

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
PATRICK C. DOLINA,)
)
Defendant.)

CIVIL ACTION NO. 86-C-452-E

FILED
AUG - 8 1986
JES. C. SHERMAN
U. S. DISTRICT COURT

DEFAULT JUDGMENT

This matter comes on for consideration this 8th day of ^{August} ~~July~~, 1986, 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, Patrick C. Dolina, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Patrick C. Dolina, acknowledged receipt of Summons and Complaint on June 27, 1986. 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,

Patrick C. Dolina, for the principal sum of \$997.40, plus interest at the rate of 9 percent per annum and administrative costs of \$.68 per month from December 5, 1984, and \$.67 per month from February 1, 1985, until judgment, plus interest thereafter at the current legal rate of 6.18 percent per annum until paid, plus costs of this action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

BOBBY G. HOWELL,)
)
 Plaintiff,)
)
 vs.) No. 85-C-665-E
)
 GRANT CORPORATIONS, an)
 Oklahoma corporation;)
 and CHARLES B. GRANT,)
)
 Defendants.)

FILED
AUG 8 1986
JAMES O. ELLISON
U. S. DISTRICT COURT

ORDER OF DISMISSAL

NOW on this 8th day of August, 1986, the Court has for its consideration the joint Stipulation for Dismissal filed in the above-styled and numbered cause by Plaintiff and Defendants. Based upon the representations and requests of the parties, as set forth in the foregoing Stipulation, and for good cause shown, it is

ORDERED that Plaintiff's Complaint and the claims for relief alleged therein against the Defendants, Grant Corporations and Charles B. Grant, be and the same are hereby dismissed, with prejudice. It is further

ORDERED that Defendants' claims for relief against Plaintiff, Bobby G. Howell, be and the same are hereby dismissed with prejudice. It is further

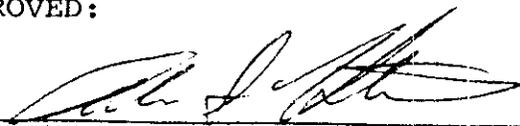
ORDERED that each party shall bear its own costs.

DATED this 8th day of Aug, 1986.

S/ JAMES O. ELLISON

JAMES O. ELLISON, UNITED STATES
DISTRICT JUDGE FOR THE NORTHERN
DISTRICT OF OKLAHOMA

APPROVED:



BARKLEY, ERNST, WHITE,
HARTMAN & RODOLF
Michael Barkley
Andrew S. Hartman

Attorneys for Plaintiff,
Bobby G. Howell



NORMAN, WOHLGEMUTH & THOMPSON
Joel L. Wohlgemuth
John E. Dowdell

Attorneys for Defendants,
Grant Corporations and Charles
B. Grant

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

FILED

AUG -7 1986

JACK C. SILVER, CLERK
DISTRICT COURT

DARRELL ARTHUR HICKS,)
)
 Petitioner,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
 THE ATTORNEY GENERAL OF THE)
 STATE OF OKLAHOMA,)
)
 Respondents.)

No. 86-C-317UC

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed July 16, 1986, in which the Magistrate recommended that petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. §2254 be dismissed. 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, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is therefore Ordered that petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is dismissed.

Dated this 7th day of ~~July~~ ^{August}, 1986.

H. Dale Cook
H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

Entered

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

F I L E D

EDWARD E. GRUMBEIN and)
CAROL L. GRUMBEIN, Husband)
and Wife,)

Plaintiffs,)

vs.)

RUSS ROGERS CHEVROLET, INC.,)
a Corporation; CANDACE)
MASTERS, an Individual; and)
TOM McHARGUE, an Individual,)

Defendants.)

AUG 7 - 1986

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

No. 85-C669-B ✓

JOURNAL ENTRY OF JUDGMENT

NOW on this 7th day of August, 1986, after judgment being entered upon a jury verdict in favor of the Plaintiffs, and upon Motion of the Plaintiffs to assess attorney's fees and costs, the Court finds that the parties have stipulated that the fees and costs as set forth in the Motion of the Plaintiffs to assess same filed on the 4th day of April, 1986, is reasonable and that such fees and costs should be assessed against the Defendants herein.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED BY THE COURT that the Plaintiffs, EDWARD E. GRUMBEIN and CAROL L. GRUMBEIN, are hereby granted judgment on a verdict of the jury in the amount of One Thousand and No/100 Dollars (\$1,000.00) which this Court, pursuant to 15 U.S.C. Section 1989(a)(1) trebles, therefore granting judgment in the amount of Three Thousand and No/100 Dollars (\$3,000.00) plus attorney's fees and costs in the amount of Three Thousand Seven Hundred Twelve and 35/100 Dollars (\$3,712.35).

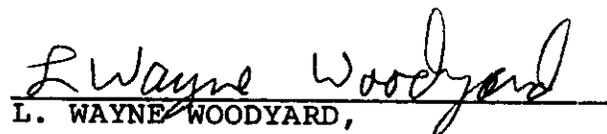
S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM
AND CONTENT:

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

KEVIN D. BUCHANAN,
Attorney for Plaintiffs

A handwritten signature in black ink, appearing to read "L. Wayne Woodyard", written over a horizontal line.

L. WAYNE WOODYARD,
Attorney for Defendants

Entered

FILED

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

AUG - 7 1986

of

RUNNING C, INC.,)
)
Plaintiff)
)
vs.)
)
BOBBY BIGPOND and LESTER)
JACKSON,)
)
Defendants)

Lee C. Smith
U. S. DISTRICT COURT

Case No. 84-C-666-B ✓

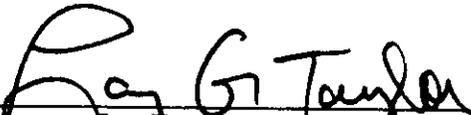
JOURNAL ENTRY OF JUDGMENT

NOW on this 7th day of July, 1986, this matter comes on for hearing before this Court and the Plaintiff, RUNNING C, INC., appears by and through counsel, Feldman, Hall, Franden, Woodard & Farris, by Larry G. Taylor and the Defendant, LESTER JACKSON, appears by and through counsel, Lantz McClain, and the Court is advised by counsel that settlement has been reached in this case and the Defendant, LESTER JACKSON, admits liability and will allow judgment to be taken against him in this matter, and the Court therefore finds the Defendant, LESTER JACKSON, is liable to the Plaintiff, RUNNING C, INC., in the amount of \$208,488.00 for lease payments and for costs expended in this action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THIS COURT that the Plaintiff, RUNNING C, INC., shall be granted a judgment against the Defendant, LESTER JACKSON, in the amount of \$208,488.00 and for costs expended in this action.

S/ THOMAS R. BRETT

United States District Judge,
Thomas R. Brett


Larry G. Taylor, Attorney
for Plaintiff Running C, Inc.


Lantz McClain, Attorney
for Defendant Lester Jackson

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

AUG -7 1985
CLERK
U.S. DISTRICT COURT

KWH INVESTMENTS, INC.,
Plaintiff,

vs.

No. 85-C-15

CENTENNIAL PETROLEUM,
INC.,
Defendant.

Notice
JOINT DISMISSAL WITH
PREJUDICE

COMES NOW KWH Investments, Inc., plaintiff and Centennial Petroleum, Inc., defendant, parties to the above named action and advise the Court that a settlement agreement has been reached concerning the matters contained in the above styled case and jointly dismiss with prejudice this action.

KWH INVESTMENTS, INC.
Plaintiff

By: *Ken Harlow*
Ken Harlow, President

L. Wayne Woodyard
Attorney for Plaintiff

L. Wayne Woodyard

CENTENNIAL PETROLEUM, INC.
Defendant

By: *Steven D. James*
Steven D. James, President

Mack M. Brazz
Attorney for Defendant
Mack M. Brazz

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

7-7 1986
110-7 103
CLERK

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
PAUL DAVID SANDERS; DONNA C.)
SANDERS; COUNTY TREASURER,)
Tulsa County, Oklahoma; and)
BOARD OF COUNTY COMMISSIONERS,)
Tulsa County, Oklahoma,)
)
Defendants.)

CIVIL ACTION NO. 86-C-560-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 7th day of August, 1986. The Plaintiff appears by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by Susan K. Morgan, Assistant District Attorney, Tulsa County, Oklahoma; and the Defendants, Paul David Sanders and Donna C. Sanders, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendants, Paul David Sanders and Donna C. Sanders, acknowledged receipt of Summons and Complaint on June 17, 1986; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 11, 1986; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 11, 1986.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on June 30, 1986; and that the Defendants, Paul David Sanders and Donna C. Sanders, have failed to answer and their default has been entered by the Clerk of this Court on July 21, 1986.

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:

The East 50 feet of Lots Seven (7) and Eight (8), Block Twelve (12), CHEROKEE HEIGHTS ADDITION, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on April 1, 1983, the Defendants, Paul David Sanders and Donna C. Sanders, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$33,500.00, payable in monthly installments, with interest thereon at the rate of twelve percent (12%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Paul David Sanders and Donna C. Sanders, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated April 1, 1983, covering the above-described property. Said mortgage was recorded on April 5, 1983, in Book 4681, Page 722, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Paul David Sanders and Donna C. Sanders, 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, Paul David Sanders and Donna C. Sanders, are indebted to the Plaintiff in the principal sum of \$33,423.61, plus interest at the rate of twelve percent (12%) per annum from July 1, 1985, until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Paul David Sanders and Donna C. Sanders, in the principal sum of \$33,423.61, plus interest at the rate of twelve percent (12%) per annum from July 1, 1985, until judgment, plus interest thereafter at the current legal rate of 6.18 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Paul David Sanders and Donna C. Sanders, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisalment the real property 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.

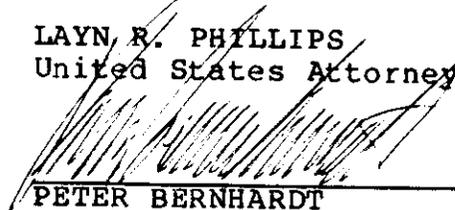
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney



PETER BERNHARDT
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MATTIE HACKETT, a/k/a MATTIE
WRIGHT; VERNON WRIGHT, JR.;
CITY FINANCE COMPANY OF
OKLAHOMA, INC.; CITY
REINSURANCE LIFE COMPANY;
COUNTY TREASURER, Tulsa
County, Oklahoma; and BOARD
OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

FILED

AUG - 7 1986

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 86-C-497-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 7 day
of Aug., 1986. The Plaintiff appears by Layn R.
Phillips, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by Susan K. Morgan, Assistant District Attorney,
Tulsa County, Oklahoma; the Defendants, City Finance Company of
Oklahoma, Inc., and City Reinsurance Life Company, appear not,
having previously filed their Disclaimers; and the Defendants,
Mattie Hackett, a/k/a Mattie Wright, and Vernon Wright, Jr.,
appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendants, Mattie Hackett, a/k/a

Mattie Wright, and Vernon Wright, Jr., were served with Summons and Complaint on July 1, 1986; that Defendant, City Reinsurance Life Company, acknowledged receipt of Summons and Complaint on June 3, 1986; that Defendant, City Finance Company of Oklahoma, Inc., acknowledged receipt of Summons and Complaint on June 3, 1986; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on May 21, 1986; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on May 20, 1986.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on June 9, 1986; that Defendant, City Reinsurance Life Company through Charter National Life Insurance, successor through merger with City Reinsurance Life Company, and Defendant, City Finance Company of Oklahoma, Inc., filed their Disclaimers on July 9, 1986, disclaiming any right, title, or interest in or to the real property which is the subject of this foreclosure action and consenting to the entry of Judgment in this case without further notice to these Defendants; and that the Defendants, Mattie Hackett, a/k/a Mattie Wright, and Vernon Wright, Jr., have failed to answer and their default has been entered by the Clerk of this Court on July 22, 1986.

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 Fourteen (14), Block Eight (8), SUBURBAN ACRES, 2nd Addition to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on February 8, 1975, the Defendant, Mattie Hackett, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, her mortgage note in the amount of \$9,500.00, payable in monthly installments, with interest thereon at the rate of nine and one-half percent (9-1/2%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Mattie Hackett, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated February 8, 1975, covering the above-described property. Said mortgage was recorded on February 11, 1975, in Book 4153, Page 1051, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Mattie Hackett, a/k/a Mattie Wright, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Mattie Hackett, is indebted to the Plaintiff in the principal sum of \$8,394.32, plus interest at the rate of nine and one-half percent (9-1/2%) per annum from July 1, 1985, until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes for the year of 1981 in the amount of \$6.00, plus any accruing penalties and interest, plus the costs of this action. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title, or interest in the subject real property.

The Court further finds that the Defendant, Vernon Wright, Jr., is in default and has no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Mattie Hackett, a/k/a Mattie Wright, in the principal sum of \$8,394.32, plus interest at the rate of nine and one-half percent (9-1/2%) per annum from July 1, 1985, until judgment, plus interest thereafter at the current legal rate of 6.18 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$6.00 for personal property

taxes for the year of 1981, plus any accruing penalties and interest, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Vernon Wright, Jr., has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Mattie Hackett, a/k/a Mattie Wright, 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.

Third:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$6.00, personal property taxes which are currently due and owing.

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

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

S/ JAMES O. ELISON

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney

PETER BERNHARDT
Assistant United States Attorney

Susan K. Morgan for
SUSAN K. MORGAN

Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

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

AUG -6 1986

NATIONAL STEEL SERVICE CENTER,
INC., a corporation,

Plaintiff,

-vs-

INTERNATIONAL FABRICATORS, INC.,
a corporation,

Defendant.

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

No. 86-C-451C

JOURNAL ENTRY OF JUDGMENT

At Tulsa in said District this 1st day of August, 1986 this matter came on for hearing by agreement and the plaintiff appearing by its attorney, Norman E. Reynolds, and the defendant appearing by its attorney, Jack L. Brown, and it being ascertained and agreed that plaintiff is entitled to judgment as follows:

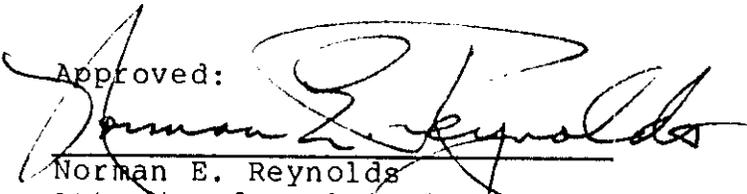
Defendant is indebted to plaintiff in the amount of \$149,248.26 for goods, wares and merchandise or services rendered by plaintiff for defendant and plaintiff is entitled to judgment for said amount together with interest thereon at the rate of 6% per annum from March 1, 1986 to this date in the amount of \$3,753.70 or a total judgment in the amount of \$153,001.96 which shall draw interest hereafter at the rate of 15 % per annum until paid together with costs of this action in the amount of \$85.00 and any accruing costs and a reasonable attorney's fee in the amount of \$3,000.00, and for good cause shown,

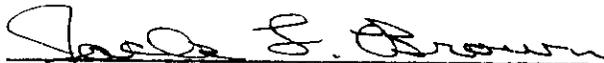
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that National Steel Service Center, Inc., plaintiff, have judgment against International Fabricators, Inc., defendant, in the amount of \$153,001.96 together with interest thereon at the rate of 15 % per annum until paid, costs of this action previously accrued in the amount of \$85.00 and any accruing costs and a reasonable attorney's fee in the amount of \$3,000.00, for all of which let execution issue.

(Signed) H. Dale Cook

United States District Judge

Approved:


Norman E. Reynolds
Attorney for Plaintiff
Reynolds, Ridings & Hargis
2808 First National Center
Oklahoma City, Oklahoma 73102
405/232-8131


Jack L. Brown
Attorney for Defendant
Morrel & West, Inc.
Suite 800 Keplinger Energy Plaza
1717 South Boulder
Tulsa, Oklahoma 74119
918/592-2424

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

FILED

AUG -6 1986

J. M. GRAVES and ALLEN D. WEST)
)
 Plaintiffs,)
)
 v.)
)
 MARK L. NANCE and)
)
 UNION BANK & TRUST CO.,)
)
 Defendants.)

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

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

O R D E R

The Court has for consideration the Findings and Recommendations of the Magistrate filed July 17, 1986, in which the Magistrate made recommendations on pending motions. 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, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is therefore Ordered that plaintiffs' Motion for Summary Judgment is denied, and defendants' Motion for Summary Judgment is granted.

It is further Ordered that plaintiffs' request for judgment against Gary Mills, Mills Oil & Gas, and Gar-Mac, Inc., is denied.

It is further Ordered that plaintiffs' request to amend the complaint to add a cause of action for breach of contract against Gary Mills, Mills Oil & Gas, and Gar-Mac, Inc., and for tortious interference with contract against Union Bank is denied.

Dated this 7th day of August, 1986.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

WINFRED D. ROWELL,)

Defendant.)

AUG 6 1986

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

CIVIL ACTION NO. 86-C-579-E

DEFAULT JUDGMENT

This matter comes on for consideration this 6th day of August, 1986, 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, Winfred D. Rowell, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Winfred D. Rowell, acknowledged receipt of Summons and Complaint on July 4, 1986. 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,

Winfred D. Rowell, for the principal sum of \$577.63, plus interest at the rate of 12.25 percent per annum and administrative costs of \$.68 per month from March 15, 1984, and \$.67 per month from February 1, 1985, until judgment, plus interest thereafter at the current legal rate of 6.18 percent per annum until paid, plus costs of this action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

FILED

AUG -6 1986

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

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

BOBBY KELLY OZBUN,)
)
 Petitioner,)
)
 vs.)
)
 MACK ALFORD, WARDEN,)
)
 Respondent.)

No. 85-C-905-C

O R D E R

Now before the Court for its consideration are the objections to the Magistrate's Findings and Recommendations filed by the petitioner, Bobby Kelly Ozbun. The Magistrate entered his Findings and Recommendations on July 16, 1986.

As his first claim, petitioner asserts that the state court denied him his right of confrontation as guaranteed by the Sixth Amendment to the United States Constitution in allowing the transcript of the preliminary hearing testimony of witness Lucinda Ross to be admitted at trial. The Magistrate found that the government had established sufficient evidence that Lucinda Ross was unavailable for trial and thereby properly allowed a transcript of her prior testimony.

In his second claim for relief petitioner alleges that the state court erred in overruling his motion to dismiss the charges on the April 1980 trial on the grounds that double jeopardy had attached in his first trial which ended in a mistrial. The

Magistrate found that petitioner's co-defendant in the state court moved for mistrial and that petitioner acquiesced in the motion. In citing United States v. Dinitz, 424 U.S. 600 (1976), the Magistrate found that petitioner was not subject to double jeopardy by the retrial of his case after petitioner's request for a declaration of mistrial of his first trial.

The Court has independently reviewed the pleadings, briefs and applicable case law and finds that the recommendations of the Magistrate are consistent with the applicable rules of law.

Wherefore, premises considered, it is the Order of the Court that the Writ of Habeas Corpus brought by Bobby Kelly Ozbun pursuant to 28 U.S.C. §2254 is hereby denied.

IT IS SO ORDERED this 6th day of August, 1986.


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

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

FILED

AUG - 6 1986

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

J. M. GRAVES and
ALLEN D. WEST,

Plaintiffs,

vs.

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

MARK L. NANCE and
UNION BANK & TRUST CO.,

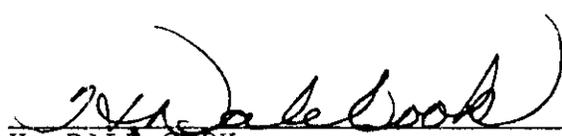
Defendants.

J U D G M E N T

This matter came on before the Court on cross motions for summary judgment. The issues having been duly considered and a decision having been duly rendered in accordance with the Order filed simultaneously herein,

It is the Order of the Court that summary judgment is hereby entered on behalf of defendants and against plaintiffs.

IT IS SO ORDERED this 5th day of August, 1986.


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

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA AUG -6 1986

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

OKLAHOMA WILDLIFE FEDERATION,)
ANCHOR INDUSTRIES, INC.,)
TULSA ROCK COMPANY, and)
SWEETWATER COAL COMPANY,)
)
Plaintiffs,)
)
vs.)
)
McNABB COAL COMPANY, INC., and)
McNABB STONE COMPANY,)
)
Defendants.)

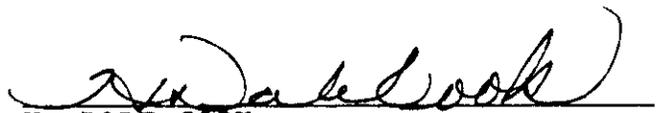
No. 85-C-964-C

J U D G M E N T

This action came on for nonjury trial before the Court, the issues having been duly tried and a decision having been duly rendered,

IT IS SO ORDERED AND ADJUDGED that Judgment be entered in behalf of the defendant McNabb Coal Company, Inc. and against the plaintiffs Oklahoma Wildlife Federation, Anchor Industries, Inc., Tulsa Rock Company, and Sweetwater Coal Company, on plaintiffs' claim brought pursuant to 30 U.S.C. §1201 et seq.

