintiff


Joel L. Wohlgemuth
Paul R. Williams III

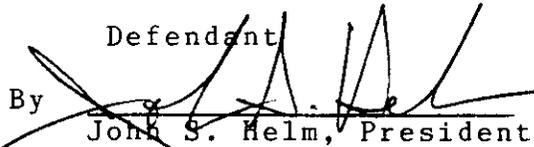
OF COUNSEL:

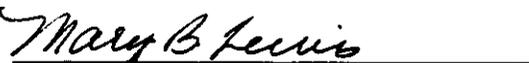
NORMAN, WOHLGEMUTH & THOMPSON
909 Kennedy Building
Tulsa, Oklahoma 74103
(918) 583-7571

Attorneys for Plaintiff

L.B. Jackson Company,

Defendant

By 
John S. Helm, President


Mary B. Lewis

OF COUNSEL:

BRUNE & PEZOLD
500 Sinclair Building
Six East Fifth Street
Tulsa, Oklahoma 74103
(918) 584-0506

Attorneys for Defendant

CERTIFICATE OF MAILING

I, Mary B. Lewis, hereby certify that on the 13th day of November, 1985, I placed in the United States mails at Tulsa, Oklahoma, a true and correct copy of the above and foregoing document with correct postage fully prepaid thereon, addressed to the following:

Joel L. Wohlgemuth
NORMAN, WOHLGEMUTH & THOMPSON
909 Kennedy Building
Tulsa, Oklahoma 74103

Mary B. Lewis
Mary B. Lewis

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

ALLSTATE INSURANCE COMPANY,)
a foreign insurance corporation,)

Plaintiff,)

vs.)

BOBBY G. BIGPOND, STEVEN)
ANTEL and WENDELL EAVES,)

Defendants.)

Case No. 85-C-721-C

FILED

NOV 13 1985

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

ORDER OF DISMISSAL OF PLAINTIFF'S COMPLAINT

NOW, on this 13 day of November, 1985, upon the written stipulation of the plaintiff, for a Dismissal with Prejudice of the plaintiff's Complaint, the Court having examined said Stipulation for Dismissal, finds that the parties have entered into a compromised settlement of all of the claims involved herein, and the Court being fully advised in the premises finds that the plaintiff's Complaint against the defendant should be dismissed with prejudice.

IT IS THEREFORE ORDERED BY THE COURT that the Complaint of the plaintiff against the defendants be and the same is hereby dismissed with prejudice to any further action.

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

Closes Court

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,
Plaintiff,
vs.
SHARON A. DOLT,
Defendant.

NOV 13 1985

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

CIVIL ACTION NO. 85-C-491-C

DEFAULT JUDGMENT

This matter comes on for consideration this 13 day of November, 1985, 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, Sharon A. Dolt, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Sharon A. Dolt, was served with Alias Summons and Complaint on September 12, 1985. 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, Sharon A. Dolt, for the principal sum of \$418.13, plus interest at the rate of 15.05 percent per annum and administrative costs of \$.68

er month from September 28, 1984, until judgment, plus interest thereafter at the current legal rate of 8.08 percent from date of judgment until paid, plus costs of this action.


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 13 1985

JOHNNY W. ALLBRITTON,
Plaintiff,

vs.

MARGARET M. HECKLER,
Secretary of Health and
Human Services of the
United States of America,
Defendant.

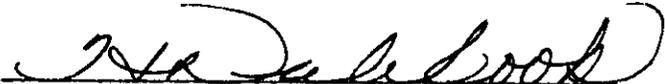
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

CIVIL ACTION NO. 85-C-225-C

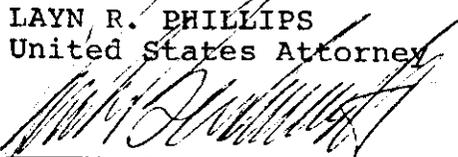
O R D E R

Upon the Motion of the Defendant, Secretary of Health and Human Services, by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and for good cause shown, pursuant to the Social Security Disability Benefits Reform Act of 1984, it is hereby ORDERED that this case be remanded to the Secretary for readjudication.

Dated this 13th ^{November} day of ~~October~~, 1985.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

LAYN R. PHILLIPS
United States Attorney

PETER BERNHARDT
Assistant U.S. Attorney

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

FILED

NOV 13 1935

pt

BANK OF COMMERCE AND TRUST)
COMPANY,)
)
Plaintiff,)
)
vs.)
)
DELAWARE ENERGY SHARES, INC.,)
DUNOCO DEVELOPMENT CORPORATION,)
and LONNIE M. DUNN, JR.,)
)
Defendants.)

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

No. 84-C-934-C ✓

ORDER

Now before the Court for its consideration is the motion of plaintiff to dismiss Counts 1, 2, 3, 4, 6, 7, 8, 9, 10 and 11 of defendants' counterclaim for the reason that these claims are barred by the applicable statute of limitations. In response, defendants assert that the counterclaims are compulsory and that even though the statutory period has run, the limitation period was waived by the filing of the complaint.

This is an action by plaintiff Bank of Commerce and Trust Company (BOC) against defendants Delaware Energy Share, Inc. (Delaware), Dunoco Development Corporation (Dunoco) and Lonnie M. Dunn, Jr. (Dunn) for breach of promissory notes and guaranty agreements. Defendants answered alleging the plaintiff knowingly conspired with other third parties to fraudulently induce defendants to borrow monies from plaintiff which otherwise defendant would not have borrowed. Defendants allege because of plaintiff's banking relationship with other third parties, plaintiff was cognizable of facts unknown to defendants involving

defendants intended purchase of securities with the loan proceeds. Defendants therefore contend that the scheme knowingly engaged in by plaintiff was in violation of federal and state securities laws, Racketeer Influenced and Corrupt Organizations Act and various common law torts.

Defendants' counterclaim arises out of their purchase of Dalco Petroleum Corporation's (Dalco) publicly traded securities. The defendants claim they purchased the securities in June, 1982, after receiving certain financial papers of Dalco. These financial papers allegedly failed to show accurately the diminished worth of Dalco. Defendants allege they had no knowledge of the misrepresentations in the financial statements until September, 1982. Defendants assert that plaintiff had knowledge of the financial condition of Dalco through its banking relationships and induced defendants to take out the loans so that defendants would be held responsible for the indebtedness Dalco and its principal shareholder owed to plaintiff. Further, defendants allege that plaintiff exercised control over the seller (principal shareholder) of Dalco stock and convinced the seller to sell Dalco stock to defendants so plaintiff could avoid a loss on loans made to the seller. Plaintiff filed its complaint on November 26, 1984, for breach of the promissory notes and guaranties. Defendants counterclaimed on February 4, 1985. It is undisputed that the causes of action set forth in the defendants' counterclaim accrued in September, 1982, the date defendants

causes of action accrued. Defendants filed their counterclaims two years and five months after their causes of action accrued.

Count 1 of defendants' counterclaim alleges violations of section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b) and Rule 10b-5, 17 C.F.R. §240.10b-5. The statute of limitation for §10b actions is found in the analogous forum's state statute. Chiodo v. General Waterwork Corp., 380 F.2d 860, 867 (10th Cir. 1967), cert. den. 389 U.S. 1004 (1967). In Oklahoma, actions under §10b are governed by 12 O.S. §95(3). McFadden & Bro., Inc. v. Home-Stake Production Co., 295 F.Supp. 587, 589 (N.D. Okla. 1968). This statute provides that a civil action for fraud must be brought within two years from the discovery of the fraud. Since defendants' counterclaim was brought two years and five months after the discovery of the fraud, the action was brought outside the limitation period.

Courts have not clearly resolved the question whether plaintiff, by instituting its action, waives the defense of statute of limitations thereby precluding plaintiff from objecting to an untimely counterclaim. Courts have generally allowed counterclaims barred by limitation for set-off or recoupment purposes when the counterclaim arises out of the same occurrence as plaintiff's action. See Wright & Miller, Federal Practice and Procedures, §1419, and accompanying annotations. The Court finds that Count 1 of defendants' counterclaim brought under §10b arises out of the same transaction as plaintiff's action, in that, defendants assert plaintiff conspired with third parties in

a fraudulent scheme to induce defendants to both execute the promissory notes and purchase the securities from the proceeds. Several federal courts have permitted untimely compulsory counterclaims, brought under federal substantive law, to be asserted in seeking recoupment, but precludes defendants from seeking affirmative relief. See e.g. Klemens v. Air Line Pilots Assoc., Int'l, 736 F.2d 491, 501 (9th Cir. 1984). The Tenth Circuit has endorsed this concept in Hartford v. Gibbons & Reed Co., 617 F.2d 567 (10th Cir. 1980). Hartford is distinguishable in that the Tenth Circuit was construing state substantive and procedural law of New Mexico, however, the reasoning used by the court in permitting a time-barred compulsory counterclaim is applicable. The court said:

These prescriptive statute of limitation are, by their very nature, arbitrary. They operate against even the most meritorious claims without regard to the nature of the injury involved, the social considerations or the emotional appeal of the claim.

The harshness in their application, however, has been dulled somewhat by judicial maxim that 'the law favors the right of action rather than the right of limitation.' 617 F.2d at 569.

The court concluded that a strict application of the statute of limitations would allow litigation on the main claim but preclude litigation on a compulsory counterclaim and that the harshness of this result has been mitigated by both judicial and legislative action. 716 F.2d at 570. Therefore the Court finds as to Count 1 of defendants' counterclaim brought pursuant to §10b the defendants may assert the counterclaim for recoupment or set-off

but not for affirmative relief even though the counterclaim is time barred.

Count 2 of defendants' counterclaim alleges violations of section 17 of the Securities Exchange Act of 1933, 15 U.S.C. §77q. The Court need not reach the merits of plaintiff's allegation that this claim is time barred since this Court finds that no private right of action exists under §17. See, State of Ohio v. Peterson, 651 F.2d 687 (10th Cir. 1981). Therefore Count 2 of defendants' counterclaim must be dismissed, by Order of the Court sua sponte, for failure to state a claim upon which relief can be granted.

Count 3 of defendants' counterclaim alleges violations of section 5 of the Securities Exchange Act of 1933, 15 U.S.C. §77e and seeks recovery under section 12 of the Securities Exchange Act of 1933, 15 U.S.C. §77l. The statute of limitation for §12 actions is found in §13 of the Act, allowing a one year limitation period. Wertheim & Co. v. Coddling Embryological Sciences, Inc., 620 F.2d 764, 767 (10th Cir. 1980). Count 4 of defendants' counterclaim alleges violations of section 18(a) of the Securities Exchange Act of 1934, 15 U.S.C. §78r. The statutory period stated in §18c is one year. Count 8 alleges violations of another federal statute the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961. The statute of limitation is to be taken from the most analogous state statute, in this instance, common law fraud, 12 O.S. §95(3). See Kirschner v. Cable/Tel. Corp., 576 F.Supp. 234, 241 (E.D. Penn. 1983). The limitation period is therefore two years. For the reasons set

forth above the Court finds that as to Count 3, Count 4 and Count 8 defendants may assert the counterclaims for recoupment or set-off but not for affirmative relief.

Count 5 of defendants' counterclaim alleges violations of the Texas Securities Act, 33 Tex.Red.Civ.Stat. Ann. Art. 581-33. Count 6 alleges violations of the Oklahoma Securities Laws, 71 O.S. §101 et. seq., and Count 7 alleges violations of the California Corporation Code, §§25401 and 25501. The defendants are asserting that the alleged fraudulent scheme engaged in by the plaintiff violated simultaneously three separate state's laws. Under the commands of Klaxon v. Stentor Elec. Mfg. Co., 313 U.S. 487 (1941), a federal court adjudicating a state law issue must apply the law of the forum state, including that state's choice of law rules. Although Klaxon was a diversity jurisdiction case, the same principle holds true with respect to pendent jurisdiction claims. Systems Operations v. Scientific Games Dev. Corp., 555 F.2d 1131, 1136 (3rd Cir. 1977); McSurely v. McClellan, 753 F.2d 88, 110 (D.C.Cir. 1985), and Rohm and Haas Co. v. Adco Chemical Corp., 689 F.2d 424, 429 (3rd Cir. 1982). Counts 5, 6, 7 all allege violations of state securities laws therefore they are based on state, not federal law and the Court's selection of applicable law must be governed by the choice-of-law principles of the forum state, Oklahoma. Systems Operations, supra. Since courts apply tort principals to security law violations as being the most analogous law, correspondingly the Court will apply the choice-of-law principles applicable to tort actions in this case.

Oklahoma has adopted the "most significant relationship" test in tort actions. White v. White, 618 P.2d 921 (Okla. 1980). Factors to be taken into account in determining which state has the most significant relationship to the occurrence and the parties in tort actions include: (1) place where the injury occurred, (2) place where the conduct causing the injury occurred, (3) domicile, (4) residence, (5) place of incorporation, (6) place of the business of the parties and (7) the place where the relationship between the parties occurred. White supra at 924. Given the facts of this case, the alleged fraudulent conduct occurred within the State of Oklahoma and it is from Oklahoma that most of the relevant documents emanated. Therefore it would be reasonable, based upon the facts the Court has before it, to choose Oklahoma as the single state whose law should apply. Therefore the Court Orders sua sponte that Counts 5 and 7 of defendants' counterclaim are dismissed for the reason that the State of Oklahoma bears the most significant relationship to the parties and the occurrence at issue.