IT IS SO ORDERED this 6 day of August, 1986.


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

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

AUG 11 1986

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	
)	
MARJORIE A. KULPER,)	
)	
Defendant.)	CIVIL ACTION NO. 86-C-633-B

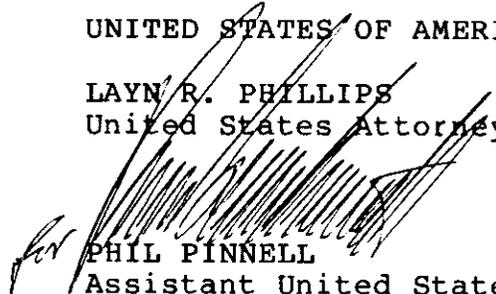
NOTICE OF DISMISSAL

COMES NOW the Plaintiff, United States of America, by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, 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 August, 1986.

UNITED STATES OF AMERICA

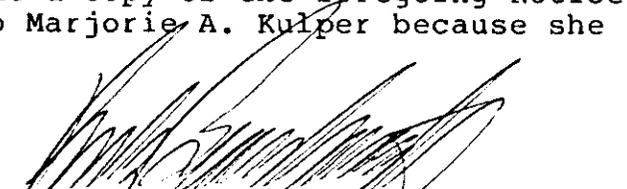
LAYN R. PHILLIPS
United States Attorney



PHIL PINNELL
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF NON-MAILING

This is to certify that a copy of the foregoing Notice of Dismissal cannot be mailed to Marjorie A. Kulper because she is deceased.


Assistant United States Attorney

Entered

FILED

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA AUG 6 1986

JERRY W. EWTON and CONNIE)
EWTON, husband and wife,)
)
Plaintiffs,)
)
v.)
)
TRANSWESTERN MINING, INC.,)
)
Defendant.)
_____)

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

86-C-336-B Cons.

No. 86-C-337-B

STIPULATION OF
DISMISSAL

COME NOW the Plaintiffs, Jerry W. Ewton and Connie Ewton, and dismiss their case against the Defendant herein.

CARLE, HIGGINS, MOSIER & TAYLOR

BY: Richard H. Foster
Attorney for Defendant
Richard H. Foster
DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON
1000 Atlas Life Building
Tulsa, Oklahoma 74103
918/582-1211

BY: Stratton Taylor
STRATTON TAYLOR, OBA # 10141
417 West First Street
Claremore, OK 74017
918/341-2131
ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing Dismissal this 5th day of August, 1986 by depositing same in the U.S. Mail, postage prepaid and addressed to:

Richard H. Foster
Attorney for Defendant
1000 Atlas Life Building
Tulsa, OK 74103

Stratton Taylor
STRATTON TAYLOR

Entered

F I L E D

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

AUG 6 1986

CHANCIE PHILLIP SISCO and)
 ELIZABETH SISCO, husband)
 and wife,)
)
 Plaintiffs,)
)
 v.)
)
 TRANSWESTERN MINING, INC.,)
)
 Defendant.)

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

86-C-336-B ✓CONS.

No. 86-C-338-B

STIPULATION OF
DISMISSAL

COME NOW the Plaintiffs, Chancie Phillip Sisco and Elizabeth Sisco, and dismiss their case against the Defendant herein.

CARLE, HIGGINS, MOSIER & TAYLOR

BY: *Stratton Taylor*
 STRATTON TAYLOR, OBA # 10141
 417 West First Street
 Claremore, OK 74017
 918/341-2131

ATTORNEY FOR PLAINTIFFS

BY: *Richard H. Foster*
 Attorney for Defendant
 Richard H. Foster
 DOERNER, STUART, SAUNDERS,
 DANIEL & ANDERSON
 1000 Atlas Life Building
 Tulsa, Oklahoma 74103
 918/582-1211

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing Dismissal this 5th day of August, 1986 by depositing same in the U.S. Mail, postage prepaid and addressed to:

Richard H. Foster
Attorney for Defendant
1000 Atlas Life Building
Tulsa, OK 74103

Stratton Taylor
 STRATTON TAYLOR

Entered

FILED

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA AUG 6 1986

W. J. REED and VIRGINIA L.)
REED, husband and wife,)
)
Plaintiffs,)
)
v.)
)
TRANSWESTERN MINING, INC.,)
)
Defendant.)
_____)

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

86-C-336-B/CONS.

No. 86-C-339-B

STIPULATION OF
DISMISSAL

COME NOW the Plaintiffs, W. J. Reed and Virginia L. Reed, and dismiss their case against the Defendant herein.

CARLE, HIGGINS, MOSIER & TAYLOR

BY: *Richard H. Foster*
Attorney for Defendant
Richard H. Foster
DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON
1000 Atlas Life Building
Tulsa, Oklahoma 74103
918/582-1211

BY: *Stratton Taylor*
STRATTON TAYLOR, JOBA # 10141
417 West First Street
Claremore, OK 74017
918/341-2131
ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF MAILING

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Richard H. Foster
Attorney for Defendant
1000 Atlas Life Building
Tulsa, OK 74103

Stratton Taylor
STRATTON TAYLOR

Entered

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

FILED

AUG 6 1986

DANIEL WALLACE and WANDA
WALLACE, husband and wife,

Plaintiffs,

v.

TRANSWESTERN MINING, INC.,

Defendant.

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

86-C-336-B CONS.
No. 86-C-340-B

STIPULATION OF
DISMISSAL

COME NOW the Plaintiffs, Daniel Wallace and Wanda
Wallace, and dismiss their case against the Defendant
herein.

CARLE, HIGGINS, MOSIER & TAYLOR

BY: *Richard H. Foster*
Attorney for Defendant
Richard H. Foster
DOERNER, STUART, SAUNDERS
DANIEL & ANDERSON
1000 Atlas Life Building
Tulsa, Oklahoma 74103
918/582-1211

BY: *Stratton Taylor*
STRATTON TAYLOR, OBA # 10141
417 West First Street
Claremore, OK 74017
918/341-2131

ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy
of the above and foregoing Dismissal this 5th day of
August, 1986 by depositing same in the U.S. Mail,
postage prepaid and addressed to:

Richard H. Foster
Attorney for Defendant
1000 Atlas Life Building
Tulsa, OK 74103

Stratton Taylor
STRATTON TAYLOR

Entered

FILED

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA AUG 6 1986 *g*

WAYNE FREIDLINE and ELMA JEAN)
FREIDLINE, husband and wife,)

) Plaintiffs,)

v.)

TRANSWESTERN MINING, INC.,)

) Defendant.)

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

86-C-336-B *✓* CONS.
No. 86-C-341-~~B~~

STIPULATION OF DISMISSAL

COME NOW the Plaintiffs, Wayne Freidline and Elma Jean Freidline, and dismiss their case against the Defendant herein.

CARLE, HIGGINS, MOSIER & TAYLOR

BY: *Richard H. Foster*
Attorney for Defendant
Richard H. Foster
DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON
1000 Atlas Life Building
Tulsa, Oklahoma 74103
918/582-1211

BY: *Stratton Taylor*
STRATTON TAYLOR, OBA # 10141
417 West First Street
Claremore, OK 74017
918/341-2131

ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing Dismissal this 5th day of August, 1986 by depositing same in the U.S. Mail, postage prepaid and addressed to:

Richard H. Foster
Attorney for Defendant
1000 Atlas Life Building
Tulsa, OK 74103

Stratton Taylor
STRATTON TAYLOR

Entered

FILED

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

AUG 6 1986

CHARLES HOWARD POLITTE and)
SANDRA S. POLITTE, husband)
and wife,)
)
Plaintiffs,)
)
v.)
)
TRANSWESTERN MINING, INC.,)
)
Defendant.)
_____)

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

86-C-336-B CONSOLIDATED
No. 86-C-396-B

STIPULATION OF
DISMISSAL

COME NOW the Plaintiffs, Charles Howard Politte and
Sandra S. Politte, and dismiss their case against the
Defendant herein.

CARLE, HIGGINS, MOSIER & TAYLOR

BY: Richard H. Foster
Attorney for Defendant
Richard H. Foster
DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON
1000 Atlas Life Building
Tulsa, Oklahoma 74103
918/582-1211

BY: Stratton Taylor
STRATTON TAYLOR, OBA # 10141
417 West First Street
Claremore, OK 74017
918/341-2131

ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy
of the above and foregoing Dismissal this 5th day of
August, 1986 by depositing same in the U.S. Mail,
postage prepaid and addressed to:

Richard H. Foster
Attorney for Defendant
1000 Atlas Life Building
Tulsa, OK 74103

Stratton Taylor
STRATTON TAYLOR

Entered

FILED

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

AUG 6 1986

CHARLES HOWARD POLITTE and)
 SANDRA S. POLITTE, husband)
 and wife,)
)
 Plaintiffs,)
)
 v.)
)
 TRANSWESTERN MINING, INC.,)
)
 Defendant.)

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

86-C-336-B CONSOLIDATED
No. 86-C-396-B ✓

STIPULATION OF
DISMISSAL

COME NOW the Plaintiffs, Charles Howard Politte and Sandra S. Politte, and dismiss their case against the Defendant herein.

BY: *Richard H. Foster*
 Attorney for Defendant
 Richard H. Foster
 DOERNER, STUART, SAUNDERS,
 DANIEL & ANDERSON
 1000 Atlas Life Building
 Tulsa, Oklahoma 74103
 918/582-1211

CARLE, HIGGINS, MOSIER & TAYLOR

BY: *Stratton Taylor*
 STRATTON TAYLOR, OBA # 10141
 417 West First Street
 Claremore, OK 74017
 918/341-2131
 ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing Dismissal this 5th day of August, 1986 by depositing same in the U.S. Mail, postage prepaid and addressed to:

Richard H. Foster
Attorney for Defendant
1000 Atlas Life Building
Tulsa, OK 74103

Stratton Taylor
 STRATTON TAYLOR

Entered

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

AUG 6 1986

GEORGE V. COTTOM and IRENE)
MAE COTTOM, husband & wife,)
)
Plaintiffs,)
)
v.)
)
TRANSWESTERN MINING, INC.,)
)
Defendant.)

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

No. 86-C-336-B ✓
Cons.

STIPULATION OF
DISMISSAL

COME NOW the Plaintiffs, George V. Cottom and Irene Mae
Cottom, and dismiss their case against the Defendant herein.

CARLE, HIGGINS, MOSIER & TAYLOR

BY: Richard H. Foster
Attorney for Defendant
Richard H. Foster
DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON
1000 Atlas Life Building
Tulsa, Oklahoma 74103
918/582-1211

BY: Stratton Taylor
STRATTON TAYLOR, OBA # 10141
417 West First Street
Claremore, OK 74017
918/341-2131
ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy
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August, 1986 by depositing same in the U.S. Mail,
postage prepaid and addressed to:

Richard H. Foster
Attorney for Defendant
1000 Atlas Life Building
Tulsa, OK 74103

Stratton Taylor
STRATTON TAYLOR

FILED

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA AUG 6 1986

WAYNE FREIDLINE and ELMA JEAN)
FREIDLINE, husband and wife,)
)
Plaintiffs,)
)
v.)
)
TRANSWESTERN MINING, INC.,)
)
Defendant.)
_____)

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

86-C-336-B CONS.
No. 86-C-341-B

STIPULATION OF
DISMISSAL

COME NOW the Plaintiffs, Wayne Freidline and Elma Jean Freidline, and dismiss their case against the Defendant herein.

BY: Richard H. Foster
Attorney for Defendant
Richard H. Foster
DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON
1000 Atlas Life Building
Tulsa, Oklahoma 74103
918/582-1211

CARLE, HIGGINS, MOSIER & TAYLOR
BY: Stratton Taylor
STRATTON TAYLOR, OBA # 10141
417 West First Street
Claremore, OK 74017
918/341-2131
ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing Dismissal this 5th day of August, 1986 by depositing same in the U.S. Mail, postage prepaid and addressed to:

Richard H. Foster
Attorney for Defendant
1000 Atlas Life Building
Tulsa, OK 74103

Stratton Taylor
STRATTON TAYLOR

Entered

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

FILED

AUG 6 1986 *g*

DANIEL WALLACE and WANDA)
WALLACE, husband and wife,)
)
Plaintiffs,)
)
v.)
)
TRANSWESTERN MINING, INC.,)
)
Defendant.)

Jack C. Silver, Clerk
U.S. DISTRICT COURT
86-C-336-B CONS.
No. 86-C-340-B ✓

STIPULATION OF
DISMISSAL

COME NOW the Plaintiffs, Daniel Wallace and Wanda Wallace, and dismiss their case against the Defendant herein.

CARLE, HIGGINS, MOSIER & TAYLOR

BY: *Richard H. Foster*
Attorney for Defendant
Richard H. Foster
DOERNER, STUART, SAUNDERS
DANIEL & ANDERSON
1000 Atlas Life Building
Tulsa, Oklahoma 74103
918/582-1211

BY: *Stratton Taylor*
STRATTON TAYLOR, OBA # 10141
417 West First Street
Claremore, OK 74017
918/341-2131
ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing Dismissal this 5th day of August, 1986 by depositing same in the U.S. Mail, postage prepaid and addressed to:

Richard H. Foster
Attorney for Defendant
1000 Atlas Life Building
Tulsa, OK 74103

Stratton Taylor
STRATTON TAYLOR

Entered

FILED

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA AUG 6 1986

W. J. REED and VIRGINIA L.)
REED, husband and wife,)
)
Plaintiffs,)
)
v.)
)
TRANSWESTERN MINING, INC.,)
)
Defendant.)

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

86-C-336-B CONS.

No. 86-C-339-B ✓

STIPULATION OF
DISMISSAL

COME NOW the Plaintiffs, W. J. Reed and Virginia L. Reed, and dismiss their case against the Defendant herein.

CARLE, HIGGINS, MOSIER & TAYLOR

BY:

Richard H. Foster

Attorney for Defendant
Richard H. Foster
DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON
1000 Atlas Life Building
Tulsa, Oklahoma 74103
918/582-1211

BY:

Stratton Taylor

STRATTON TAYLOR, OBA # 10141
417 West First Street
Claremore, OK 74017
918/341-2131

ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing Dismissal this 5th day of August, 1986 by depositing same in the U.S. Mail, postage prepaid and addressed to:

Richard H. Foster
Attorney for Defendant
1000 Atlas Life Building
Tulsa, OK 74103

Stratton Taylor

STRATTON TAYLOR

Entered

FILED

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

AUG 6 1986

CHANCIE PHILLIP SISCO and)
ELIZABETH SISCO, husband)
and wife,)
)
Plaintiffs,)
)
v.)
)
TRANSWESTERN MINING, INC.,)
)
Defendant.)
_____)

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

86-C-336-B CONS.
No. 86-C-338-B ✓

STIPULATION OF
DISMISSAL

COME NOW the Plaintiffs, Chancie Phillip Sisco and Elizabeth Sisco, and dismiss their case against the Defendant herein.

CARLE, HIGGINS, MOSIER & TAYLOR

BY: Richard H. Foster
Attorney for Defendant
Richard H. Foster
DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON
1000 Atlas Life Building
Tulsa, Oklahoma 74103
918/582-1211

BY: Stratton Taylor
STRATTON TAYLOR, OBA # 10141
417 West First Street
Claremore, OK 74017
918/341-2131

ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing Dismissal this 5th day of August, 1986 by depositing same in the U.S. Mail, postage prepaid and addressed to:

Richard H. Foster
Attorney for Defendant
1000 Atlas Life Building
Tulsa, OK 74103

Stratton Taylor
STRATTON TAYLOR

Entered

FILED

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA AUG 6 1986

JERRY W. EWTON and CONNIE
EWTON, husband and wife,)
)
Plaintiffs,)
)
v.)
)
TRANSWESTERN MINING, INC.,)
)
Defendant.)

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

86-C-336-B Cons.
No. 86-C-337-B ✓

STIPULATION OF
DISMISSAL

COME NOW the Plaintiffs, Jerry W. Ewton and Connie Ewton, and dismiss their case against the Defendant herein.

CARLE, HIGGINS, MOSIER & TAYLOR

BY: *Richard H. Foster*
Attorney for Defendant
Richard H. Foster
DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON
1000 Atlas Life Building
Tulsa, Oklahoma 74103
918/582-1211

BY: *Stratton Taylor*
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918/341-2131
ATTORNEY FOR PLAINTIFFS

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Richard H. Foster
Attorney for Defendant
1000 Atlas Life Building
Tulsa, OK 74103

Stratton Taylor
STRATTON TAYLOR

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

AMERICAN INTERINSURANCE)
EXCHANGE,)
Plaintiff,)
v.)
JOHN G. CLARY, et al.,)
Defendants.)

NO. 86-C-148-B

FILED

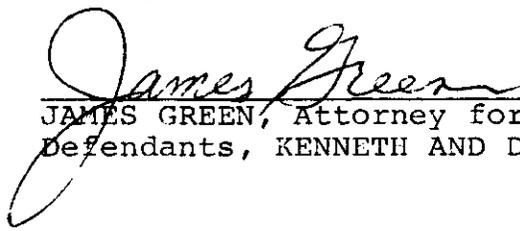
AUG 6 1986

STIPULATION OF DISMISSAL WITH PREJUDICE

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

Plaintiff and Defendants Kenneth Clary and Dena Clary hereby stipulate and agree, by and through their respective attorneys, that Plaintiff's Complaint against Defendants Kenneth Clary and Dena Clary be, and it hereby is, dismissed with prejudice. Defendants Kenneth Clary and Dena Clary and Plaintiff American Interinsurance Exchange, hereby mutually release each other from any claims which may have arisen out of the facts alleged in the Complaint herein or which would have been compulsory counterclaims in this action.


TODD MAXWELL HENSHAW, Attorney
for Plaintiffs


JAMES GREEN, Attorney for
Defendants, KENNETH AND DENA CLARY

CERTIFICATE OF MAILING

I, Todd Maxwell Henshaw, do hereby certify that a true and correct copy of the above and foregoing instrument has been mailed on this _____ day of _____, 1986, with sufficient postage fully prepaid to:

B. J. Cooper
P. O. Box 1336
Oklahoma City, Oklahoma 73101

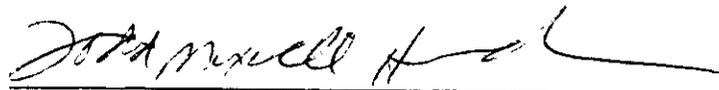
Fred E. Stoops
2512-E East 71st Street
Tulsa, Oklahoma, 74136

Paul Kessler
301 N.W. 63rd, Suite 340
Harvey Parkway Building
Oklahoma City, Oklahoma, 73116

James Green
Comfort, Lipe & Green
2100 Mic-Continent Tower
401 S. Boston
Tulsa, Oklahoma, 74103

William J. Bergner
P. O. Bcx 2056
Oklahoma City, Oklahoma, 73101

Sandra Setzer
110 7th Ave.
Baraboo, Wisconsin, 53913



Todd Maxwell Henshaw

Entered

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

FILED

AUG -6 1986

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

CELTIC LIFE INSURANCE COMPANY,

Plaintiff,

v.

CAROLYN GUEST, Individually and
ROSE STANTON, Individually and
as Executrix of the Estate of
DOYLE R. WALDROP, Sr., Deceased,

Defendants.

No. 84-C-880-BT

FINDINGS OF FACT AND CONCLUSIONS
OF LAW RE PLAINTIFF'S ATTORNEY
FEE APPLICATION

This action was originally commenced as a declaratory judgment action by plaintiff, Celtic Life Insurance Company, to declare the rights of the parties regarding certain medical payments insurance coverage. The defendant, Rose Stanton, as Executrix of the Estate of Doyle R. Waldrop, Sr., Deceased, counterclaimed for \$120,271.00, in medical expense under said insurance policy. On February 6, 1986, the Court entered its Judgment pursuant to the verdict of the jury in favor of the plaintiff and against said defendant estate relative to the counterclaim. Following application for award of attorneys' fees of the plaintiff, Celtic Life Insurance Company, consideration of the response of the defendant estate, as well as the evidence and applicable legal authority, the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The plaintiff, Celtic Life Insurance Company, was the prevailing party on the defendant estate's counterclaim for medical payments insurance benefits under the subject insurance policy.

2. That \$15,777.50 is a reasonable attorneys' fee as established by the evidence and plaintiff's affidavits, Exhibits "A" and "B", filed in support thereof. The \$115.00 per hour rate of 1985 and \$125.00 per hour rate of 1986 was agreed by the parties as reasonable, as were the total hours claimed. (The basic dispute centers in whether or not there is an Oklahoma statutory basis for award of the claimed attorneys' fee).

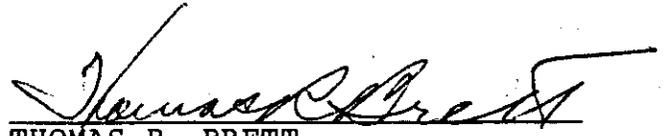
CONCLUSIONS OF LAW

1. The plaintiff, Celtic Life Insurance Company, is entitled to the award of a reasonable attorney's fee herein as the prevailing party pursuant to 36 Okl.St. Ann. §3629(B) against the defendant, Rose Stanton as Executrix of the Estate of Doyle R. Waldrop, Sr., Deceased.

2. The sum of \$15,777.50 is a reasonable attorneys' fee pursuant to the criteria and analysis set forth in State ex rel Burks v. City of Oklahoma City, 598 P.2d 659 (Okla. 1979), and Oliver's Sport Center v. National Standard Ins. Co., 615 P.2d 291 (Okla. 1980).

3. A separate Judgment shall be entered this date in keeping with these Findings of Fact and Conclusions of Law.

DATED this 6th day of August, 1986.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett". The signature is written in dark ink and is positioned above a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA AUG -6 1986

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

OKLAHOMA WILDLIFE FEDERATION,)
ANCHOR INDUSTRIES, INC.,)
TULSA ROCK COMPANY, and)
SWEETWATER COAL COMPANY,)
)
Plaintiffs,)
)
vs.)
)
McNABB COAL COMPANY, INC., and)
McNABB STONE COMPANY,)
)
Defendants.)

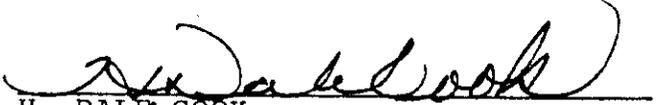
No. 85-C-964-C ✓

J U D G M E N T

This action came on for nonjury trial before the Court, the issues having been duly tried and a decision having been duly rendered,

IT IS SO ORDERED AND ADJUDGED that Judgment be entered in behalf of the defendant McNabb Coal Company, Inc. and against the plaintiffs Oklahoma Wildlife Federation, Anchor Industries, Inc., Tulsa Rock Company, and Sweetwater Coal Company, on plaintiffs' claim brought pursuant to 30 U.S.C. §1201 et seq.

IT IS SO ORDERED this 6 day of August, 1986.


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

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA AUG -6 1985

FILED

[Handwritten mark]

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

OKLAHOMA WILDLIFE FEDERATION,)
ANCHOR INDUSTRIES, INC.,)
TULSA ROCK COMPANY, and)
SWEETWATER COAL COMPANY,)
)
Plaintiffs,)
)
vs.)
)
McNABB COAL COMPANY, INC., and)
McNABB STONE COMPANY,)
)
Defendants.)

No. 85-C-964-C ✓

O R D E R

This case is now before the Court for final determination following a nonjury trial heard July 15, 16 and 17. At the commencement of trial, defendant McNabb Coal Company, Inc. reasserted its motion for summary judgment brought pursuant to Rule 56 F.R.Cv.P. alleging that defendant McNabb is entitled to a judgment as a matter of law. At the conclusion of plaintiff's case in chief, defendant McNabb renewed its motion for summary judgment. The Court took defendant's motion under advisement.

The Court has now reviewed all pleadings, briefs and arguments of counsel. It has heard the testimony and reviewed exhibits admitted at trial and has studied applicable case law and the legislative history of 30 U.S.C. §1201 et seq., the Surface Mining Control and Reclamation Act of 1977 (the Act). The Court being fully advised finds as follows.

In October of 1985, plaintiffs Oklahoma Wildlife Federation, Anchor Industries, Inc., Tulsa Rock Company and Sweetwater Coal Company filed suit against defendants Donald Hodel, Secretary of the Department of the Interior; Jed Christensen, Director of the Office of Surface Mining Reclamation and Enforcement; Gayle Townley, Deputy Chief Mine Inspector, Oklahoma Department of Mines; McNabb Coal Company, Inc., and McNabb Stone Company. The plaintiffs seek a declaratory judgment that McNabb is conducting a surface and mining operation within the meaning of 30 U.S.C. §1291(28) of SMCRA, and final injunctive relief directing McNabb to refrain from conducting further coal mining until such time as McNabb obtains a coal mining permit.

On July 14, 1986 the Court entered summary judgment in favor of defendants Donald Hodel, Jed Christensen and Gayle Townley. The Court held that it lacked jurisdiction under 30 U.S.C. §1270(a)(1) in that it is only applicable against persons or governmental entities engaged in coal mining or reclamation activities. Further the Court lacked jurisdiction under 30 U.S.C. §1270(a)(2) since this Court's jurisdiction is limited to compelling the Secretary of the Department of Interior or the appropriate State regulatory authority to perform any nondiscretionary act or duty.

In its amended complaint, plaintiffs allegedly invoke the Court's jurisdiction under 30 U.S.C. §1270(a)(1) against defendant McNabb. Under 30 U.S.C. §1270(a)(1) a civil action can be instituted by any person having an interest which is or may be adversely affected,

(1) against the United States or any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution which is alleged to be in violation of the provisions of this chapter or of any rule, regulation, order or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter. 30 U.S.C. §1270(a)(1) emphasis added.

The Court finds that paragraph (a)(1) first provides for an action against a governmental entity engaged in coal mining or reclamation activities which is allegedly in violation of some substantive requirement of the Act or of any rule, regulation, or a permit issued pursuant to the Act. Section 1270(a)(1) also provides for an action against any other person who is in violation of any rule, order or permit issued pursuant to the Act, but does not provide for an action against persons who are in violation of the Act itself. The legislative history reveals that in the original House draft of 30 U.S.C. §1270(a)(1) "any person" was defined to include the United States and other governmental instrumentalities or agencies and "any person" was subject to suit for violation of the provisions of the Act or the regulations promulgated thereunder. See H.R.Rept. No.45, 94th Cong., 1st Sess. 35 (1975). In the Senate's debates, however, concern was expressed that under the draft language of §1270(a)(1) a mine operator would be subject to suit where it was claimed that the permit or regulations under which he was lawfully mining were not in accord with the Act. In response to this concern, Senator Fannin introduced an amendment which deleted reference to the Act with respect to citizen suits against

operators. See, 121 Cong.Rec. S6176 (daily ed. March 12, 1975).

The Senator proposing the amendment stated:

Citizens' suits are retained in the amendments but are modified--consistent with other environmental legislation--to provide for suits against the regulatory agency to enforce the Act, and mine operators where violations of regulations or permits are alleged. 121 Cong.Rec. S6176 (daily ed. March 12, 1975) (emphasis added).

The Senate Conference Report further explained the distinction:

Subsection (a) assures, that no "operator" can be sued under this section if he is operating in compliance with all regulations, orders, and an approved permit, even though the regulating authority or the Secretary has failed to properly implement the Act. In such cases, the suit must be brought against the regulatory authority. The only exception to this provision occurs if the "operator" is itself a government agency or instrumentality, such as the Tennessee Valley Authority. S.Rept. No. 101, 94th Cong., 1st Sess. 84 (1975).

The Court finds that a Government agency may be sued under (a) (1) when it is the operator of a coal mine and is not in compliance with the Act. However, an action could not be brought against a private operator unless that private operator is in violation of a rule, regulation, order or permit.

After reviewing all the pleadings and the evidence presented at trial, the Court finds that plaintiffs have not shown the Court any legally enforceable rule, regulation order or permit in which McNabb is allegedly in violation. Rather, plaintiffs assert McNabb is in violation of the Act. The only rules or regulations offered at trial were offered by defendant McNabb. McNabb offered defendant's exhibit No. 45, the May 7, 1984

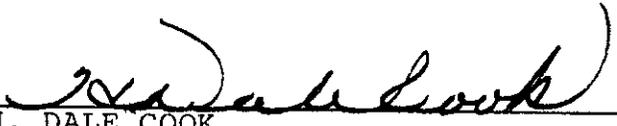
Advance Notice of Proposed Rulemaking and Request for Public Comment published by the Department of the Interior, Office of Surface Mines. McNabb also offered defendant's exhibit No. 46, the Guide to Operators and Permittees, published by the Department of Interior, Office of Surface Mines. Both exhibits were objected to by plaintiffs as not having "the force of law" and in no way supplementing or modifying the Act. After trial concluded, plaintiff filed a written objection to the admission into evidence of Defendant's exhibit No. 46. Further, the Court finds that defendant's exhibits Nos. 45 and 46 do not have the "force of law" and therefore do not provide controlling authority.

The Court finds that the evidence adduced at trial was insufficient to establish that defendant McNabb is in violation of "any rules, regulation, order or permit issued" pursuant to the Act and has therefore failed as a matter of law to state a cause of action for which relief can be granted. Although the Court took defendant McNabb's motion for summary judgment under advisement, the Court need not rule on summary judgment since the case has been submitted on the record following nonjury trial.

WHEREFORE, from the evidence submitted to the Court, the Court finds in favor of defendant McNabb Coal Company, Inc., and against the plaintiffs Oklahoma Wildlife Federation, Anchor Industries, Inc., Tulsa Rock Company, and Sweetwater Coal

Company, on plaintiffs' claim brought pursuant to 30 U.S.C. §1201 et seq., the Surface Mining Control and Reclamation Act of 1977.

IT IS SO ORDERED this 6th day of August, 1986.


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

FILED

AUG 6 1986

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

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

CALVIN J. JUMP, JR,)
)
Plaintiff,)
)
vs.)
)
UNITED STATES OF AMERICA)
)
Defendant.)
)
CALVIN J. JUMP, JR.)
)
Petitioner,)
)
v.)
JEANETTE PATTERSON, et al.,)
)
Defendants.)

No. 85-C-961-E

No. 86-C-415-E

ORDER

The Court has before it for its consideration, sua sponte, the question of whether Plaintiff's Complaint in Case No 86-C-415-E states a claim for declaratory judgment on which relief can be granted. The Court has previously determined that the Plaintiff's actions to quash Internal Revenue Service administrative summons should be dismissed. The Court has now reviewed the remaining claims for declaratory judgment asserted by Plaintiff. The Court is satisfied that these claims are frivolous.

Accordingly, all remaining claims of the Plaintiff are dismissed.

DATED this 6th day of August, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

AUG 6 1986

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

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

CALVIN J. JUMP, JR,)
Plaintiff,)
vs.)
UNITED STATES OF AMERICA)
Defendant.)
CALVIN J. JUMP, JR.)
Petitioner,)
v.)
JEANETTE PATTERSON, et al.,)
Defendants.)

No. 85-C-961-E

No. 86-C-415-E

C R D E R

The Court has before it for its consideration, sua sponte, the question of whether Plaintiff's Complaint in Case No 86-C-415-E states a claim for declaratory judgment on which relief can be granted. The Court has previously determined that the Plaintiff's actions to quash Internal Revenue Service administrative summons should be dismissed. The Court has now reviewed the remaining claims for declaratory judgment asserted by Plaintiff. The Court is satisfied that these claims are frivolous.

Accordingly, all remaining claims of the Plaintiff are dismissed.

DATED this 6th day of August, 1986.



JAMES C. ELLISON
UNITED STATES DISTRICT JUDGE

JAD/SB

Entered

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

FILED

AUG -6 1986

LANDMARK AMERICAN INSURANCE)
COMPANY,)
)
Plaintiff,)
)
vs.)
)
ROBERT C. HOLLOWAY, MARK)
MAULDIN and LISA MAULDIN,)
)
Defendants.)

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

NO. 85-C-1120B

DISMISSAL WITH PREJUDICE

Comes now the plaintiff, Landmark American Insurance Company, and hereby dismisses the above captioned action with prejudice.

SECRET & HILL

By:

W. MICHAEL HILL
Oklahoma Bar No. 4213
JOHN A. DUNNERY
Oklahoma Bar No. 10277
1515 East 71, Suite 200
American Federal Building
Tulsa, Oklahoma 74136
Telephone: (918) 494-5905

Attorneys for Plaintiff

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the foregoing was deposited in the U. S. Mail this 5th day of ~~July~~ ^{Aug.}, 1986, addressed to Scott D. Keith, 1515 South Denver, Tulsa, Oklahoma 74119, with proper postage thereon fully prepaid.

Entered

2

FILED

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

AUG - 5 1986

99

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

CHAMPION FINANCIAL CORPORATION,)
)
 Plaintiffs,)
)
 vs.)
)
 THE MARINA LIMITED,)
)
 Defendant.)

No. 77-C-526-C ✓

JUDGMENT TO THE ACCRUALS

This matter came before the Court on plaintiff's Application to determine the accruals to the Judgment which was entered by this Court on January 7, 1982. The issues having been duly considered, and a decision having been duly rendered in accordance with the Orders filed on December 20, 1985, July 8, 1986, and August 5, 1986, the Court finds as follows:

1. That on January 7, 1982 a Judgment was rendered in favor of Champion Financial Corporation and against The Marina Limited on an accounting through June 30, 1981 in the amount of \$1,261,727.00. In this connection, the Court finds that certain offsets have been made against the Judgment and that the amount remaining unpaid on the January 7, 1982 Judgment is \$731,181.00, with accrued interest on the unpaid principal balance in the sum of \$24,677.00.

2. That real property located in Tulsa County, Oklahoma, known as The Marina Apartments, was transferred to Champion

Financial Corporation by Order dated December 27, 1984, and that Champion Financial Corporation has since been in actual possession and operation of The Marina Apartments.

3. That the amount due from The Marina Limited to Champion Financial Corporation for operation of The Marina Apartments representing net revenues and pre- and post-judgment interest through December 31, 1984, is the sum of \$1,491,436.00.

4. That the accrued interest from January 1, 1985 on the net revenues and accrued interest is the sum of \$268,458.00.

5. That the amount held in the Bank of Oklahoma Escrow Account in certificate of deposit No. 208224 as of July 16, 1986 is the sum of \$1,522,855.63 (representing principal and accrued interest). That this sum of \$1,522,855.63 is an offset against the net revenues and pre- and post-judgment interest calculated to July 25, 1986 in the sum of \$1,759,894.00 (the total of amounts contained in paragraphs 3 and 4 above).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that on January 7, 1982 a Judgment was rendered in favor of Champion Financial Corporation and against The Marina Limited on the accounting through June 30, 1981 in the amount of \$1,261,727.00 and that a balance, after offsets, remains in the sum of \$731,181.00, with accrued interest on the unpaid principal balance in the sum of \$24,677.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that real property located in Tulsa County, Oklahoma, known as The Marina Apartments, was transferred to Champion Financial

Corporation by Order dated December 27, 1984, and that Champion Financial Corporation has since been in actual possession and operation of The Marina Apartments.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the amount due from The Marina Limited to Champion Financial Corporation for operation of The Marina Apartments representing net revenues and accrued interest for the period July 1, 1981 through December 31, 1984, is the sum of \$1,491,436.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the accrued interest from January 1, 1985 on the net revenues and accrued interest is the sum of \$268,458.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the amount held in the Bank of Oklahoma Escrow Account in certificate of deposit No. 208224 as of July 16, 1986 is the sum of \$1,522,855.63; that this sum is an offset against the net revenues and pre- and post-judgment interest calculated to July 25, 1986 in the sum of \$1,759,894.00.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff, Champion Financial Corporation, is entitled to a Judgment in a sum of \$237,038.37 which represents the sum in excess of that deposited in the escrow account; and a Judgment in a sum of \$755,858.00 as the amount of unpaid principal and interest on the Judgment entered January 7, 1982.

WHEREFORE, the plaintiff is entitled to Judgment in the sum of \$992,896.37 which is hereby entered and awarded as accruals to the Judgment rendered on January 7, 1982 against the defendant, The Marina Limited, plus the previously determined post-judgment interest at a rate of 12% per annum from the date of this Judgment until paid, and an award of attorney fees, as previously determined by the Court in the sum of \$231,664.00.

FOR ALL OF WHICH LET EXECUTION ISSUE.

IT IS SO ORDERED this Fifth day of August, 1986.



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

Entered

4

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA AUG -5 1986

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

CHAMPION FINANCIAL CORPORATION,)
)
 Plaintiffs,)
)
 vs.)
)
 THE MARINA LIMITED,)
)
 Defendant.)

No. 77-C-526-C

JUDGMENT ON SUPERSEDEAS BOND

This matter comes on for consideration upon the Motion for Forfeiture of Supersedeas Bond filed by the plaintiff, Champion Financial Corporation. The Court, having reviewed the Motion for Forfeiture of Supersedeas Bond and being fully advised in the premises, hereby finds as follows:

1. That on January 7, 1982, Champion Financial Corporation obtained a judgment against The Marina Limited in the principal sum of \$1,261,727 which judgment was appealed, and that on January 20, 1982, for the purpose of staying execution of the judgment, American Home Assurance Company executed a Supersedeas Bond with The Marina Limited as principal and itself as surety, in the sum of \$350,000.

2. That by executing the Supersedeas Bond, American Home Assurance Company, as surety, pursuant to Rule 8(b) of the Federal Rules of Appellate Procedure, submitted itself to the jurisdiction of the United States District Court for the Northern

District of Oklahoma and irrevocably appointed the Clerk thereof as its agent upon whom any papers affecting its liability on its Supersedeas Bond could be served.

3. That on January 8, 1985, Champion Financial Corporation filed a Motion for Forfeiture of Supersedeas Bond; and the Court finds that Champion Financial Corporation is hereby granted a judgment in its favor and against American Home Assurance Company in the sum of \$350,000.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Champion Financial Corporation have and recover judgment of and from American Home Assurance Company on its Supersedeas Bond executed and dated January 20, 1982, in the sum of \$350,000.

For all of which let execution issue.

IT IS SO ORDERED this 5th day of August, 1986.


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

Entered

3

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

FILED

AUG -5 1986 *94*

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

CHAMPION FINANCIAL CORPORATION,)
)
 Plaintiffs,)
)
 vs.)
)
 THE MARINA LIMITED,)
)
 Defendant.)

No. 77-C-526-CV ✓

ORDER DIRECTING BANK OF OKLAHOMA TO DELIVER ESCROW
FUNDS TO CHAMPION FINANCIAL CORPORATION

This matter comes on for consideration upon Champion Financial Corporation's application for order directing Bank of Oklahoma to deliver escrow funds to Champion Financial Corporation.

The Court, having reviewed the application and the file and being fully advised in the premises, finds that the application should be granted and that Bank of Oklahoma should be and is hereby ordered and directed to deliver the escrowed funds to Champion Financial Corporation.

NOW, THEREFORE, BE IT ORDERED, ADJUDGED AND DECREED by the Court that Bank of Oklahoma be and it is hereby and by these presents Ordered and directed to deliver the escrowed funds to Champion Financial Corporation.

IT IS SO ORDERED this 5th day of August, 1986.


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

248

Entered

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA AUG -5 1986 *gf*

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

CHAMPION FINANCIAL CORPORATION,)
)
 Plaintiffs,)
)
 vs.)
)
 THE MARINA LIMITED,)
)
 Defendant.)

No. 77-C-526-C ✓

O R D E R

The Court Ordered a hearing to be held before John Leo Wagner, Magistrate for the Northern District of Oklahoma, regarding the interest calculations on net revenues held in an escrow account at the Bank of Oklahoma in Tulsa. The hearing was conducted on July 23, 1986. The Court has read the transcript from that hearing and finds as follows:

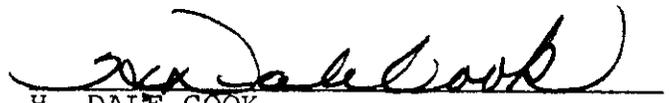
As prevailing party, Champion is entitled to the net revenues plus pre-judgment interest until January 7, 1982 and thereafter post-judgment interest. Net revenues is the amount accumulated in the escrow account since its inception. Net revenues will not include the interest generated out of the account itself, because that would in fact constitute an award of interest on interest.

The Court's Order dated July 8, 1986, page 7, states, "The Court finds that interest which has accrued on those funds during this period is the property of Champion and is property

incorporated in the accounting as net revenues." After reviewing the transcript of the July 23, 1986 hearing before the Magistrate, the Court finds that Champion is not entitled to an award of interest on interest which would result if Champion were allowed the escrow funds, plus accrued interest, as well as pre- and post-judgment interest on that amount. Therefore to the extent that the Court's Order of July 8, 1986 is contrary to this finding, that Order is so modified and corrected.

WHEREFORE, premises considered, it is the Order of the Court that the net revenues contained in the Bank of Oklahoma escrow account will not include the interest generated out of the account itself as constituting net revenues.

IT IS SO ORDERED this 5th day of August, 1986.


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

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

F I L E D
AUG 5 1986

THE ATCHISON, TOPEKA AND SANTA
FE RAILWAY COMPANY,)
)
)
 Plaintiff,)
)
 vs.)
)
)
 ECONO-THERM ENERGY SYSTEMS)
 CORPORATION,)
)
)
 Defendant.)

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

Case No. 85-C-1008-E

STIPULATION AND ORDER OF DISMISSAL

The parties having stated that the Complaint of plaintiff and the Counterclaim contained in the Answer of defendant in the above-entitled action may be dismissed, it is hereby Ordered, Adjudged and Decreed that the Complaint of plaintiff herein and the Counterclaim of defendant herein be, and the same hereby are, dismissed with prejudice, each party to bear his own costs of suit.