Counts 6, 9, 10 and 11 of defendants' counterclaim allege violation of various state statutory or common laws each having a statute of limitation period of two years. Oklahoma procedural law is determinative as to these causes of action, 12 O.S. §2013(c) provides in part:

A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. Where a counterclaim and the claim of the opposing party arise out of the same transaction or occurrence, the counterclaim shall not be barred by a statute of limitation notwithstanding that it was barred at the time the petition

was filed, and the counterclaimant shall not be precluded from recovering an affirmative judgment.

Oklahoma statutory law allows counterclaims to be asserted -- regardless of whether they are time-barred by a statute of limitation -- as long as the counterclaim arose out of the same transaction, occurrence or event. The Court has determined that defendants' counterclaims against plaintiff do arise out of the same transactional circumstance. Therefore as to Counts 6, 9, 10 and 11 involving state claims, the Court finds that defendants may assert the counterclaims and seek affirmative relief.

The plaintiff has filed a reply and has not sought dismissal of Counts 15, 16, 17, 18 and 19. Counts 12, 13, 14 and 20 are dismissed since they are only asserted against third parties which have previously been dismissed from the action.

Therefore, premises considered, it is the Order of the Court that the motion of the plaintiff, Bank of Commerce and Trust Company, to dismiss Count 1, 3, 4, 6, 8 9, 10 and 11 of defendants' counterclaim is denied. The Court Orders, sua sponte, that Counts 2, 5, 7, 12, 13 14 and 20 of defendants' counterclaim are dismissed.

IT IS SO ORDERED this 13th day of November, 1985.


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

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

FILED

NOV 13 1985

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

BANK OF COMMERCE AND TRUST
COMPANY,

Plaintiff,

vs.

DELAWARE ENERGY SHARES, INC.,
DUNOCO DEVELOPMENT CORPORATION,
and LONNIE M. DUNN, JR.,

Defendants,

and

DALCO PETROLEUM CORPORATION,
a Nevada corporation; PEAT,
MARWICK & MITCHELL, an Oklahoma
corporation; UTICA BANK AND
TRUST COMPANY; JAY THOMAS;
KENNETH C. BOND; C. PAUL EVANS;
PAUL H. MINDEMAN; L. DALE
MITCHELL; WAYNE R. SHARP;
VIRGIL S. TILLEY, JR.; JAMES W.
VICKERS; DEREK WHITTLE; JOHN
BREITENSTEIN; MURRY L. DEA;
ARTHUR R. SMITH; and GEORGE W.
OUGHTRED,

Third Party Defendants.

No. 84-C-934-C

ORDER

Now before the Court for its consideration are the motions
to dismiss the third-party complaint brought by third-party
defendants Jay Thomas, L. Dale Mitchell, Virgil S. Tilly, Paul H.
Mindeman and separately by John Breitenstein for failure of the
third-party complaint to comply with the requirements of Rule
14(a) F.R.Cv.P.

This is an action by the plaintiff, Bank of Commerce and
Trust company (hereinafter "BOC"), against Delaware Energy

Shares, Inc. (hereinafter "Delaware"), Dunoco Development Corporation (hereinafter "Dunoco") and Lonnie M. Dunn, Jr., (hereinafter "Dunn") for breach of promissory notes and guaranty agreements. The defendants filed a third-party complaint against numerous third-party defendants, including the movants Thomas, Mitchell, Tilly, Mindeman and Breitenstein. The third-party defendants are charged with violations of the federal and state securities laws, the Racketeer Influenced and Corrupt Organizations Act and various common law torts.

Third-party complaints must comply with the requirements of Rule 14(a) F.R.Cv.P. It provides in pertinent part:

(a) When Defendant May Bring In Third Party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him.

A third-party claim may be asserted under this rule only when the third party's liability is in some way dependent on an outcome of the main claim or when the third party is secondarily liable to the defendant. Wright & Miller, Federal Practice and Procedure §1446.

In the instant case defendants seek to proceed on their third-party complaint on the basis the fraudulent misrepresentations allegedly made by the third parties caused the defendants to incur their liability to the plaintiff which they otherwise would not have incurred absent the alleged misrepresentations.

The defendants rely on the case of Tower Mfr. Corp. v. Reynolds, 81 F.R.D. 560 (W.D. Okla. 1978) in support of a liberal construction of Rule 14(a). This Court elects not to follow the reasoning set forth by Judge Daughtery in that opinion, but instead will follow the traditional interpretation of Rule 14(a) which has been repeatedly applied by the Tenth Circuit. See e.g. U.S.Fidelity & Guaranty Co. v. American State Bank, 372 F.2d 449 (10th Cir. 1967).

The Court finds that the third-party complaint does not come within the purview of the third-party impleader under Rule 14(a) F.R.Cv.P. The purpose of Rule 14 is to avoid "the situation that arises when a defendant has been held liable to plaintiff and then finds it necessary to bring a separate action against the third individual who may be liable to defendants for all or a part of plaintiff's original claim." Wright Miller, supra §1442. The fact that the third-party claim arises against the same general background as the main claim is not enough to allow application of Rule 14 to independent claims. U.S. Fidelity & Guaranty Co. v. American State Bank, Id. Regardless of the success or failure of the plaintiff's claim against the defendants, the defendants claim against the third parties would persist as independent claims, supra. In the third-party complaint, defendants seek monetary damages against third parties over and above the amount plead by plaintiff in the complaint, as follows:

Count I	\$25,000,000
Count II	\$25,000,000

Count III	Restitution
Count IV	Undetermined amount
Count V	Rescind Stock Purchase Agreement
Count VI	Rescind Stock Purchase Agreement
Count VII	Rescind Stock Purchase Agreement
Count VIII	Treble damages
Count IX	\$100,000,000
Count X	\$25,000,000
Count XI	\$100,000,000
Count XVIII	Rescission of Notes
Count XX	Amount of alleged illegal gain

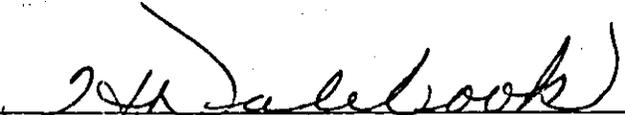
Therefore there is no attempt by the defendants to hold the third-parties secondarily liable on plaintiff's claim against defendant, rather defendants have independent claims against the third-parties. The function of Rule 14(a) is to implead third-parties that are allegedly liable secondary as distinguished from primary. The liability is premised upon a fault that is imputed or constructive only, being based on some legal relation between the parties or arises from some positive rule of common or statutory law. U.S. v. Acord, 209 F.2d 709, 715 (10th Cir. 1954). The secondary or derivative liability notion is the touchstone for Rule 14 practice and is commonly based upon indemnity, subrogation, contribution, express or implied warranty, or some other legal theory. Wright & Miller, supra.

The Court finds that defendants' third-party complaint does not meet the criteria set forth in Rule 14(a) F.R.Cv.P.

Therefore premises considered, it is the Order of the Court that the motions to dismiss the third-party complaint brought by third-party defendants Jay Thomas, Paul H, Mindeman, L. Dale Mitchell, Virgil S. Tilly and separately by John Breitenstein are

granted. All third-party defendants are hereby dismissed from the subject action.

IT IS SO ORDERED this 13th day of November, 1985.


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

Entered

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

FILED

NOV 12 1985

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

THE GAS SERVICE COMPANY,)
et al.,)
)
Plaintiffs,)
)
v.)
)
AMOCO PRODUCTION COMPANY,)
et al.,)
)
Defendants.)

No. 85-C-568-B

O R D E R

This matter comes before the Court on the motion of plaintiff, Kansas Power and Light ("KPL"), to transfer the action to the District of Kansas. Defendants have objected thereto. For the reasons stated below, the plaintiff's motion is granted.

This action asserts claims for violations of Sections 1 and 2 of the Sherman Act, for common law fraud and conspiracy to defraud, and for breach of contract. The action arises from the sale of natural gas by certain producers to an affiliated pipeline, and that pipeline's resale of the gas to plaintiffs in Kansas and Missouri.

The case was initially filed in the Western District of Missouri. On June 14, 1985, on its own motion, the United States District Court for the Western District of Missouri moved the case to this court. Subsequently, two cases (85-2349-0 and 85-2354-S) similar to this one were filed in the United States District Court for the District of Kansas. The Kansas court has overruled a motion to transfer the Kansas cases to the Northern

District of Oklahoma. A motion to consolidate these cases is now pending before the Multi-District Panel.

KPL contends that trying these cases in separate courts will duplicate judicial effort, risk inconsistent verdicts and raise the possibility of overlapping damages and multiple recoveries. At a status conference held before this Court October 8, 1985, all parties agreed that for discovery purposes the litigation in Kansas and before this Court should be consolidated. Nearly all parties seemed to agree that the cases should be consolidated for trial. The issue then seems to be whether the cases, if consolidated, should be tried in Kansas or in this Court. Plaintiffs contend that transfer to Kansas is simpler and more efficient because the actions pending there involve the state, state agencies and municipalities that purchased the subject gas and individual Kansas gas users. Defendants contend that many of the witnesses in this case are located in Tulsa and that much of the evidence to be used at trial is located at Amoco's headquarters in Tulsa, therefore for convenience the matter should be retained here.

28 U.S.C. §1404(a) provides:

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

Plaintiffs brought this action on September 30, 1984, in the United States District Court for the Western District of Missouri. The federal court had subject matter jurisdiction since Counts I and II of the complaint allege violations of the Sherman Act.

Jurisdiction regarding Counts III and IV for fraud and breach of contract is conferred under the theory of pendent jurisdiction.

Under 28 U.S.C. §1404(a), a district court may transfer an action in the interest of justice to any district where it might have been brought. Thus, the initial question facing this Court is whether this action might have been brought in the District of Kansas. The question is whether venue would be proper in the District of Kansas.

15 U.S.C. §22 provides:

Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business....

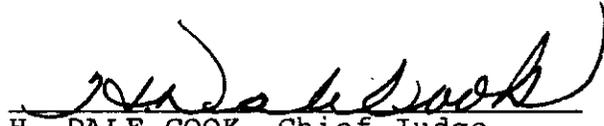
The general venue statute provides that a civil action which is not based solely on diversity jurisdiction may be brought only in the judicial district where all the defendants reside or in which the claim arose, except as otherwise provided by law. 28 U.S.C. §1391(b). The statute provides further that a corporation may be sued "in any judicial district in which it is incorporated or licensed to do business or is doing business." 28 U.S.C. §1391(c). All of the defendants in this action are licensed to do business in Kansas, and therefore, the action "might have been brought" in the District of Kansas.

The next consideration for the Court is whether this case should be transferred "for the convenience of parties and witnesses, in the interest of justice." The objective of §1404(a) is to prevent needless expenditure of judicial time and effort,

as well as public money. Van Dusen v. Barrack, 376 U.S. 612, 84 S.Ct. 805, 11 L.Ed.2d 945 (1964); Continental Grain Co. v. Barge FBL-585, 364 U.S. 19, 26, 27.

All parties to this action agree that it should be consolidated with the cases in Kansas, at least for the purposes of discovery, and probably for trial as well. Consolidation will avoid the wasted time and effort of multiple litigation from a single transaction. It would also avoid the possibility of inconsistent jury verdicts and multiple recovery by separate plaintiffs for the same damages. In this instance, the Court finds that any potential inconvenience to the defendants from transfer to the District of Kansas is outweighed by the convenience to other parties, and the avoidance of multiple litigation. Therefore, the motion to transfer this action to the District of Kansas is granted.

IT IS SO ORDERED this 12th day of November, 1985.


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

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

FILED

NOV 12 1985

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

SAMUEL R. KIRK AND
RICHARD E. WELLS,

Plaintiffs,

v.

GENERAL SIGNAL CORP., a New York
Corporation, et. al.,

Defendants,

GENERAL SIGNAL CORP., a New York
Corporation,

Third Party Plaintiff,

v.

SAMUEL R. KIRK AND THE SIERRA
COMPANY, INC.,

Third Party Defendants.

No. 85-C-48-B

CONSOLIDATED

No. 85-C-295-B

NOTICE OF DISMISSAL WITHOUT PREJUDICE

COME NOW the above-named Plaintiffs, Samuel R. Kirk and Richard E. Wells, and pursuant to the provisions of Rule 41(a)(1), hereby dismiss, without prejudice, the Defendants R. Casey Cooper and Randy Furr from the above-styled and numbered action. Neither of said Defendants have answered the Plaintiffs' Complaint, herein, nor has either of said Defendants moved for summary judgment.