Dated this 5th day of August, 1986.

ST. JAMES O. ELLISON
United States District Judge

APPROVAL OF ENTRY:

Marc R. Pitts
H. D. Binns, Jr.
Marc R. Pitts
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401/235-1356

ATTORNEYS FOR PLAINTIFF THE
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918/743-9633



Don A. Peterson
BRENNER, LOCKWOOD & PETERSON
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Kansas City, Missouri 64106
816/421-2380

ATTORNEYS FOR DEFENDANT ECONO-
THERM ENERGY SYSTEMS
CORPORATION

110

Entered

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

FILED

AUG -5 1986 *ef*

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

PHILIP N. HUGHES,)
)
 Plaintiff,)
)
 vs.)
)
 MAUREEN LANE, and CONEY-I-)
 LANDER MANAGEMENT COMPANY,)
 an Oklahoma corporation,)
)
 Defendants.)

No. 86-C-164-B ✓

DISMISSAL WITHOUT PREJUDICE OF
CONEY-I-LANDER MANAGEMENT COMPANY

COMES NOW the Plaintiff and hereby dismisses its action against Coney-I-Lander Management Company without prejudice to the refiling of it. In support thereof, the Plaintiff would show that this is a voluntary dismissal pursuant to Rule 41 of the Federal Rules of Civil Procedure in that the Defendant, Coney-I-Lander Management Company, has not answered or filed a Motion for Summary Judgment herein.

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By: *Elise Dunitz*
Richard P. Hix
Elise M. Dunitz
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211
Attorneys for Plaintiff

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

AUG -5 1986

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

CALVIN J. JUMP, JR.,
Plaintiff,
vs.
UNITED STATES OF AMERICA,
Defendant.
CALVIN J. JUMP, JR.
Petitioner,
v.
JEANNETTE PATTERSON, et al
Defendant.

No. 85-C-961-E

No. 86-C-415-E
Consolidated

ORDER

NOW on this 5th day of August, 1986, this matter comes on for hearing before the Court on the Petitioner's Application to Continue Evidentiary Hearing. The Court has reviewed the Petitioner's Application, and the Opposition to Motion for Continuance and Memorandum of Law submitted by the United States of America.

The United States opposes a continuance of this matter on the basis of delay, and because it contends that no evidentiary hearing is required under 26 U.S.C. §7602(b). The Government argues that amendment of §7602(b) to expressly allow the use of administrative summons for criminal investigation eliminates any need to consider the factors set forth in United States v. La Salle National Bank, 437 U.S. 298 (1978) concerning whether the

IRS is proceeding in bad faith to employ the administrative summons for a purely criminal investigation.

Based on the amendment of 26 U.S.C. §7206 subsequent to the decision of the United States Supreme Court in La Salle, the Court finds that consideration of the factors enumerated in La Salle is no longer required. Therefore, there is no need for the evidentiary hearing on those issues.

The Court has previously held that the United States has met its burden of compliance with United States v. Powell, 379 U.S. 48 (1964). The affirmative defenses raised by the Petitioner, use of the summons for a criminal investigation and use of the summons to harass a tax protester, are both insufficient as a matter of law to constitute a basis for quashing the summons. 26 U.S.C. §7602(b); United States v. First American Bank, 504 F.Supp 90 (N.D. Fla. 1980).

Accordingly, the Motion to Dismiss of the Defendant United States of America is granted, and the evidentiary hearing scheduled for August 8, 1986 is hereby stricken from the docket.

ORDERED this 5th day of August, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

CLERK'S OFFICE

UNITED STATES COURT HOUSE

TULSA, OKLAHOMA 74103

August 4, 1986

JACK C. SILVER
CLERK

(918) 581-7796
(FTS) 736-7796

TO: COUNSEL/PARTIES OF RECORD

RE: Case # 86-C-434-C
Willis A. Schwinden vs. Howard Brothers Discount Stores, Inc.

This is to advise you that Chief Judge H. Dale Cook entered the following Minute Order this date in the above case:

Plaintiff's complaint alleges that his cause of action arose out of defendant's closing its store located in Ponca City, Oklahoma which is located in Kay County, Oklahoma which is in the jurisdictional district of the Western District of Oklahoma. The Northern District of Oklahoma does not have proper venue of this action. Therefore, it is Ordered that this action shall be transferred to the Western District of Oklahoma for consideration before that forum.

Very truly yours,

JACK C. SILVER, CLERK

By:

P. Duoy
Deputy Clerk

Ellsworth J. Noble, for the principal sum of \$1,392.00, plus interest at the current legal rate of 6.18 percent per annum until paid, plus costs of this action.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG -4 1986

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JERRY ROSS BRASHAR, a/k/a)
JERRY R. BRASHAR and VICKIE)
ELAINE BRASHAR, husband and)
wife; COUNTY TREASURER, Tulsa)
County, Oklahoma; and BOARD)
OF COUNTY COMMISSIONERS, Tulsa)
County, Oklahoma,)
)
Defendants.)

CIVIL ACTION NO. 86-C-420-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 4^m day
of August, 1986. The Plaintiff appears by Layn R.
Phillips, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by Susan K. Morgan, Assistant District Attorney,
Tulsa County, Oklahoma; and the Defendants, Jerry Ross Brashar,
a/k/a Jerry R. Brashar, and Vickie Elaine Brashar, appear not,
but make default.

The Court being fully advised and having examined the
file herein finds that the Defendants, Jerry Ross Brashar, a/k/a
Jerry R. Brashar, and Vickie Elaine Brashar, acknowledged receipt
of Summons and Complaint on May 19, 1986; that Defendant, County
Treasurer, Tulsa County, Oklahoma, acknowledged receipt of
Summons and Complaint on May 1, 1986; and that Defendant, Board

of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on May 1, 1986.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on May 19, 1986; and that the Defendants, Jerry Ross Brashar, a/k/a Jerry R. Brashar, and Vickie Elaine Brashar, have failed to answer and their default has been entered by the Clerk of this Court on June 13, 1986.

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:

The South Twenty-two (22) feet of the West Half (W/2) of Lot One (1) and the North Twenty-eight (28) feet of the West Half (W/2) of Lot Two (2), Block Ten (10), CITY VIEW ADDITION, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on June 20, 1983, the Defendants, Jerry Ross Brashar, a/k/a Jerry R. Brashar, and Vickie Elaine Brashar, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$33,500.00, payable in monthly installments, with interest thereon at the rate of eleven and one-half percent (11.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Jerry Ross Brashar, a/k/a Jerry R. Brashar, and Vickie Elaine Brashar,

executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated June 20, 1983, covering the above-described property. Said mortgage was recorded on June 20, 1983, in Book 4699, Page 2094, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Jerry Ross Brashar, a/k/a Jerry R. Brashar, and Vickie Elaine Brashar, 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, Jerry Ross Brashar, a/k/a Jerry R. Brashar, and Vickie Elaine Brashar, are indebted to the Plaintiff in the principal sum of \$33,337.79, plus interest at the rate of eleven and one-half percent (11.5%) per annum from August 1, 1985, until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Jerry Ross Brashar, a/k/a Jerry R. Brashar, and Vickie Elaine Brashar, in the principal sum of \$33,337.79, plus interest at the rate of eleven and one-half percent (11.5%) per annum from August 1, 1985, until judgment, plus interest thereafter at the current legal rate of 6.18 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during

this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Jerry Ross Brashar, a/k/a Jerry R. Brashar, and Vickie Elaine Brashar, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisalment the real property 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

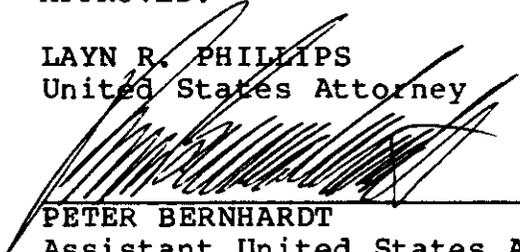
Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney



PETER BERNHARDT
Assistant United States Attorney

FILED

IN THE UNITED STATES DISTRICT COURT AUG 4 1986

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

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
ST. LOUIS-SAN FRANCISCO)
RAILWAY COMPANY, now)
BURLINGTON NORTHERN RAILROAD)
CO.,)
)
Defendant.)
_____)

CIVIL ACTION NO.
76-C-253-E

CONSENT DECREE

This matter was instituted by the Equal Employment Opportunity Commission (hereinafter referred to as the "EEOC") on June 10, 1976, alleging that the Defendant, St. Louis-San Francisco Railway Company, now Burlington Northern Railroad Co. (hereinafter referred to as the "Company"), discriminated against Deborah Bauman and other similarly situated females in violation of Section 703 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2, by establishing a minimum height requirement for train service positions.

The Company denies the allegations in the complaint, and it maintains that at all times relevant to this lawsuit, it has complied and will continue to comply with the provisions

of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.

The Company specifically denies that it unlawfully discriminated against Deborah Bauman, presently Deborah Schott, and other females, and denies that it has any liability to or relating to Deborah Schott and any other female.

The EEOC and the Company desire to settle this action and, therefore, do hereby stipulate and consent to the entry of this Decree as final and binding between the parties signatory hereto and their successors or assigns. This Decree resolves all matters related to the complaint in this action.

This Decree shall not constitute an adjudication or finding on the merits, and neither the negotiation and execution nor the entry of this Decree shall constitute or operate as an acknowledgement or admission that the Company violated Title VII, or discriminated in any manner against females, including Deborah Bauman.

The parties agree that neither shall use this Consent Decree in any court hearing or administrative hearing not provided by the Decree, except when necessary to prove the terms of the Decree or the release provided herein.

Upon consent of the parties to this action, it is

agreed, Ordered, Adjudged and Decreed that:

1. The Company, its agents, employees, successors and assigns shall continue to comply in all respects with the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq.
2. The Company shall not discriminate or retaliate in any manner against any individual because of that individual's participation in the investigation, hearing or litigation relating to this cause of action.
3. Upon execution of the Consent Decree by EEOC and the Company, the Company shall pay to Deborah Schott the sum of \$10,000.00, less standard legal deductions for applicable FICA, federal, state and local tax withholding, and shall make all employer contributions to the Social Security Administration, the Internal Revenue Service and any applicable state or local authority in behalf of Deborah Bauman Schott as required by law.
4. The Company shall deliver to the EEOC, Dallas District Office, 8303 Elmbrook Drive, Dallas, Texas 75247, to the attention of Dale H. Jurgens, Senior Trial Attorney, within ten (10) days of the execution of this Consent Decree by both parties, a check for the payment designated in paragraph 3 above made payable to Deborah Bauman Schott. The check shall be promptly delivered by EEOC to Deborah Bauman Schott, but only upon re-

ceipt by EEOC of a Release in the form agreed upon by EEOC and the Company, a copy of which is attached hereto as Exhibit 1, executed by Deborah Bauman Schott. The EEOC shall promptly deliver the executed release to the Company.

5. The Company represents that it no longer has any applications for employment for persons who applied for but were not hired into train service positions during the period from January 1, 1972, to July 1, 1975. The EEOC represents that it has made diligent efforts to locate such persons in order to advance claims of any females who were discriminatorily denied train service positions because of their sex. Efforts made by EEOC included publications of notices in five newspapers of daily circulation during the period from July 12, 1985, through July 15, 1985, as evidenced in Exhibits 2,3,4,5 and 6 attached hereto; and mailing of a letter, in text similar to that of the newspaper notices, to approximately five hundred (500) employees and former employees of the Company. The EEOC was unsuccessful in locating any female applicants for train service positions who were not hired other than Deborah Bauman Schott, or any females who were discouraged from applying because of the Company's minimum height requirement.
6. This Consent Decree is entered into for the purpose of eliminating and foregoing the nuisance and expense of further litigation and shall not be construed as an admission

by the Company of any allegations of the complaint or charges, or of any liability arising therefrom, which the Company denies, and shall not be construed by the Commission as a concession of the merits of its claims.

7. This decree shall be filed with the Court within five days of the delivery of the check to Deborah Schott.
8. Each of the parties to this lawsuit shall bear its own costs and expenses incurred in the course of, as a result of or incidental to this litigation and the discrimination charges upon which it was founded.

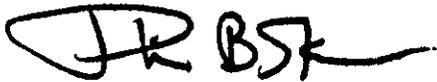
It is further ORDERED that upon the entry of this decree Civil Action No. 76-C-253E filed with this court be and the same is hereby dismissed with prejudice and without costs or expenses to either party as against each other.

DATED this 14th day of August, 1986.

S/ JAMES O. ELISON

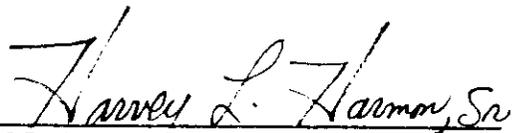
UNITED STATES DISTRICT JUDGE

ATTORNEYS FOR PLAINTIFF

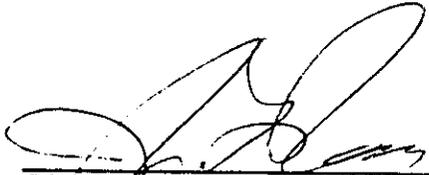


PHILIP B. SKLOVER
Associate General Counsel
Equal Employment Opportunity
Commission
2401 "E" Street, N.W.
Washington, D.C. 20507

ATTORNEYS FOR DEFENDANT



HARVEY L. HARMON, SR.
Kornfeld, Franklin & Phillips
P.O. Box 26400
Oklahoma City, OK 73126
(405) 840-2731



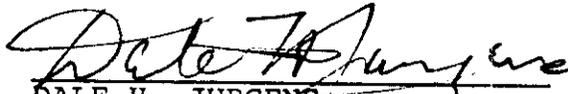
JOHN L. ROSS
Regional Attorney



RICHARD J. SCHREIBER
Senior Assistant Vice
President-Law
Burlington Northern Railroad
Company
3800 Continental Plaza
777 Main Street
Fort Worth, Texas 76102



TELA L. GATEWOOD
Supervisory Trial Attorney



DALE H. JURGENS
Senior Trial Attorney

Equal Employment Opportunity
Commission
Dallas District Office
8303 Elmbrook Drive
Dallas, Texas 75247
(214) 767-7948
(FTS) 729-7948

EXHIBIT 1

RELEASE

For and in consideration of the sum of TEN THOUSAND DOLLARS AND NO CENTS (\$10,000.00), less applicable federal, state and local taxes, in hand paid by St. Louis-San Francisco Railway Company, now Burlington Northern Railroad Company, the receipt of which is hereby acknowledged to be sufficient, just and adequate consideration, Deborah Schott, the undersigned, hereby releases, remises, acquits and discharges St. Louis-San Francisco Railway Company, now Burlington Northern Railroad Company, of and from any and all claims, demands, causes of action, obligations, damages and liabilities arising from allegations of violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq., contained in the complaint filed in Civil Action No. 76-C-253E, The Northern District of Oklahoma, and which Deborah Schott had, now has or claimed to have had against St. Louis-San Francisco Railway Company, now Burlington Northern Railroad Company, arising out of any alleged violations of Title VII.

It is understood and agreed that the above-recited consideration be paid by St. Louis-San Francisco Railway Company, now Burlington Northern Railroad Company, and accepted by Deborah Schott in settlement and compromise of disputed claims of alleged violations of Title VII of the Civil Rights Act of 1964,

as amended, the validity of which are expressly denied by the Company.

The terms and covenants contained in this release and the decree into which this is incorporated shall be binding upon and inure to the benefit of the assigns, heirs, executors and administrators of Deborah Schott, as well as to the predecessors, successors and assigns of St. Louis-San Francisco Railway Company, now Burlington Northern Railroad Company, and each of its past or present employees, agents, representatives, officers or directors.

I further state that I have read the foregoing release, know the contents thereof, and that I have signed the same as my own free act.

DEBORAH BAUMAN SCHOTT

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 1986.

NOTARY PUBLIC IN AND FOR _____

My commission expires _____

PROOF OF PUBLICATION

TITLE EQUAL EMPLOYMENT OPPORTUNITY

STATE OF OKLAHOMA,

COUNTY OF TULSA

SS.

AFFIDAVIT:

I, LISA MILLER, of lawful age, being duly sworn, upon oath deposes and says that he is the CLERK of TULSA TRIBUNE, a daily newspaper printed in the City of Tulsa, County of Tulsa, State of Oklahoma, and of a bona fide paid general circulation therein, printed in the English language, and that the notice by publication, a copy of which is hereto attached, was published in said newspaper for THREE consecutive days (or-weeks), the first publication being on the 12TH day of JULY, 1985, and the last day of publication being on the 15TH day of JULY, 1985, and that said newspaper has been continuously and uninterruptedly published in said county during the period of more than One Hundred and Four (104) weeks consecutively, prior to the first publication of said notice, or advertisement, as required by Section one, Chapter four, Title 25 Oklahoma Session Laws, 1943, as amended by House Bill No. 495, 22nd Legislature, and thereafter, and complies with all of the prescriptions and requirements of the laws of Oklahoma. (The advertisement above referred to is a true and printed copy. Said notice was published in all editions of said newspaper and not in a supplement thereof.)

The advertisement above referred to, a true and printed copy of which is hereto attached, was published in said NEWS PAPER on the following dates, to-wit:

JULY 12, 13, 15, 1985

Said notice was published in the regular edition of said newspaper and not in a supplement thereof.

Publishing fee \$61.60
 Notary fee \$ 00
 TOTAL \$61.60

Subscribed and sworn to before me this 17TH day of JULY, 1985, A. D., 1985.
 My commission expires SEP 26 1988

Lisa Miller (Signature)
Judy Sale

Notary Public

PUBLISHED in the Tulsa Tribune on July 12, 13, 15, 1985. TULSA OKLAHOMA EQUAL EMPLOYMENT OPPORTUNITY COMMISSION Plaintiff,

v. LOUIS SAN FRANCISCO RAILWAY CO. Defendant. CIVIL ACTION NO 76-C-733 E TO ALL FEMALES WHO APPLIED OR WHO CONSIDERED APPLICATION FOR EMPLOYMENT AT ST. LOUIS-SAN FRANCISCO RAILWAY. Equal Employment Opportunity Commission (EEOC) has filed suit against the St. Louis-San Francisco Railway Co. (owner of the Burlington Northern Railroad) for sex discriminating against females in hiring because of the minimum height requirements of 5'7" imposed on both males and females at St. Louis-San Francisco at any time from 1972-1973, and were not hired, or if you considered applying, but did not do so because of the height requirement, or know of a female who did not apply for employment at (714) 767-7943 or Betty Garner at (214) 767-7943. You may also inquire by writing to EEOC at Equal Employment Opportunity Commission, 400 1st District Office Dallas, Texas 75201. ATTN: Alicia Burkman Senior Trial Attorney

(ATTACHED HERE)

PROOF OF PUBLICATION

TITLE EQUAL EMPLOYMENT OPPORTUNITY.....

STATE OF OKLAHOMA, SS.
COUNTY OF TULSA

AFFIDAVIT:

I, LISA MILLER, of lawful age, being duly sworn, upon oath deposes and says that he is the CLERK of TULSA WORLD, a daily newspaper printed in the City of

Tulsa, County of Tulsa, State of Oklahoma, and of a bona fide general circulation therein, printed in the English language, and that the notice by publication, a copy of which is hereto attached, was published in said newspaper

for THREE consecutive days (or-weeks), the first publication being on the 12TH day of JULY, 1985 and the last day of publication being on the 14TH day

of JULY, 1985 and that said newspaper has been continuously and uninterruptedly published in said county during the period of more than One Hundred and Four (104) weeks consecutively, prior to the first publication of said notice, or advertisement, as required by Section one, Chapter four, Title 25 Oklahoma Session Laws, 1943, as amended by House Bill No. 495, 22nd Legislature, and thereafter, and complies with all of the prescriptions and requirements of the laws of Oklahoma. (The advertisement above referred to is a true and printed copy. Said notice was published in all editions of said newspaper and not in a supplement thereof.)

The advertisement above referred to, a true and printed copy of which is hereto attached, was published in NEWS PAPER

said on the following dates, to-wit:

JULY 12, 13, 14, 1985

Said notice was published in the regular edition of said newspaper and not in a supplement thereof.

Publishing fee \$61.60
Notary fee \$ 00
TOTAL \$61.60

Lisa Miller (Signature)

Subscribed and sworn to before me this 17TH day of JULY, 1985, A. D., 1985.