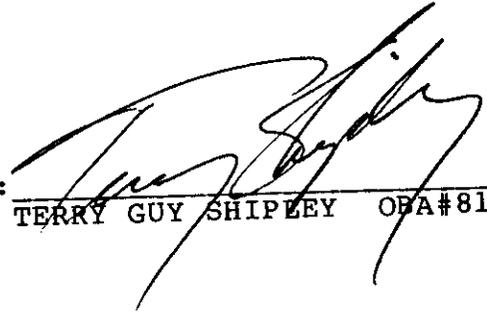
Commensurate with the filing of this Notice of Dismissal, said Plaintiffs have filed their joint Motion to Amend their Complaint by dismissing both their ninth claim for relief (as against R. Casey Cooper) and their tenth claim for relief (as against Randy Furr). Said Motion to amend their Complaint further seeks leave from the Court to allege diversity jurisdiction as against all of the other non-dismissed party Defendants remaining in this action.

Thomas Dee Frasier
James Clinton Garland
1700 Southwest Blvd.
Suite 100
Tulsa, Oklahoma 74107
(918) 584-4724

Philip Warren Redwine
400 South Crawford
Norman, Oklahoma 73069
(405) 364-5551

Terry Guy Shipley
304 South Main Street
Noble, Oklahoma 73068
(405) 236-1200

Attorneys for Plaintiffs/Third
Party Defendants

By: 

TERRY GUY SHIPLEY OBA#8183

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing Notice of Dismissal Without Prejudice was served upon the following:

Rodney A. Edwards
JONES, GIVENS, GOTCHER, DOYLE & BOGAN, INC.
201 West Fifth, Suite 400
Tulsa, Oklahoma 74103

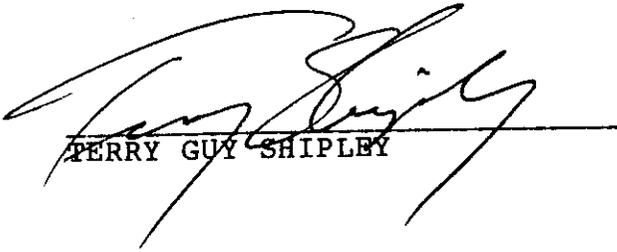
Attorneys for Defendant/Third Party
Plaintiff, General Signal Corporation

and

James Kincaid
CONNER & WINTERS
2400 First National Tower
Tulsa, Oklahoma 74103

Attorneys for Defendant Casey Cooper

by placing same in the United States mail, postage prepaid, this
day of November, 1985.


PERRY GUY SHIPLEY

James L. Muse, in the amount of \$3,499.93, plus accrued interest of \$166.02 as of July 31, 1981, plus interest thereafter at the , rate of 4 percent per annum until paid.

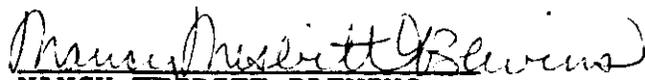
S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney


NANCY NESBITT BLEVINS
Assistant U.S. Attorney


JAMES L. MUSE

FILED

NOV 12 1985

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

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

SAMUEL R. KIRK and)
RICHARD E. WELLS,)

Plaintiffs,)

v.)

85-C-48-B

GENERAL SIGNAL CORPORATION,)
a New York corporation, et al.,)

CONSOLIDATED

Defendants,)

85-C-295-B

and)

GENERAL SIGNAL CORPORATION,)
a New York Corporation,)

Third Party)
Plaintiff,)

v.)

SAMUEL R. KIRK and)
THE SIERRA COMPANY, INC.,)

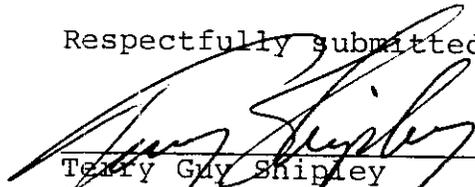
Third Party)
Defendants.)

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

COME NOW Samuel R. Kirk and Richard E. Wells, Plaintiffs, and R. Casey Cooper, Defendant, and stipulate pursuant to Rule 41(a), Fed. R. Civ. P., that all claims for relief brought by Plaintiffs Samuel R. Kirk and Richard E. Wells in their Complaint filed herein against Defendant R. Casey Cooper are hereby dismissed without

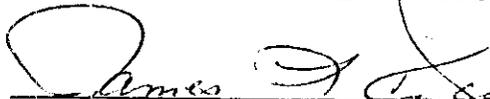
prejudice, with each party to bear his own costs, expenses and attorneys' fees.

Respectfully submitted,



Terry Guy Shipley
304 South Main Street
Noble, Oklahoma 73063
(405) 872-5111

Attorney for Plaintiffs Samuel R.
Kirk and Richard E. Wells

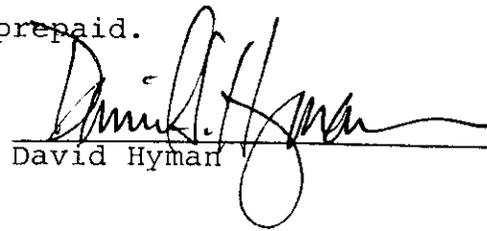


James L. Kincaid
2400 First National Tower
Tulsa, Oklahoma 74103

Attorney for Defendant
R. Casey Cooper

CERTIFICATE OF MAILING

This is to certify that on this 12th day of November, 1985,
I mailed a true and correct copy of the foregoing Stipulation of
Dismissal Without Prejudice to Rodney A. Edwards, Jones, Givens,
Gotcher, Doyle & Bogan, Inc., 201 West Fifth, Tulsa, Oklahoma 74103,
by U.S. Mail, first class postage prepaid.



David Hyman

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

FILED

NOV 12 1985

SONJA MARIE WRAY BLACKWELL,)
)
 Plaintiff,)
)
 vs.)
)
 HENRY REILLY, an individual;)
 BEN WILLIAMS, an individual;)
 ROCKWELL INTERNATIONAL)
 CORPORATION, a Delaware)
 corporation; and UNITED)
 AUTOMOBILE, AEROSPACE AND)
 AGRICULTURAL WORKERS OF AMERICA,)
 LOCAL 952,)
)
 Defendants.)

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

No. 84-C-807-C

O R D E R

Now before the Court for its consideration is the second motion of defendant Reilly for dismissal filed December 13, 1984, pursuant to Rule 12(b)(6) F.R.Cv.P. on the grounds that Reilly is not a proper defendant in an action arising under §301(a) of the Labor Management Relations Act, 29 U.S.C. §185(a). Because this second motion is dispositive, defendant Reilly's joint motion to dismiss with defendant United Workers on other grounds filed on October 16, 1984, shall not be ruled upon as to defendant Reilly.

Plaintiff brought suit in state court August 23, 1984, against, among others, defendant Reilly as employee of the defendant labor union, and in the three surviving causes of action alleged against defendant Reilly conspiracy, interference with contractual and business relations and intentional infliction of emotional distress. Under the facts of this case, all three

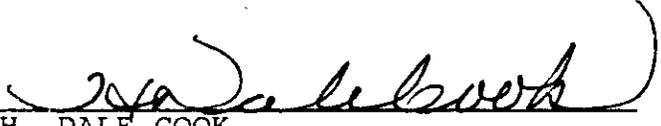
causes of action may be characterized as arising under §301(a) of the Labor Management Relations Act, 29 U.S.C. §185(a) for reasons stated in this Court's order of this date sustaining defendant Rockwell's motion for summary judgment. The United States Supreme Court has stated that

[w]hen Congress passed §301, it declared its view that only the union was to be made to respond for union wrongs, and that the union members were not to be subject to levy Where the union has inflicted the injury it alone must pay. Atkinson v. Sinclair Refining Co., 370 U.S. 238, 247-8, 249 (1962).

Atkinson has been interpreted by the United States Court of Appeals for the Fifth Circuit to mean that union employees are not proper parties to an action under §301. Ramsey v. Signal Delivery Service, Inc., 631 F.2d. 1210, 1212 (5th Cir. 1980). As defendant Reilly is and was at the relevant times a union employee, he is not a proper defendant in an action arising under §301.

Accordingly, it is the Order of the Court that the second motion to dismiss of defendant Henry Reilly should be and is hereby granted.

IT IS SO ORDERED this 17 day of November, 1985.


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

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

FILED

NOV 12 1985

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

SONJA MARIE WRAY BLACKWELL,)
)
 Plaintiff,)
)
 vs.)
)
 HENRY REILLY, an individual;)
 BEN WILLIAMS, an individual;)
 ROCKWELL INTERNATIONAL)
 CORPORATION, a Delaware)
 corporation; and UNITED)
 AUTOMOBILE, AEROSPACE AND)
 AGRICULTURAL WORKERS OF AMERICA,)
 LOCAL 952,)
)
 Defendants.)

No. 84-C-807-C

O R D E R

Now before the Court for its consideration is the motion of defendant Williams for dismissal pursuant to Rule 12(b)(4) F.R.Cv.P. and Rule 12(b)(6) F.R.Cv.P., or, in the alternative, for summary judgment pursuant to Rule 56 F.R.Cv.P. As the Court finds that the plaintiff has failed to state a claim against defendant Williams, the motion shall be ruled upon under Rule 12(b)(6) F.R.Cv.P.

Plaintiff brought suit in state court against, among others, defendant Williams as an employee of Rockwell International Corporation and in the three surviving causes of action alleged against defendant Williams conspiracy, interference with contractual and business relations, and intentional infliction of emotional distress. Under the facts of this case, all three causes of action may be characterized as arising under §301(a) of the Labor Management Relations Act, 29 U.S.C. §185(a), for

reasons stated in this Court's order of this date sustaining defendant Rockwell's motion for summary judgment. In Ramsey v. Signal Delivery Service, Inc., 631 F.2d 1210 (5th Cir. 1980), the United States Court of Appeals for the Fifth Circuit held that

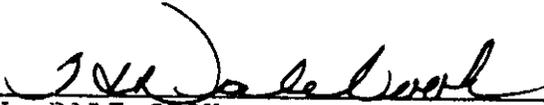
the law is well settled that individual employees are not proper parties to a suit brought under §301 of the Labor Management Relations Act, 29 U.S.C. §185. Rather, §301 suits are confined to defendants who are signatories of the collective bargaining agreement under which they are brought. Id., at 1212 (footnote omitted).

Accord, Loss v. Blankenship, 673 F.2d 942, 946 (7th Cir. 1982); Teamsters Local Union No. 30 v. Helms Express, Inc., 591 F.2d 211, 217 (3rd Cir. 1979), cert. denied, 444 U.S. 837 (1979). Contra, Painting and Decorating Contractors Ass'n v. Painters and Decorators Joint Comm. 707 F.2d. 1067, 1071 (9th Cir. 1983), cert. denied 104 S.Ct. 1709 (1984).

The Ramsey statement quoted above is the view adopted by most courts who have addressed the issue, and is persuasive upon the Court. As defendant Williams is not a signatory to the collective bargaining agreement, he is not a proper defendant in an action arising under §301.

Accordingly, it is the Order of the Court that the motion to dismiss of defendant Ben Williams should be and is hereby granted.

IT IS SO ORDERED this 11th day of November, 1985.


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

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

FILED

NOV 12 1985

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

SONJA MARIE WRAY BLACKWELL,)
)
 Plaintiff,)
)
 vs.)
)
 HENRY REILLY, an individual;)
 BEN WILLIAMS, an individual;)
 ROCKWELL INTERNATIONAL)
 CORPORATION, a Delaware)
 corporation; and UNITED)
 AUTOMOBILE, AEROSPACE AND)
 AGRICULTURAL WORKERS OF AMERICA,)
 LOCAL 952,)
)
 Defendants.)

No. 84-C-807-C

O R D E R

Now before the Court for its consideration is the motion of defendant Rockwell International Corporation ("Rockwell") for dismissal, pursuant to Rule 12(b)(6) F.R.Cv.P. or, in the alternative, for summary judgment pursuant to Rule 56 F.R.Cv.P. based on the reason that the plaintiff's three surviving causes of action are time-barred under the statute defendant alleges is applicable to plaintiff's causes of action.

Matters outside the pleadings have been presented to and considered by the Court. The Court, therefore views the motion as one for summary judgment pursuant to Rule 56 F.R.Cv.P. As such, the matter is now ready for determination.

Plaintiff brought suit in state court August 23, 1984, against Rockwell and co-defendants Reilly, Williams and United Automobile, Aerospace and Agricultural Workers of America, Local 952 ("United Workers"), a local labor union. Plaintiff alleged,

in the three causes of action still surviving: (1) conspiracy by defendants Reilly and Williams, as employees and agents of United Workers and Rockwell, respectively, to deprive plaintiff of her employment and to deny a proper hearing for plaintiff's union grievance; (2) breach of contract by Rockwell, and interference with contractual and business relations by Reilly and Williams as agents of United Workers and Rockwell, respectively; and (3) intentional infliction of emotional distress by Reilly and Williams as agents of United Workers and Rockwell, respectively. The alleged wrongful conduct began in May, 1982, and ended on or about August 30, 1982. Plaintiff submitted a grievance to her union (United Workers) on January 17, 1983. Said grievance was denied on April 14, 1983, the union appealed the denial on April 25, 1985, and the appeal was withdrawn by the union on April 28, 1983. Plaintiff took no further action until the filing of this lawsuit.

On September 25, 1984, defendant Rockwell filed a petition for removal and a removal bond in the appropriate amount with this Court. In this petition and in arguments supporting the present motion, Rockwell alleged that the plaintiff's causes of action arose under §301(a) of the Labor Management Relations Act, 29 U.S.C. §185(a), that the plaintiff's exclusive remedy was pursuant to federal law and that therefore the state law claims of the state court petition were preempted, citing San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959).

Further, Rockwell's motion and citation of authorities assert that all three causes of action are barred under

DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983), which held that the six-month statute of limitations provided in §10(b) of the National Labor Relations Act, 29 U.S.C. §160(b), was applicable to a "hybrid §301/fair representation claim", 462 U.S. at 165. Although the parties have cited no authority on the matter of accrual, the Court concludes that the latest possible accrual date for the first two causes of action is April 14, 1983, the date the grievance was denied, because it is on that date that the plaintiff knew or reasonably should have known that a breach of the duty of fair representation had occurred, though some possibility of nonjudicial enforcement remained. See Santos v. District Council of New York City, 619 F.2d 963, 969 (2d Cir. 1980). As for the claim of intentional infliction of emotional distress, the final wrongful act appears to be the discharge itself, on August 30, 1982. As the plaintiff's lawsuit was not filed until August 23, 1984, the six-month limitation period imposed by DelCostello, supra, and §10(b) has clearly passed as to all three causes of action. The dispositive issue is whether the three causes of action arise under §301(a).

The first two causes of action, conspiracy and breach of contract/tortious interference with employment and contractual relationship, are dealt with easily. These particular claims, even if alleged in terms of state law, come within the ambit of 29 U.S.C. §185(a), and are therefore barred pursuant to DelCostello, supra. See Local 926, International Union of Operating Engineers, AFL-CIO v. Jones, 460 U.S. 669 (1983) and

Ramsey v. Signal Delivery Service, Inc., 631 F.2d 1210 (5th Cir. 1980).

Moreover, breach of a collective bargaining agreement arises under §301. Harper v. San Diego Transit Corp., 764 F.2d 663, 667 (9th Cir.1985). A claim for wrongful interference with a business relationship has likewise been ruled preempted and therefore barred. Carter v. Smith Food King, 765 F.2d 916, 921 (9th Cir. 1985).

Plaintiff's third cause of action, regarding intentional infliction of emotional distress, requires more extended discussion. The United States Supreme Court set forth an exception to federal preemption in Farmer v. United Brotherhood of Carpenters and Joiners of America, Local 25, 430 U.S. 290 (1977), for a claim that a defendant intentionally and by outrageous conduct caused severe emotional distress. This exception has been interpreted narrowly by most courts, and in Viestenz v. Fleming Companies, Inc., 681 F.2d 699 (10th Cir. 1982), cert. denied 459 U.S. 972 (1982), the United States Court of Appeals for the Tenth Circuit concluded that to come within the Farmer exception a litigant must satisfy a two prong test: (1) the conduct complained of must have been sufficiently "outrageous" and (2) the harm suffered must have resulted from the manner of discharge, rather than the fact of discharge itself, 681 F.2d at 703. The acts of which plaintiff complains as alleged in her state court petition are as follows: (a) in May, 1982, defendant Reilly

falsely informed the secretary of the Union and plaintiff's mother that plaintiff was discharged; (b) defendant Reilly stated to plaintiff "neither I nor this Union will ever represent you again"; (c) in mid-August, 1982, plaintiff received an unsigned telegram from defendant Rockwell stating that if medical leave papers were not turned in by the next day, she would be terminated, which statement proved to be false; (d) on or about August 30, 1982, plaintiff received a second telegram message from Rockwell stating that her employment was terminated. Applying the standard articulated in Viestenz, supra, to these acts, this Court concludes that neither prong of the standard is met. Initially, the Court cannot conclude that the conduct was of such kind "that no reasonable man in a civilized society should be expected to endure it" Viestenz, 681 F.2d at 703 (quoting Farmer v. Carpenters, 430 U.S. at 302). Therefore, the first prong is not met. Nor can the Court conclude that the conduct gives rise to a claim regarding the manner of discharge as distinguished from the mere fact of discharge itself. The Court therefore must conclude that the third cause of action of the plaintiff does not fall within the Farmer exception and is therefore barred by the six-month statute of limitation of §10(b) as deemed applicable by DelCostello. Thus, all three of plaintiff's causes of action against Rockwell are barred.

Accordingly, and because no material facts are at issue, it is the Order of the Court that the motion for summary judgment of

defendant Rockwell International Corporation should be and hereby
is granted.

IT IS SO ORDERED this 17th day of November, 1985.



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

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

FILED

NOV - 8 1985

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

TRANSAMERICA OCCIDENTAL LIFE)
INSURANCE COMPANY,)

Plaintiffs,)

vs.)

GAYNELL FEAMSTER,)

Defendant.)

Case No. 85-C-3-E

ORDER OF DISMISSAL

On this 7th day of Nov, 1985, upon written application of the parties for an order of dismissal with prejudice of the Complaint and all causes of action, the Court, having examined said application, finds that said parties have entered into compromise settlement covering all claims involved in the Complaint and Counterclaim and have requested the Court to dismiss the Complaint and Counterclaim with prejudice to any future action, and the Court, having been fully advised in the premises, finds that said Complaint and Counterclaim should be dismissed; it is, therefore,

ORDERED, ADJUDGED and DECREED by the Court that the Complaint and all causes of action of the Plaintiff and Defendant filed herein be and the same are hereby dismissed with prejudice to any further action.

JAMES O. ELLISON

JAMES O. ELLISON, JUDGE

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

FILED

NOV 8 1985

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

WILLIAM PATTON AND CAROL PATTON,)
)
Plaintiffs,)
)
vs.)
)
ATLANTIC RICHFIELD COMPANY,)
)
Defendants.)

No. 84-C-451-E

STIPULATION OF DISMISSAL

IT IS HEREBY STIPULATED that the above entitled action be dismissed with prejudice, Plaintiffs and Defendant each to bear their own costs and attorney fees.

DATED this 9th day of October, 1985.

HICKMAN & HICKMAN

By _____

WILLIAM L. HICKMAN
16 East 16th Street
Suite 300
Tulsa, Oklahoma 74119
(918)582-9773

Attorneys for Plaintiffs

SHORT, HARRIS, TURNER & DANIEL

By _____

REX SHORT
OBA NO. 8209
2761 E. Skelly Drive
Suite 700
Tulsa, Oklahoma 74105
(918)743-6201
Attorneys for Defendant

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 THREE PARCELS OF REAL PROPERTY)
 WITH EQUIPMENT, DESCRIBED AS)
 The West ½ of the Southwest ¼)
 of the Northwest ¼, and the)
 West ½ of the Northwest ¼ of)
 the Southwest ¼, in Section 21,)
 Township 24 North, Range 18)
 East, of the Indian Base and)
 Meridian; The East 2 acres)
 of the Northwest ¼ of the)
 Northwest ¼ of the Northwest ¼,)
 in Section 21, Township 24)
 North, Range 18 East, of the)
 Indian Base and Meridian;)
 and the East 2 Acres of the)
 Southwest ¼ of the Northwest ¼)
 of the Northwest ¼, in Section)
 21, Township 24 North, Range 18)
 East, of the Indian Base and)
 Meridian,)
)
 Defendants.)

FILED

NOV 8 1985

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

CIVIL ACTION NO. 85-C-346-C

DECREE OF FORFEITURE
AND ORDER DISMISSING CLAIMS

It appearing that all claims filed herein have been fully compromised and settled, as more fully appears by the written Stipulation for Compromise entered into between the Claimants, Carey C. Drumheller, a/k/a Carey Carroll Drumheller, Mary L. Drumheller, a/k/a Mary Louise Drumheller, Federal Land Bank of Wichita, and the Plaintiff, United States of America, to which Stipulation for Compromise reference is hereby made and which is incorporated herein, all claims filed herein should

accordingly be dismissed with prejudice and the Clerk of Court should be authorized and directed to enter of record in this civil action such dismissal. It further appearing that no other claims to said property have been filed since such property has been seized

Now, therefore, on motion of Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and with the consent of James C. Linger, counsel for Carey C. Drumheller, a/k/a Carey Carroll Drumheller, and Mary L. Drumheller, a/k/a Mary Louise Drumheller, and Russell D. Peterson, counsel for Federal Land Bank of Wichita, it is

ORDERED AND DECREED that the following described real property be and hereby is condemned as forfeited to the United States of America for disposition according to the terms of the Stipulation for Compromise:

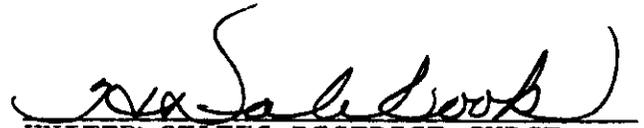
The East Two (2) acres of the West Half ($W\frac{1}{2}$) of the Northwest Quarter ($NW\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$); the East Two (2) acres of the West Half ($W\frac{1}{2}$) of the Southwest Quarter ($SW\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$); and the East Two (2) acres of the West Half ($W\frac{1}{2}$) of the Northwest Quarter ($NW\frac{1}{4}$) of the Southwest Quarter ($SW\frac{1}{4}$), all in Section 21, Township 24 North, Range 18 East of the Indian Base and Meridian, Rogers County, Oklahoma.

IT IS FURTHER ORDERED that the claims of Carey C. Drumheller, a/k/a Carey Carroll Drumheller, and Mary L. Drumheller, a/k/a Mary Louise Drumheller, and Federal Land Bank of Wichita, in this action, be and the same hereby are dismissed with prejudice, however, it is further ordered that the first

lien position of the Federal Land Bank of Wichita by virtue of the mortgage filed against the above described property filed on October 25, 1977 in Book 525 at Page 787 of the records of the county clerk of Rogers County, State of Oklahoma, shall remain in full force and effect on said forfeited property, and shall not be in any way be subordinated to the interest of the United States of America in this matter.

IT IS FURTHER ORDERED that the Complaint herein against the remainder of the Defendant real property which is not described above be and the same is hereby dismissed with prejudice.

IT IS SO ORDERED this 8th day of November, 1985.

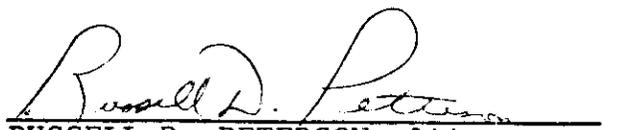

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

LAYN R. PHILLIPS
United States Attorney


NANCY NESBITT BLEVINS
Assistant United States Attorney


JAMES C. LINGER, Attorney
for Carey C. Drumheller,
a/k/a Carey Carroll Drumheller,
and Mary Louise Drumheller


RUSSELL D. PETERSON, Attorney
for Federal Land Bank of Wichita

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

FILED

NOV -8 1985

PETROLEUM RESERVE CORPORATION)
)
) Plaintiff,)
)
 vs.)
)
 WILLIAM DAVIS,)
)
) Defendant.)

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

No. 85-C-596-C

ORDER

Now before the Court for its consideration is the motion to dismiss pursuant to Rule 12(b)(2) F.R.Cv.P. for lack of in personam jurisdiction brought by the defendant William Davis.

On January 23, 1961, Foster and Davis, Inc. of Bartlesville, Oklahoma, and Cities Service Petroleum Company executed a "Bill of Sale" wherein Foster and Davis, Inc. conveyed to Cities Service the right, title and interest in certain oil and gas wells located in Osage County, Oklahoma. In return, Foster and Davis, Inc. retained a type of royalty interest in the minerals produced, known as "production payments" in the gross sum of \$319,250.00 payable over a course of years. Plaintiff is the successor-in-interest to Cities Service Oil Company. Defendant was one of the owners of the production payments, a portion of which was obtained by virtue of an Assignment of Production Payment dated March 26, 1971, which was executed in Oklahoma.

The total amount of the production payment reserved in the Foster and Davis Bill of Sale was fully paid by plaintiff in October, 1979. Since October, 1979, plaintiff has mistakenly

continued to make payments to defendant resulting in an overpayment of \$56,532.92. Plaintiff now seeks to recover the overpayments.

Defendant is a resident of Colorado and owns no real property in Oklahoma. Defendant alleges he has no contractual obligations nor business relationships in this state, and in particular, no contractual or business relationships which arise out of this action. Defendant was served with process in Buena Vista, Colorado. Defendant denies that this Court has in personam jurisdiction over him.

Plaintiff alleges that the production payments received by defendant are an interest in real property sufficient to satisfy "minimum contract" with this state as set forth in International Shoe Co. v. Washington, 326 U.S. 310 (1945). The right to royalty payments or production payments is a distinct and enforceable interest in the minerals after they are produced, Davis v. Mann, 234 F.2d 553 (10th Cir. 1956), rather than a direct interest in the real property. The mere fact defendant received royalty or production payments over a course of years which were transmitted from the State of Oklahoma is not sufficient contact with this state to satisfy the requirements of due process.