My commission expires SEP 26 1988

Judy Sole

Notary Public

PUBLISHED in the Tulsa World, July 12, 13, 14, 1985, Tulsa, Oklahoma, Equal Employment Opportunity Commission, Plaintiff, vs. ST. LOUIS-SAN FRANCISCO RAILWAY CO now BURLINGTON NORTHERN RAILROAD, Defendant, TO ALL WHOM THESE PRESENTS SHALL COME, NOTICE IS HEREBY GIVEN THAT THE FOLLOWING IS THE APPLICABLE LAW AND THE APPLICABLE PROCEDURE FOR EMPLOYMENT AT ST. LOUIS-SAN FRANCISCO RAILWAY: The Equal Employment Opportunity Commission (EEOC) has issued a final ruling against the St. Louis-San Francisco Railway Company (now owned by the Burlington Northern Railroad) for sex discrimination against females in hiring because of the minimum height requirements of 57" imposed on females. Said ruling was issued on July 12, 1985. The ruling states that any time from 1972 to 1985, and were not hired, or if hired, considered applying, but did not do so because of the height requirement, or a now of a female who did consider application, at 13141 767-7943. Yvonne Garner at 13141 767-7943. Yvonne Garner inquire by writing to EEOC at: Equal Employment Opportunity Commission, Dallas District Office, 630 E. Imbrook Drive, Suite 200, Dallas, Texas 75207. Yvonne Garner, Equal Employment Opportunity Commission, Dallas District Office, 630 E. Imbrook Drive, Suite 200, Dallas, Texas 75207. Similar Title Attorney

(ATTN)

STATE OF OKLAHOMA, }
COUNTY OF OKLAHOMA } ss.

Affidavit of Publication

Edgar L. Stanley, of lawful age, being first

duly sworn, upon oath deposes and says that he is the Classified Manager
of The Oklahoma Publishing Company, a corporation, which is the publisher of the

Oklahoman and Times which is a daily newspaper
of general circulation in the State of Oklahoma, and which is a daily newspaper
published in Oklahoma County and having paid general circulation therein; that
said newspaper has been continuously and uninterruptedly published in said
county and state for a period of more than one hundred and four consecutive
weeks next prior to the first publication of the notice attached hereto, and that said
notice was published in the following issues of said newspaper, namely:

July 13, 14, 15

Subscribed and sworn to before me this 13

day of Sept. 1985

Cathy A. Kiefer
Notary Public

My commission expires Sept. 20, 1988

**LEGAL NOTICE
EQUAL EMPLOYMENT OP-
PORTUNITY COMMISSION,**
Plaintiff,

**ST. LOUIS-SAN FRANCISCO
RAILWAY CO. now BURLING-
TON NORTHERN RAILROAD,**
Defendant.
CIVIL ACTION NO. 76-C-253-E
TO ALL FEMALES WHO AP-
PLIED OR WHO CONSIDERED
APPLICATION FOR EMPLOY-
MENT AT ST. LOUIS-SAN
FRANCISCO RAILWAY.
The Equal Employment Oppor-
tunity Commission (EEOC) has
filed suit against the St. Louis-
San Francisco Railway Co. (now
owned by the Burlington North-
ern Railroad) for sex discrimina-
tion against females in hiring be-
cause of the minimum height re-
quirement of 5'7" imposed on
job applicants. If you applied at
St. Louis-San Francisco Railway
at any time from 1972 - 1975,
and were not hired, or if you
considered applying, but did not
do so because of the height re-
quirement, or know of a female
who did consider application,
please call Ms. Alicia Burkman
at (214) 767-7945 or Betty
Garner at (214) 767-7943. You
may also inquire by writing to
EEOC at:
Equal Employment Opportunity
Commission
Dallas District Office
6305 Embrook Drive
Dallas, Texas 75247
ATTN: Alicia Burkman
Senior Trial Attorney

Affidavit of Publication

EQUAL
EMPLOYMENT
OPPORTUNITY
COMMISSION,

Plaintiff,

v.

ST. LOUIS-
SAN FRANCISCO
RAILWAY CO. now
BURLINGTON
NORTHERN
RAILROAD,

Defendant.

CIVIL
ACTION
NO.
76-C-253-E

STATE OF MISSOURI
County of Jackson ss.

Clifford B. Smith, of lawful age, being duly sworn, says that he is one of the publishers of THE DAILY RECORD, a daily newspaper of general circulation published in Kansas City, Jackson County, Missouri, and that the notice of

Legal Notice

a true copy of which is hereto attached was duly published in the Daily Edition of said newspaper.

Three (3) Consecutive Issues

beginning July 11, 1985 and in each of the

following issues July 12, 15, 1985

being numbers 9-10-11

of volume 170 of said newspaper.

Affiant further declares that said newspaper is qualified under, and has complied with all of the provisions of Chapter 493, including Section 493.050 and Sections 493.070 to 493.090. Revised Statutes of Missouri, 1969, as amended.

Clifford B. Smith
CLIFFORD B. SMITH

Subscribed and sworn to before me this 15 day of July, 1985 and I certify that I am duly qualified as a Notary Public and my commission expires September 15, 1986.

Mary Ellen Fennelly
MARY ELLEN FENNELLY
Notary Public in and for Jackson County, Missouri

(NOTARY SEAL)

TO ALL FEMALES WHO APPLIED OR WHO CONSIDERED APPLICATION FOR EMPLOYMENT AT ST. LOUIS-SAN FRANCISCO RAILWAY:

The Equal Employment Opportunity Commission (EEOC) has filed suit against the St. Louis-San Francisco Railway Co. (now owned by the Burlington Northern Railroad) for sex discrimination against females in hiring because of the minimum height requirement of 5'7" imposed on job applicants. If you applied at St. Louis-San Francisco Railway at any time from 1972-1975, and were not hired, or if you considered applying, but did not do so because of the height requirement, or know of a female who did consider application, please call Ms. Alicia Burkman at (214) 767-7945 or Betty Garner at (214) 767-7943. You may also inquire by writing to EEOC at:

Equal Employment Opportunity Commission
Dallas District Office
8533 Elmbrook Drive
Dallas, Texas 75247
ATTN: Alicia Burkman,
Senior Trial Attorney

Published July 11, 12, 15, 1985
9-10-11 (A28910)

Form 137D

PUBLISHERS AFFIDAVIT

THE STATE OF TEXAS

COUNTY OF DALLAS

Before me, the undersigned, a Notary Public, this day personally came M LaFORGE, who, after being duly sworn, according to the law, says that he/she is the Classified Cust Svc Supvr of the TIMES HERALD PRINTING COMPANY, Publishers of the DALLAS TIMES HERALD, a Daily Newspaper published in Dallas, in said County and State, and that the attached ad was published in said paper on 7-14,15,16, 1985.

M LaForge

SUBSCRIBED AND SWORN TO BEFORE ME, THIS 16th DAY OF July, 1985.

Debbie Hubert
NOTARY PUBLIC DALLAS COUNTY TEXAS

COMMISSION EXPIRES: 12-15-88

LEGAL NOTICE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
PLAINTIFF
VERSUS
ST. LOUIS—SAN FRANCISCO RAILWAY CO. now BURLINGTON NORTHERN RAILROAD, Defendant.
CIVIL ACTION NO. 76-C-251-E
TO ALL FEMALES WHO APPLIED OR WHO CONSIDERED APPLICATION FOR EMPLOYMENT AT ST. LOUIS—SAN FRANCISCO RAILWAY:
The Equal Employment Opportunity Commission (EEOC) has filed suit against the St. Louis—San Francisco Railway Co. (now owned by the Burlington Northern Railroad) for sex discrimination against females in hiring because of the minimum height requirement of 5'7" imposed on job applicants. If you applied at St. Louis—San Francisco Railway at any time from 1972—1975, and were not hired, or if you considered applying, but did not do so because of the height requirement, or know of a female who did consider application, please call Ms. Alicia Burkman at (214) 767-7945 or Betty Garner at (214) 767-7943. You may also inquire by writing to EEOC at: Equal Employment Opportunity Commission, Dallas District Office, 8300 Elmbrook Drive, Dallas, Texas 75247. A.T.N.: Alicia Burkman, Senior Trial Attorney.

CLERICAL REQUEST FORM

DOCUMENT AUTHOR

D. Purgoe

DATE

7/15/86

CHARGE/CASE

0000 v. Frisco Rury

TYPE OF DOCUMENT

Letter to Harmon forwarding Decree

INSTRUCTIONS FOR MAILING, ENVELOPE, COPIES

SPECIAL INSTRUCTIONS

*Submit to Teta Gatewood
for signature in my absence.*

SUPERVISOR'S APPROVAL

[Signature]

DATE AND TIME

7/15 at 12:30

LEGAL CLERK

dj

DATE AND TIME
RETURNED

NUMBER OF PAGES

CLERICAL ERRORS

- Entered -

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

FILED

AUG -4 1985

FRANK GOULD, et al.,)
)
) Plaintiffs,) CIVIL ACTION
) v.) NO.: 85-C-1080-C
)
) EXAM COMPANY, INC.,)
)
) Defendant.)

JAMES H. WOOD, CLERK
U.S. DISTRICT COURT

AGREED FINAL JUDGMENT

Based upon the pleadings on file, representations of counsel, and other documents filed in this cause, the Court hereby FINDS as follows:

Plaintiffs in Count I administer certain multiemployer pension and health and welfare benefit funds, which funds are administered in accordance with the provisions of the Employee Retirement Income Security Act of 1974, as amended, and the Labor-Management Relations Act of 1947, as amended. The Plaintiff in Count II is a Labor Organization engaged in the representation of employees for purposes of negotiating wages, hours and other terms and conditions of employment.

The Defendant is the employer of certain beneficiaries of the Funds administered by Plaintiffs and is currently doing business in this judicial district. The Defendant has admitted jurisdiction under the Employee Retirement Income Security Act of 1974, as amended, and the Labor-Management Relations Act of 1947, as amended. Accordingly, the Court

finds that it has jurisdiction over the parties, in personam, and that venue is properly in the Northern District of Oklahoma.

The Court finds that the Defendant has made available to the Plaintiffs certain payroll books and records for the purposes of conducting an accounting as to employees of the Defendant covered by the Collective Bargaining Agreement alleged in the Complaint, and determining compliance by the Defendant with the alleged terms and conditions therein. The Court finds that an examination was conducted by the Plaintiffs' auditors and Defendant's representative, covering the period January 1, 1980 through March 31, 1986, and as a result of compromise and settlement, the parties have amicably resolved all issues in dispute and have agreed upon an Order to be issued by this Court.

Based upon the Agreement of the parties, the Court finds that the Plaintiffs are entitled to Judgment in the amount of \$46,704.07, and accordingly, it is hereby,

ORDERED, ADJUDGED and DECREED that Plaintiffs have and recover from Defendant, Exam Company, Inc., the sum of \$46,704.07, to be paid in the following manner: \$704.07 plus the Defendant's reports and payments due the Plaintiffs for work performed during the period April 1, 1986 through June 30, 1986 upon entry of this Order, with the balance of

\$46,000.000 to be paid in twelve (12) equal monthly installments of \$4,022.77, said payments to be payable on or before the monthly anniversary date of the entry of this Order.

In addition, it is further ORDERED, ADJUDGED and DECREED that Exam Company, Inc. shall submit all monthly reports and payments due the Plaintiffs under the terms of the aforementioned Collective Bargaining Agreement, for all work performed by the Defendant's non-destructive testing technician employees during the next twelve (12) months, such monthly reports and payments to be submitted to Plaintiffs' Counsel with each monthly payment referred to above.

Based upon the Agreement of the parties, the Court makes no finding as to the Defendant's alleged violation of the Agreements referenced in the Complaint, and the Court notes that Defendant specifically denies certain violations and enters into this Agreed Order and Judgment for the purpose of compromise and settlement only.

Each party shall bear its own costs.

Execution on this Judgment shall be stayed during such period of time as the Defendant, Exam Company, Inc., faithfully complies with the terms and conditions specified above, but in the event the Defendant shall fail to make any payment due the Plaintiffs as specified above, including the monthly reports and payments for work performed subsequent to the date of entry of this Order, the Plaintiffs shall be immediately entitled to a writ of execution for the balance of any

amounts due the Plaintiffs under this Judgment, together with such further sum as may be determined by the Court as and for Plaintiffs' reasonable attorneys' fees incurred in connection with any such necessary enforcement proceedings.

SIGNED, RENDERED and ENTERED on this the 4th day of ~~July~~^{August}, 1986.

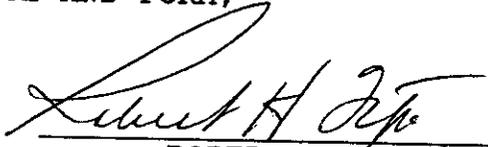
(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

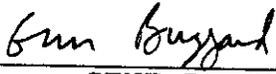
APPROVED AND AGREED AS TO SUBSTANCE AND FORM;



MICHAEL A. CRABTREE
Attorney for Plaintiffs



ROBERT H. TIPPS
Attorney for Defendant



GENE BUZZARD
Attorney for Plaintiffs



EDWARD EAVES, President
Exam Company, Inc.

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

FILED

AUG 4 1986

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

HOMeward BOUND, INC., on behalf)
of its members BRIDGET BECKER,)
by her mother and next friend)
Mary Ann Becker, et al.,)

Plaintiffs,)

vs.)

No. 85-C-437-E

HISSOM MEMORIAL CENTER, et al.,)

Defendants.)

ORDER

NOW on this 1st day of August, 1986 comes on for hearing the above styled case and the Court, being fully advised in the premises finds:

Plaintiffs filed motion for Class action determination pursuant to Rule 23(b)(2) which this Court finds should be granted, Plaintiffs having met the criteria set forth therein.

The Class shall be defined as follows: All persons who at the time of the filing of the complaint in this action were at Hissom and all persons who become clients of Hissom during the pendency of this action; retarded persons residing at home who have been clients of Hissom within the past five (5) years and who may be returned to Hissom; and persons who have been transferred to skilled nursing facilities or intermediate care facilities, yet remain Defendants' responsibility.

The parties are directed to submit an agreed form of notice within ten (10) days.

- The Court finds Judith A. Finn shall be appointed guardian ad litem for those clients at Hissom who are without parents or guardians.

The Court further finds that Plaintiffs' motion for preliminary injunction which was reurged by motion for emergency relief is granted in part and denied in part as follows: Plaintiffs' motion is granted as to positioning and physical therapy in that the Defendant is ordered to implement the proposed plan of Ms. Cox. Plaintiffs' motion is granted as to the feeding issues in that Defendant is directed to retain the services of Dr. Donovan and implement any directives issued by Dr. Donovan; Defendant Hissom will supplement the report of Samuel Hoover within twenty (20) days at which time the Court will address the issues raised therein; all other issues raised are denied pending final resolution of the trial on the merits.

IT IS FURTHER ORDERED that the parties are to meet for the purpose of preparing a comprehensive plan regarding the implementation of establishing community homes. The parties are to submit their respective proposals by August 29, 1986; agreed plan is to be submitted on or before September 25, 1986.

The Court further finds oral motion to dismiss of Defendant Wendell Sharpton is taken under advisement. Defendant Wendell Sharpton is hereby ordered to file written motion and brief within fifteen (15) days citing the authority on which he relies.

The Court has reviewed Defendant Department of Education of the State of Oklahoma's motion to dismiss and finds Plaintiffs have failed to establish futility of administrative review as

required. The Court finds Defendant's motion to dismiss should be granted pursuant to Smith v. Robinson, 468 U.S. 992 (1984). The Court takes under advisement the offer of Defendant Department of Education to serve as amicus curiae in this action.

It is so Ordered.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

AUG 4 1966

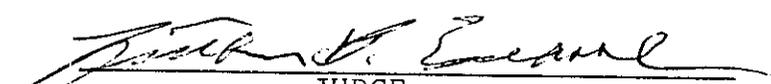
John L. Sawyer, Clerk
U.S. DISTRICT COURT

W. DAVID HOLLOWAY, M.D.,)
et al.,)
)
Plaintiffs,)
)
vs.)
)
PEAT, MARWICK, MITCHELL &)
CO., a partnership, et al.,)
)
Defendants.)

Case No. 84-C-814-Eu

ORDER DISMISSING ROBERT J. PETERSON AS A DEFENDANT

Upon the joint motion of Plaintiffs and Defendant, ROBERT J. PETERSON, the Court hereby finds and ORDERS that ROBERT J. PETERSON should be dismissed as a defendant herein with prejudice.


JUDGE

FILED

AUG 1 1986

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

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

UTICA NATIONAL BANK & TRUST CO.,)
a national banking association,)
)
Plaintiff,)
)
vs.)
)
DON R. ODLE,)
)
Defendant.)

No. 86-C-403E

JOURNAL ENTRY OF JUDGMENT

Utica National Bank & Trust Co., a national banking association, filed its Complaint in this action on April 25, 1986. Service was obtained on the defendant, Don R. Odle, by leaving a copy of the Summons and Complaint with him, personally on June 1, 1986, pursuant to Rule 4 of the Federal Rules of Civil Procedure.

After being properly served, defendant, Don R. Odle, has failed to plead or otherwise defend. Upon plaintiff's request and, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, the Clerk of this Court on July 31, 1986, entered the default of Don R. Odle.

The Court having considered the record in this case, and having reviewed the pleadings, finds that plaintiff is entitled to judgment and hereby grants plaintiff the relief prayed for in its Complaint against the defendant, Don R. Odle.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff, Utica, have judgment against the defendant, Don R. Odle, for the sum of \$28,151.56 with interest thereon at the

rate of 6% per annum from the 15th day of May, 1985, until judgment is entered, ^{attorney's fees to be set upon proper application,} ~~for its attorneys fees in the amount of \$450.00~~ and for the costs of this action, with interest on such amounts at the rate of 6.35 % per annum from the date of judgment until paid.



JUDGE OF THE UNITED STATES
DISTRICT COURT

Entered

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

FILED

AUG -1 1986

WARREN N. DURANT,)
)
 Plaintiff,)
)
 vs.)
)
 DANIEL M. COLLINS,)
)
 Defendant.)

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

No. 85-C-554-C

JOURNAL ENTRY OF JUDGMENT

On this 21st day of July, 1986, this action came on for trial before the Honorable H. Dale Cook, United States District Judge, and the Plaintiff appeared in person and by his attorney, David Cole; the Defendant appeared in person and by his attorney, Jeffrey A. King; and all parties announced ready for trial. A jury of six was duly qualified, impaneled and sworn to try the issues between the Plaintiff and Defendant in accordance with the law and the evidence. Plaintiff presented his case in chief. The Defendant's Motion To Dismiss was overruled at the close of Plaintiff's evidence and Defendant offered and presented his evidence. All parties having closed and the jury having heard the evidence, instructions of the Court and argument of counsel, the case was duly submitted to the jury on July 23, 1986. After due deliberation, the jury returned a unanimous verdict in favor of the Defendant and against the Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that judgment be and is hereby entered in favor of the Defendant, Daniel M. Collins, and against the Plaintiff, Warren N. Durant.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



David H. Cole
Attorney for Plaintiff



Jeffrey A. King
Attorney for Defendant

Entered

FILED

AUG -1 1986

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

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

TURNPIKE TOM, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. 86-C-107-C
)	
BETTY R. DENNISON,)	
)	
Defendant.)	

CONSENT JUDGMENT

The Complaint in this action was filed herein on February 10, 1986 and duly served upon the defendant, Betty R. Dennison, and the parties having advised the Court that judgment may be entered accordingly in favor of the plaintiffs against the defendant.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Judgment is hereby entered against the defendant, Betty R. Dennison, in the sum of \$5,000.00, the parties having agreed that the judgment shall be satisfied if the defendant pays to the American Society of Composers, Authors and Publishers (ASCAP) on behalf of the plaintiffs the sum of \$1,000.00 payable as follows:

<u>DATE DUE</u>	<u>PAYMENT</u>
July 1, 1986	\$250.00
August 1, 1986	\$250.00
September 1, 1986	\$250.00
October 1, 1986	<u>\$250.00</u>
TOTAL	\$1,000.00

Interest of ten percent (10%) per annum shall accrue on the unpaid balance from June 1, 1986.

2. By entry of this Consent Judgment the parties have settled all claims and causes of action that each has against the other arising out of non-dramatic public performances of copyrighted musical compositions written and published by plaintiffs and all other members of ASCAP at defendant's establishment known as Miss Kitty's Fountain Blu, located in Tulsa, Oklahoma for all periods through December 31, 1985.

3. Execution of this judgment shall be stayed provided that the defendant

(a) makes timely payments as provided in paragraph 1 above, and

(b) obtains and complies with the terms and conditions of ASCAP license agreements for Miss Kitty's Fountain Blu listed in paragraph 2 above for the period January 1, 1986 through December 31, 1986.

4. Upon the execution of this Consent Judgment, ASCAP shall offer to the defendant and the defendant agrees to accept and execute an ASCAP license agreement and tender payment of license fees for her club listed in paragraph 2 above.

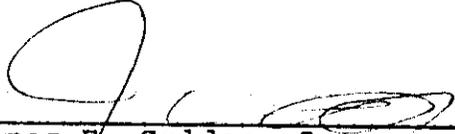
5. Failure to comply with the provisions of paragraphs 1 or 3 above within ten (10) days written notice to the defendant of such failure shall entitle the plaintiff to have execution on this judgment without further notice for the sum of \$5,000.00 less any payments made by the defendant.