Plaintiff next contends that since defendant is the assignee of the production payments and that since the Assignment was executed by defendant within Oklahoma, the Court has sufficient bases to exercise in personam jurisdiction over him. In support of this proposition, plaintiff relies on Burger King Corp. v. Rudzewicz, ___ U.S. ___, 105 S.Ct. 214 (1985).

Plaintiff's reliance on Burger King is misplaced. The facts of Burger King are distinguishable. Burger King involved a Florida corporation whose principal offices are in Miami. It conducts most of its restaurant business through a franchise operation, under which franchises are licensed to use its trademarks and service marks in leased, standardized restaurant facilities for a period of 20 years. The governing contracts provide that the franchise relationship is established in Miami and governed by Florida law and call for payment of all monthly fees to Miami. A dispute arose between a franchise holder located in Michigan and Burger King. The Supreme Court affirmed the lower court's granting of in personam jurisdiction. The Supreme Court held that an individual's contract with an out-of-state party alone cannot automatically establish sufficient minimum contacts in the party's home forum, rather, the prior negotiations, contemplated future consequences, terms of the contract, and course of dealings between the parties must be evaluated to determine whether the defendant established minimum contact with the forum.

In the instant case, defendant received the rights to the production payment through an assignment. The assignment obligated plaintiff to make payments to the defendant, but the defendant had no mutual obligation to the plaintiff. The obligation was strictly a unilateral one on the part of the plaintiff. It has been established that "the unilateral activity of those who claim some relationship with a nonresident defendant cannot

satisfy the requirement of contact with the forum state."
Hanson v. Denckla, 357 U.S. 235, 253 (1958).

The Court finds that there is not sufficient contact between the State of Oklahoma and the defendant for the Court to assume in personam jurisdiction.

Therefore premises considered, it is the Order of the Court that the motion to dismiss brought by defendant William D. Davis is hereby granted.

IT IS SO ORDERED this 8th day of November, 1985.


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

Entered

FILED

NOV 8 1985

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

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

RUSSELL BOARDMAN,)
)
Plaintiff,)
)
vs.)
)
NATIONAL CAR RENTAL SYSTEMS, INC.,)
a Texas corporation, and HOUSEHOLD)
INTERNATIONAL, a Minnesota)
corporation,)
)
Defendant.)

No. 85-C-309-B

O R D E R

This matter comes before the Court on defendants' motion to dismiss or quash returns of service for lack of personal jurisdiction, improper service, and improper venue. For the reasons set forth below, defendant Household International is dismissed from the action and the motion is overruled with regard to defendant National Car Rental Systems, Inc.

Plaintiff herein is an Oklahoma resident who resided in Oklahoma City, Oklahoma at the time of the accident herein, but resided in Bartlesville, Oklahoma at the time this action was filed. Oklahoma City is in the Western District of Oklahoma; Bartlesville is within the geographical limits of this court, the Northern District of Oklahoma. Defendant Household International ("Household") is a Minnesota corporation with its principal place of business in Minnesota. Defendant National Car Rental Systems, Inc. ("National"), a subsidiary of Household International, is a Texas corporation with its principal place of business in Texas.

On July 30, 1983, at the National rental facility located at Hobbie Airport in Houston, Texas, plaintiff was unloading his

belongings from the trunk of an automobile which he had rented from National and had driven in Houston for the preceeding several days. An employee of National backed another rental car into the front of the automobile plaintiff was unloading. The collision caused the rear of the rented car to strike plaintiff in the legs and caused the trunk lid to strike plaintiff's head.

On March 29, 1985, plaintiff filed a complaint in this Court requesting damages for injuries incurred as a result of the negligence of defendants' employee.

Summons and a copy of plaintiff's complaint were served on National by certified mail addressed to the company "c/o C.T. Corporation System, 1601 Elm Street, Dallas, Texas 75201." Summons and a copy of the complaint were served on Household by certified mail to Household's Minneapolis, Minnesota address.

Defendant's motion submits that: 1) the Court lacks in personam jurisdiction over defendants, 2) process and service of summons are insufficient, and 3) venue is not proper in the Northern District.

At the evidentiary hearing on the motion to dismiss held on November 8, 1985, defendant National admitted it did business in Tulsa & Ok. City Oklahoma. It was also established that plaintiff or his secretary arranged by telephone call to National's Oklahoma City office for the car rental for plaintiff's stay in Houston. The alleged tort occurred on National's premises at Hobby Airport in Houston.

Title 12 Okl.Stat. Ann. §2004 provides:

"A Court of this state may exercise jurisdiction on any basis consistent with the

Constitution of this state and the
Constitution of the United States."

Oklahoma's long-arm statute is intended to reach to the
outer limits of due process.

Though the accident did not occur in Oklahoma, the
defendant National had sufficient Oklahoma contacts that it
might reasonably foresee being haled into court in Oklahoma.
Plaintiff has alleged sufficient facts to show the necessary
minimum contacts with the State of Oklahoma as to defendant
National. The accident occurred on National's premises in
Texas, but by virtue of the rental agreement entered into
between the parties in Oklahoma.

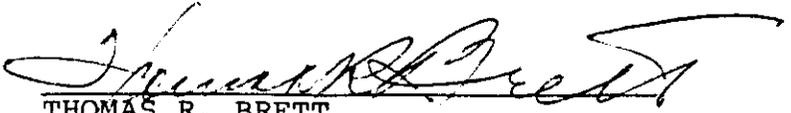
As for defendant Household, plaintiff admitted at the
November 8, 1985 hearing that there was no basis for Household's
presence in the matter, as its only known relationship to National
was as National's parent corporation.

Defendants assert, but do not brief, their contentions
of improper service and improper venue. Service of process upon
defendant National appears to be proper under Rule 4(d)(3), F.R.
Civ.P.

Venue is proper in this Court under 28 U.S.C. §1391, as it
was brought in the district where plaintiff resides.

Defendants' motion to dismiss is granted as to defendant
Household and denied as to defendant National.

IT IS SO ORDERED this 8th day of November, 1985.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

RICHARD ALLEN HAMPTON,)
)
Plaintiff,)
)
v.)
)
HARRY W. STEGE, et al.,)
)
Defendants.)

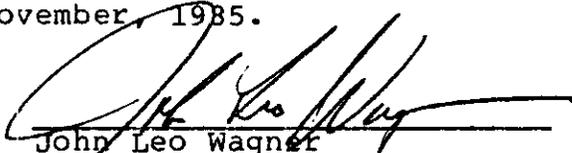
NOV -8 1985
890-C ✓
JACOB C. Silver, Clerk
U. S. DISTRICT COURT

PRELIMINARY FINDINGS AND RECOMMENDATIONS OF MAGISTRATE

The Magistrate informs the Court that during the telephone status conference conducted on November 5, 1985 the Plaintiff agreed to dismiss Defendants Cox, Nelson, and Stege from this suit, in that they were joined in error.

Therefore, it is the recommendation of the Magistrate that Defendants Cox, Nelson, and Stege be dismissed from this action without prejudice.

Dated this 6th day of November, 1985.


John Leo Wagner
United States Magistrate

ORDER

The Preliminary Findings and Recommendations of the Magistrate are hereby adopted and ratified by the Court, and Defendants Cox, Nelson, and Stege are hereby dismissed from this action without prejudice.


H. DALE COOK
CHIEF JUDGE

FILED

NOV 13 1985

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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
NOV 7 1985
Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 PATRICK K. BROWN et al.,)
)
 Defendants.)

CIVIL ACTION NO. 85-C-790-E

ORDER

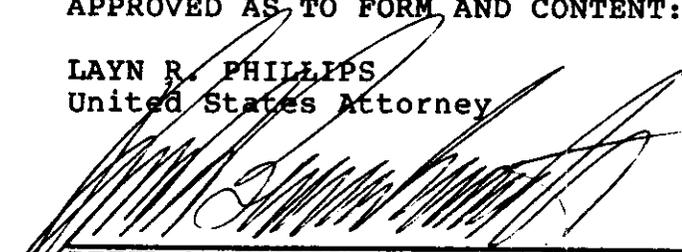
Upon the Motion of the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans' Affairs, by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and for good cause shown it is hereby ORDERED that this action is dismissed without prejudice.

S/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

LAYN R. PHILLIPS
United States Attorney


PETER BERNHARDT
Assistant United States Attorney

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

NOV -7 1985 *isj*

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
PRYOR STOCKMAN'S AUCTION, INC.,)
)
Defendant.)

CIVIL ACTION NO. 85-C-165-B ✓

STIPULATION OF DISMISSAL

Come now the parties herein by their respective
counsel and hereby stipulate and agree that the above-captioned
action be dismissed pursuant to Rule 41 of the Federal Rules of
Civil Procedure.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

Nancy Nesbitt Blevins

NANCY NESBITT BLEVINS
Assistant United States Attorney

Tim Trump

TIMOTHY T. TRUMP
Attorney for Defendant
PRYOR STOCKMAN'S AUCTION, INC.

8

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FILED

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA **NOV 7 1985**

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

KERN OIL & REFINING CO.,)
)
Plaintiff,)
)
vs.)
)
TENNECO OIL COMPANY,)
)
Defendant.)

No. 85-C-825-E ✓

STIPULATED ORDER

UPON the application of Tenneco Oil Company ("Tenneco") and Seth Herndon, Jr., ("Applicants"), the court hereby enters the following order relative to the production of documents described as follows (the "Documents"):

- A. All contracts, written agreements, invoices, notes of telephone conversation, daily diaries, or other documents drafted, dated, or executed between January 1, 1979, and December 31, 1980, which pertain to transactions between Herndon and Kern.
- All contracts, written agreements, invoices, notes of telephone conversations, daily diaries or other documents drafted, dated, or executed between January 1, 1979, and December 31, 1980, which pertain to transactions between Herndon and Mellon

Energy Products Company of Houston, Texas
("Mellon").

B. All letters, memoranda, telexes or notes sent from Kern to Herndon or from Herndon to Kern between January 1, 1979, and December 31, 1980.

All letters, memoranda, telexes or notes sent from Mellon to Herndon or from Herndon to Mellon between January 1, 1979, and December 31, 1980.

The court finds that the parties have reached an agreement as to the production of certain documents in captioned matter and that the Motion for Reconsideration of Order Quashing Subpoena Duces Tecum of Tenneco Oil Company is hereby moot.

The court further finds that copies of the Documents shall be produced by Seth Herndon, Jr., in the office of Sneed, Lang, Adams, Hamilton, Downie & Barnett, Sixth Floor, 114 East Eighth Street, Tulsa, Oklahoma, within ten (10) day of the date of this order.

The court further finds that Tenneco shall reimburse Seth Herndon, Jr., for the administrative cost of producing the documents at the rate of \$25.11 per day and the copying costs of the documents not to exceed 8¢ per copy. In this regard, the Court finds that within ten (10) days of the date of this order that Tenneco shall deposit \$300.00 in the trust account of

Doerner, Stuart, Saunders, Daniel & Anderson to be used to reimburse Seth Herndon for the administrative and copying cost of the Documents.

The court further finds that the parties have stipulated that the subpoenaed Documents are confidential commercial business records of Herndon Oil & Gas Company and that all said Documents should be protected under an order of this Court. That Tenneco and Kern and their respective employees shall not disclose the contents of or distribute copies of the said Documents to anyone other than the attorneys of record~~s~~ or representatives of the parties hereto, exclusively for use in or as a part of the litigation styled, Kern Oil & Refining Co. v. Tenneco Oil Company, Case Nos. CV81-3253 LEW (Kx) and CV82-6875 LEW (Kx) pending in the United States District Court for the Central District of California. That all Documents subpoenaed, including copies made thereof, that are not marked and offered in evidence will be returned to Seth Herndon, Jr., at the close of the trial of said actions numbered CV81-3253 LEW (Kx) and CV82-6875 LEW (Kx).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the parties have reached an agreement as to the production of certain documents in captioned matter and that the Motion for Reconsideration of Order Quashing Subpoena Duces Tecum of Tenneco Oil Company is hereby moot.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that copies of the Documents shall be produced by Seth Herndon, Jr., in the office of Sneed, Lang, Adams, Hamilton, Downie & Barnett, Sixth Floor, 114 East Eighth Street, Tulsa, Oklahoma, within ten (10) day of the date of this order.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Tenneco Oil Company shall reimburse Seth Herndon, Jr., for the administrative cost of producing the documents at the rate of \$25.11 per day and the copying costs of the documents not to exceed 8¢ per copy.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that within ten (10) days of the date of this order that Tenneco shall deposit \$300.00 in the trust account of Doerner, Stuart, Saunders, Daniel & Anderson to be used to reimburse Seth Herndon and for the administrative and copying cost of the Documents.

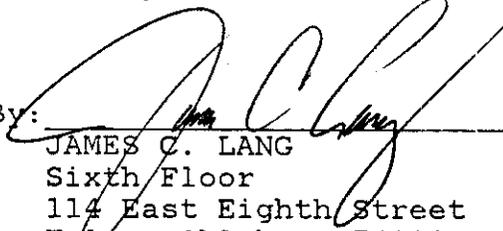
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the subpoenaed Documents are confidential commercial business records of Herndon Oil & Gas Company and that all said Documents are hereby protected under this order of the Court. That Tenneco and Kern and their respective employees shall not disclose the contents of or distribute copies of said Documents to anyone other than the attorneys of record^s or representatives of the parties hereto, exclusively for use in or as a part of the litigation styled, Kern Oil & Refining Co. v. Tenneco Oil Company, Case Nos. CV81-3253 LEW (Kx) and CV82-6875 LEW (Kx) pending in the United States District Court for the Central District of California. All said subpoenaed Documents, including copies made

thereof, that are not marked and offered in evidence will be returned to Seth Herndon, Jr., at the close of the trial of said actions numbered CV81-3253 LEW (Kx) and CV82-6875 LEW (Kx).


James O. Ellison
JUDGE OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OKLAHOMA

APPROVED:

SNEED, LANG, ADAMS,
HAMILTON, DOWNIE & BARNETT

By: 

JAMES C. LANG
Sixth Floor
114 East Eighth Street
Tulsa, Oklahoma 74119
(618) 583-3145

JOHN P. MATHIS
KIRK K. VAN TINE
BAKER & BOTTS
1701 Pennsylvania Ave., N.W.
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(202) 457-5500

JAMES R. MARTIN
GIBSON, DUNN & CRUTCHER
333 South Grand Avenue
Los Angeles, California 90071
(213) 229-7000

OF COUNSEL:
RALPH J. MAYNARD
ALFRED B. SMITH, JR.
TENNECO OIL COMPANY
Post Office Box 2511
Houston, Texas 77001
(713) 757-2131

Attorneys for Defendant
TENNECO OIL COMPANY

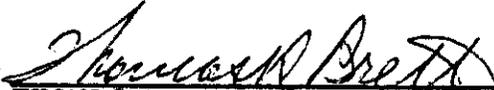
DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By: R. Robert Huff
R. Robert Huff, Esq.
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211

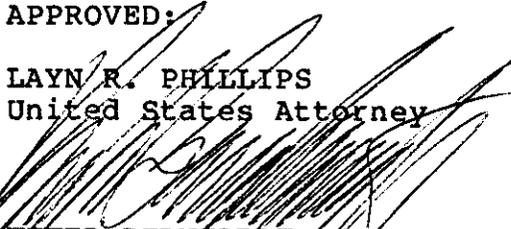
Attorneys for Seth Herrndon, Jr.

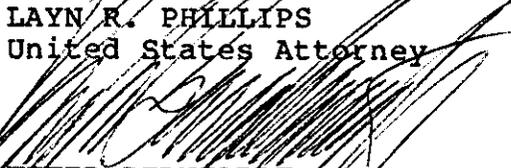
Debtor, Case No. 85-01361, Chapter 7, United States Bankruptcy
Court for the Northern District of Oklahoma.

IT IS THEREFORE ORDERED AND ACCESSED that this summons
enforcement case is rendered moot and the same is hereby
dismissed without prejudice.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:


LAYN R. PHILLIPS
United States Attorney


PETER BERNHARDT
Assistant United States Attorney

Entered

FILED

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

NOV - 6 1985 *ksj*

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

WARREN K. SMITH,
Plaintiff,
vs.
WESTERN AIRLINES, INC.,
Defendant.

No. 85-C-759-B ✓

ORDER

On this 1 day of November, 1985, there came on
before me the Motion of plaintiff to voluntarily dismiss the
instant case without prejudice.

There having been no Answer filed and no opposition of
Counsel, the Motion to Dismiss Without Prejudice is hereby
approved pursuant to FRCP Rule ~~41~~ 42.

Howard R. Brett
Judge of the U. S. District Court

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

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

NOV - 5 1985

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

MARYLAND NATIONAL
INDUSTRIAL FINANCE
CORPORATION, a Maryland
corporation,

Plaintiff,

v.

No. 85-C-866-E

THOMAS W. BEAVERS, ANITA
S. BEAVERS, and SUSAN L.
MILLER,

Defendants.

JUDGMENT BY DEFAULT

NOW ON THIS 4th day of ~~October~~ ^{November} 1985, this cause comes on for hearing before the undersigned Judge upon plaintiff's Motion for Entry of Default Judgment on its First Cause of Action of the Complaint herein against defendants, Thomas W. Beavers, Anita S. Beavers, and Susan L. Miller, and on plaintiff's Second Cause of Action of the Complaint herein against defendant Susan L. Miller, all pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure. It appearing to the Court that the Complaint in the above cause was filed on the 13th day of September, 1985, and that Summons and copies of the Complaint were duly served on defendants Thomas W. Beavers and Anita S. Beavers on September 19, 1985, and it appearing to the Court that the Summons and a copy of the Complaint was duly served on defendant Susan L. Miller on September 24, 1985, and it further appearing that no answer or other defense has been filed by defendants, Thomas W. Beavers, Anita S. Beavers, and Susan L. Miller, and each of them, and that default was entered by the Clerk of this Court on the 17th day of October, 1985, and that no proceeding has been taken against said defendants since default was entered by the Clerk.

The Court having examined the file, reviewed the Motion, Affidavits and Brief filed by plaintiff herein, and having considered the Affidavit of plaintiff's counsel as to the attorneys' fees incurred by the plaintiff in this matter, and being fully advised, the Court hereby finds that this Court has jurisdiction over the parties and the subject matter of this action pursuant to 28 U.S.C. § 1332. The Court further finds that defendants, Thomas W. Beavers, Anita S. Beavers, and Susan L. Miller, were duly served with Summons and a copy of the Complaint, and that said defendants, and each of them, have failed to answer or otherwise defend within the time allowed by law. The court finds that default was entered by the Court Clerk on October 17, 1985, and that judgment by default should be granted pursuant to the First Cause of Action of plaintiff's complaint herein against defendants, Thomas W. Beavers, Anita S. Beavers, and Susan L. Miller, and each of them, in favor of the plaintiff. The Court further finds that the attorneys' fees incurred by the plaintiff in connection with the collection efforts and the conduct of this proceeding are reasonable as set forth in the Affidavit of plaintiff's counsel, and that the plaintiff is entitled to an award of its attorneys' fees and costs as prayed for in this matter.

IT IS THEREFORE ORDERED AND ADJUDGED that judgment by default is hereby entered against the defendants, Thomas W. Beavers, Anita S. Beavers, and Susan L. Miller, and each of them, in the amount of \$94,864.76, plus interest in the amount of \$28,215.96, accrued thereon through September 30, 1985, plus interest accruing thereafter at the per diem rate of \$40.85, together with expenses of collection, plus \$2,783.85 in insurance premiums paid, plus all costs of this action and reasonable attorneys' fees.

IT IS FURTHER ORDERED that judgment by default is hereby entered against defendant Susan L. Miller in favor of plaintiff Maryland National Industrial

Finance Corporation in the sum of \$987,027.23, together with interest accrued thereon in the amount of \$340,557.29 through August 31, 1985, plus interest accruing thereafter at the per diem rate of \$397.57, together with expenses of collection plus all costs of this action and reasonable attorneys' fees.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

NOV 5 1985

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

READD SUPPLY CO.,)
)
Plaintiff,)
)
vs.)
)
MARWIL, et al.,)
)
Defendants.)

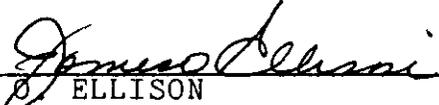
No. 83-C-844-E ✓

ORDER

The Court has been notified that this action has been settled, and no longer need remain on this Court's docket. For this reason, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within sixty (60) days of the date of this order the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed without prejudice.

It is so ORDERED this 4th day of November, 1985.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

FRANKLIN D. WEBSTER,

Plaintiff,

vs.

MISSOURI PACIFIC RAILROAD COMPANY,
a Delaware corporation,

Defendant,

and

ELIZABETH DONN STILWELL,

Plaintiff,

vs.

MISSOURI PACIFIC RAILROAD COMPANY,
a Delaware corporation,

Defendant.

NOV - 5 1985

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

No. 85-C-360-E

No. 85-C-361-E

ORDER

This matter coming on before the undersigned Judge of the United States District Court for the Northern District of Oklahoma upon the Application of the Plaintiffs herein, the Court having reviewed said Application, finds that the following should be the Order of this Court:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above-styled and numbered causes, be and the same, are hereby dismissed without prejudice to the filing of a new action.

SO ORDERED this 4th day of November, 1985.

S/ JAMES O. ELLISON

James O. Ellison
United States District Judge

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

FRANKLIN D. WEBSTER,

Plaintiff,

vs.

MISSOURI PACIFIC RAILROAD COMPANY,
a Delaware corporation,

Defendant,

and

ELIZABETH DONN STILWELL,

Plaintiff,

vs.

MISSOURI PACIFIC RAILROAD COMPANY,
a Delaware corporation,

Defendant.

No. 85-C-360-E

FILED

NOV - 5 1985

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

No. 85-C-361-E

ORDER

This matter coming on before the undersigned Judge of the United States District Court for the Northern District of Oklahoma upon the Application of the Plaintiffs herein, the Court having reviewed said Application, finds that the following should be the Order of this Court:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above-styled and numbered causes, be and the same, are hereby dismissed without prejudice to the filing of a new action.

SO ORDERED this 4th day of November, 1985.

S/ JAMES O. ELLISON

James O. Ellison
United States District Judge

FILED

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

NOV 5 1985

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

JOHN BROWN AUTOMATION, INC.,)
formerly known as Wickman)
Machine Tools, Inc., a Delaware)
corporation,)
)
Plaintiff,)
)
v.)
)
CRUDGINGTON-OKLAHOMA MACHINE)
TOOLS, INC., an Oklahoma)
corporation,)
)
Defendant.)

No. 85-C-395-E ✓

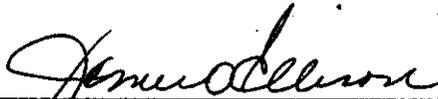
ORDER ASSESSING ATTORNEY FEES

This action having been commenced on April 18, 1985, and the defendant, Crudgington-Oklahoma Machine Tools, Inc., an Oklahoma corporation, having appeared through counsel and said defendant having offered in writing to allow plaintiff to take judgment against it in the sum of \$67,334.32, with interest thereon as provided in the judgment previously entered herein. The Court having provided in the judgment that plaintiff is entitled to recover a reasonable attorney fee to be taxed as costs pursuant to 12 O.S. §936. The parties having represented to the Court by stipulation that \$2,620.00 is a reasonable attorney fee under the circumstances in this case. Based upon the stipulation of the parties hereto,

IT IS ADJUDGED that plaintiff recover from defendant, Crudgington-Oklahoma Machine Tools, Inc., the sum of \$2,620.00 as

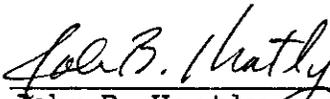
attorney fees and the same are hereby taxed as costs pursuant to
12 O.S. §936.

Made and entered this 5th day of November,
1985.



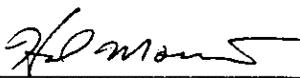
U. S. District Judge

APPROVED AS TO FORM:



John B. Heatly
Fellers, Snider, Blankenship,
Bailey & Tippens
2400 First National Center
Oklahoma City, Oklahoma 73102
(405) 232-0621

Attorneys for Plaintiff



Hal F. Morris
Chappel, Wilkinson, Riggs, Abney
& Henson
502 W. 6th St.
Tulsa, Oklahoma 74119
(918) 587-3161

Attorneys for Defendant

FILED

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

NOV - 5 1985

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

RAYMOND D. TYSON,
Plaintiff,

vs.

RUTH E. LANGLEY,
Defendant.

)
)
)
)
)
)
)
)
)
)

Case No.: 85-C-53 E

ORDER OF DISMISSAL

ON This 4th day of October, 1985, 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 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.

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

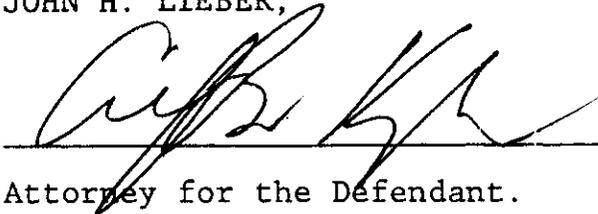
Approvals

A. MARK SMILING,

A handwritten signature in cursive script, appearing to read "A. Mark Smiling", written over a horizontal line.

Attorney for the Plaintiff,

JOHN H. LIEBER,

A handwritten signature in cursive script, appearing to read "John H. Lieber", written over a horizontal line.

Attorney for the Defendant.

FILED

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

NOV - 5 1985

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

RICHARD. W. NINDE,)
)
Plaintiff,)
)
vs.)
)
UNITED STATES OF AMERICA,)
)
Defendant.)

No. 82-C-447-E

O R D E R

NOW on this 4th day of November, 1985 pursuant to the Findings of Fact and Conclusions of Law entered by the Court herein, the Court finds that the statute of limitations bars this action, and that the same should, and hereby is, dismissed with prejudice.

It is so Ordered.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

NOV - 5 1985

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
HEIDI O. CARSTENSEN,)
)
Defendant.)

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

CIVIL ACTION NO. 85-C-81-B

NOTICE 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, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 5th day of November, 1985.

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 4th day of November, 1985, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Heidi O. Carstensen, 20 N. Co Y Yah, Pryor, Oklahoma 74361.

Nancy Nesbitt Blevins
Assistant United States Attorney

FILED

NOV 5 1985

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

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

MACHINE MAINTENANCE AND)
EQUIPMENT, INC.,)
)
Plaintiff,)
)
vs.)
)
FRED ESCOTT d/b/a FRED)
ESCOTT DRILLING,)
)
Defendant,)
)
AND)
)
INGERSOLL-RAND FINANCIAL)
CORPORATION,)
)
Third-party defendant.)

No. 84-C-437-E

JUDGMENT

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

IT IS ORDERED AND ADJUDGED that the Plaintiff Machine Maintenance and Equipment, Inc. take nothing from the Defendant Ingersoll-Rand Financial Corporation, that the cross claim against Ingersoll-Rand be dismissed on the merits, and that the Defendant Ingersoll-Rand Financial Corporation recover of the Plaintiff Machine Maintenance and Equipment, Inc. its costs of action.

DATED at Tulsa, Oklahoma this 5th day of November, 1985.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

NOV -4 1985

THE FIRST NATIONAL BANK AND)
TRUST COMPANY OF TULSA, a)
national banking association,)
)
Plaintiff,)
)
vs.)
)
C. WILLIAM FRYSSINGER and)
JOHN L. FRYSSINGER,)
)
Defendants.)

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

Case No. 84-C-309-B

JOURNAL ENTRY OF JUDGMENT

This matter came before the Court this 4th day
of October, 1985. The Plaintiff, The First National Bank and
Trust Company of Tulsa ("First Tulsa") appeared by and through
its counsel, M. E. McCollam of Conner & Winters. The Defendants,
C. William Frysinger and John L. Frysinger, appeared not, but
indicated their consent to this Journal Entry of Judgment by
their signatures affixed below.

The Court, having reviewed the file and upon advice
of counsel and agreement of the parties, makes and enters the
following findings of fact and conclusions of law.

Findings of Fact

1. First Tulsa is a national banking association
with its principal place of business in Tulsa County, State of
Oklahoma, in the Northern District of Oklahoma.

2. The Defendant, C. William Frysinger, is an in-
dividual who is a nonresident of the State of Oklahoma.

3. The Defendant, John L. Frysinger, is an individual who is a nonresident of the State of Oklahoma.

4. On or about April 29, 1983, C. William Frysinger for good and valuable consideration made, executed and delivered to First Tulsa a certain promissory note (the Note) in writing whereby he promised and agreed to repay to First Tulsa the principal sum of \$175,000.00 with interest at an annual rate of 1% in excess of First Tulsa's prime rate according to the terms further set out therein, with all unpaid principal and interest due and payable no later than August 27, 1983.

5. On or about April 29, 1983, John L. Frysinger for good and valuable consideration made, executed and delivered to First Tulsa a certain promissory note (the Note) in writing whereby he promised and agreed to repay to First Tulsa the principal sum of \$175,000.00 with interest at an annual rate of 1% in excess of First Tulsa's prime rate according to the terms further set out therein, with all unpaid principal and interest due and payable no later than August 27, 1983.

6. The Note states, in part: "If all or any portion of the indebtedness hereby evidenced is not paid when due...the holder may, without notice or demand, declare this indebtedness and any other obligations of the undersigned owing to the holder to be immediately due and payable...."

7. As of April 5, 1984, the date the complaint was first filed in this case, and as of November 4, 1985, C. William Frysinger has failed, refused or neglected to pay the indebtedness evidenced by the Note.

8. As of April 5, 1985, the date the complaint was first filed in this case, and as of November 4, 1985, John L. Frysinger has failed, refused or neglected to pay the indebtedness evidenced by the Note.

9. The Note, in part, contains the following language: "If this note be placed with any attorney(s) for collection upon any default all parties severally agree to pay the reasonable attorney fees and all lawful collection costs of the holder."

10. As of November 4, 1985, the unpaid balance of the Note was as follows:

Principal	\$175,000.00
Interest	<u>35,557.02</u>
Total	<u>\$210,557.02</u>

Conclusions of Law

1. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 in that the action is between citizens of different states and the controversy exceeds \$10,000.00 exclusive of interest and costs.

2. Venue is proper under 28 U.S.C. § 1391(a).

3. Under the terms of the Note, C. William Frysinger and John L. Frysinger have defaulted in that the indebtedness was not paid when due.

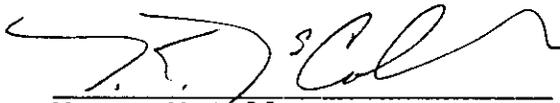
4. First Tulsa is the lawful holder and payee of the Note and is entitled to Judgment against C. William Frysinger and John L. Frysinger, jointly and severally, for the amount of the Note, interest, its costs and a reasonable attorneys fee.

5. WHEREFORE, it is the order, judgment and decree of the Court that First Tulsa be and hereby is granted judgment against C. William Frysinger and John L. Frysinger, jointly and severally, in the amount of \$210,557.02 plus its costs and a reasonable attorneys fee.

S/ THOMAS R. BRETT

THOMAS R. BRETT
JUDGE OF THE DISTRICT COURT

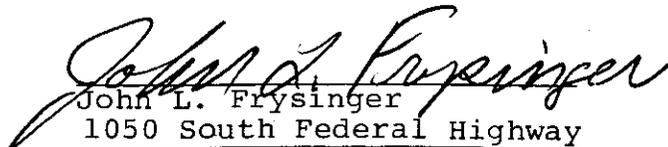
Acknowledged and Approved:



M. E. McCollam
Conner & Winters
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711
Attorneys for Plaintiff



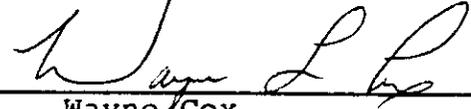
C. William Frysinger
Pro Se
~~100 East Wilson Bridge Road~~ 933 High St. #106
Worthington, Ohio 43085
(614) 431-2260



John L. Frysinger
1050 South Federal Highway
Del Ray Beach, Florida 33444

PROOF OF SERVICE

This is to certify that on the 31 day of October, 1985, a true and correct copy of the foregoing instrument was mailed to opposing counsel, with postage prepaid.

A handwritten signature in cursive script, appearing to read "Wayne Cox", written over a horizontal line.

Wayne Cox

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

FILED

NOV -1 1985

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

JULIEN B. ADOUE,)
)
Plaintiff,)
)
vs.)
)
PAINE WEBBER JACKSON &)
CURTIS, INC.,)
)
Defendants.)

Case No. 85-C-624-E

NOTICE OF DISMISSAL WITHOUT PREJUDICE

COMES NOW, the Plaintiff, Julien B. Adoue, by and through his attorney of record, Mark H. Iola, and hereby dismisses this Complaint without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1).

UNGERMAN, CONNER & LITTLE



Mark H. Iola
Attorney for Plaintiff
OBA No. 4553

P. O. Box 2099
Tulsa, Oklahoma 74101
(918) 745-0101

CERTIFICATE OF MAILING

I, Mark H. Iola, hereby certify that I did cause to be mailed a full, true and correct copy of the above and foregoing Notice of Dismissal Without Prejudice this 1 day of November, 1985, to Sam P. Daniel, 1000 Atlas Life Building, Tulsa, Oklahoma 74103, with proper postage fully prepaid thereon.



Mark H. Iola

LAW OFFICES

UNGERMAN,
CONNER &
LITTLE

MIDWAY BLDG.
2727 EAST 21 ST.
SUITE 400

P. O. BOX 2099
TULSA, OKLAHOMA
74101

Entered

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

FILED
NOV -1 1985
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

CITY INSURANCE COMPANY,)
a New Hampshire Corporation,)
)
Plaintiff,)
)
v.)
)
AMERICAN PROTECTION INSURANCE)
COMPANY, an Illinois)
corporation,)
)
Defendant.)

No. 84-C-919-B ✓

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This case came on for trial to the Court on October 2 and 3, 1985. The plaintiff's claim is essentially one for contribution arising from its rights under an assignment of interest, to require the defendant to pay its share of a flood damage loss. After considering the evidence, the arguments of counsel and the applicable legal authorities, the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The plaintiff, City Insurance Company (hereinafter "City Insurance"), is a commercial insurance company incorporated under the laws of the State of New Hampshire with its principal place of business in the State of New Jersey. City Insurance is licensed to do business in the State of Oklahoma. City Insurance is a member of the Home Insurance Group of companies.

2. The defendant, American Protection Insurance Company (hereinafter "American Protection"), is a commercial insurance company incorporated under the laws of the State of Illinois with its principal place of business therein. American Protection is licensed to do business in the State of Oklahoma. American Protection is a member of the Kemper Group of insurance companies.

3. Bryan Industries, Inc. (hereafter "Bryan Industries"), is an Oklahoma corporation which manufactures infants and children's clothing with its principal place of business in Tulsa, Oklahoma.

4. Bayly, Martin & Fay is a national insurance brokerage firm with an office in Tulsa, Oklahoma. It has "agency agreements" with numerous insurance companies, including the plaintiff and defendant herein. (Plaintiff's Exhibits 66 and 67, respectively.)

5. The events and conduct giving rise to the dispute between the parties herein occurred in Tulsa County, Oklahoma.

6. American Protection provided commercial insurance to Bryan Industries commencing on May 9, 1973. The last policy provided by American Protection to Bryan Industries was effective May 9, 1982. As originally written, the policy was to be a three-year policy, having an expiration date of May 9, 1985. Premiums were to be paid annually and subject to annual premium adjustments. In practice, the plaintiff paid premiums monthly.

7. John Breeding, controller for Bryan Industries, was the employee responsible for insurance matters at Bryan Industries. Mr. Breeding had no particular expertise in insurance matters and relied on Bayly, Martin & Fay, principally Ronald Carter, for advice and recommendations relative to Bryan Industries insurance needs.

8. Ronald Carter is Senior Vice President with Bayly, Martin & Fay. He became the account representative for Bryan Industries in early 1982, and has handled the Bryan Industries account since that date. As account representative he endeavored to provide Bryan Industries with a total insurance package adequate for its needs, subject to approval of Bryan Industries.

9. Tim Murphy is an employee underwriter for American Protection. He assumed responsibility for underwriting for American Protection the Bryan Industries account in February, 1984. Prior to that time, the Bryan Industries account had been handled by Bob Mahoney of American Protection.

10. In October, 1983, D. J. Perkins, a safety engineer employed by American Protection, inspected the Bryan Industries location at 9120 East 43rd Street and determined that the sprinkler system servicing that building was inadequate. As a consequence, American Protection communicated a mandatory recommendation to Bryan Industries that the sprinkler system be improved. Bryan Industries responded by stating that garment storage was being moved from that building to a different facility located at 4352 South 91st East Avenue and requested that American Protection withdraw its recommendation.

11. Thereafter, J. L. Schlum, another safety engineer employed by American Protection, inspected the Bryan Industries facilities at 4352 South 91st East Avenue. Mr. Schlum wrote a report dated February 21, 1984, in which he advised Bryan Industries that its sprinkler system in that building was inadequate and issued a mandatory recommendation that the sprinkler system be significantly upgraded. In response, John Breeding secured a bid from Wilson Fire Protection, estimating the cost of the sprinkler system upgrade. The estimate from Wilson Fire Protection was for approximately \$64,000.00.

12. Mr. Breeding asked Mr. Carter to inquire whether American Protection would consider any alternative to the mandatory sprinkler system upgrade recommendation. Mr. Murphy proposed as an alternative a substantial increase in premium rate.

13. Both of the American Protection alternatives were presented to Mr. Breeding by Mr. Carter. After considering these alternatives in March or early April, 1984, Mr. Breeding directed Mr. Carter to find another carrier, that is, to determine if another carrier would be willing to insure Bryan Industries for approximately its then existing premium with essentially the same coverage without requiring the sprinkler system upgrade.

14. In response, Mr. Carter solicited a bid from City Insurance through Paul Paddock and Mark Carnell, two employee underwriters with City Insurance in Tulsa, Oklahoma. On April 12, 1984, City Insurance submitted its bid to Mr. Carter

proposing to provide essentially the same insurance coverage to Bryan Industries effective May 9, 1984, at approximately the same premium as was then being charged by American Protection, but without requiring a sprinkler system upgrade.

15. Mr. Carter presented the two American Protection alternatives and the City Insurance proposal to Mr. Breeding in a meeting held in April, 1984. Mr. Breeding instructed Mr. Carter to "go with the Home", that is, to accept the City Insurance proposal.

16. On May 2, 1984, Mr. Carter informed Tim Murphy that the American Protection alternatives were unacceptable to Bryan Industries and that he was "moving" the Bryan Industries account effective May 9, 1984. Mr. Murphy informed Mr. Carter that he regretted losing the account but told Mr. Carter that the two alternatives were the best that American Protection could do. He asked Mr. Carter to send him the original Bryan Industries policy or a lost policy release. In this conversation, Mr. Carter, acting on behalf of Bryan Industries, effectively cancelled the American Protection policy effective May 9, 1984.

17. In the insurance industry, the phrase "move an account" means to move the business from one insurance carrier to another, thereby cancelling the insurance with the former or incumbent.

18. City Insurance issued its binder and policy of insurance No. MOPP 364 636, effective May 9, 1984, to Bryan Industries. This policy was essentially a duplicate of the former policy which had been provided to Bryan Industries by American Protection.

19. It was Bryan Industries' express intent that after May 9, 1984, Bryan Industries would have insurance coverage with City Insurance and that it would not have coverage with American Protection. At no time did Bryan Industries contemplate having coverage with both carriers simultaneously.

20. It was Ronald Carter's express intent that effective May 9, 1984, Bryan Industries would be covered by City Insurance policy No. MOPP 364 636 and not by American Protection policy No. 2ZT 640 002. At no time did Mr. Carter contemplate that Bryan Industries would have coverage with both carriers simultaneously.

21. On May 26-27, 1984, Bryan Industries suffered considerable damage to its property and business as a result of a devastating flood which struck the Tulsa area.

22. Bryan Industries immediately notified Bayly, Martin & Fay of the flood. In turn, City Insurance was orally notified of the flood on Sunday, May 27, 1984, by Bayly, Martin & Fay, and City Insurance had an adjuster at the flood site on that date. Bayly, Martin & Fay did not notify American Protection of the flood damage at this time.

23. On Tuesday, May 29, 1984, after the flood, Tim Murphy called Ronald Carter to confirm that the American Protection policy had been cancelled and replaced effective May 9, 1984, and to again request return of the original Bryan Industries policy or a lost policy release. Mr. Carter assured him that "you are off the hook." He informed Mr. Murphy that City Insurance was the company that had replaced American Protection.

24. On May 31, 1984, Mr. Carter wrote a letter to City Insurance in which he attempted to "work out a few bugs" in the City Insurance policy. In that letter he referred to American Protection as the "previous carrier"; he reiterated his intent that the City Insurance coverage was to "duplicate" the American Protection coverage; and he reiterated that the City Insurance policy had "replaced" the American Protection policy.

25. Prior to May 9, 1984, American Protection had sent monthly invoices to Bayly, Martin & Fay on the Bryan Industries account. Bayly, Martin & Fay would thereafter bill Bryan Industries. American Protection has never billed Bryan Industries for insurance coverage for the period after May 9, 1984.

26. On June 1, 1984, Bryan Industries instructed Ronald Carter to put American Protection on notice regarding the May 26-27, 1984 Tulsa flood. On that date Bryan Industries also instructed Bayly, Martin & Fay to prepare an invoice for the entire annual premium due on the American Protection policy for the period May 9, 1984, through May 9, 1985. The amount of the invoice was based on the last billing rate from May 9, 1984 and not on the new rejected premium rate of American Protection for May 9, 1984 to May 9, 1985. Bryan Industries then tendered its check for this amount to Bayly, Martin & Fay. During the eleven year period prior to that time, Bryan Industries had always paid its premium on the American Protection policy on a monthly basis following receipt of an invoice generated by Bayly, Martin & Fay. American Protection refused to accept the premium check tendered by Bryan Industries and returned it to Bayly, Martin & Fay.

27. On June 6, 1984, Bayly, Martin & Fay sent a written notice to the Bank of Oklahoma, Bryan Industries' mortgagee, informing the Bank of Oklahoma that as of May 9, 1984, City Insurance provided insurance coverage to Bryan Industries.

28. After investigation, American Protection denied the Bryan Industries flood claim by letter dated November 12, 1984. American Protection denied the claim because Bayly, Martin & Fay, acting on behalf of Bryan Industries, had cancelled the American Protection policy effective May 9, 1984, and had replaced it with the City Insurance policy.

29. The Bayly, Martin & Fay insurance brokerage firm, at the times involved herein, did substantially more insurance business for its clients through the Home Insurance Group of companies rather than with the Kemper Insurance Group of companies.

30. City Insurance adjusted the loss and paid Bryan Industries the sum of \$2,395,758.24 in settlement thereof. City Insurance obtained an assignment of interest from Bryan Industries (Plaintiff's Exhibit 1). By way of contribution under the assignment of interest, City Insurance seeks to recover from American Protection the sum of \$1,197,879.12. The assignment of interest (Plaintiff's Exhibit 1) inter alia states: "It is understood that Assignor makes no warranties or representations whatsoever that coverage exists under the Kemper policy."

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the subject matter and the parties herein pursuant to 28 U.S.C. §1332.

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

3. The subject insurance contract provides that the policy may be terminated at the request of the insured. One method of termination by an insured is to directly manifest its purpose to terminate the policy at a given time. American Protection policy No. 2ZT 640 002 was cancelled effective May 9, 1984, by Ronald Carter acting with full authority on behalf of Bryan Industries and was replaced by City Insurance policy No. MOPP 364 636 effective May 9, 1984. Atlantic Fire Ins. Co. of Raleigh, N.C. v. Smith, 80 P.2d 216 (Okla. 1938), and Victory Insurance Company v. Schroeder, 30 P.2d 894 (Okla. 1934).

4. Under Oklahoma law, whether or not Ronald Carter of Bayly, Martin & Fay was acting with the authority of Bryan Industries is a fact question to be determined from the evidence presented. McFarling v. Demco, Inc., 546 P.2d 625 (Okla. 1976); Ivey v. Wood, 387 P.2d 621 (Okla. 1963); and Insurance Company of North America v. Burton, 294 P. 796 (Okla. 1930).

5. Bryan Industries and its agent Ronald Carter manifested a purpose to terminate the American Protection policy effective May 9, 1984. As a result, the American Protection policy was cancelled and terminated effective May 9, 1984. Insurance Company of Pennsylvania v. Smith, 435 F.2d 1029 (10th Cir. 1971)

(applying Oklahoma law); and National Investors Fire & Casualty Insurance Co. v. Pacific Indemnity Co., 359 F.2d 203 (10th Cir. 1966) (applying Oklahoma law).

6. In placing City Insurance policy No. MOPP 364 636 with Bryan Industries and in cancelling the Bryan Industries American Protection policy No. 2ZT 640 002, Ronald Carter was acting as agent for Bryan Industries, City Insurance and American Protection. Knowledge to Carter was knowledge to both City Insurance and American Protection. Ivey v. Wood, supra; and Insurance Company of North America v. Burton, supra. See also Continental Casualty Co. v. Aetna Insurance Co., 402 N.E.2d 756 (Ill.App. 1st Dist. 1980); and Lumbermen's Mutual Casualty Co. v. Iowa Home Mutual Casualty Co., 405 P.2d 160 (Okla. 1965).

7. An insurance contract may be cancelled by the mutual consent of the parties. Lumbermens Mutual Casualty Co. v. Iowa Home Mutual Casualty Co., 405 P.2d 160 (Okla. 1965); J. Appleman, 6A Insurance Law and Practice, §4194 at 603-604 (1972).

8. In keeping with the above Findings of Fact and Conclusions of Law, a Judgment shall be entered contemporaneous herewith in favor of the defendant, American Protection Insurance Company, and against the plaintiff, City Insurance Company.

DATED this 1st day of November, 1985.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

IRMA ROBLES, individually and
as next of kin of HERMILO M.
GONZALES, deceased,

Plaintiff,

and

JULIAN GOMEZ GARCIA,
individually and as next of
kin of PEDRO GOMEZ GARCIA,
deceased,

Plaintiff,

vs.

TOM HEINEN, d/b/a SOUTHERN
HILLS TEXACO, et al.,

Defendants.

Entered

FILED

NOV -1 1985

No. 84-C-732-B and JACK C. SILVER, CLERK
84-C-733-B U.S. DISTRICT COURT
(Consolidated)

ORDER OF DISMISSAL

UPON application of counsel and upon examination of the Plaintiffs herein and their attorney, the Court finds that the parties have voluntarily entered into an agreed settlement. That all the parties fully understand the settlement, and it is in the best interest of the parties to approve this settlement, the Court does hereby approve the settlement of the payment of the total sum of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) being FIFTY THOUSAND DOLLARS (\$50,000.00) to the Plaintiff, IRMA ROBLES, and TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) to the Plaintiff, JULIAN GOMEZ GARCIA, individually and in their respective capacities, and finds that the causes of action filed herein should be dismissed with prejudice.

IT IS ORDERED that the causes of action herein are dismissed with prejudice as to the future filing of the same. DONE IN OPEN COURT THIS 1ST DAY OF NOVEMBER, 1985.

Thomas R. [Signature]
JUDGE OF THE DISTRICT COURT

JAG: pkr
1031-85
M177-4

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Entered

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

FILED

NOV -1 1985 *WJ*

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

IRMA ROBLES, Individually and)
as next of kin of HERMILO M.)
GONZALES, Deceased,)

Plaintiff,)

and)

JULIAN GOMEZ GARCIA,)
Individually and as next of kin)
of PEDRO GOMEZ GARCIA,)
Deceased,)

Plaintiff,)

vs.)

No. 84-C-732-B and ✓
84-C-733-B
(Consolidated)

TOM HEINEN d/b/a SOUTHERN)
HILLS TEXACO; TEXACO, INC.,)
a corporation; and SPENCER)
ENTERPRISES, INCORPORATED,)
a corporation,)

Defendants.)

ORDER OF DISMISSAL WITH PREJUDICE

Upon Application of the attorneys for each of the respective Defendants to dismiss each cross-claim filed herein by the Defendants against the other so that this matter can be fully concluded pursuant to settlement agreement between the parties the Court finds that each of the cross-claims filed herein by the Defendant against the other should be and is hereby dismissed with prejudice as to future filing.

Thomas R. Pratt
JUDGE OF THE DISTRICT COURT

RDG:JAG/mc
11-1-85
M179-4

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

FILED

NOV -1 1985

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

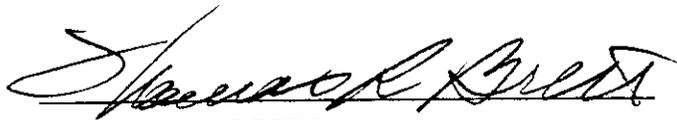
CITY INSURANCE COMPANY,)
 a New Hampshire corporation,)
)
 Plaintiff,)
)
 v.)
)
 AMERICAN PROTECTION INSURANCE)
 COMPANY, an Illinois corporation,)
)
 Defendant.)

No. 84-C-919-B ✓

J U D G M E N T

In accordance with the Findings of Fact and Conclusions of Law entered this date, Judgment is hereby entered in favor of the defendant, American Protection Insurance Company, an Illinois corporation, and against the plaintiff, City Insurance Company, a New Hampshire corporation, with the costs of the action assessed against the plaintiff. The parties are to pay their own respective attorney fees.

DATED this 1st day of November, 1985.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

NOV -1 1985

THE K. C. SILVER, CLERK
U.S. DISTRICT COURT

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

NICOR DRILLING COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 APPALACHIAN OIL & GAS)
 COMPANY, INC.,)
)
 Defendant.)

No. 85-C-571-E

NOTICE OF DISMISSAL

TO: Appalachian Oil & Gas Company, Inc., Defendant and
John S. Athens, Bruce W. Freeman; Connor & Winters,
and James R. Cheshire and Dennis J. Meaker; Waller,
Lansden, Dortch & Davis, attorneys for Defendant.

Please take notice that the above entitled action is hereby
dismissed without prejudice pursuant to Rule 41(a)(1)(i) of the
Fed. R. of Civ. P.

DATED this 1st day of November, 1985.

Respectfully submitted,
OWENS & MCGILL, INC.

BY *George W. Owens*
George W. Owens

1606 First National Bank Building
Tulsa, Oklahoma 74103
(918) 587-0021

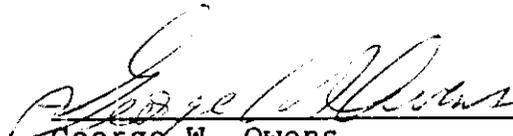
ATTORNEYS FOR NICOR DRILLING COMPANY

CERTIFICATE OF MAILING

I hereby certify that on the 1st day of November, 1985,
a true and correct copy of the above and foregoing Notice of
Dismissal was mailed, with postage fully prepaid thereon, to:

John S. Athens
Bruce W. Freeman
Connor & Winters
2400 First National Tower
Tulsa, OK 74103

James R. Cheshire
Dennis J. Meaker
Waller, Lansdon, Dortch
& Davis
2100 One Commerce
Nashville, TN 37239


George W. Owens

0401k/JMR
10/29/85