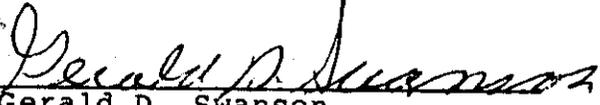
6. In the event that the defendant shall attempt to sell, transfer, or assign, or actually sell, transfer or assign the business known as Miss Kitty's Fountain Blu, the plaintiff shall be entitled to immediate execution on this judgment in the sum of \$5,000.00 less any payments received.

IT IS SO ORDERED this 1st ^{August} day of ~~June~~, 1986.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE


James E. Golden, Jr.
PIERCE COUCH HENDRICKSON
JOHNSTON & BAYSINGER
Post Office Box 26350
Oklahoma City, OK 73126
405/235-1611
Attorney for Plaintiffs


Gerald D. Swanson
Suite 800 - Grantson Building
111 West Fifth
Tulsa, Oklahoma 74103
918/599-9125
Attorney for Defendant

Entered

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

FILED

AUG - 1 1986

98

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

FIRST TEXAS SAVINGS ASSOCIATION,)	
a Texas savings and loan)	
association,)	
)	
Plaintiff,)	
)	
v.)	
)	
AUTUMN OAKS, LTD., an Oklahoma)	
limited partnership; HOWARD L.)	
RASKIN; COUNTY TREASURER FOR)	
TULSA COUNTY; and THE BOARD OF)	
COUNTY COMMISSIONERS OF TULSA)	
COUNTY,)	
)	
Defendants.)	

Case No. 85-C-49-B ✓

CORRECTED JUDGMENT

The Court corrects its Judgment entered herein May 30, 1986, as follows:

In keeping with the Corrected Findings of Fact and Conclusions of Law entered this date, Judgment is hereby rendered in favor of the plaintiff, First Texas Savings Association, a Texas savings and loan association, against the defendant guarantor, Howard L. Raskin, in the amount of Two Million Four Hundred Sixty-six Thousand Six Hundred Twenty-four and 74/100 Dollars (\$2,466,624.74), post-judgment interest is granted at the rate of Texas Commerce Bank-Houston, Texas prime plus five (5) per cent on the net deficiency of One Million Nine Hundred Thirty-four Thousand Three Hundred Eighty-two and 00/100 Dollars (\$1,934,382.00), plus the costs of this action if timely applied for under the Local Rules.

DATED THIS 31st day of July, 1986.

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

Entered

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

FILED

AUG -1 1985

J

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

KEITH E. ELLIS and LINDA ELLIS,)
)
 Plaintiffs,)

No. 84-C-1029-B ✓

v.)
)
 CONSOLIDATED DIESEL ELECRC)
 CORPORATION, a foreign corpora-)
 tion, CONDEC CORPORATION, a)
 foreign corporation, VOUGHT)
 CORPORATION, a foreign corpora-)
 tion, and LTV CORPORATION, a)
 foreign corporation,)
)
 Defendants.)

DENNIS HODNETT and SANDRA W.)
 HODNETT,)
)
 Plaintiffs,)

No. 85-C-302-B

v.)
)
 CONSOLIDATED DIESEL ELECTRIC)
 CORPORATION, et al.,)
)
 Defendants.)

THOMAS L. CURRY,)
)
 Plaintiff,)

No. 85-C-303-B

v.)
)
 CONSOLIDATED DIESEL ELECTRIC)
 CORPORATION, et al.,)
)
 Defendants.)

(CONSOLIDATED UNDER
84-C-1029-B)

ORDER SUSTAINING DEFENDANTS'
MOTIONS FOR SUMMARY JUDGMENT

The plaintiffs in these consolidated cases filed in late 1984 and early 1985 seek damages for alleged personal injuries from a one-vehicle accident on June 7, 1984, on Interstate 40

an

east of Roland, Oklahoma. The plaintiff, Dennis Hodnett, was driver of the vehicle in which plaintiffs Keith E. Ellis and Thomas L. Curry were passengers. It is alleged that the driver apparently fell asleep, losing control, which caused the vehicle to crash into a concrete abutment resulting in a flash fire and injuries to plaintiffs. At the time of the accident the injured plaintiffs were on active military duty in the Oklahoma Army National Guard and the subject vehicle was a specialized military vehicle known as a "Gama Goat".

Plaintiffs' action sounds in product (strict) liability, it being alleged that the vehicle was defectively designed and manufactured by the defendants Consolidated Diesel Electric Corporation ("Consolidated"), Condec Corporation ("Condec"), Vought Corporation ("Vought") and LTV Corporation ("LTV"). The alleged defect making the vehicle unreasonably dangerous is that it was designed and manufactured with its batteries mounted on top of fuel tanks located on the outside of the vehicle and further that they were not properly protected to prevent fires from direct contact.

The defendants have moved for summary judgment pursuant to Fed.R.Civ.P. 56, urging that no genuine issue of fact remains for trial. Rule 56(c) provides in pertinent part that summary judgment shall be rendered "if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment

as a matter of law." The Court of Appeals for the Tenth Circuit has stated that for summary judgment to lie "[t]he movant must demonstrate entitlement (to a summary judgment) beyond a reasonable doubt and if an inference can be deduced from the facts whereby the non-movant might recover, summary judgment is inappropriate." Williams v. Borden, Inc., 637 F.2d 731, 738 (10th Cir. 1980), quoting from Mustang Fuel Corp. v. Youngstown Sheet & Tube Co., 516 F.2d 33, 36 (10th Cir. 1976); Webb v. Allstate Life Insurance Co., 536 F.2d 336 (10th Cir. 1976).

The Court must construe the evidence and all reasonable inferences therefrom in a light most favorable to the nonmoving party. United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S.Ct. 993, 994; 8 L.Ed.2d 176 (1962); Barber v. General Electric Co., 648 F.2d 1272, 1276 (10th Cir. 1981); Bruce v. Martin-Marietta Corp., 544 F.2d 442 (10th Cir. 1976); and Machinery Center, Inc. v. Anchor National Life Ins. Co., 434 F.2d 1 (10th Cir. 1970).

Following a review of the entire voluminous record herein, the Court concludes the motions for summary judgment of Condec and LTV should be sustained.

I.

EVIDENCE CONCERNING THE HISTORY OF THE GAMA GOAT

In 1960, the United States Continental Army Command recommended a 1 1/4 ton truck for future Army requirements. Essential characteristics of the vehicle included decrease in weight, increase in cargo space, improved mobility, including

water floatation, and improved reliability. (Exhibit C, Foreword, p. 5; Exhibit O, p.3; Exhibit N, pp. 1-2; Exhibit I, p. 1).

The M561 project was initiated on June 29, 1961 (Exhibit C, p. 5; Exhibit P). The Military Characteristics for the experimental M561 (XM561) were approved in December 1961, which included air transportability. Responsibility for development of the M561 by the Army Materiel Command (AMC) was assigned to the U. S. Army Tank Automotive Command ("TACOM") (Exhibit C, p. 6).

In 1960, Roger Gamaunt of LTV had conceived the idea of an all-terrain vehicle for the U.S. Army and had applied for a patent on an articulated longitudinal spine and drive shaft vehicle by which the front and rear vehicle body members were connected and LTV built a prototype 3/4 ton vehicle (the "LTV Prototype") (Civiletto Affidavit, ¶7). The LTV Prototype had fuel tanks built in as an integral part of the hull (Exhibit U, p. 2). In January 1961, the LTV Prototype was demonstrated by LTV for the U. S. Army (Civiletto Affidavit, ¶8). Exhibit V is a 1961 LTV brochure proposing a vehicle inter alia with no external fuel tanks but two 25-gallon fuel tanks located in tank cavities beneath the seats and a single 12 volt battery compartment at the left front of the crew compartment.

TACOM developed a set of performance specifications outlining tactical requirements for the new vehicle. They were circulated by TACOM among manufacturers and bids on a development contract were solicited. TACOM's Research Engineering Purchase

Description 62-22 (the "REPD") listed 22 engines which could be considered, all of which were larger than the Corvair engine which had been used in the LTV Prototype. (Exhibit L, REPD ¶3.10) The REPD ¶3.20 specified a 24 volt electrical system calling for two 12 volt batteries.

In response to the request for proposal (RFP), LTV submitted its proposal on March 30, 1962, which conformed to the requirements of the REPD. The LTV proposal was approved in August 1962 (Exhibit O, p. 3) and LTV was awarded the Development Contract on March 15, 1963. Pursuant to the Development Contract LTV was to follow certain plans and specifications provided by the Army to build two test rigs, and if the Army chose, pilot vehicles. (Exhibit L; Civelecto Affidavit, ¶¶ 15, 17, 18).

The Development Contract contemplated testing of the test rigs by the Army and LTV and extensive testing of the pilots by the Army (Exhibit L, REPD ¶¶ 5-5.7, pp. 19-33) and for specific engineering tests by the Army for the mandatory requirement of safe operation of the vehicle (Exhibit L, REPD ¶¶ 5.4.2.2, pp. 22-23). There were no specific crash worthiness tests provided for in any of the contract documents relating to design and/or manufacture of the Gama Goat.

The Development Contract required Army approval or acceptance of every aspect of LTV's work, including the supplies and the end product. (Exhibit L, pp. 1, 2, 21, 10a and 10b and General Provisions pp. 2 and 13).

The Army was to approve drawings, supervise the work, approve and issue work directives and accept test rigs and pilots after inspection. (Exhibit L Schedule Exhibit "A", pp. 1, 2, 11 and 12). The pilots were to be extensively tested by the Army (Exhibit L REPD, pp. 21-32) and LTV was, as directed by the Army, to correct deficiencies and adopt suggested improvements resulting from the tests.

LTV was required by the Development Contract to move its operation from Dallas, Texas to Detroit, Michigan where TACOM was located. LTV moved its necessary people to a site near TACOM and the Army Project Management Office ("PMO"), approximately 30 people, moved into the same building as LTV in 1963. (Exhibit L, p. 12; Allshouse Affidavit, ¶6; Argo Affidavit, ¶18).

Test plans were prepared by nine Army testing agencies. Eight of the test plans provided for safety testing and evaluation. (Exhibit C, pp. D50-D149). The pilots were tested for over 200,000 miles by numerous military agencies and at numerous locations about the country. (Exhibits B, C, D, E, F, G, H and I). The testing was carried out of the pilots to discover deficiencies in the vehicles and make reports and recommendations so that changes could be made in future pilots for proper vehicle development. (Allshouse Affidavit, ¶10; Argo Affidavit, ¶10; Civiletto Affidavit, ¶¶ 17-18).

There were formal in-process review meetings involving the various interested military agencies as the vehicle development progressed. In addition, there were regular less formal meetings

among TACOM, PMO and LTV and daily communication between LTV, TACOM and the PMO. (Allshouse Affidavit, ¶¶ 7, 8; Argo Affidavit, ¶ 18; Zimmerman Affidavit, ¶4).

Regarding any changes made as the vehicle developed, the ultimate decisions were those of the Army. Nothing was done by LTV except at the direction of or with the concurrence of the Army. (Allshouse Affidavit, ¶13; Argo Affidavit, ¶17; Civiletto Affidavit, ¶18; Zimmerman Affidavit, ¶11; Johnson Deposition, pp. 36, 118-119 and 124-125). The Army likewise had to approve the location of the fuel tanks and batteries in their ultimate configuration and location. (Johnson Deposition, p. 147)

The XM561 as developed pursuant to the Development Contract was safety released by the Army Test and Evaluation Command ("TECOM") (Exhibit I, pp. VI-15). By type classification of the vehicle as approved for production and use by the military, the Army approved the design in June 1966. (Allshouse Affidavit, ¶¶ 14-15; Argo Affidavit, ¶14).

In June 1965, the Army and LTV entered into an Advance Production Engineering ("APE") Contract. LTV was to build more pilots for further testing and change as directed by the Army. (Exhibit M, pp. 1, Argo Affidavit, ¶20). Further testing, including safety tests of the vehicles built by LTV under the APE contract brought about changes at the direction of or with the concurrence of the Army. (Allshouse Affidavit, ¶13; Argo Affidavit, ¶17; Civiletto Affidavit, ¶18). The safety release of the XM561 was extended in November 1967 to the M561 as developed pursuant to the APE contract. (Exhibit I, p. 14).

LTV then submitted to the Army a Technical Data Package ("TDP") consisting of drawing and specification for the vehicle as it had then been developed. (Argo Affidavit, ¶15; Civiletto Affidavit, ¶55). LTV was not involved in the ultimate manufacture and production of the subject vehicle herein.

Relative to the history of the location of the batteries, the batteries were originally light duty batteries and were located in the engine compartment. The Army changed the battery specification to heavy duty, back to light duty, and back to heavy duty again. (Exhibit L REPD, ¶3.20.1, p. 13; Exhibit K; Exhibit P; Argo Affidavit, ¶12; Civiletto Affidavit, ¶¶ 31, 37). The specification of the Army of heavy duty batteries, artic kits and a larger engine (AVM-310) contributed to the necessity to move the batteries out of the engine compartment. (Argo Affidavit, ¶¶ 7, 8, 13; Civiletto Affidavit, ¶¶ 38 and 39).

By Modification 23 dated September 15, 1964 (Exhibit Q), the Army directed LTV to relocate batteries in the engine compartment of XM561 Test Rigs 2A and 2B for Advanced Research Projects Agency ("ARPA"). Both batteries had been located on one side of the engine and obstructed access to the oil dip stick, starter motor and cold weather starting aid (Exhibit 2, p. 22). Exhibit R illustrates the position of the batteries before and after.

The batteries finally specified were 6TN (Exhibit P). 6TN batteries were twice as large as the 2HN battery and contributed to the decision to move the batteries from the engine compartment to atop the fuel tanks. (Exhibit A, Argo Affidavit, ¶ 13;

Civiletto Affidavit, ¶¶ 37, 39). The record does not reflect whether it was the Army or LTV that actually made the decision to move the batteries to the top of the fuel tanks but it did require Army approval.

Exhibit 3 consists of a three-page unsolicited value Engineering Change Proposal ("VECP") dated January 17, 1969 submitted by LTV to TACOM suggesting that the batteries of the M561 be relocated from their positions atop the right and left fuel tanks into the engine compartment. The reason given for the change was cost savings. Nowhere in the record is there any specific discussion of safety hazards associated with the batteries mounted on top of fuel tanks.

Exhibit A consists of a one-page document dated March 19, 1969, in which the chief of the Truck Branch Vehicle Systems Division, Development and Engineering Directorate ("CTB") of TACOM requests comments from the Chief, Light Tactical Vehicle Branch ("CLTVB") on the LTV VECP proposing that the batteries of the M561 be relocated from atop the fuel tanks exterior to the vehicle to within the engine compartment. The Chief of the Truck Branch responded that the battery location had always been controversial and recommended that the LTV value engineering change proposal be rejected because if the batteries were brought into the engine compartment, they would be buried and not as accessible. He also stated the batteries located in the engine compartment would cause possible interference with removal of the air cleaner and engine filter and addition of artic and

winterization kits would make the batteries inaccessible and degrade maintainability. (Exhibit A; Exhibit 3; Crawford Affidavit, ¶9; Whalley Affidavit, ¶6; Civiletto Affidavit, ¶¶ 51-52).

The Army issued an invitation for bids ("IFB") seeking bids on a contract to produce more than 15,000 of the vehicles to the Technical Data Package ("TDP") developed as part of the APE contract. (Argo Affidavit, ¶16; Civiletto Affidavit, ¶56; Exhibit 5). In 1967 Condec received the IFB on the construction of the new all-terrain Gama Goat vehicle for the United States Army. The design specifications were provided by the Government with the IFB. The IFB expressly provided that any bids submitted must be to construct a vehicle in strict compliance with the specifications. (Defendants' Joint Exhibits 6, pp. 16-35). Any bid not conforming to the specifications would not be considered. (Defendants' Joint Exhibit 5, p. 7481 [Bates #]; Defendants' Joint Exhibit 6, pp. 12, 13, 17). Condec was awarded the contract for production of the M561 Gama Goat vehicle on September 18, 1967, approximately four years after going through the design and pilot vehicle production phase.

Condec was not involved in the design of the Gama Goat's fuel and electrical systems. (Exhibits A and B). Condec manufactured the vehicles in compliance with the Government specifications and plans, including those pertaining to the electrical and fuel systems. (Exhibit C). The manufacturing process was strictly scrutinized by representatives of the

Defense Contract Administration Service ("DCAS") to assure that the specifications were followed. Production of the Gama Goat commenced in 1968 and ceased in 1973. The subject Gama Goat involved herein was number 954C and was manufactured at Condec's Charlotte, North Carolina manufacturing facility in late 1970 and early 1971. It was accepted by the Army on January 6, 1971, following an inspection and a determination it complied with the Government's specifications. There were no manufacturing defects (Johnson Deposition p. 221).

The particular vehicle involved herein was in service until June 7, 1984, the date of the accident. A few in excess of 15,000 Gama Goats were manufactured by Condec. Over the approximately fifteen years in which various Gama Goats were involved in accidents, none involved a fire in the electrical or fuel system. (Exhibit E to Condec's Memorandum of Law of September 3, 1984; Transcript of Proceedings, January 3, 1986, p. 9).

The affidavit of Civiletto states that at the time of the design and production of the pilot vehicles LTV was not aware of any hazards associated with the location of the electrical system and the fuel tanks. (p. 13).

It is the contention of plaintiffs that affidavits of engineers Lehman and Johnson join issue with material facts above and this prevents granting a summary judgment for defendants. Specifically, Lehman's affidavit states the Army's approval was "strictly technical", suggesting that it was not a detail

approval and acceptance of all design specifications. Johnson states in her affidavit that "although the Army may have inspected and approved the design submitted by LTV and the finished product submitted by Condec", it did not have the knowledge or expertise to understand the consequences of approving the hazardous and dangerous vehicle. (Johnson Deposition, p. 21).

Neither engineers Johnson nor Lehman were involved in the development or production of the subject vehicle. Neither had any experience with the Army or TACOM concerning ground wheel or track vehicle design and production, nor were they knowledgeable concerning the expertise of TACOM or TECOM. Many relevant documents were not furnished engineers Lehman and Johnson.

The conclusions or opinions of an expert are no better than the underlying facts upon which they are based. Lee Way Motor Freight v. True., 165 F.2d 38 (10th Cir. 1948); F. W. Woolworth Co. v. Davis, 41 F.2d 342 (10th Cir. 1930); Downs v. Longfellow Corporation, 351 P.2d 999 (Okla. 1960); McNamara v. American Motors Corp., 247 F.2d 445 (5th Cir. 1957); Smith v. General Motors Corporation, 227 F.2d 210 (5th Cir. 1955); Finney v. Ford Motor Company, 331 F.Supp. 321 (W.D.Pa. 1971); Wieser v. Chrysler Motors Corporation, 69 F.R.D. 97 (E.D.N.Y. 1975); Mustang Fuel Corporation v. Youngstown Sheet & Tube Co., 516 F.2d 33 (10th Cir. 1975); Stevens v. Barnard, 512 F.2d 876 (10th Cir. 1975); and Thompson v. Merrill, Lynch, Pierce, Fenner & Smith, Inc., 401 F.Supp. 111 (W.D.Okla. 1975). The ultimate opinions expressed by

the witnesses Lehman and Johnson are contrary to the facts reflected in the record, i.e., the Army's approval of the Gama Goat was not "strictly technical" and the Army's expertise in TACOM and TECOM was insufficient to be aware of such hazards.

F.R.Civ.P. 56(e) provides in pertinent part:

"... affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein...."

A party opposing summary judgment cannot rest on mere allegations or denials but must, by affirmative response and affidavits or otherwise, set forth specific facts of which the affiant is knowledgeable showing that there is a genuine issue for trial. Prochaska v. Marcoux, 632 F.2d 848 (10th Cir. 1980), cert. denied 451 U.S. 984 (1981). Therefore, such evidence is not sufficient to create a fact question herein and summary judgment is appropriate. Celotex Corp. v. Catrett, 54 U.S.L.W. 4775 (June 24, 1986).

THE APPLICABLE LAW

LTV and Condec urge that the undisputed facts of this case require application of the government contract defense as set forth in In re "Agent Orange" Product Liability Litigation, 534 F.Supp. 1046 (E.D.N.Y. 1982), cert. denied 104 S.Ct. 1417 (1984) and McKay v. Rockwell International Corp., 704 F.2d 444 (9th Cir. 1983), cert. denied, 104 S.Ct. 711 (1984), and dictate the granting of the defendants' motions for summary judgment pursuant to F.R.Civ.P. 56. McKay v. Rockwell International Corp., supra,

sets out the following four elements that must be satisfied for the government contract defense to be applicable:

1. The United States is immune from liability under the cases of Feres and Stencell¹;
2. The supplier proves that the United States established, or approved, reasonably precise specifications for the allegedly defective military equipment;
3. The equipment conformed to those specifications; and
4. The supplier warned the United States about patent errors in the Government's specifications or dangers involved in the use of the equipment that were known to the supplier but not to the United States.

The Agent Orange court briefly stated the purpose of the government contractor defense as follows:

"The purpose of a government contract defense ... is to permit the government to wage war in whatever manner the government deems advisable, and to do so with the support of suppliers of military weapons. Considerations of cost, time of production, risks to participants, risks to third parties, and any other factors that might weigh on the decision of whether, when and how to use a particular weapon, are uniquely questions for the military and should be exempt from review by civilian courts. As indicated in the text, considerations of public policy require that a supplier of weapons to the government has two duties: (1) to comply with the specifications imposed by the government, and (2) to see that the government is apprised of any risks or hazards related to the weapon of which the supplier has knowledge. Given those two conditions, a supplier

¹ The Feres-Stencel doctrine stems from two cases: Feres v. United States, 340 U.S. 135, 71 S.Ct. 153 (1950) (holding that a service man cannot recover from the Government for service related injuries) and Stencel Aero Engineering Corp. v. United States, 431 U.S. 666, 97 S.Ct. 2054 (1977) (holding that a third party also could not recover from the Government damages it paid to another for services related injuries). The Feres-Stencel doctrine is the forerunner and connecting link to the modern government contractor defense.

to the government under specifications established by the government, is exempt from liability whether the theory of the claim be negligence or strict products liability."

534 F.Supp. at 1054, n. 1.

Other circuits have approved the McKay criteria of the government contract defense. In re Air Crash Disaster at Mannheim, Germany on September 11, 1982, 769 F.2d 115 (3rd Cir. 1985); Koutsoubos v. Boeing Vertol Division of the Boeing Company, 755 F.2d 352 (3rd Cir. 1985); Tillett v. J. I. Case, 756 F.2d 591 (7th Cir. 1985). Recent Fourth Circuit cases approving the government contract defense and the McKay criteria are Tozer v. LTV Corporation, 792 F.2d 403 (4th Cir., 1986); Dowd v. Textron, Inc., 792 F.2d 409 (4th Cir. 1986); and Boyle v. United Technologies Corp., 792 F.2d 413 (4th Cir. 1986).

When the fact situation herein is viewed from the four McKay criteria, each is satisfied. The United States is immune from liability under the Feres-Stencel doctrine. The United States either established or approved reasonably precise specifications for the allegedly defective Gama Goat, military equipment. The Gama Goat involved herein manufactured by Condec conformed to the Government's precise specifications; and the alleged defect herein was not one that was known to the supplier but not to the United States.

The placement of each battery on top of each external fuel tank was open and obvious. (Defendants' Joint Exhibit 7A to 7F and 8A through 8LL). It is not required to warn of open and obvious dangers. Burton v. L. O. Smith Foundry Products Co., 529

F.2d 108 (7th Cir. 1976); Marshall v. Ford Motor Co., 446 F.2d 712 (10th Cir.1971); Larsen v. General Motors Corp., 391 F.2d 495 (8th Cir. 1968); Mayberry v. Akron Rubber Machinery Corp., 483 F.Supp. 407 (N.D.Okla. 1979); Lambertson v. Cincinnati Corp., 257 N.W.2d 679 (Minn. 1977); Doran v. Pullman Standard Car Mfg. Co., 45 Ill. App.3d 981, 4 Ill.Dec. 504, 360 N.E.2d 440 (Ill. 1977); Dixon v. Outboard Marine Corp., 481 P.2d 151 (Okla. 1971); Berry v. Porsche Audi, Inc., 578 P.2d 1195 (Okla. 1978); and Nicholson v. Tacker, 512 P.2d 156 (Okla. 1973).

TACOM was capable of being knowledgeable concerning potential dangers related to the proximity of batteries to fuel tanks. Plaintiffs' experts, Johnson and Lehman, and their opinions that TACOM would have changed the design had it been aware of the safety problems is conjectural and conclusory without support in the record. TACOM specifically rejected the proposal of LTC to move the batteries under the hood because of TACOM's desire for ease of maintenance of the preferred larger batteries to facilitate the vehicles' military applications.

The plaintiffs urge that the government contractor defense should not be applied to this case and that the general product liability law as established in Oklahoma in Kirkland v. General Motors, 521 P.2d 1353 (Okla. 1984) should apply.

The plaintiffs contend that if the government contractor defense rule applies, that the recent case of Shaw v. Grumman Aerospace Corporation, 778 F.2d 736 (11th Cir. 1985), and its stated criteria should be used. Shaw was an action brought

against an aircraft manufacturer under the Death on the High Seas Act, 46 U.S.C. §761 et seq. and federal admiralty law, 28 U.S.C. §1333. The Eleventh Circuit held that the "military contractor defense is available in certain situations not because a contractor is appropriately held to a reduced standard of care, nor because it is cloaked with sovereign immunity, but because traditional separation of powers doctrine compels the defense."² Shaw acknowledged the rationale behind the government contractor defense is that the military should make decisions exclusively regarding the preparation for and waging of war, such decisions being shielded from review by civilian courts. Shaw holds that before a government contractor can successfully assert such shield it must show that the military's decision to use a defective product was done knowingly and purposefully.

Shaw fashioned a different government contractor defense criteria than McKay in the disjunctive as follows:

"(1) That it did not participate, or participated only minimally, in the design of those products or parts of products shown to be defective; or (2) that it timely warned the military of the risks of the design and notified it of alternative designs reasonably known by the contractor, and that the military, although forewarned, clearly authorized the contractor to proceed with the dangerous design."

² In Shaw the court concluded the government contractor defense was not available to the aircraft manufacturer, Grumman, because Grumman participated more than minimally in the product or parts of products shown to be defective and further that Grumman was aware of the defect and had chosen to approach it as a maintenance problem rather than a design defect requiring an improved design. The evidence established that the defect was the loss or failure of a bolt in the "stabilizer actuation system" which caused the aircraft to go out of control immediately following catapult launch.

Under the above quoted Shaw criteria, Condec could successfully assert the government contractor defense because it did not participate, or participated only minimally, in the part of the product alleged to be defective. Further, herein LTV would be shielded under Shaw because the military, being aware of any alleged obvious hazards or dangers, authorized the contractor to proceed with the placement of the batteries on top of the external fuel tanks.

The Oklahoma Supreme Court has not specifically passed upon the government contractor defense. Two Oklahoma cases, not decisive on the question, are discussed by the parties. In Garrett v. Jones, 200 P.2d 402 (Okla. 1948), the defendant entered on plaintiff's land under a contract with the Government. The court held that the plaintiff's remedy was in condemnation, and not directly against the defendant, because the defendant was executing the will of the Government.

In the case of Stiers v. Mayhall, 248 P.2d 1047 (Okla. 1952), the defendant constructed a bridge under a contract with the Government and was found liable for negligence in the process of construction as an independent contractor.

In the case of Williams v. Borden, 637 F.2d 731 (10th Cir. 1980), the court stated that in deciding what the Oklahoma courts would probably do, there is justification in examining decisions from other jurisdictions. Other circuits have applied the government contract defense in similar cases as is reflected in the following: Burgess v. Colorado Serum Company, Inc., 772 F.2d

844 (11th Cir. 1985); Bynum v. FMC Corporation, 770 F.2d 556 (5th Cir. 1985); In re Air Crash Disaster at Mannheim, Germany on 9/11/82, 769 F.2d 115 (3rd Cir. 1985); Tillett v. J. I. Case, 756 F.2d 591 (7th Cir. 1985); Koutsoubos v. Boeing Vertol Division of the Boeing Company, 755 F.2d 352 (3rd Cir. 1985); Tozer v. LTV Corp., 792 F.2d 403 (4th Cir. 1986); Dowd v. Textron, 792 F.2d 409 (4th Cir. 1986); Boyle v. United Technologies Corp., 792 F.2d 413 (4th Cir. 1986); McKay v. Rockwell International Corp., 704 F.2d 444 (9th Cir. 1983), cert. denied, 104 S.Ct. 711 (1984); and Brown v. Caterpillar Tractor Co., 696 F.2d 246 (3rd Cir. 1982).

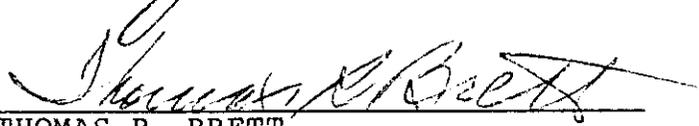
A majority of the state courts that have considered the government contract defense under state law have adopted it. Tillett v. J. I. Case, supra; Brown v. Caterpillar Tractor Co., supra; Hunt v. Blasius, 55 Ill.App.3d 14, 370 N.E.2d 617 (1977), aff'd, 74 Ill.2d 203, 384 N.E.2d 368 (1978); Sanner v. Ford Motor Company, 144 N.J.Super. 1, 364 A.2d 43 (1976), aff'd, 154 N.J.Super. 402, 381 A.2d 805 (1977), cert. denied, 75 N.J. 616, 384 A.2d 846 (1978); and Casabianca v. Casabianca, 104 Misc.2d 348, 428 N.Y.S.2d 400 (1980).

The policy concept supporting the government contract defense is that Government approved or directed design specifications for military equipment gives rise to a uniquely federal interest sufficient to impose federal law. The overriding federal interest requires that exclusive control over matters of military equipment remain with the Executive and Legislative branches of the federal government. Federal interests could be frustrated by the application of state law.

For the above reasons, this Court accepts the McKay analysis which is an application of the federal common law and an extension of the Feres-Stencel doctrine. The Court does not choose to apply the Shaw v. Grumman criteria as it is a single circuit, while numerous other circuits considering the government contract defense have applied the McKay criteria.³.

For the reasons stated above, the motions for summary judgment of the defendants LTV and Condec are hereby sustained. A separate Judgment in keeping with the order herein shall be entered contemporaneous herewith.

DATED this 15th day of Aug, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

³ In view of the Court's application of the government contractor defense herein, it is not necessary for the Court to engage in a conflicts of law analysis because the subject vehicle was manufactured in the State of North Carolina and consider the "significant contacts" test as applied in Brickner v. Gooden, 525 P.2d 632 (Okla. 1974), and Bruce v. Martin-Marietta Corp., 418 F.Supp. 829 (W.D.Okla. 1975), Bruce v. Martin-Marietta Corp., 418 F.Supp. 837 (W.D.Okla. 1975), Bruce v. Martin-Marietta Corp., 544 F.2d 442 (10th Cir. 1976). Neither is it necessary for the Court to determine whether or not LTV in supplying design and engineering services (not manufacturing or selling the product itself) could be liable herein under the product liability rule of Kirkland v. General Motors Corp., supra, or the Restatement, Torts 2d §402A.

Entered

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

FILED

AUG -1 1986

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

KEITH E. ELLIS and LINDA ELLIS,)
)
 Plaintiffs,)

v.)

CONSOLIDATED DIESEL ELECTRIC)
 CORPORATION, a foreign corpora-)
 tion, CONDEC CORPORATION, a)
 foreign corporation, VOUGHT)
 CORPORATION, a foreign corpora-)
 tion, and LTV CORPORATION, a)
 foreign corporation,)
 Defendants.)

No. 84-C-1029-B

DENNIS HODNETT and SANDRA W.)
 HODNETT,)
 Plaintiffs,)

v.)

CONSOLIDATED DIESEL ELECTRIC)
 CORPORATION, et al.,)
 Defendants.)

No. 85-C-302-B

THOMAS L. CURRY,)
 Plaintiff,)

v.)

CONSOLIDATED DIESEL ELECTRIC)
 CORPORATION, et al.,)
 Defendants.)

No. 85-C-303-B

(Consolidated Under
84-C-1029-B)

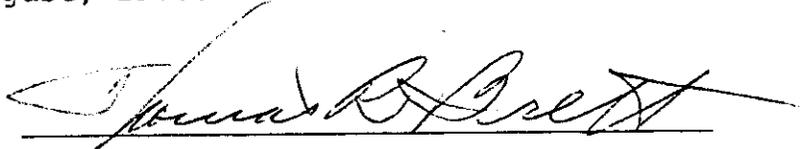
J U D G M E N T *

In keeping with the Court's Order sustaining the defendants' motions for summary judgment pursuant to Fed.R.Civ.P. 56, Judgment

g/s

is hereby entered in favor of the defendants Consolidated Diesel Electric Corporation, CONDEC Corporation, Vought Corporation, LTV Corporation and LTV Aerospace and Defense Company, and against the plaintiffs, Keith E. Ellis and Linda Ellis, Dennis Hodnett and Sandra W. Hodnett, and Thomas L. Curry, in the captioned cases. Costs are hereby assessed against the plaintiffs if timely applied for pursuant to local rules.

DATED this 1st day of August, 1986.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

* The counterclaim of the defendants Consolidated Diesel Electric Corporation and CONDEC Corporation against the plaintiffs Dennis Hodnett and Sandra W. Hodnett is rendered moot by this judgment.

FILED

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

AUG -1 1986

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

FIRST TEXAS SAVINGS ASSOCIATION,
a Texas savings and loan
association,)

Plaintiff,)

v.)

Case No. 85-C-49-B ✓

AUTUMN OAKS, LTD., an Oklahoma
limited partnership; HOWARD L.
RASKIN; COUNTY TREASURER FOR
TULSA COUNTY; and THE BOARD OF
COUNTY COMMISSIONERS OF TULSA
COUNTY,)

Defendants.)

CORRECTED
FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This case was tried to the Court, sitting without a jury, on February 27 and 28, and March 3, 1986. Oral argument was presented by counsel to the Court on April 4, 1986. The issue tried to the Court centered in the plaintiff First Texas Savings Association's claim against the defendant, Howard L. Raskin, on his guaranty, for a deficiency judgment. The Court entered its original Findings of Fact and Conclusions of Law and Judgment herein on May 30, 1986. Thereafter on the 9th day of June, 1986, plaintiff filed its Motion to correct the Judgment pointing out that it had not been given judgment for \$39,610.47 referred to this Court's Finding No. 19 although this Court had found plaintiff to be entitled to that amount. The Court therefore hereby grants plaintiff's Motion to Correct Judgment and files

these Corrected Findings of Fact and Conclusions of Law in accordance therewith.

The Court having heard the evidence, the arguments of counsel, and the applicable legal authorities presented, enters the following Corrected Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. There is complete diversity between plaintiff and all defendants, and the amount of controversy exceeds \$10,000, exclusive of interest and costs. Jurisdiction by the Court over

the parties and over the subject matter of the controversy is uncontested. Likewise, venue is uncontested.

2. On the 3rd day of August, 1984, defendant, Autumn Oaks, Ltd., a limited partnership ("Defendant Autumn Oaks"), caused to be executed a Promissory Note (the "Note") in the principal sum of \$10,800,000.00, payable to the order of plaintiff, First Texas Savings Association ("Plaintiff First Texas").

3. Contemporaneously with the execution of the Note, defendant Autumn Oaks executed a Mortgage, Security Agreement and Financing Statement (the "Mortgage"), covering certain real and personal property, described therein (hereinafter referred to as the "Autumn Oaks Project").

4. Contemporaneously with the execution of the Note and Mortgage, defendant Autumn Oaks caused to be executed an Assignment of Leases and Assignment of Net Profits Interest (the "Assignments") under the terms of which it assigned all leases and profits of the Autumn Oaks Project to Plaintiff.

5. Contemporaneously with the execution of the Note and Mortgage on behalf of defendant Autumn Oaks, defendant Howard L. Raskin ("defendant Raskin"), executed a Guaranty (the "Guaranty") in favor of plaintiff guaranteeing to plaintiff the prompt payment and performance of the Note and Mortgage in compliance with all the terms of all of the agreements executed by Autumn Oaks as part of the transaction, including the Mortgage. The Note, Plaintiff's Exhibit 1, at pages 4 and 5 provides that time is of the essence and further provides for acceleration of all

principal and interest due in the event of default. The Note provides that at maturity, whether by acceleration or otherwise, if the Note is placed in the hands of an attorney for collection, the maker and other liable party agree to pay the payee its collection costs, including a reasonable attorneys fee.

6. The Guaranty of the defendant Raskin was unconditional except for a condition subsequent on page 1 of the Guaranty (Plff. Ex. 3) which states in essential part as follows:

"At such time as the "Gross Rent Test" is met, this Guaranty shall terminate and be null and void in its entirety."

The parties stipulated and agreed that as of January 31, 1986, the Gross Rent Test had been satisfied but this was approximately sixteen months after default on the note, approximately six months after the foreclosure sale of the subject real property, and approximately one month after the sale of the subject real property to a third party. (Therefore, a threshold question is whether the guarantor has been exonerated by this belated satisfaction of the "Gross Rent Test."

7. Under the terms of the Note, the first payment was due September 1, 1984. Defendant Autumn Oaks defaulted on that payment and all subsequent payments. Plaintiff then called on defendant Raskin to pay the Note, but defendant Raskin failed to do so.

8. On the 18th day of January, 1985, plaintiff filed this action to foreclose on the Autumn Oaks Project in accordance with the terms of the Mortgage. It also sought judgment against defendant Raskin on the Guaranty.

9. Under the terms of the Order of the Court of May 1, 1985, plaintiff and defendants agreed that plaintiff could make certain advancements of funds to be expended on the Autumn Oaks project in order to facilitate the leasing of space to new tenants of the building. Under the terms of this Order, defendants agreed that plaintiff's advancements would be treated as if they had been made under the terms of the Note and Mortgage and such advancements would become part of the principal of the Note. On August 23, 1985, the Court entered another order permitting the plaintiff to make certain advances to facilitate the leasing of space to new tenants of the building. Under such orders the plaintiff has expended or has committed to spend the sum of \$1,627,407.19 on the Autumn Oaks Project in keeping with the orders of the Court. Said sum caused a corresponding increase in the value of the real property and the defendant Raskin is given credit therefor in the ultimate sale price of the building as hereafter set forth.

10. A Receiver was appointed for the Autumn Oaks Project in accordance with the Court's Order of the 6th day of March, 1985. Thereafter, the property was sold at Sheriff's Sale in accordance with the Court's Order of Foreclosure on July 11, 1985. The Autumn Oaks Project had theretofore been appraised pursuant to the foreclosure as having a value of \$8,916,000.00.

11. Plaintiff purchased the Autumn Oaks Project at foreclosure sale for \$5,944,010.00, the same being in excess of two-thirds of the appraised value of the Autumn Oaks Project.

The Court confirmed the sale on the 18th day of July, 1985, and a Sheriff's Deed was delivered to Plaintiff on the 19th day of July, 1985.

12. Defendant Raskin contends that defendant Autumn Oaks' interest in the personal property described in the Mortgage was not properly foreclosed. The Court rejects this contention for the reason that the property was, by definition in the Mortgage, "property used in connection with the buildings and other improvements" and these values were included in arriving at the fair market value of the Autumn Oaks Project and were considered in the appraisal and evaluation of the Autumn Oaks Project as a whole and functioning unit. The said personal property was fixtures and had become a part of the real property.

13. The parties have agreed that the economic benefit conferred on plaintiff by the sale of the building should be used by the Court in determining any deficiency and this is set out in the Court's Order of July 11, 1985.

14. The Court finds that the subject real property was sold on the 30th day of December, 1985, to Autumn Oaks Associates, a Texas limited partnership. The Court finds the economic benefit conferred on plaintiff by the sale is \$12,300,000.00, comprised of the \$12,000,000.00 sale price set forth in the contract between the seller, First Texas, and the buyer, Autumn Oaks Associates, and the profit participation interest retained by First Texas in the sales agreement, which has a value of \$300,000.00. The Court concludes the evidence does not establish

any presently measurable dollar tax benefit was conferred upon First Texas by the sale to Autumn Oaks Associates.

15. The terms of the Guaranty expressly provide that but for its execution the loan to defendant Autumn Oaks would not have been made. Further, under the terms of the Note, defendant Autumn Oaks had no personal liability. The Court finds that defendant Raskin is liable under the terms of the Guaranty for all amounts owed plaintiff by defendant Autumn Oaks under the terms of the Note, Mortgage and Assignment.

16. Defendant Raskin contends that the provisions of the Guaranty in reference to the "Gross Rent Test" (PX-3, p.1) insulates him from liability. The Court rejects this contention because the Gross Rent Test provided that the Guaranty should be null and void at such time as the Autumn Oaks Project had produced gross rents, as defined in the Guaranty, of \$54,375.00 per month for six (6) consecutive months, but defendant Autumn Oaks defaulted on the Note without ever making a payment. Consequently, the Court finds that the Gross Rent Test, a condition subsequent, never became operative because the principal obligor and the guarantor had defaulted on the Note in excess of a year before the Gross Rent Test was satisfied. Additionally, the Court finds that the financial records of defendant Autumn Oaks demonstrate that from the inception of the Autumn Oaks Project until its sale at foreclosure on July 11, 1985, the Autumn Oaks Project never produced gross rents equal to or in excess of \$54,375.00 per month for any six-month period.

The Court has addressed this issue in its Order of February 26, 1986, denying defendant's Motion for Summary Judgment.

17. The Court finds that the Receiver, William F. Rippy of William F. Rippy & Company, has fully complied with all obligations imposed upon him as Receiver of the Autumn Oaks Project and that he should, therefore, be discharged of any further liability as a result of such service and that his surety, Aetna Casualty & Surety Company, should be relieved of any liability under the terms of its bond and that said bond should be declared null and void and of no force and effect.

18. Defendant Autumn Oaks is asserting causes of action and has filed certain lawsuits against former tenants of the Autumn Oaks Project who have defaulted on their leases. Under the terms of the Assignment of Leases by defendant Autumn Oaks, plaintiff is entitled to those causes of action, and the Court finds that plaintiff is the owner of such causes of action and is entitled to receive any and all amounts paid by any debtor of defendant Autumn Oaks arising out of the Autumn Oaks Project.

19. Plaintiff's Exhibit 18 demonstrates that on the 3rd day of May, 1984, defendant Autumn Oaks withdrew \$39,610.47 from its security deposit account with Kidder Peabody, Inc. These were tenant security deposits. Defendant Autumn Oaks never repaid those funds. The security deposits were trust funds of the tenants of the Autumn Oaks Project. Consequently, defendant Raskin is liable on his Guaranty for the amounts so removed and not repaid which result in an increased obligation of plaintiff.

20. Under its terms, the Note and Mortgage was to bear interest in the event of default at the Texas Commerce Bank-Houston prime rate plus 5%.

21. Under the terms of the Guaranty, defendant Raskin is obligated to pay a reasonable attorneys fee for attorneys fees incurred by plaintiff and expenses in reference thereto in enforcing its rights under the terms of the Note, Mortgage, Assignment and Guaranty.

As is demonstrated by Plaintiff's Exhibits 8, 8A, 22, 23 and 24, along with plaintiff's supplemental application for attorneys fee filed April 2, 1986, the plaintiff seeks a total attorneys fee award of \$246,625.20, plus \$2,040.17 in expenses, making a total attorneys fee award plus expenses of \$248,665.37 through March of 1986. The total number of hours for services rendered as evidenced by the above numbered exhibits is 2002.09 hours. The average charge per hour of attorney services rendered is approximately \$122.50.

The parties agreed to the various hourly rates of counsel and the asserted time expended by plaintiff's counsel. However, the defendant defends, asserting that an excessive and inordinate amount of time was expended by 13 different lawyers in plaintiff's counsel's law firm and that legal services were rendered not directly related to the suit on the Note and Mortgage foreclosure. The defendant contends time was expended in reference to possible sale and/or leasing of the subject realty to third parties which is not specifically related to the

issues herein. Defendant further contends that the excessive time expended demonstrate both a lack of proficiency and duplication of services.

The Court concludes that while it could not be stated that plaintiff's claims herein involve a simple suit on a Note and foreclosure of a Mortgage, neither can the Court conclude that the matter is of such complexity to be a significant factor in granting an attorneys fee award. The case of Oliver's Sports Center v. National Standard Ins., 615 P.2d 291 (Okla. 1980) sets out twelve guidelines for consideration in awarding a reasonable attorneys fee. Of the twelve guidelines set forth therein, the Court considers the following to be the most relevant in the consideration of a reasonable attorneys fee award in this case:

1. Time and labor required.
* * *
3. The skill requisite to perform the legal service properly.
* * *
5. The customary fee.
* * *
8. The amount involved and the results obtained.
* * *
9. The experience, reputation and ability of the attorneys.

It is the Court's conclusion from a review of the relevant testimony and exhibits, as well as the issues involved, that a reasonable fee for the services rendered herein is \$175,000.00, plus expenses of \$2,040.17.

22. The plaintiff First Texas is entitled to recover against the defendant Raskin the sums as follows:

	Principal	Interest	Attorney Fee
Principal of Note	\$10,800,000.00		
Accrued Interest From Default Until Foreclosure Sale 11-Jul-85 (PX-12(a))	\$1,617,570.00		
Miscellaneous out of Pocket Expenses (PX-12(b))	\$149,794.34		
Amount withdrawn by Defendant from tenant security deposits on 03-May-84	\$39,610.47		
Advancements for Tenant Improvements/Leasing per Court Orders of 1-May-85 and 23-Aug-85 (PX-12(c) and PX-29)	\$1,627,407.19		
Interest to 11-Jul-85 on Advancements Made Prior to 11-Jul-85 (PX-29)		\$2,797.83	
Interest on Advancements from 11-Jul-85 to 24-Jan-86		\$103,944.12	
TOTAL	\$14,234,382.00		

Economic Benefit Conferred
to Plaintiff by Sale
of 30-Dec-85 (\$12,300,000.00)

Net Deficiency \$1,934,382.00

Interest on net Deficiency*		
@14.5% from 11-Jul-85 to 10-Mar-86	\$188,548.51	
@14.0% from 10-Mar-86 to 22-Apr-86	\$32,347.17	
@13.5% from 22-Apr-86 to 30-May-86	\$27,564.94	
TOTAL of All Interest		\$355,202.57

Reasonable Attorneys' Fee \$177,040.17

Total Judgment** \$2,466,624.74

*Texas Commerce Bank, Houston prime interest rate was as shown above
on the dates shown (PX-1, pp.1 and 3)

**Judgment to Bear Post Judgment Interest on Net Deficiency: \$1,934,382.00

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and the subject matter herein by way of diversity of citizenship and the jurisdictional amount. 28 U.S.C. §1332.

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

3. The Guaranty (PX-3, p.6) provides that it is to be governed by the law of the State of Texas. Texas law is not pled nor proven so the applicable law of the forum (Oklahoma) is assumed to be the same as that of Texas. Tidewater Oil Co. v. Waller, 302 F.2d 638 (10th Cir. 1962) and Benham v. Keller, 673 P.2d 152 (Okl. 1983).

4. In determining whether a Guaranty exists, the language is to be construed in favor of the party parting with property and against the guarantor. Federal Savings & Loan Assn. v. Bell, 146 Okl. 128, 293 P. 214 (1930); Lamm & Company v. Colcord, 22 Okl. 493, 98 P. 355 (1908); and McNeal v. Gorsard, 6 Okl. 363, 50 P. 159 (1897).

5. 15 Okl.St. Ann. §331 provides:

"Guaranty deemed unconditional

"A guaranty is to be deemed unconditional unless its terms import some condition precedent to the liability of the guarantor."

Rucker v. Republic Supply Co., 415 P.2d 951 (Okl. 1966).

The "Gross Rent Test" set forth in the Guaranty (PX-3, p. 1) is a condition subsequent which, by agreement of the parties, was not satisfied until after the events of default and

acceleration, the foreclosure sale, and the ultimate sale to a third party.

6. A guarantor's obligation will not be enlarged beyond its clear express terms. Lamm & Company v. Colcord, supra; North American Life Insurance Co. v. Remedial Finance Corp., 178 Okl. 248, 62 P.2d 491 (1936); Walker v. McNeal, 134 Okl. 111, 272 P. 443 (1928); Lone Star Capital Corp. v. Wickersham, 389 F.2d 616 (10th Cir. 1968); First National, Etc. v. Citizen and Southern Bank, Etc., 651 F.2d 696 (10th Cir. 1981).

7. The defendant Raskin may be liable under his Guaranty even though the debtor, Autumn Oaks, has been exonerated. Riverside National Bank v. Manolakis, 613 P.2d 438 (Okl. 1980); Black v. O'Haver, 567 F.2d 361 (10th Cir. 1977), cert. denied 435 U.S. 969, 98 S.Ct. 1609, 56 L.Ed.2d 61 (1978).

The Guaranty (PX-3, p. 2) provides:

"... no delay or omission or lack of diligence or care in exercising any right or power with respect to the Obligations or any security therefor or guaranty thereof or under this Guaranty shall in any manner impair or affect the rights of Holder or the obligations and liability of Guarantors hereunder. Guarantors specifically agree that it shall not be necessary or required, and that Guarantors shall not be entitled to require, that Holder file suit or proceed to obtain or assert a claim for personal judgment against Debtor for the Obligations or make any effort at collection of the Obligations from Debtor or foreclose against or seek to realize upon any security now or hereafter existing for the Obligations or file suit or proceed to obtain or assert a claim for personal judgment against any other party (maker, guarantors, endorser or surety) liable for the Obligations or make any effort at collection of the Obligations from any such other party or exercise or assert any other right or remedy to which Holder is or may be entitled in connection with the Obligations or any security or other

guaranty therefor or assert or file any claim against the assets or estate of Debtor or any other Guarantors or other person liable for the Obligations, or any part thereof, before or as a condition of enforcing the liability of Guarantors under this Guaranty or requiring payment of said Obligations by Guarantors hereunder, or at any time thereafter. Guarantors expressly waive any right to the benefit of or to require or control application of any security or the proceeds of any security now existing or hereafter obtained by Holder as security for the Obligations or any part thereof, and agree that Holder shall have no duty insofar as Guarantors are concerned to apply upon any of the Obligations any monies, payments or other property at any time received by or paid to or in the possession of Holder, except as Holder shall determine in its sole discretion...."

In Black v. O'Haver, supra, a clause similar to the first sentence in the above quote was held to waive any defense the guarantor may assert under the fictional satisfaction of principal debt created by the terms of 12 Okl.St. Ann. (1971) §686. Under the facts herein and the above-quoted language of the guaranty, defendant Raskin's contention that foreclosure of certain personalty remains as an impediment to determination of deficiency and entry of a deficiency judgment is without merit.

8. Title 15 Okl.St. Ann. §174 states:

"Time not of essence unless so provided

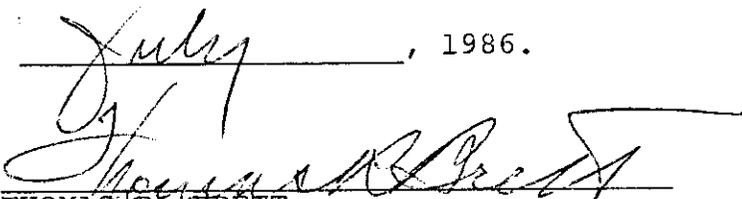
Time is never considered as of the essence of a contract, unless by its terms expressly so provided."

If it is provided in a contract that time is of the essence, there must, as a general rule, be compliance within the time specified. A contractual provision that time is of the essence is not for the benefit of one failing to perform. Burke Aviation Corp. v. Alton Jennings Co., 377 P.2d 578 (Okl. 1963) and Hamra v. Mitchell, 133 Okl. 264, 271 P. 1042 (1928).

9. The attorneys fee to be awarded as set forth in the Findings of Fact is reasonable within the contemplation of Oklahoma law in Oliver's Sport Center v. National Standard Insurance, 615 P.2d 291 (Okla. 1980) and State Ex.Rel. Burk v. City of Oklahoma City, 598 P.2d 659 (Okla. 1979).

10. A separate Corrected Judgment shall be entered in favor of the plaintiff, First Texas, and against the defendant, Howard L. Raskin, as provided in Finding of Fact No. 22.

DATED this 31ST day of July, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

FILED

AUG -1 1986

97

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

EASTERN SHAWNEE TRIBE OF)
OKLAHOMA, an organized Tribe)
of Indians as recognized under)
and by the laws of the)
United States,)

Plaintiff,)

vs.)

No. 86-C-128-CV ✓

THE STATE OF OKLAHOMA, ex rel.)
Oklahoma Tax Commission,)

Defendant.)

ORDER

Now before the Court is the motion of defendant to dismiss and the request of plaintiff for declaratory judgment and injunctive relief. The matter is ready for this Court's consideration pursuant to filings of record and hearings held in same.

On February 19, 1986, the plaintiff, Eastern Shawnee Tribe of Oklahoma (Tribe), filed its complaint pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §2201. The Tribe alleges that it is the owner of certain real estate in Ottawa County, Oklahoma, in the Northern District of Oklahoma, located at:

Lots 1 and 2 of Section 9, Township 27 North,
Range 25 East, containing 57 acres, more or
less,

which land is held in trust by the United States for use and benefit of the Tribe.

At the time of the Court's hearing on the matter, the facts on which plaintiff's complaint was based were that the Tribe had established a bingo operation on the Tribal trust land and had employed a Mr. David Allen to carry on and conduct all bingo operations. Mr. Allen, a non-Tribal member, was contractually bound to the Tribe pursuant to a management agreement entered into with the Tribe on October 5, 1984.¹ The agreement provided that the Tribe had assigned or leased to Allen, as the "contractor", the building and premises located on the real property referred to for the purpose of operating the bingo games as authorized by the Tribe's business committee.

David Allen was to act solely and exclusively to finance and/or assist the Tribe's committee in obtaining financing, constructing, improving, developing, managing, operating and maintaining the property with revenue-producing activities such as bingo. Allen had full and exclusive authority over employees and was responsible for all aspects of the bingo operation except beverages and food stuffs, including insurance and security. He was to receive all gross sales or rental revenue and to maintain full and accurate books of accounts at his principal office, with

¹Although the Court has been informed by pleadings filed subsequent to the hearing that the management agreement has been modified, the Court has not considered this because it is not reflected in the complaint and its requested relief.

duces tecum served upon plaintiff's agents, and (3) permanent injunctive relief.

The subpoenas at issue provide as follows:

State of Oklahoma to Norma Kraus:

You are hereby ordered and directed, to appear and produce for examination, on the date and at the location mentioned below, the following:

The General Ledger, all subsidiary Journals and all source documents supporting said Ledger and Journals including but not limited to: purchase orders, sales invoices and records, bank statements, daily business summaries, daily recap sheets, Federal tax returns and all other business documents relating to the bingo operations conducted at Eastern Shawnee Tribe of Oklahoma Bingo Place ... for all periods of operation to date.

The above described items are to be produced for examination by an agent of the Oklahoma Tax Commission

One identical to this was directed to Mr. David Allen. In addition, one each to Norma Kraus and David Allen was served which provided for the production of:

All personal records, bank statements and tax returns showing the amounts of money you have received or have control of, by reason of your association with, employment, or involvement in, the operation of the bingo games conducted at Eastern Shawnee Tribe of Oklahoma Bingo Palace ... for all periods of the above bingo games operation to date.

The above described items are to be produced for examination by an agent of the Oklahoma Tax Commission. ...

On February 24, 1986, the Court entered a temporary restraining order which enjoined the defendant from attempting to enforce compliance with the subpoenas insofar as they require the production of records relative to the bingo operations on the Tribe's land. The order further recited that the temporary

the right to inspect and examine such books retained by the Tribe. The Tribe was to be furnished monthly statements of all financial transactions in connection with the bingo operations.

Allen was to make a monthly payment to the Tribe, in lieu of any and all taxes due and irrespective of revenues, of \$5,000 per month for the first year, \$6,667 per month for the second year, and \$7,500 for the third year. Allen's compensation was to be the balance and remainder of any net operating profits for each month after payment to the Tribe of the set monthly leasing fee.

The agreement further provides that Allen is an independent contractor liable for the payment of his own social security and income taxes as well as those of his employees.

This lawsuit was brought under the allegation that defendant "has caused certain subpoenas duces tecum to be served upon said David Allen and one Norma Kraus, requiring the production for examination by the defendant of books and records relative to the bingo operations conducted at the Eastern Shawnee Tribe of Oklahoma Bingo Palace." Plaintiff asserts the defendant does not have jurisdiction to "tax, audit, monitor, regulate, control or otherwise interfere" with the activities of the Tribal bingo enterprise of the Tribe and asks for (1) a declaratory judgment, ruling that the Oklahoma statutes relating to bingo operations cannot be enforced against the bingo operation of the Tribe on the Tribal trust land, (2) a temporary restraining order prohibiting the application of defendant's bingo and taxing statutes to the plaintiff and restraining the enforcement of the subpoenas

quashing of the subpoenas did not extend any injunctive effect to the subpoenas requiring the production of personal records of Norma Kraus and Davis Allen, insofar as such personal records are not records of the bingo operation being conducted by the plaintiff on Tribal land.

At the hearing on the preliminary injunction, defendant asserted that the State was only after David Allen individually and pointed out that there was no evidence that the Tribe was the target of the subpoenas. Allen was under investigation for withholding and personal income tax liabilities.

CONCLUSIONS OF LAW

1. The plaintiff Tribe is an organized tribe of Indians as recognized under and by the laws of the United States of America and is a federally-recognized tribe organized under the provision of the Oklahoma Indian Welfare Act of June 26, 1936, with plaintiff's organization and Constitution approved by Oscar Chapman, Assistant Secretary of the Department of the Interior of the United States of America on November 7, 1939.

2. The Tribe is the owner of the following-described real estate situated in Ottawa County, State of Oklahoma, to-wit:

Lots 1 and 2 of Section 9, Township 27 North,
Range 25 East, containing 57 acres, more or
less;

which land is held in trust by the United States for the use and benefit of the Tribe.

3. The Tribe has heretofore established a bingo operation on the Tribal trust land and has employed David Allen as the Tribe's contractor to carry on and conduct such bingo operation.

The facilities and land comprising the bingo operation are leased to Allen for a sum certain every month as set forth in the Findings of Fact, irrespective of net profits.

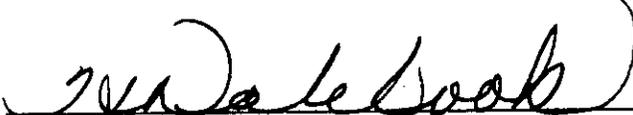
4. To invoke the jurisdiction of the Court, a genuine and existing controversy must be presented, calling for present adjudication involving present rights. Ashwander v. Tennessee Valley Authority, 297 U.S. 288 (1936). Article III, Section 2 of the U. S. Constitution mentions "cases and controversies." A "controversy" within the meaning of that provision has been interpreted to mean one that is definite and concrete, concerns legal relations among parties with adverse interests, and is real and substantial so as to require a decision granting or denying specific relief. Aetna Life Insurance Company v. Haworth, 300 U.S. 227 (1937). Claims based merely on "assumed potential invasions" of rights are not enough to warrant judicial intervention. Rizzo v. Goode, 423 U.S. 3612 (1976).

Plaintiff has asked the Court to adjudicate in the absence of an actual controversy, based on plaintiff's assumption that a potential invasion of its rights will eventually occur. Under the cases cited above, plaintiff's petition does not satisfy the "case or controversy" requirement of Article III, Section 2 of the U. S. Constitution.

5. There is no actual controversy to justify a declaratory judgment because the State is not seeking to impose a tax on the Tribe or the monthly payment the Tribe receives from Allen. The purpose of the subpoenas is not to subject the Tribe to taxation, but to impose taxation on individuals.

6. As such, defendant's motion to dismiss is hereby granted.

IT IS SO ORDERED this 1st day of August, 1986.


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

Entered

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

MIDWESTERN UNITED LIFE
INSURANCE COMPANY,

Plaintiff,

-vs-

DANIEL E. FAIRCHILD, as
Trustee of THE SUSAN MARIE
"SUMI" MILLER TRUST, et al.

Defendants.

FIREMAN'S FUND AMERICAN LIFE
INSURANCE COMPANY,

Plaintiff,

-vs-

DANIEL E. FAIRCHILD, as
Trustee of THE SUSAN MARIE
"SUMI" MILLER TRUST, et al.

Defendants.

Case No. 85-C-1074-B

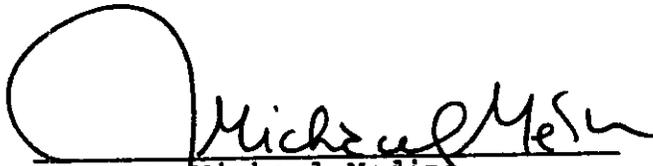
FILED
4/31 1986
Jack C. Silver, Clerk
U.S. DISTRICT COURT

STIPULATION OF DISMISSAL

COME NOW the remaining parties to the above-captioned action, pursuant to Rule 41(a) of the F.R.Civ.P., and hereby stipulate to the dismissal with prejudice of all claims which have been stated in the above-described action.

Respectfully submitted,

By: _____
Benjamin P. Abney
Chapel, Wilkinson, Riggs & Abney
502 West Sixth Street
Tulsa, Oklahoma 74119
Attorneys for Ben McGill

A handwritten signature in black ink, appearing to read "Michael Medina". The signature is written over a horizontal line.

J. Michael Medina
Holliman, Langholz, Runnels
& Dorwart
700 Holarud Building
Ten East Third Street
Tulsa, Oklahoma 74103
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG -1 1986

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

GEORGE R. ROUNDS,)

Defendant.)

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

CIVIL ACTION NO. 86-C-226-C

DEFAULT JUDGMENT

This matter comes on for consideration this 1st day
of August, 1986, 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, George R. Rounds, appearing not.

The Court being fully advised and having examined the
file herein finds that Defendant, George R. Rounds, acknowledged
receipt of Summons and Complaint on April 3, 1986. 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,

George R. Rounds, for the principal sum of \$352.60, plus interest at the rate of 12.25 percent per annum and administrative costs of \$.68 per month from June 15, 1984, until judgment, plus interest thereafter at the current legal rate of 6.18 percent per annum until paid, plus costs of this action.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE