

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

FILED

AUG 29 1986

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

LEANN WEBBER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DONALD W. CULWELL, M.D., )  
 )  
 Defendant. )

No. 85-C-621-C ✓

ORDER OF DISMISSAL WITH PREJUDICE

Now on this 29 day of august, 1986, upon the application of the parties hereto for an Order of Dismissal with Prejudice of this case, the issues between the parties having been resolved, the COURT THEREFORE ORDERS, ADJUDGES AND DECREES that this action be dismissed with prejudice.

  
United States District Judge

Entered

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

FILED

AUG 28 1986

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

ANNA MAE OLIVER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SKAGGS COMPANIES, INC. )  
 )  
 Defendant. )

No. 86-C-205-B

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff by and through her attorney of record, Don L. Dees, and the Defendant comes by its attorney, Jack Y. Goree, and the parties advise the Court that all of the issues between the Plaintiff and the Defendant have been settled to the satisfaction of the Plaintiff and the Defendant and a Release has been executed by the Plaintiff.

It is hereby stipulated by and between the parties that the case is hereby dismissed with prejudice to refiling same.

DON L. DEES, INC.

By: Don L. Dees  
Attorney for Plaintiff

23 West 4th Street, Suite 700  
Tulsa, Oklahoma 74103  
(918) 583-0121

GOREE, KING, RUCKER & FINNERTY

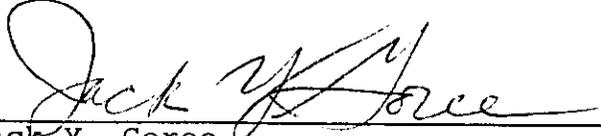
JACK Y. GOREE (OBA #3481)

By: Jack Y. Goree  
Attorney for Defendant

Southern Oaks Office Park  
7335 South Lewis, Suite 306  
Tulsa, Oklahoma 74136  
(918) 496-3366

CERTIFICATE OF MAILING

I, Jack Y. Goree, hereby certify that on this 27<sup>th</sup> day of August, 1986, a true and correct copy of the above and foregoing was mailed to Mr. Don L. Dees, 23 West Fourth Street, Suite 700, Tulsa, Oklahoma 74103; with sufficient postage thereon fully prepaid.

  
Jack Y. Goree

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

FILED

AUG 28 1986

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

IN RE:

KENNETH E. TUREAUD, a/k/a  
KENNETH E. TUREAUD d/b/a  
SAKET PETROLEUM COMPANY,  
a/k/a KENNETH E. TUREAUD  
d/b/a KESAT, a/k/a SAKET  
PETROLEUM COMPANY, a/k/a  
KENNETH E. TUREAUD d/b/a SAKET  
DEVELOPMENT CORPORATION, d/b/a  
LINDA VISTA CORPORATION, d/b/a  
SAKET DEVELOPMENT CORPORATION,  
a New Mexico Corporation a/k/a  
DEER PARK, INC., d/b/a SAKET  
REALTY, INC., d/b/a SOUTHERN  
LAKES DEVELOPMENT CORPORATION,  
d/b/a RIVER RIDGE DEVELOPMENT  
CORPORATION,

Debtors.

Case No. 82-01269  
(Chapter 11)

District Court No.  
86-C-465 E ✓

ORDER OF DISMISSAL

Having considered the Joint Application for Dismissal of Appeal filed herein on behalf of R. Dobie Langenkamp, Trustee for the Estate of Kenneth E. Tureaud, and Heller Financial, Inc., and being fully advised in the premises,

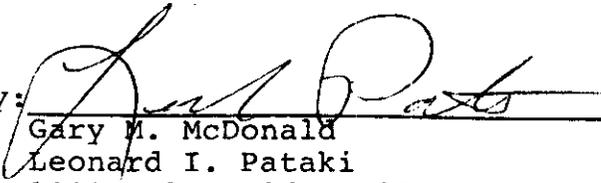
IT IS HEREBY ORDERED, ADJUDGED and DECREED that this appeal is dismissed, each party to bear their own costs.

August 28, 1986.

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

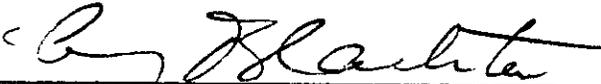
APPROVED AS TO FORM AND CONTENT:

DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

By: 

Gary M. McDonald  
Leonard I. Pataki  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
(918) 582-1211  
Attorneys for R. Dobie  
Langenkamp, Trustee

BLACKSTOCK & PRATHER -

By: 

Craig Blackstock  
320 South Boston  
Suite 1605  
Tulsa, Oklahoma 74103  
(918) 587-1805  
Attorneys for Heller Financial,  
Inc.

*Entered*

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

ROBERT M. KAYE, an individual, )  
and PLANNED RESIDENTIAL COM- )  
MUNITIES MANAGEMENT COMPANY OF )  
OKLAHOMA, INC., )

Plaintiffs, )

v. )

JOHN W. MACY, JR., Director of )  
the Federal Emergency Manage- )  
ment Agency, and SILBERMAN- )  
BRAUN INSURANCE AGENCY, )

Defendants. )

No. 85-C-447-B

FILED 8 6 1986  
*[Handwritten signature]*

J U D G M E N T

Pursuant to the Findings of Fact and Conclusions of Law entered this date, Judgment is hereby entered in favor of the defendant, John W. Macy, Jr., Director of the Federal Emergency Management Agency, and against the plaintiffs, Robert M. Kaye, an individual, and Planned Residential Communities Management Company of Oklahoma, Inc. Costs are assessed against the plaintiffs.

DATED this 28<sup>th</sup> day of Aug, 1986.

*[Handwritten signature: Thomas R. Brett]*

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

*Entered*

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

FILED

ROBERT M. KAYE, an individual, )  
and PLANNED RESIDENTIAL COM- )  
MUNITIES MANAGEMENT COMPANY OF )  
OKLAHOMA, INC., )

Plaintiffs, )

v. )

No. 85-C-447-B ✓

JOHN W. MACY, JR., Director of )  
the Federal Emergency Manage- )  
ment Agency, and SILBERMAN- )  
BRAUN INSURANCE AGENCY, )

Defendants. )

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

This alleged flood insurance claim was tried to the Court without a jury on June 23, 1986. After considering the issues, the evidence presented, as well as the arguments of counsel and the applicable legal authority, the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

The parties stipulated to the following relevant facts and the Court finds:

1. The Court has jurisdiction over the parties to this action and the subject matter of the controversy pursuant to Title 42 U.S.C. §4072.

2. Robert M. Kaye ("Kaye") is the owner of the Sugarbush Apartments ("Sugarbush"), whose business address is 3901 South Garnett, Tulsa, Oklahoma.

3. Federal Emergency Management Agency ("FEMA") flood insurance policy no. FL1-7769-7597-9 showing Kaye as insured and a property address of Sugarbush Apartments, 3901 South Garnett, Tulsa, Oklahoma, was in force on May 26, 1984, and provided for coverage in the amount of \$161,000.00.

4. Said flood insurance policy provided in part:

"This policy does not cover more than one building."

5. Sugarbush was damaged by a general condition of flooding occurring on or about May 26, 1984, and nine (9) structures received flood damage in the amount of \$528,817.31, an amount fixed by an adjuster employed by FEMA.

6. That the nine (9) structures at Sugarbush damaged by flood were damaged as follows:

Building "D"	\$ 3,808.99
Building "E"	\$ 62,467.59
Building "F"	\$ 62,467.59
Building "G"	\$ 62,467.59
Building "H"	\$ 51,624.00
Building "I"	\$ 97,232.89
Building "J"	\$ 96,627.62
Building "K"	\$ 56,494.64
Building "L"	\$ 35,626.40

TOTAL: \$528,817.31

The Court additionally finds from the evidence:

7. The alleged claim between plaintiffs, Robert M. Kaye, an individual, and Planned Residential Communities Management Company of Oklahoma, Inc. ("PRC") (manager of the Sugarbush Apartments) and defendant, Silberman-Braun Insurance Agency, was settled between the plaintiffs and Silberman-Braun prior to commencement of trial. These Findings of Fact and Conclusions of

Law pertain only to the claim of plaintiffs versus defendant, FEMA.

8. The policy was obtained by Kaye through an "independent" insurance agent, defendant Silberman-Braun Insurance Associates ("Silberman").

9. A claim was made for the May 27, 1984 flood loss, which claim was denied because there were fourteen separate buildings in Sugarbush Apartments which were intended to be covered and the policy does not cover more than one separate building.

10. The pertinent policy provisions read as follows:

"Building" means a walled and roofed structure, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, including a walled and roofed building in the course of construction, alteration or repair and a mobile home on a foundation, subject to Paragraph "H" of the provision titled "Property Not Covered." This policy does not cover more than one building. (emphasis added)

11. The fourteen buildings of Sugarbush are physically connected by only sidewalks and some under utility lines. There is no substantial physical connection or community of use among its parts.

12. Sugarbush is made up of fourteen buildings, as the term is used in the policy, rather than one building.

13. Sugarbush Apartments is not therefore covered under the policy and the policy is void and of no effect.

14. The property address and description set forth in the policy were supplied by Kaye, Silberman, or their agents and/or employees. The property address of 3901 South Garnett was the

address of the single story apartment office and common club house facility which was not damaged in the flood.

15. Kaye and Silberman intended that all fourteen buildings of Sugarbush be covered by the policy.

16. At all pertinent times herein, Silberman was not acting as the agent of the Director of FEMA.

17. The plaintiff, Kaye, is bound by the terms of the subject insurance and its limitation to cover one building. As more than one building was purportedly covered by said policy, it is null and void and provides no insurance coverage for the flood damage and loss of plaintiff at the Sugarbush Apartments.

#### CONCLUSIONS OF LAW

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

2. Federal law governs the construction and interpretation of the policy. Mason Drug Co., Inc. v. Harris, 597 F.2d 886, 887 (5th Cir. 1979); West v. Harris, 573 F.2d 873, 880-81 (5th Cir. 1978).

3. "A structure will constitute a single building if there is a substantial physical connection among its parts, and there is a community of use among its parts." (citation omitted; emphasis added) The Landing Council of Co-Workers v. Director of the Federal Emergency Management Agency, Civil Action No. H-84-3513 (S.D.Tex., Oct. 22, 1985), p. 5 of the Memorandum and Order.

4. If there is an ambiguity in the property address and description, this ambiguity cannot be construed against the Director. The usual rule that a policy of insurance is to be strictly construed against the insurer does not obtain when the language at issue is supplied by the insured, his agent, or his broker. Halpern v. Lexington Ins. Co., 715 F.2d 191, 193 (5th Cir. 1983); Travelers Indemnity Co. v. United States, 543 F.2d 71, 74 (9th Cir. 1976).

5. The Code of Federal Regulations in effect on May 27, 1984 with regard to coverage under the policy in part provides that: "One policy to provide insurance for more than one structure is not available . . ." 44 C.F.R. §61.3 (1983). That Code of Federal Regulations also provides as follows:

The following rules provide for avoidance, reduction or reformation of coverage issued under a Standard Flood Insurance Policy by the insurer:

(1) Voidance: This policy shall be void and of no legal force and effect in the event that any one of the following conditions occurs:

(i) The property listed on the application is not eligible for coverage, in which case the policy is void from its inception date; . . . 44 C.F.R. §61.5(h)(1)(i) (1983)

and

The standard flood insurance policy is authorized only under terms and conditions established by Federal statute, the program's regulations, the Administrator's interpretations and the express terms of the policy itself. Accordingly, representations regarding the extent and scope of coverage which are not consistent with the National Flood Insurance Act of 1968, as amended, or the Program's regulations, are void, and the duly licensed property or casualty agent acts for the insured and does not act as agent for the Federal Government, the Federal Emergency Management Agency, or the servicing agent. 44 C.F.R. §61.5(i) (1983).

6. The regulations referred to above were adopted pursuant to the authority delegated to the Director by Congress by the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968), 42 U.S.C. §§4001-4008; Reorganization Plan No. 3 of 1978 (43 F.R. 41943); E. O. 12127, dated March 31, 1979 (44 F.R. 19367).

7. As a matter of law, as well as a matter of fact, Kaye and Silberman are charged with notice of the limitations on the coverage of the policy as set forth in the Code of Federal Regulations, as they are published in the Federal Register. 44 U.S.C. §1510; Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380, 384, 68 S.C. 1, 92 L.Ed. 10 (1947).

8. These limitations on coverage are therefore binding on Kaye and Silberman. Federal Crop Ins. Corp. v. Merrill, 332 U.S. at p. 385.

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

10. A Judgment in favor of defendant, John W. Macy, Jr., Director of the Federal Emergency Management Agency, and against the plaintiffs, Robert M. Kaye, an individual, and Planned Residential Communities Management Company of Oklahoma, Inc., in keeping with these Findings of Fact and Conclusions of Law shall be entered this date.

DATED this 28<sup>th</sup> day of Aug, 1986.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
AUG 27 1986  
JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

R. EDWARD WALKER,

Plaintiff

v.

UNITED STATES OF AMERICA,

Defendant

CIVIL NO. 84-C-875-C

FINAL JUDGMENT

This action came on for trial before the Court and a jury. Honorable Judge H. Dale Cook, District Judge, presiding and the issues having been duly tried and the jury having duly rendered its special verdict and upon said verdict:

It is ORDERED and ADJUDGED that plaintiff, R. Edward Walker, take nothing and that his action against the United States be dismissed on the merits;

It is ORDERED and ADJUDGED that defendant, United States of America, recover from the plaintiff, R. Edward Walker, the sum of \$154,182.92 plus statutory additions and interest as allowed by law.

It is further ORDERED and ADJUDGED that the defendant, United States of America recover from the plaintiff, R. Edward Walker its costs of action.

ENTERED this 27 day of August, 1986.

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ALVIN ROBERT ALLRED; ALICE L. )  
 ALLRED; COUNTY TREASURER, Tulsa )  
 County, Oklahoma; and BOARD OF )  
 COUNTY COMMISSIONERS, Tulsa )  
 County, Oklahoma, )  
 )  
 Defendants. )

FILED

AUG 27 1986

CIVIL ACTION NO. 86-C-561-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 27<sup>th</sup> day of Aug, 1986. The Plaintiff appears by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney; the Defendants, 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, Alvin Robert Allred and Alice L. Allred, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendants, Alvin Robert Allred and Alice L. Allred, acknowledged receipt of Summons and Complaint on June 12, 1986; that Defendant, County Treasurer, Tulsa County, Oklahoma, and Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint

on June 11, 1986. On March 13, 1986, Defendants, Alvin Robert Allred and Alice L. Allred filed their Petition pursuant to Chapter 7 of the Bankruptcy Code. On July 11, 1986, the Bankruptcy Court entered its Order of Abandonment with regard to the subject real property, and entered its Order Granting Relief from Stay to permit foreclosure of Plaintiff's mortgage on the subject real property and the sale of such property.

On June 30, 1986, the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers disclaiming any interest in the subject real property. The Defendants, Alvin Robert Allred and Alice L. Allred, have failed to answer or otherwise plead and their default has therefore been entered by the Clerk of this Court.

The Court 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 Five (5), Block Five (5), TWIN CITIES SUBDIVISION, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on May 28, 1981, Alvin Robert Allred and Alice L. Allred executed and delivered to Liberty Mortgage Company their mortgage note in the amount of \$35,000.00, payable in monthly installments, with interest thereon at the rate of fifteen and one-half percent (15.5%) per annum.

The Court further finds that as security for the payment of the above-described note, Alvin Robert Allred and Alice L. Allred executed and delivered to Liberty Mortgage Company, a mortgage dated May 28, 1981, covering the above-described property. Said mortgage was recorded on June 11, 1981, in Book 4550, Page 602, in the records of Tulsa County, Oklahoma.

The Court further finds that on July 17, 1981, Liberty Mortgage Company assigned said mortgage to Federal National Mortgage Association. This assignment was recorded in Book 4557, Page 1820, in the records of Tulsa County, Oklahoma.

The Court further finds that on March 27, 1985, Federal National Mortgage Association assigned said mortgage to the Administrator of Veterans Affairs. This assignment was recorded in Book 4858, Page 26, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Alvin Robert Allred and Alice L. Allred, 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, Alvin Robert Allred and Alice L. Allred, are indebted to the Plaintiff in the sum of \$40,141.18 as of October 1, 1985, plus interest thereafter at the rate of fifteen and one-half percent (15.5%) per annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

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

Robert Allred and Alice L. Allred, in the sum of \$40,141.18 as of October 1, 1985, plus interest thereafter at the rate of fifteen and one-half percent (15.5%) per annum until judgment, plus interest thereafter at the current legal rate of \_\_\_\_\_ percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that 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/ JAMES O. ELLISON**

**UNITED STATES DISTRICT JUDGE**

APPROVED:

LAYN R. PHILLIPS  
United States Attorney

  
NANCY NESBITT BLEVINS  
Assistant United States Attorney

*entered copy*

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

**FILED**

AUG 27 1986

NORTHEAST PETROLEUM CORPORATION, )  
a Massachusetts corporation, )

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

Plaintiff, )

vs. )

No. 78-C-228-C

APCO OIL CORPORATION, )  
a Delaware corporation; )  
RIFFE PETROLEUM COMPANY, )  
an Illinois corporation; and )  
TOTAL PETROLEUM, INC., )  
a Michigan corporation, )

Defendants, )

vs. )

TOTAL PETROLEUM )  
(NORTH AMERICA) LTD., )  
a Canadian corporation, )

Additional Defendant )  
on Cross-Claim. )

J U D G M E N T

This matter came on before the Court for nonjury trial. The issues having been duly presented and a decision having been duly rendered in accordance with the Findings of Fact and Conclusions of Law filed simultaneously herein,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment should be and hereby is entered on behalf of Apco Oil Corporation and against Total Petroleum in the amount of \$1,989,442.52.

IT IS SO ORDERED this 27 day of august, 1986.

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

entered copy

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

FILED

AUG 27 1936

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

NORTHEAST PETROLEUM CORPORATION, )  
 a Massachusetts corporation, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 APCO OIL CORPORATION, )  
 a Delaware corporation; )  
 RIFFE PETROLEUM COMPANY, )  
 an Illinois corporation; and )  
 TOTAL PETROLEUM, INC., )  
 a Michigan corporation, )  
 )  
 Defendants, )  
 vs. )  
 )  
 TOTAL PETROLEUM )  
 (NORTH AMERICA) LTD., )  
 a Canadian corporation, )  
 )  
 Additional Defendant )  
 on Cross-Claim. )

No. 78-C-228-C

FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

This is a civil action involving a dispute between John G. McMillian and Thomas W. diZerega, Trustees of the Apco Liquidating Trust, (hereafter Apco), Total Petroleum, Inc., (hereafter Total) and Total Petroleum (North America) LTD, (hereafter Total N.A.). Apco brings two claims against Total. The first is for breach of a Purchase Agreement covering the sale by Apco to Total of a certain oil refinery and related assets. The second is for the tortious bad faith of Total in its dealings with Apco subsequent to the closing of the sale of the oil refinery. The claim against Total N.A. has as its genesis a certain clause in the Purchase Agreement whereby Total N.A. agreed to indemnify Apco

for any damage caused by the failure of Total to perform under the Purchase Agreement. The claims by Apco against Total and Total N.A. are raised by a cross-complaint.

Total has also filed a cross-complaint against Apco whereby it seeks certain adjustments and reductions in the purchase price under the Purchase Agreement, recovery against Apco for certain breaches of warranty contained in the Purchase Agreement, recovery for conversion of certain barrels of crude oil and recovery under the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. §751 et seq. and regulations promulgated thereunder for Apco's wrongful diversion of a certain supply of crude oil away from the refinery purchased by Total. Total, as well as Total N.A., alleges that based on the breach by Apco of these obligations and warranties and due to the adjustments and reductions in the purchase price under the Purchase Agreement the damage suffered by Total exceeds the amount of any recovery Apco would be entitled to in this action.

After considering the pleadings, the testimony and exhibits admitted at trial, all of the briefs and arguments presented by counsel for the parties, and being fully advised in the premises, the Court enters the following findings of fact and conclusions of law.<sup>1</sup>

---

<sup>1</sup> The Court approved, pursuant to the Preliminary Findings of Fact and Conclusions of Law filed October 2, 1984, the Joint Pretrial Statement filed by the parties on March 23, 1982 to act as the Pretrial Order governing the issues to be determined in this action.

## FINDINGS OF FACT

1. At the time this action was instituted, the Trustees of the Apco Liquidating Trust were citizens of Massachusetts or Illinois. Total was incorporated in the State of Michigan. Total N.A. was a Canadian corporation. Apco, the seller of the oil refinery, was incorporated in the State of Delaware at the time the action was instituted. Apco, as well as the Trustees, will be referred to as Apco. Complete diversity of citizenship exists between the parties.

2. The amount in controversy exceeds the sum of \$10,000.00, exclusive of interest and costs.

3. In late 1976 or early 1977 Total learned that Apco was interested in selling certain of its assets. These assets included an oil refinery located at Arkansas City, Kansas and one located at Cyril, Oklahoma.

4. After analysis between January and March, 1977, Total decided to make a bid for the assets of Apco.

5. In mid-June, 1977 Total and Apco had reached a basic agreement concerning the sale of the Arkansas City refinery and certain Canadian assets, not directly involved in this litigation though covered by the Purchase Agreement.

6. On August 19, 1977, the Purchase Agreement at issue herein was entered into by the parties.

7. The sale of the Arkansas City refinery and related assets was closed on April 3, 1978, effective April 1, 1978. At closing, Total paid Apco \$88,626,949.00 for the Arkansas City refinery and associated inventories. This figure was an

approximation and it was subject to subsequent adjustment under the terms of the Purchase Agreement. The figure generally represented payment for all that was being sold, exclusive of payment for Net Receivables Value. At the time of closing, Apco executed a General Bill of Sale, as well as other closing documents.

8. The Trustees of the Apco Liquidating Trust are the successors in interest to Apco Oil Corporation.

9. Paragraph 6(d) to the Purchase Agreement provided that on the 30th day after closing (i.e. May 1, 1978) Total would pay, by certified check, to Apco one-half of the Net Receivables Value and on the 60th day after closing (i.e. May 31, 1978) the remainder.

10. On May 8, 1978, Total paid to Apco \$3,898,470.72. Apco claims that an additional amount was due for the May 1, 1978 payment of \$2,861,922.79. Total has made no further payment to Apco. Apco claims that an additional \$6,760,393.51 was due from Total on May 31, 1978 as the second half payment with respect to Net Receivables Value. Apco has reduced this claim by \$296,787.82 by virtue of a payment received from Mid-America Refining Co., Inc., on May 14, 1979, making the total amount of compensatory damages claimed by Apco herein the sum of \$9,325,528.48.

11. The Court finds that the Purchase Agreement, read in its entirety, is essentially a clear and unambiguous document.

12. Pursuant to the terms of the Purchase Agreement Total was to purchase at closing the Arkansas City refinery and

specified associated assets, including inventories of crude oil, certain customer receivables and the stock of Apco Pipe Line, Inc., a wholly owned subsidiary of Apco.

13. On or about October 10, 1977, Total and Apco entered into a supplemental letter agreement to the Purchase Agreement that provided in relevant part, that Apco agreed to reduce "[i]ts total inventory of crude oil to, or below, 1,300,000 barrels by closing date." The October 10 agreement further provided, "[s]hould inventory quantities be higher at closing date, Apco will retain the excess above 1,300,000 barrels, or may at its option sell the excess to TOTAL at Apco's base period price for gasoline, or base period cost for crude oil." (emphasis added) Defendant's Exh.6.

#### Apco - Mid-America Transactions

14. In late November, 1976, prior to any negotiations between Apco and Total concerning the sale of the Arkansas City Refinery, Apco had entered into certain related agreements with Mid-America Refining Co., Inc. (hereafter MA) and General Energy Company, Inc., (hereafter GEC) including a Crude Oil Processing Agreement, a Supplemental Crude Oil Processing Agreement, a Sales Contract, a Supplemental Sales Contract and a Security Agreement.

15. The President of both MA and GEC at all relevant times hereto was an individual named Paul Hemker.

16. Generally speaking, the aforementioned agreements provided that MA would deliver to Apco on a monthly basis certain quantities of crude oil to the Arkansas City refinery for processing and Apco would sell to GEC No.6 fuel oil. Apco would

also charge a fee for processing the crude oil. One of the central purposes of the agreements was to take advantage of the small refiner entitlement benefits under the Emergency Petroleum Allocation Act, 15 U.S.C. §751 et seq. In essence, when the agreements were executed, Mr. Hemker hoped to make a profit on finished products processed by Apco from the crude oil MA was to deliver in such an amount that any losses suffered by GEC from its purchase from Apco of No.6 fuel oil and marketing of this product at or below current market price would be more than offset by the profits made on the finished products.

17. The profit to be made by MA/GEC took into account the small refiner bias entitlement benefit (approximately \$2.00 per barrel). The main benefits flowing to Apco from the agreements were to allow it to utilize increased refinery capacity at a more economic level and to afford it a market for No.6 fuel oil.

18. In May, 1977 the Federal Energy Administration (FEA) proposed the elimination of the small refiner bias entitlement benefit for processing of crude oil done at another entity's oil refinery. Shortly thereafter, in order to offset the loss of the small refiner bias, Apco, MA and GEC entered into amendments to the November agreements in May, 1977. The amendments reduced the obligations of GEC to purchase No.6 fuel oil and the processing fees charged by Apco. The effect of these amendments was, however, not sufficient to offset the losses which would be incurred by Mr. Hemker's companies at that time.

19. Prior to May, 1977, the practice of Apco under these agreements with MA was to hold finished product due to MA for

delivery to others for MA's account until payment of all fees had been made, to the extent of product securing payment of amounts due to Apco. In May, 1977, MA requested delivery of the refined products processed on its account by Apco during the month of processing.

20. In order to justify releasing the MA finished product which had served as security for the MA/GEC indebtedness to Apco, MA and GEC presented Riffe Petroleum Company (hereafter Riffe) as a guarantor of their indebtedness.

21. The authorization of Thomas W. diZerega was obtained, upon the recommendation of Vint L. Wolfe, Vice President with Apco primarily responsible for the Apco/MA/GEC agreements, to proceed with the arrangements relying on the Riffe guarantee. From May, 1977 through March, 1978, excluding the month of February 1978, Riffe did execute monthly agreements with Apco essentially guaranteeing payment of the MA/GEC obligations owing to Apco.

22. In June, 1977, Apco began a formal exchange relationship with MA/GEC/Riffe involving the exchange of 100,000 barrels of regular gasoline to MA in June and July, 1977. At this time, Riffe agreed to deliver in August, 1977, the 100,000 barrels which Apco would deliver to MA on exchange. Essentially, an exchange relationship or transaction in the oil and gas industry is one in which one company agrees to deliver a specified amount of product to another company or its designate at a certain time and/or location in exchange for the latter company agreeing to deliver the same amount of product at a subsequent time, or

contemporaneously, at a different location. An exchange balance is created in favor of the former company during the period of time the latter company has not "paid back" the amount of product delivered on its behalf by the former company.

23. Another similar exchange transaction was entered into by Apco and MA/GEC/Riffe in November, 1977. In late October, 1977, prior to entering into the November transaction, which also included processing crude oil for MA and sale of No.6 fuel oil to GEC, Vint Wolfe of Apco contacted Robert Dean of Total. Mr. Dean did not specifically authorize Apco to enter into the exchange balance transaction, though he lodged no objection to the transaction. Total did not consent in writing to the exchange transaction.

24. In the latter portion of January, 1978, a Mr. Charles Fiske, Total employee, advised Vint Wolfe to terminate the agreements with MA/GEC according to the sixty-day termination provision contained in the agreements. At this time, Total expected the closing of the sale of the Arkansas City refinery would occur in March and that Total would, thus, be obligated to honor the processing agreement during the month of March. Mr. Wolfe indicated he would do so. He did not.

25. Under the November, 1977 Apco/MA/GEC/Riffe agreement, repayment of the exchanged gasoline was to occur in December, 1977, and January, 1978. Instead of the 100,000 barrels of gasoline specified in the November agreement, only 70,000 barrels were delivered for the benefit of MA. In December, 1977, 20,000 barrels were "paid back" out of MA's processing yield. Apco

deferred repayment of the balance. Apco did not obtain Total's written consent to any deferral of the exchange balance due.

26. At the time of the November, 1977 transaction, Mr. Hemker estimated that MA/GEC were experiencing a loss of approximately \$500,000.00 to \$700,000.00 a month on its transactions with Apco.

27. In January, 1978, MA was past due on its payment of invoices in an amount of \$1,200,000.00. By the end of January, the outstanding obligations of MA were in the neighborhood of \$2,000,000.00.

28. In February, 1978, Apco proposed to buy crude oil from GEC and sell refined products to GEC. One of the purposes of this proposal was to relieve a containment problem Apco was experiencing at the Arkansas City refinery.

29. In March, 1978, a final processing arrangement was entered into by Apco/MA/GEC/Riffe. No repayment of MA's existing exchange balances was made in March.

30. On March 31, 1978, MA had an account receivable with Apco of \$1,660,450.06. It also had outstanding exchange balances in the amounts of 119,995 barrels of gasoline, 46,087 barrels of No.2 fuel oil and 19,293 barrels of No.6 fuel oil. At the end of March, these obligations totalled approximately \$4,000,000.00.

31. On September 15, 1983, \$3,459,244.85 of the MA/GEC/Riffe obligations was recovered by Apco via final disbursement in Riffe's Chapter XI Bankruptcy proceeding, In Re: Riffe Petroleum Company, 78-B-509, aff'm 80-C-101-C (N.D.Okla. June 30, 1982), aff'm 82-1939 (10th Cir. July 29, 1983).

32. MA was not scheduled by Apco as a customer of the Arkansas City refinery on Schedule 15(18) which was sent to Total. See ¶15(18) to Purchase Agreement. Nor was MA listed on the original account receivable Schedule 15 (19). It was, however, included on Schedule 15(12). See ¶15(12) to the Purchase Agreement and defendant's Exh.156. GEC was listed on Schedule 15(19) and subsequent account receivable printouts. Defendant's Exh.5B and 155.

33. The MA receivables and exchange balances were covered by the express terms of the Purchase Agreement.

34. Apco breached ¶¶13(8) and 13(4) of the Purchase Agreement by not conducting the transactions with MA/GEC/Riffe in the ordinary course of Apco's regular business, in not procuring Total's written consent to material modifications in the agreements and in not notifying Total of matters not arising in the ordinary course of business concerning the MA/GEC/Riffe agreements which had a material effect on the purchased assets. The Court further finds that Apco breached ¶15(14) to the Purchase Agreement.

35. Paragraph 13(8) of the Purchase Agreement essentially contains a warranty by Apco that it will conduct the business associated with the purchased assets only in the ordinary course of its regular business and that Apco will not modify, in any material respect, any contract or arrangement then in existence.

36. Paragraph 13(4) of the Purchase Agreement obligated Apco to notify Total of any matters arising other than in the

ordinary course of business which would be likely to have a material effect on the purchased assets.

37. Paragraph 15(14)(ii) further provides that Apco, since June 15, 1977, has not waived any rights of substantial value which have materially detracted from the purchased assets.

38. Paragraph 15(9) provides that Apco warrants that it owns outright all personal property that is to be purchased free and clear of all burdens, except as to assets as are disposed of in the ordinary course of business from August 19, 1977 and prior to closing. Paragraph 1(d) to the Purchase Agreement defines burdens as follows: "[C]ovenants ... and other burdens and encumbrances of any nature ...."

39. In September, 1977, employees of Total met with Paul Hemker, President of both MA and GEC. During this meeting Apco's transactions with Mr. Hemker's companies were briefly discussed. After this meeting, Mr. Wolfe called Mr. Charles Fiske of Total and informed him that Total employees should refrain from discussing with Mr. Hemker what would happen to the Apco/MA/GEC arrangements after closing. Total essentially complied with this request. The request of Mr. Wolfe did not entail any restriction on Total's continuing to investigate the arrangement or in requesting information from either Mr. Hemker or Apco concerning it.

40. Due to its concern over the economic viability of the Apco/MA/GEC arrangement, Total performed internal calculations as to their profitability. From these calculations it appeared Mr. Hemker was losing money. After additional meetings with Mr.

Hemker in December, 1977 and January 1978, Total, through Mr. Fiske, asked Mr. Wolfe to terminate the agreements. As mentioned in finding of fact numbered 24, supra, Mr. Wolfe did not do so.

41. Shortly after Apco became involved with Mr. Hemker in November, 1976, Mr. Hemker bought MA for approximately 4 million dollars. Most of this amount was advanced by Riffe. Thus, Riffe had a substantial economic stake in the viability of MA. At about the time the small refiner bias was discontinued, Apco became aware through conversations with Mr. Robert Phillips, chief operating officer of Riffe, that if MA/GEC folded, Riffe would do likewise. Total was not aware of this information at the time of execution of the Purchase Agreement or at any relevant time thereafter because it was not informed of such information by Apco.

42. Apco further failed to inform Total that it had deferred repayment of the November 1977 gasoline exchange balance and MA's history of past-due obligations. Further, knowing of MA's precarious financial condition Apco in January and March, 1978, committed to deliver certain volumes of product for MA's benefit irrespective of Hemker's processing yield, with amounts in excess of processing yield simply added to MA's exchange balances. Mr. Wolfe of Apco testified that Riffe's guarantees of these latter transactions were unlike the earlier guarantees. Total did not consent in writing to these latter transactions, nor was Total asked by Apco to review them.

43. By the time of closing, Apco had effectively waived any reliance upon its security agreement it had with Mr. Hemker.

Apco did not retain or attempt to retain MA's processing yield to act as security for any indebtedness owed it by MA. Apco further waived its rights under its agreements with MA to declare all amounts immediately due even though prior to closing it was aware of MA's imminent collapse and Riffe's, then, inability to meet its obligations under the guarantees. These waivers constituted a violation of ¶15(14) of the Purchase Agreement. Though it has often been said that hindsight is always 20/20, this Court believes that Apco had sufficient information in the beginning of 1978 to realize that its further reliance solely on the Riffe guarantee was impractical and imprudent. The Court further finds that under ¶15(14)(ii) to the Purchase Agreement it is of no import that Apco had previously foregone reliance on the security agreements. The simple fact is that Apco should have made some attempt before closing to rectify the situation. It did not do so.

44. This Court further finds that Apco breached ¶15(11) of the Purchase Agreement in relation to the MA exchange balances. At the time of closing, these exchange balances were not usable or salable in the ordinary course of business.

45. Apco further breached ¶15(9) of the Purchase Agreement in relation to the 30,000 barrels of regular gasoline and 30,000 barrels of No.2 fuel oil which Apco had committed to deliver to Williams Energy Company in February, 1978. This Court believes that such commitment to deliver constituted a burden under ¶15(q) of the Purchase Agreement. Even if one considers this commitment as creating an exchange balance owing by Apco, under ¶¶1(a)(1)(G)

and 2(c)(1) such exchange balance should not have been included in the inventory calculations. These barrels should, thus, not have been included under RPIC if they created an exchange balance owing by Apco. If they did not create such an exchange balance, the breach of ¶15(9) would have the effect of decreasing the purchase price by \$883,467.00.

46. The Court further finds that Total did not waive by its actions, acquiescence or conduct any of the breaches of warranty by Apco. See ¶¶19(a) and 21 to the Purchase Agreement. Finally, the evidence at trial did not establish that Total should be estopped from asserting any claims regarding the MA transactions.

47. Due to the various breaches of warranty set out above in relation to the Apco/MA/GEC/Riffe transactions, Total has been damaged in an amount equal to the price due for the MA receivable and the outstanding exchange balances.

Refined Product Inventory Cost

and

Non-Refined Inventory Cost

48. Under ¶1(a)(1)(G) of the Purchase Agreement, Apco's inventories of refined products and non-refined products identified at closing with the Arkansas City refinery were included in the assets to be purchased by Total.

49. Paragraph 2(c)(1)(A) of the Purchase Agreement defines Refined Product Inventory Cost (RPIC) and ¶2(c)(2) defines Non-Refined Inventory Cost (NRIC). These definitions were to be utilized in determining the purchase price to be paid for these inventories under the Purchase Agreement. Both parties

essentially argue that the definitions contained in the above paragraphs are unambiguous.

Apco argues that the definitions require the purchase price to be calculated on March only inventory figures and Total, that the language calls for use of beginning inventory figures which should be added to March figures.

50. The language contained in ¶¶2(c)(1)(A) and 2(c)(2) is not ambiguous. It is wholly consistent with the manner in which Apco determined the price charged for RPIC and NRIC. The language contained in those paragraphs clearly evidences the intent of the parties, at the time of contracting, to fix a price for RPIC and NRIC which would fairly represent the current market price and because the closing was on April 3, 1978 (effective April 1, 1978), March only figures were to be used.

51. If one were to consider the language as ambiguous, it was shown by a preponderance of the evidence presented to this Court that the parties' intent was to utilize March only figures. Apco's main position throughout the negotiations was to receive a price for such inventories that was near current market price and to make some sort of profit on the inventories. The Court finds that representatives of Total understood this and that Total voluntarily agreed to the method used for such pricing.

52. Paragraph 5(2) of the Purchase Agreement which set an approximate payment for the inventories to be paid at closing is further evidence that the parties did not intend to utilize a pricing formula akin to Apco's historical method of valuing these inventories.

53. The actual price agreed upon by the parties was a result of "arms length" negotiations between two relatively equal entities. The issue was hotly disputed by the parties at trial. The only possible ambiguity, if it be one, in ¶¶2(c)(1)(A) and 2(c)(2) is the use of the language "weighted average cost" which Total contends would be consistent with the manner in which Apco historically costed its inventory and which was a particular meaning in the accounting profession. However, this Court finds that such language did not refer to Apco's historical method of valuing inventory, or to an accounting principle which would utilize a beginning inventory as contended at trial by Total. The parties' intent was to include language which would fix the purchase price by utilizing a weighted average cost for the month immediately preceding the month of closing, as reflected in the negotiation stance of the parties and the surrounding circumstances at the time of contracting.

#### Costing Allocations

54. Under ¶2(e) of the Purchase Agreement, the parties agreed that "[a]ll matters ... affected by Apco's accounting methods or practices shall be determined in accordance with such practices as they existed on December 31, 1976."

55. In determining the cost allocation for the catalytic cracking unit which produced gasoline and light cycle oil, Apco followed the appropriate procedure of allocation consistent with its accounting methods and practices in effect as of December 31, 1976. Prior to execution of the Purchase Agreement and on December 31, 1976, Apco had attributed all costs of the catalytic

cracking unit to gasoline. Under the language of ¶¶2(e) and 2(c)(1)(A) Apco properly made the cost allocation for the catalytic cracking unit products.

56. As to the propane deasphalting unit, consistent with ¶¶2(e) and 2(c)(1)(A), Apco made the cost allocations for this unit in conformity with how such allocation would have been made on December 31, 1976.

57. The Court finds that additives and tetraethyl lead were not intended by the parties to be treated as materials and supplies under ¶1(a)(1)(A). They were, thus, not included in the base purchase price of \$65,000,000.00 for the Purchased Assets contained in ¶2(a)(1)(A). On December 31, 1976, Apco carried these items on its books as refined product inventory and for costing allocation purposes under ¶2(c)(1), in conformity with ¶2(e), they were properly included in calculating refined product inventory cost. Apco appropriately utilized those inventory costing and cost allocation methods consistently applied by it in the past and those accounting methods as practiced by it on December 31, 1976.

58. Apco improperly treated the intermediate product Q base as gasoline. Q base was treated by Apco on its books as if it had been leaded when in fact it was not. The Court finds that proper treatment of the Q base would reduce inventory cost by \$14,901.00.

#### Margin Computations

59. Paragraph 2(c)(1)(B) provides that to the cost of No.6 fuel oil and catalytic cracker charge stock, as computed pursuant

to ¶2(c)(1)(A) of the Purchase Agreement, will be added one-half the difference between Apco's refinery gate price for the product and the product's cost. This difference between price and cost has been termed by the parties as margin. Apco included the two above products in the RPIC at cost, without including any amount for the margin. This Court finds that the Purchase Agreement clearly called for the calculation of a margin on No.6 fuel oil and catalytic cracker charge stock and that under the Purchase Agreement, the margin was not restricted to being a positive number, i.e. increasing the purchase price to be paid by Total to Apco.

60. In regard to catalytic cracker charge stock, the evidence showed that there were sales of this product in March, 1978, though the sales were of a relatively small nature. The Court finds from the evidence presented that Apco's gate price for catalytic cracker charge stock for the month of March was ascertainable from the sales of this product in March, 1978 and that a margin should have been calculated for it using the per unit sales price for March, 1978. However, in light of findings of fact numbered 48 through 53, the Court determined that the margin submitted by Total was incorrect. The parties were ordered to submit a stipulated calculation of a new margin for this product in conformity with March only costing, as contemplated by the Purchase Agreement. The parties have done so, and the stipulation provides for a reduction of purchase price due to catalytic cracker margin in the amount of \$41,515.00.

61. As to No.6 fuel oil, the Court finds that a margin should have been calculated for this product and that the evidence at trial showed that the negative margin would be \$16,085.72, rather than the margin submitted by Total in this regard.

62. The Court finds no basis for utilizing Platt's Oilgram (an industry price guide) for calculating a margin for No.6 fuel oil. Apco's gate price for No.6 fuel oil was 30 cents per gallon. This was the price charged by Apco in its most recent sales of this product which had been made to MA/GEC. The Court believes that utilizing this per unit price is the best available guide to Apco's gate price for the product.

#### Accrual for Entitlements

63. Under ¶2(c)(2) of the Purchase Agreement, which defines NRIC, if Apco was required by the FEA to assign to Total entitlement revenues received after closing, but based on crude runs prior to closing, the cost of non-refined products was to be determined without regard to entitlement costs or credits. Paragraph 2(c)(1)(A) or (B) contains no such language. Entitlements are payments made pursuant to federal law by oil companies with a lower than average cost of crude oil to companies with a higher than average cost of crude oil. At all relevant times, Apco was a seller of entitlements, meaning it received payment from other crude oil purchasers each month.

64. The Department of Energy (DOE), successor to the FEA, did in fact require Apco to assign to Total entitlement revenues

based upon crude runs in February and March, 1978, but received after the closing.

65. The Court finds that the specific exclusion of the effect of entitlements from NRIC, in ¶2(c)(2) coupled with the absence of such exclusionary language in ¶2(c)(1)(A) and (B) evidenced the parties' intent to include the effect of entitlement revenues in the calculations for RPIC.

66. The March entitlement revenues were in the amount of \$405,975.57.

67. Under Apco's usual costing procedures, the effect of entitlement revenues would have been included in costing both crude oil and refined product inventories. However, the Court finds that the calculation offered by Total in Defendant's Exh.158-L must be changed to reflect a figure consistent with this Court's Findings of Fact 48 through 53. Pursuant to the Court's request, the parties have submitted that this recalculation for entitlement accrual should be at a rate of 48.36% of the entitlements involved. Applying this percentage to the entitlement revenue figure of \$405,975.57 results in the Court's finding the recalculation results in the amount of \$196,329.79.

#### Intercompany Profit

68. Apco did not inflate RPIC or NRIC by its non-elimination of any intercompany profit of its wholly-owned subsidiary Apco Pipe Line, Inc. when it figured the transportation charge component of RPIC or NRIC. Apco treated the situation involved with the transportation charge component

consistently with its accounting methods applied as of December 31, 1976, and the evidence submitted at trial showed that Apco Pipe Line, Inc. made no direct profit on the involved transactions and, in fact, experienced losses in the months of January, February and March, 1978 on the transactions with Apco. The evidence at trial further indicated that Apco Pipe Line, Inc. realized no profit in the month of March, 1978, the month applicable under the Purchase Agreement.

#### Western Crude Sale

69. As mentioned in Finding of Fact numbered 13, supra, Apco and Total entered into a certain letter agreement dated October 10, 1977 dealing with Apco's agreeing to reduce its inventory of crude oil to or below 1,300,000 barrels. In an effort to comply with the letter agreement, Apco sold 102,100 barrels of crude oil to a company called Western Crude Oil Company and it booked the sale as a March transaction. Western Crude also treated the sale as a March transaction. There was no direct evidence offered at trial that Apco intended to exercise its option to sell the 102,100 barrels to Total, unless one views the General Bill of Sale and Assignment executed at closing as an exercise of this option. The Court does not. It was clear from the evidence at trial that Apco did not attempt, after closing, to initiate the transaction. The transaction was initiated in the month of March and the Court finds from all the evidence presented that Apco retained the 102,100 barrels after closing.

70. Though the evidence was conflicting, the Court finds that the sale of the Western Crude barrels was an April

transaction. Thus, the sale in April should not have had an effect on calculating NRIC and RPIC. However, the Court found that the calculations submitted by Total in Defendant's Exh.158-K are incorrect in light of Findings of Fact 48 through 53 and requested the parties submit new calculations on this issue for the Court to properly determine the purchase price still owed by Total under ¶¶2(a)(1)(B) and (C) of the Purchase Agreement. The submission of the parties pursuant to the Court's request reflects a reduction of purchase price due to Western Crude in the amount of \$107,162.17 [\$79,261.17 for Non-Refined Inventory Cost (NRIC) and \$27,901.00 for Refined Product Inventory Cost (RPIC)].

#### Refining Expenses

71. The Court finds that ¶¶11(d) and 20 of the Purchase Agreement are not relevant to the refining expenses issue in this litigation. Paragraph 11(d) expressly concerns Apco's obligation to terminate its Retirement and Thrift Plans and to make the funding contributions necessary to effect the termination. Apco properly did this. Paragraph 20 simply states "Apco and Total shall pay its own expenses in connection with this Agreement and the transactions contemplated hereby."

72. The Court finds that Apco properly expensed all of the items involved under the refined expenses (i.e. payroll benefits, payroll merit bonuses, vacation expense, capital improvements and payments for security guards, electricity and natural gas) in accordance with those accounting methods and practices consistently utilized by Apco in the past and in accordance with ¶2(e) of the Purchase Agreement.

73. As to payroll merit bonuses, vacation expense, security guards, electricity and natural gas, Apco in the past had used a cash basis method rather than an accrual method in expensing these items. Even though utilizing a cash basis method may have resulted in a slight increase in these expenses for the month of March, nowhere in the Purchase Agreement was it mandated, nor even mentioned, that an accrual method of accounting was contemplated by the parties at the time of contracting. In fact, the opposite is clear from the application of ¶2(e). Whether an accrual method may have been more beneficial from Total's standpoint cannot be used to alter the agreement of the parties. If some adjustment for purportedly higher expenses in the month prior to closing were intended by the parties, such should have been included in the Purchase Agreement. It was not. The Court would also note that the evidence at trial showed that certain items were not included in March expenses by Apco which were not paid in March consistent with its cash basis accounting practice even though some of the benefit for these expenses would have been realized in March and would have resulted in an increase in the purchase price under the Purchase Agreement.

#### Blend Stocks

74. Under the Purchase Agreement blending materials (iso-butane, normal butane and natural gasoline) were included under the definition of NRIC in ¶2(c)(2). Apco had blend stocks on hand at both the Arkansas City refinery and at its terminal at Hutchinson, Kansas. There were no deliveries in March at Hutchinson.

75. In that the blend stocks on hand were not purchased during the month of March, Apco made a decision to cost the blend stocks for pricing purposes under the Purchase Agreement at the cost carried on Apco's books.

76. The situation involving blend stocks was one not directly contemplated by the parties at the time of contracting. This Court finds that the calculations submitted by Total, however, reflect the best method of pricing of the blend stocks consistent with the parties' general intention to price the products being sold at or near the market value. Therefore, Total is entitled to an adjustment to the Purchase Agreement in the amount of \$154,281.00 for blend stocks, which would decrease the purchase price in a like amount.

#### Basin Pipeline Transfer

77. The parties intended that the space in the Basin Pipeline was to be used by Apco after closing. Therefore, it was necessary that the oil in the Basin Pipeline be owned by Apco after closing. The oil in the Basin Pipeline had been classified as Arkansas City other locations oil prior to closing. Apco reclassified this oil to the Cyril refinery (which at closing was still owned by Apco) prior to closing consistently with its accounting practices used in the past, without regard to any impact such a reclassification would have on the ultimate purchase price Total was to pay under the Purchase Agreement.

78. Apco did not treat this reclassification or transfer as a sale and, as just mentioned, the transfer was carried out in accordance with Apco's usual past accounting practices. The

Court finds that Apco properly treated the Basin Pipeline transfer and that no adjustment should be made in the purchase price for the oil involved.

Transportation Costs of Bulk Sales

to Sun Oil and Tesoro

and

Residual Fuel Oil Purchases

79. At the beginning of the trial in this matter, Total specifically withdrew any claim it might have had involving transportation costs of bulk sales to Sun Oil and Tesoro and in regard to residual fuel oil purchases.

Overstatement of Inventory

80. Under this issue, Total contends that Apco overstated the volume of crude oil in its inventory by 852.74 barrels and that this error resulted in an increase in the NRIC of \$11,684.00. Total contends that the correct inventory figure for crude oil was in actuality 1,194,585.89 barrels and that such figure was supplied to it by Bill Hicock of Apco's Crude Oil Accounting Department. Total further contends that the figure supplied by Mr. Hicock was verified by a Total audit in this regard.

81. The Court finds that the relatively minor dispute concerning the 852.74 barrels was due to exchange balances which were properly included by Apco in figuring NRIC under ¶2(c)(2) of the Purchase Agreement.

### Recording Fees

82. The Court does not read ¶4(b) of the Purchase Agreement as requiring Apco to pay recording fees incurred by Total for recording discharges, termination statements and other instruments necessary to confirm Total's title to any assets transferred to it by Apco. If the parties had intended Apco to pay these fees, such should have been specifically set forth in the Purchase Agreement. It was not. Again, the Court does not read ¶4(b) as imposing upon Apco the responsibility for these fees.

### Interest Rate

83. The Court finds that under the clear and unambiguous language of ¶¶6(a), 6(b) and 6(c) the Citibank floating interest rates were to be applicable only in the event that the parties submitted their dispute as to pricing to arbitration. The above paragraphs of the Purchase Agreement provide:

(a) Parties' Agreement on Price. Promptly after the Closing, representatives of the Sellers and the Buyers shall meet to determine the amounts due under paragraphs (a)(1)(A), (B), (C) and (E) of section 2 hereof. In the event that parties are able to agree upon the amount due under any such paragraph within 45 days after the Closing, they shall execute, and deliver to each other, an instrument setting forth their agreement. Such agreement shall be conclusive on all parties and accompanied by payment of the agreed upon amounts.

(b) Failure to Agree on Price. In the event that the parties are unable to agree upon any of the amounts due under paragraphs (a)(1)(A), (B), (C) or (E) of section 2 hereof within 45 days after the Closing, any party may demand that such amount be determined by arbitration in accordance with rules of the American Arbitration Association. The determination of the arbitrator shall be conclusive on all parties and the award of

the arbitrator may be entered in any court of competent jurisdiction in the United States. The fees and expenses of the arbitrator incurred pursuant to this provision shall be borne equally by the parties.

(c) Payments to Complete Adjustments. On the third business day after the final determination of the amounts due pursuant to paragraph (b) of this section 6, the parties shall meet at the time of day and place of Closing, or such other time and place as they may mutually agree upon, and at such meeting, the appropriate party shall make payments which, when added to or subtracted from (as appropriate) the amounts paid at the Closing and pursuant to paragraph (a) of this section 6 will equal the purchase price provided in section 2 hereof. In addition, each party shall be credited with, and the other party shall pay, interest on the net unpaid balance owing the first party on each day, at the prime rate at Citibank, N.A., New York, New York from time to time, from the date of the Closing to the date of final payment under the provisions of this paragraph (c); provided that in the event that payment shall be due from Total U.S., Total U.S. shall have no obligation to pay interest on the amount payable under paragraph (d) hereof, for any period prior to the date such payment becomes due.

84. The Court finds that applying the Citibank interest rate to any monies found owing to Apco from Total in this litigation would be contrary to the clear import of ¶6 of the Purchase Agreement. The parties, as gleaned from ¶6, intended at the time of contracting that Citibank interest rates would only apply if disputes were finally determined by arbitration. The Court finds nothing absurd with this result, as argued by Apco. Therefore, on monies determined to be owed by Total to Apco under the Purchase Agreement the Oklahoma statutory rate of 6% found in OKLA.STAT.ANN. tit.15 §266 would be applicable.

General Crude Oil Company Barrels

85. At approximately the same time Apco was negotiating the sale of the Arkansas City refinery to Total, it was negotiating the sale of another refinery it owned to a company named Oklahoma Refining Company (ORC). The other refinery was known as the Cyril refinery. The Cyril refinery was sold to ORC effective July 1, 1978.

86. After the closing, Total succeeded to Apco's crude oil supply arrangements for the Arkansas City refinery. Other such arrangements were retained by Apco for the Cyril refinery. One of these supply contracts was with a company named General Crude Oil Company and involved a supply of 5,000 barrels per day of crude oil. This contract had been in effect since 1973. The parties do not dispute that Apco continued to receive these 5,000 barrels during the months of April, May and June, 1978.

87. Though the evidence at trial was conflicting, the Court finds that the 5,000 General Crude barrels were associated with the Arkansas City refinery in December, 1973, and in January, 1976.

88. Paragraph 1(a)(1)(J) of the Purchase Agreement provided that Apco would sell to Total the rights, licenses and positions of Apco under certain federal allocation regulations "[t]o the extent associated with the Arkansas City refinery and if permitted by the FEA."

89. Under ¶15(17) of the Purchase Agreement, Apco warranted that Schedule 15(17) contained a description of the present

allocation of crude oil supplies between the Arkansas City and Cyril refineries.

90. In ¶9(c) of the Purchase Agreement, Total, in effect, agreed that it would use its best efforts to obtain FEA rulings that, at the time of the closing, the supplier/purchaser relationships -- within the meaning of 10 C.F.R. §211.63 of the Allocation Regulations to purchase crude oil from suppliers as set out by Apco in Schedule 15(17) -- would remain in effect.

91. In ¶15(17) and the accompanying Schedule 15(17), Apco did not use the historical flow of crude oil when figuring which oil would be allocated to Arkansas City and which to Cyril.

92. 10 C.F.R. §211.63(c)(5) and the FEA/DOE's construction of it in the orders issued concerning this matter provided that Apco's right to purchase crude oil supplies for the Arkansas City and Cyril refineries was transferred to Total and ORC respectively, and that no exception relief was necessary to effectuate the transfer. The FEA/DOE did not approve the allocation advanced by Apco. In fact, the proposed allocation of Apco was never specifically brought up before that agency.

93. Apco has not shown by a preponderance of the evidence that it terminated the Arkansas City crude supply pursuant to 10 C.F.R. 211.63(d), nor does the record herein, including the Purchase Agreement, show that Total acquiesced or agreed to the allocation proposed by Apco. The preponderance of the evidence showed that Total did not agree to Apco's proposed allocation and further showed that the parties, at the time of contracting, were

of the belief that federal regulations would control the issue or, at least that the FEA/DOE would decide the issue.

94. Apco continued to receive the General Crude barrels from April 1978 through July 1978. All of these barrels should have gone to Total under the allocation regulations.

95. In its attempt to mitigate its damages, Total entered into an agreement with ORC, purchaser of the Cyril refinery, whereby Total received 80% of the General Crude barrels from August, 1978 through December 1980, when the allocation regulations were lifted and the General Crude supply was lost.

96. In covering for the supply deficiencies, Total was damaged in the sum of \$2,291,304.00. This damage was occasioned by Apco's misallocation of the General Crude barrels and its refusal to transfer the right to purchase the barrels. The Court further finds that Apco failed to show any prejudice to it by Total being allowed to assert its claim to damages for the months of August, 1978 through December, 1980, in this regard. This damage figure also reflects a mathematical error of the November and July figures, as conceded in post-trial briefs by Total.

97. Total is not entitled to recover treble damages in this action on its claim concerning the General Crude barrels.

#### Apco's Bad Faith Claim

98. Apco failed to show by a preponderance of the evidence that Total withheld payment of the Net Receivable Value or invented spurious claims to offsets in a bad faith attempt to gain settlement leverage on other unrelated matters, to cover up its motives as to payments withheld or in a bad faith attempt to

have the use of any money rightfully owing to Apco. There was simply inadequate evidence that Total acted in bad faith in its post-closing dealings with Apco. All that was involved in the actions of both parties was a breach of contract, not motivated by ill will, spite or other improper motive. There may have been mistakes made by Total in its post-closing conduct with Apco, but this Court finds that such conduct was not reckless, wanton, nor in any way could it be categorized as malicious.

#### Stipulated Adjustment

99. The parties have stipulated that Total is entitled to an adjustment in its favor in the amount of \$7,281.98. Therefore, any amount that Total still owes to Apco would be decreased by this amount.

#### March Entitlements

100. Under ¶9(e) of the Purchase Agreement, the parties agreed that they would request the FEA to order Apco's transfer to Total entitlement revenues for February and March, 1978. The FEA so ordered. Apco paid the February entitlement revenues, but not the March revenues. The March entitlement revenues were in the amount of \$405,975.57.

101. Apco is obligated to pay the March entitlement revenues to Total and this amount will act as an offset as to any money Total is found to owe to Apco under the Purchase Agreement.

#### CONCLUSIONS OF LAW

1. This Court has jurisdiction of the instant action pursuant to 28 U.S.C. §1332 and 15 U.S.C. §754.

2. The Purchase Agreement at issue in this action is a clear and unambiguous document. The Purchase Agreement is to be interpreted pursuant to OKLA.STAT.ANN. tit.12, §§151 et seq. In Oklahoma, the question of whether an ambiguity exists in a written contract is a decision to be made by the Court. Panhandle Cooperative Royalty Co v. Cunningham, 495 P.2d 108 (Okla. 1971). If a written contract is determined to be clear and without ambiguity, a court is to interpret it as a matter of law. Van Horn Drug Co. v. Noland, 323 P.2d 366 (Okla. 1958). Under the clear language of the Purchase Agreement, the MA obligations were included in the purchased assets.

3. The Court, however, concludes that because of the breaches of warranty exhibited by Apco in relation to the MA accounts receivable and exchange balances Total was damaged in a monetary amount equal to those obligations and Total is relieved of paying for these obligations pursuant to ¶19(a) of the Purchase Agreement. The Court further concludes that Total did not waive any of its rights associated with these breaches of warranty. Therefore, the purchase price under the Purchase Agreement must be reduced by \$1,643,845.66, which is 99% of MA's account receivable. See ¶2(c)(3) of the Purchase Agreement. The purchase price must further be reduced by the amount of \$2,205,563.00, such sum representing the MA exchange balances at closing. The latter figure includes an amount associated with the 60,000 Williams Energy barrels.

4. Under the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. §§751 et seq., regulations promulgated thereunder,

specifically 10 C.F.R. §211.63(c)(5) in effect in 1978, and the interpretation of such regulations by the FEA/DOE the 5,000 General Crude barrels should have been transferred by Apco to Total at the time of closing. In that these barrels were diverted away from the Arkansas City refinery after closing Total is entitled to recover damages in the amount of \$2,291,304.00, the cost to Total in covering for this supply deficiency.

5. Total is not entitled to recover treble damages under the Economic Stabilization Act (ESA) of 1970, 12 U.S.C. §1904 note. Subsection 210(b) of the ESA specifically limits the recovery of treble damages to actions involving overcharges for goods or services. Subsection 210(c) defines the term overcharge to mean "[T]he amount by which the consideration for the rental of property or the sale of goods or services exceeds the applicable ceiling under the regulations or orders issued under this title." This Court concludes that nothing in this action is concerned with an overcharge as defined in subsection 210(c). See Eastern Air Lines, Inc. v. Mobil Oil Corp., 677 F.2d 879 (Temp.Em.Ct.App. 1982).

6. In relation to the calculation of RPIC and NRIC, the Court concludes the clear words of the Purchase Agreement defining these terms indicates that March only cost should be used. If one were to conclude that the definitions of RPIC and NRIC were ambiguous in some respect, the surrounding circumstances at the time of contracting and the negotiation stance of the parties was consistent with the manner in which Apco figured the price to be paid for these inventories.

7. In Oklahoma a contract is to be interpreted so as to give effect to the intentions of the parties at the time of contracting. OKLA.STAT.ANN. tit.15, §152. The language of the contract is to govern such interpretation when that language is clear and explicit. OKLA.STAT.ANN. tit.15, §154. This rule of contract interpretation applies unless interpreting the language as written would involve some type of absurdity. Premier Resources, LTD v. Northern Natural Gas Co., 616 F.2d 1171 (10th Cir. 1980) cert. denied 449 U.S. 827 (1980). The language in the instant Purchase Agreement as to costing allocations, margin computations and refining expenses, as well as to RPIC and NRIC is clear, explicit and unambiguous. As to costing allocations, Apco was to use those accounting methods or practices it had used on December 31, 1976. Apco did so and it, thus, fully complied with the Purchase Agreement in this regard.

8. As to calculation of margins for No.6 fuel oil and cat cracker charge stock, Apco failed to follow the dictates of the Purchase Agreement found at ¶2(c)(1)(B). That clause contains no provision that would exclude a margin computation if such computation would yield a negative number, i.e. one which would have the effect of reducing the purchase price. As noted by the Court in finding of fact numbered 61, the negative margin for No.6 fuel oil would be \$16,085.72. In relation to cat cracker charge stock, the parties must calculate the margin in light of findings of fact numbered 48 through 53.

9. The refining expenses were calculated correctly by Apco utilizing its cash basis method of accounting consistent with

¶2(e) of the Purchase Agreement and no basis was shown by Total for varying these calculations by utilizing the accrual method of accounting.

10. The October 10, 1977 letter supplement to the Purchase Agreement concerning Apco's agreement to reduce its crude oil inventory to or below 1.3 million barrels is also clear and unambiguous. As noted in findings of fact numbered 69-70 the only real question involving these barrels of crude oil was whether the sale of them occurred in March or April, 1978. The Court, on the evidence presented, believes and concludes that an April sale was indicated. Total argues that because the sale was an April transaction, the barrels were transferred to it by the General Bill of Sale and the other closing documents. This Court does not agree. The October 10th supplemental letter agreement and the closing documents must be read together so as to give effect to the intentions of the parties expressed therein. Reading the documents together leads to the conclusion that Apco retained the Western Crude barrels after closing to dispose of as it saw fit. However, the barrels should not have had an effect on NRIC and RPIC under the Purchase Agreement because the barrels were not properly included as a March transaction.

11. One area that the Purchase Agreement did not specifically contemplate was the treatment of blend stocks. The real question is what price should have been charged for these products at the time of closing. The blend stocks should have been costed, as near as possible, to reflect the parties general intention to price the inventories at or near market value at the

time of closing. The adjustment submitted by Total in this regard accomplished the market value criteria and the purchase price should thus be reduced in an amount of \$154,281.00.

12. Apco failed to include the deferred tax liability of Apco Pipe Line, Inc., in its computation of the Purchase Price. As a result, pursuant to Section 2(b)(9) of the Purchase Agreement, Total is entitled to a reduction in the Purchase Price in the amount of said deferred tax liability, \$534,415.58, due to excess of known liabilities over APL assets.

13. The only other adjustments to the purchase price which would reduce that price involved accrual for entitlements, the March entitlement revenues that Apco still owes to Total and the stipulated adjustment of \$7,281.98. As to accrual for entitlements the parties need to calculate the actual effect that the entitlements should have had on RPIC. In relation to March entitlement revenues, the Court has concluded that the \$405,975.57 owing from Apco to Total shall act as an offset as to any monies still owed for the purchase price under the Purchase Agreement.

14. Pursuant to the Court's Findings and the post-trial Stipulations entered into by the parties, the following reflects computation of the purchase price to Apco, less reductions found by the Court, excluding attorney fees, costs and expenses pursuant to ¶19(a) and (b) of the Purchase Agreement:

Apco's Claim	\$9,608,102.59
Less:	
Mid-America Warranties	3,849,408.26
Q-Base	14,901.00
Cat Margin	41,515.00
No.6 Fuel Oil Margin	16,085.72
Blend Stocks	154,281.00
General Crude	2,291,304.00
Agreed Adjustment	7,281.98
March Entitlements	405,975.57
Entitlement Accrual	196,329.79
Western Crude Impact	
on RPIC and NRIC	107,162.17
APL Excess Liabilities	<u>534,415.58</u>
Equals:	\$1,989,442.52

15. As with the other matters under the Purchase Agreement, ¶6 is deemed by this Court to be clear and unambiguous. Interpreting ¶6 and its subparts to evidence the parties' intention to utilize the Citibank floating interest rates only if disputes under the Purchase Agreement are finally determined by arbitration does not lead to an absurdity. In the absence of such an absurd result, the Court must give effect to the words used by the parties. Therefore, on any monies still owed by Total to Apco under the Purchase Agreement, the Oklahoma statutory rate of 6% found in OKLA.STAT.ANN. tit.15, §266 is applicable as to prejudgment interest. Prejudgment interest began to run as of April 3, 1978.

16. Apco's second claim for relief is based on the alleged tortious bad faith of Total in withholding the May 31, 1978 payment under the Purchase Agreement and in Total's alleged bad faith claim to offsets under the agreement. Total's first claim in this regard is that this second claim is barred by the applicable statute of limitation under Oklahoma law. The parties appear to agree that the statute of limitations applicable to the second claim for relief is found at OKLA.STAT.ANN. tit.12, §95 (Third). The parties further appear to agree that the two-year statute of limitation found in Section 95 (Third) would have begun to run on May 31, 1978. Apco asserted its second claim for relief in its first amended cross-claim which was filed in this action on June 2, 1980. May 31, 1980 fell on a Saturday. Therefore, under the provisions of Fed.R.Civ.P. 6(a) the second claim for relief was timely filed by Apco.

17. The second defense raised by Total to Apco's bad faith claim is that under Oklahoma law the failure of Total to pay under the terms of the Purchase Agreement was nothing more than a breach of contract and that such failure to pay could in no event be considered a separate independent tort for which punitive damages were recoverable. It asserts the gravamen of the second claim for relief is a breach of contract, that no special relationship exists between Apco and it outside the confines of their contractual relationship and that no duty independent of the contract itself is involved here. Total relies heavily on the case of Burton v. Juzwik, 524 P.2d 16 (Okla. 1974) and the discussion of Professor Prosser's distinction between misfeasance

and nonfeasance contained in Smith v. Johnston, 591 P.2d 1260 (Okla. 1978). Apco relies on cases such as Stork v. Cities Service Gas Co., 634 P.2d 1319 (Okla.App. 1981), Djownarzadeh v. City National Bank and Trust Co., 646 P.2d 616 (Okla.App. 1982), Oklahoma Natural Gas Co. v. Pack, 97 P.2d 768 (Okla. 1939) and Christian v. American Home Assurance Co., 577 P.2d 899 (Okla. 1977) to support its position that breach of the implied duty of good faith and fair dealing contained in every contract under Oklahoma law is sufficient to give rise to an independent tort for which punitive damages are recoverable in a proper factual situation.

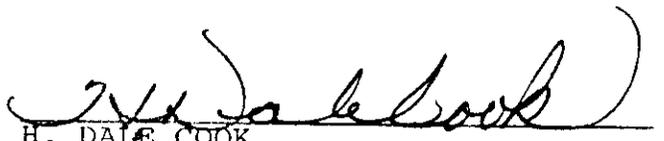
18. Assuming that Apco is correct in its assertion that a breach of the implied duty of good faith and fair dealing is sufficient, in itself, to state a claim in tort, rather than contract, the breach must still be accompanied by willful or malicious conduct for an award of punitive damages under OKLA. STAT.ANN. tit.23, §9. This Court concludes that the evidence at trial was wholly insufficient to show that an award of punitive damages would be proper under Section 9. From all the evidence presented, direct or indirect, there was no showing that Total breached any implied duty of good faith or fair dealing in its post-closing conduct toward Apco. Mistakes may have been made by Total as to the correct interpretation of certain clauses of the Purchase Agreement or as to the propriety of some offsets thereunder, but in no event can it be said that Total was guilty of oppression or malice in its dealings with Apco. Punitive damages are simply inappropriate in such a situation.

of oppression or malice in its dealings with Apco. Punitive damages are simply inappropriate in such a situation.

19. Under ¶19(b) of the Purchase Agreement, Total N.A., in effect, agreed to indemnify Apco for any damages occasioned by Total's failure to perform under the agreement and to pay Apco's reasonable attorney fees, costs and expenses incident to any lawsuit brought for such non-performance. In ¶19(a) Apco agreed to indemnify Total N.A. and Total for any damages occasioned by the breach of any warranty under the Purchase Agreement or by failure to duly perform or observe any term, provision, covenant, or agreement under the Purchase Agreement and to pay Total N.A.'s and Total's reasonable attorney fees, costs and expenses incident to any lawsuit brought for such breach or failure. There is no provision in the Purchase Agreement as to Total's liability for Apco's attorney fees.

20. This Order also serves as the embodiment of the Court's ruling on all motions raised after the filing of the Preliminary Findings of Fact and Conclusions of Law, except as to the issue of attorney fees. The parties' motions for attorney fees are hereby set for evidentiary hearing on September 30, 1986 at 9:30 o'clock A.m.

IT IS SO ORDERED this 27 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 27 1986

CITICORP ACCEPTANCE COMPANY, )  
INC., a corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MERLE CARPENTER and )  
SHARON CARPENTER, )  
Husband and Wife, )  
 )  
Defendants. )

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

No. 85-C-1037C

ORDER OF DISMISSAL

THIS cause came to be heard on Plaintiff's Motion for Voluntary Dismissal of said cause, and due deliberation has been had thereon, it is

ORDERED that this cause be and the same is hereby dismissed without prejudice.

Dated Aug 27, 1986.

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

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

AUG 27 1983

CLERK  
U.S. DISTRICT COURT

ZIMMER CORPORATION, a )  
Delaware Corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
INSURERS NATIONWIDE SERVICE, )  
INC., an Oklahoma Corporation, )  
VANGUARD INSURANCE CO., a )  
Texas Corporation, )  
 )  
Defendant. )

No. 84-C-214-E

STIPULATION OF DISMISSAL

The Plaintiff, Zimmer Corporation, hereby and herewith dismisses its cause of action as against the Defendants Vanguard Insurance Company and Insurers Nationwide Service by stipulation of the parties hereto pursuant to Rule 41(a) of the Rules of Federal Procedure.

FELDMAN, HALL, FRANDEN,  
WOODARD & FARRIS

BY: Stephen C. Stapleton  
Stephen C. Stapleton  
OBA#10972  
522 S. Boston, Ste. 816  
Tulsa, OK. 74103-4609  
(918) 583-7129

APPROVED AS TO FORM AND CONTENT:

Stephen C. Stapleton  
Stephen C. Stapleton  
Attorney for Plaintiff

Robert H. Taylor  
Robert H. Taylor  
Attorney for Defendant

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

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

No. 84-C-911-E

ORDER FOR DISMISSAL

Now on this 25<sup>th</sup> day of Aug, 1986, the Court being advised that a compromise settlement having been reached between the plaintiff and the defendants OWENS-ILLINOIS, INC., KEENE CORPORATION, OWENS-CORNING FIBERGLAS CORPORATION, FIBREBOARD CORPORATION, EAGLE-PICHER INDUSTRIES, INC., A C & S, INC., CELOTEX CORPORATION, H. K. PORTER COMPANY, INC., and FLEXITALLIC GASKET COMPANY, INC., and the Court being further advised that Betty Meixner is the sole surviving spouse and Gayle Wing is the sole surviving heir and issue of Karl Meixner, Deceased; and being further advised that Betty Meixner and Gayle Wing are the proper parties to receive the proceeds from the compromise settlement; and being further advised that the parties herein stipulate to a dismissal with prejudice; the Court orders as follows:

IT IS ORDERED that the settlement is approved and the proceeds of the compromise settlement be distributed to Betty Meixner, widow of Karl Meixner, Deceased, and Gayle Wing, daughter of Karl Meixner, deceased;

IT IS FURTHER ORDERED that the captioned case be dismissed with prejudice as to OWENS-ILLINOIS, INC., KEENE CORPORATION, OWENS-CORNING FIBERGLAS CORPORATION, FIBREBOARD CORPORATION, EAGLE-PICHER INDUSTRIES, INC., CELTOEX CORPORATION, A C & S, INC., H.K. PORTER COMPANY, INC. and FLEXITALLIC GASKET COMPANY, INC.

**S/ JAMES O. ELLISON**

---

HONORABLE JAMES O. ELLISON



APPROVAL:

  
Clarence P. Green OBA #3561

GREEN, JAMES, WILLIAMS, & ELLIOTT  
601 Northwest 13th Street  
P. O. Box 2248  
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ATTORNEYS FOR PLAINTIFF

  
Jeff R. Beeler OBA #658

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Oklahoma City, Oklahoma 73102  
(405) 239-6143

ATTORNEYS FOR DEFENDANTS

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

MARGARET P. IRETON, )  
 )  
 Plaintiff, )  
 )  
 vs. ) Case No. 84-C-767-E  
 )  
 SAINT FRANCIS HOSPITAL, INC., )  
 an Oklahoma corporation, )  
 )  
 Defendant. )

ORDER OF DISMISSAL

On presentation of a Stipulation for Dismissal filed herein,

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Count I of Plaintiff's Complaint shall be and is hereby dismissed without prejudiced as to the Defendant Saint Francis Hospital, Inc.

2. Counts II and III of Plaintiff's Complaint shall be and are hereby dismissed with prejudiced as to Defendant Saint Francis Hospital, Inc.

3. Each party shall bear their own costs in this matter.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

FIRST BANK OF GROVE, Grove, Oklahoma, )  
now BANK OF OKLAHOMA, Grove, a bank- )  
ing corporation; DELAWARE COUNTY BANK )  
Jay, Oklahoma, a banking corporation; )  
and GRAND SAVINGS & LOAN ASSOCIATION, )  
Jay, Oklahoma, now GRAND FEDERAL )  
SAVINGS BANK, a banking corporation, )

Plaintiffs, )

vs. )

No. 85-C-1122E )

CAL W. ALFORD, THELMA MAE ALFORD, )  
JAMES J. HOPPER, ANNE CHRISTINE )  
HOPPER, RALPH L. MARTIN and )  
PATRICIA V. MARTIN, )

Defendants. )

JOURNAL ENTRY OF JUDGMENT

Now on this 30th day of July, 1986, the above captioned cause comes on for hearing before the Honorable James O. Ellison, United States District Court Judge. The Plaintiffs appear by and through their attorney of record, Beverly Joyce Trew of Herrold, Gregg & Herrold, Inc. The Defendants appear by and through their attorney of record, H. Gene Seigel of Seagle and Oakley.

The parties stipulated on May 30, 1986 at a status conference in the action that absent private sale of the subject property by the Defendants on or before this date that judgment would be granted pursuant to Plaintiff's Complaint. The Court approved the stipulation and there has been no sale of the mortgaged premises.

Upon examination of the court file and pleadings of this case, and being otherwise fully advised in the premises, the

Court finds as follows:

1. Proper jurisdiction of the action is vested pursuant to 28 U.S.C. §1332.

2. That on the 29th day of June, 1984, Defendants, Cal W. Alford, James J. Hopper and Ralph L. Martin, for value received, made, executed, and delivered to The Oklahoma Development Authority, Oklahoma City, Oklahoma, a certain promissory note ("Note-C1") for the principal amount of \$80,000.00 together with interest thereon from date at the rate of 13% per annum for the first 12 months and thereafter at a rate equal to four percentage points above the 90 day United States Treasury Bill rate, adjusted weekly effective on each banking day on which a change in the 90 day United States Treasury Bill rate occurs, said Note being due and payable in full on the 1st day of July, 1999.

3. That on the 29th day of June, 1984, Defendants, Cal W. Alford, James J. Hopper and Ralph L. Martin, for value received, made, executed, and delivered to The Oklahoma Development Authority, Oklahoma City, Oklahoma, a certain promissory note ("Note-C2") for the principal amount of \$80,000.00 together with interest thereon from date at the rate of 13% per annum for the first 12 months and thereafter at a rate equal to four percentage points above the 90 day United States Treasury Bill rate, adjusted weekly effective on each banking day on which a change in the 90 day United States Treasury Bill rate occurs, said Note being due and payable in full on the 1st day of July, 1999.

4. That on the 29th day of June, 1984, Defendants, Cal W. Alford, James J. Hopper and Ralph L. Martin, for value received,

made, executed, and delivered to The Oklahoma Development Authority, Oklahoma City, Oklahoma, a certain promissory note ("Note-C3") for the principal amount of \$80,000.00 together with interest thereon from date at the rate of 13% per annum for the first 12 months and thereafter at a rate equal to four percentage points above the 90 day United States Treasury Bill rate, adjusted weekly effective on each banking day on which a change in the 90 day United States Treasury Bill rate occurs, said Note being due and payable in full on the 1st day of July, 1999.

5. That at the same time and as a part and parcel of the same transaction and for the purpose of securing payment of said Note-C1, Note-C2, and Note-C3, the Defendants Cal W. Alford and Thelma Mae Alford, husband and wife, James J. Hopper and Anne Christine Hopper, husband and wife, and Ralph L. Martin and Patricia V. Martin, husband and wife, made, executed, and delivered to The Oklahoma Development Authority, an Oklahoma Public Trust, its successors and assigns, a certain real estate mortgage ("Mortgage") covering the following described property:

A tract of land located in the N/2 NE/4 of Section 31, Township 23 North, Range 24 East, more particularly described as follows, to-wit:

Beginning at a point 60.3 feet East of the NW corner of said N/2 NE/4; thence East 1320 feet; thence S. 0° 11' E. 330 feet; thence West 1320 1320 feet; thence N. 0° 11' W. 330 feet to the point of beginning, containing 10 acres, more or less, SUBJECT TO County Road easement; all in Delaware County, Oklahoma.

which mortgage was duly recorded June 29, 1984, in the offices of the County Clerk of Delaware County, State of Oklahoma, after all

mortgage tax due thereon had been fully paid, in Book 468, at Pages 332-358.

6. That Note-C1 was assigned by The Oklahoma Development Authority to Plaintiff, First Bank of Grove, Oklahoma by virtue of an executed Endorsement dated June 29, 1984; that Note-C2 was assigned by The Oklahoma Development Authority to Plaintiff, Delaware County Bank, Jay, Oklahoma by virtue of an executed Endorsement dated June 29, 1984; and that Note-C3 was assigned by The Oklahoma Development Authority to Plaintiff, Grand Savings & Loan Association, Jay, Oklahoma by virtue of an executed Endorsement dated June 29, 1984.

6. On June 29, 1984, The Oklahoma Development Authority, and Oklahoma Public Trust, sold, assigned, transferred, set over and conveyed to Plaintiffs the subject Mortgage by an Assignment of Mortgage dated June 29, 1984 and filed same of record in the office of the County Clerk of Delaware County on June 29, 1984 in Book 468 at Pages 359-360.

7. The conditions of said Note-C1 and Mortgage have been broken and default has been made in the conditions thereof in that Defendants have failed to pay the principal and interest when due, that Defendants have made no payment thereon since June 27, 1985, and that the principal sum of \$77,964.79 is now due and owing, together with interest as of July 30, 1986 in the amount of \$11,634.52.

8. The conditions of said Note-C2 and Mortgage have been broken and default has been made in the conditions thereof in that Defendants have failed to pay the principal and interest

when due, that Defendants have made no payment thereon since October 7, 1985, and that the principal sum of \$78,738.68 is now due and owing, together with interest as of July 30, 1986 in the amount of \$10,503.76.

9. The conditions of said Note C-3 and Mortgage have been broken and default has been made in the conditions thereof in that Defendants have failed to pay the principal and interest when due, that Defendants have made no payment thereon since August 2, 1985, and that the principal sum of \$79,661.49 is now due and owing, together with interest as of July 30, 1986 in the amount of \$12,527.69.

10. On said Note-C1, Note-C2, and Note-C3, Defendants are further indebted to Plaintiffs on all amounts of principal and interest remaining unpaid on date of judgment which amounts shall bear interest from and after date of judgment until all the interest and principal of the indebtedness be fully paid at the statutory rate of 15% per annum, for all costs of this action, inclusive of Plaintiffs' reasonable attorneys fees as provided in said Notes and Mortgage.

11. The Mortgage constitutes a valid and enforceable lien and encumbrance in, upon and against the subject real property, which should be ordered foreclosed and the property sold, with appraisement as elected by Plaintiffs, in the manner prescribed by law to satisfy the aforesaid indebtedness.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff, First Bank of Grove, Grove, Oklahoma is granted judgment and in personam against the Defendants, Cal W.

Alford, James S. Hopper, and Ralph L. Martin, jointly and severally, and judgment in rem against the Defendants, Thelma Mae Alford, Anne Christine Hopper and Patricia V. Martin, jointly and severally, for the principal sum of \$77,964.79, together with interest as of July 30, 1986 in the sum of \$11,634.52; and thereafter at the statutory rate of 15% per annum from date of judgment until all the interest and principal be fully paid, for all of which let special execution issue.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff, Delaware County Bank, Jay, Oklahoma is granted judgment and in personam against the Defendants, Cal W. Alford, James S. Hopper, and Ralph L. Martin, jointly and severally, and judgment in rem against the Defendants, Thelma Mae Alford, Anne Christine Hopper and Patricia V. Martin, jointly and severally, for the principal sum of \$78,738.68, together with interest as of July 30, 1986 in the sum of \$10,503.76; thereafter at the statutory rate of 15% per annum from date of judgment until all the interest and principal be fully paid, for all of which let special execution issue.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff, Grand Savings & Loan Association, now Grand Federal Savings Bank, Jay, Oklahoma is granted judgment and in personam against the Defendants, Cal W. Alford, James S. Hopper, and Ralph L. Martin, jointly and severally, and judgment in rem against the Defendants, Thelma Mae Alford, Anne Christine Hopper and Patricia V. Martin, jointly and severally, for the principal sum of \$79,661.49, together with interest as of July 30, 1986 in

the sum of \$12,527.69; thereafter at the statutory rate of 15% per annum from date of judgment until all the interest and principal be fully paid, for all of which let special execution issue.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED the Court that Plaintiffs are granted judgment against Defendants for all costs herein accrued and accruing, including a reasonable attorneys fee (to be determined upon proper application and hearing herein), for all of which let special execution issue.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiffs are holders of a valid first real estate mortgage made, executed and delivered to The Oklahoma Development Authority, an Oklahoma public trust, upon good and valuable consideration, dated June 29, 1984 and thereafter recorded after all mortgage tax due thereon had been fully paid on June 29, 1984 in the office of the County Clerk of Delaware County, Oklahoma in Book 468 at Pages 332-358; which Mortgage was subsequently assigned to Plaintiffs by an Assignment of Mortgage dated June 29, 1984 and filed of record on June 29, 1984 in the office of the County Clerk of Delaware County, Oklahoma in Book 468 at Pages 359-360; and on certain real property located, lying and being situate in Delaware County, State of Oklahoma, more particularly described, as follows:

A tract of land located in the N/2 NE/4 of Section 31, Township 23 North, Range 24 East, more particularly described as follows, to-wit:

Beginning at a point 60.3 feet East of the NW corner of said N/2 NE/4; thence East 1320 feet; thence S. 0° 11' E. 330

feet; thence West 1320 1320 feet; thence N. 0° 11' W. 330 feet to the point of beginning, containing 10 acres, more or less, SUBJECT TO County Road easement; all in Delaware County, Oklahoma.

That said Mortgage constitutes a valid first lien in, to and against the abovedescribed real estate and secures the three promissory notes (Note-C1, Note-C2, and Note-C3) of indebtedness of Defendants to Plaintiffs as set forth hereinabove.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the lien of the aforesaid Mortgage should be foreclosed and the real estate thereby encumbered sold at public sale, with appraisement, in the manner prescribed by law, and that upon such foreclosure sale and its due confirmation, the proceeds of such sale applied as follows:

- FIRST: To payment of all costs of this action inclusive of the Plaintiffs' reasonable attorney fees and costs, accrued and accruing;
- SECOND: To payment of the Plaintiffs' Judgments hereinabove granted against the Defendants -- first to the payment and satisfaction of all interest and then to the payment and satisfaction of principal, said payments to be apportioned between the Plaintiffs on a pro rata basis; and
- THIRD: Any balance of proceeds thereafter remaining shall be paid into Court to abide its further order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that upon confirmation of sale of the abovedescribed real property, in accordance with law, the purchaser thereof shall thereupon be vested with good and lawful title in and to the subject real property, and the interests of said purchaser, his heirs, personal representatives, successors, and assigns shall be senior and superior to all other persons, including the

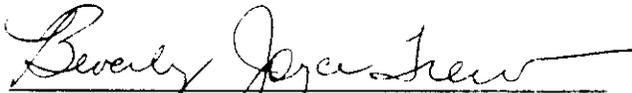
Defendants, whose right, title, interest, and estate in and to said real property shall be vacated, annulled and set aside perforce the foreclosure and its confirmation; and thereafter, Defendants, their heirs, personal representatives, successors and assigns shall be forever barred and enjoined from asserting any right, title or interest in and to said real property.

**S/ JAMES O. ELLISON**

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JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:



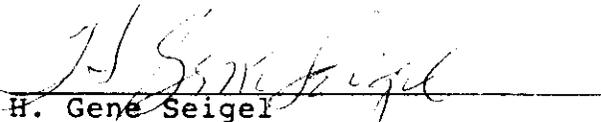
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(918) 494-4050  
ATTORNEYS for PLAINTIFFS



---

Gene A. Davis  
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ATTORNEYS for PLAINTIFFS



---

H. Gene Seigel  
Seigel and Oakley  
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500 West 7th Street  
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(918) 587-3147  
ATTORNEYS for DEFENDANTS

Entered

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

JOE SIXKILLER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 OTIS R. BOWEN, M.D., Secretary )  
 of Health and Human Services, )  
 )  
 Defendant. )

No. 85-C-46-E

RECEIVED  
AUG 20 1986

ORDER

NOW on this 26<sup>th</sup> day of August, 1986 comes on for hearing the above styled case and the Court, being fully advised in the premises finds:

Plaintiff brought this action pursuant to 42 U.S.C. § 405(g) for judicial review of the final decision of the Secretary of Health and Human Services (Secretary) denying Plaintiff's application for disability insurance benefits under 42 U.S.C. §§ 416(i) and 423. This Court referred the matter to the United States Magistrate. The Magistrate subsequently held a hearing and issued Findings and Recommendations. Based upon that hearing and a review of the entire record, the Magistrate affirmed the decision of the Secretary. Plaintiff now objects to the Findings and Recommendations of the Magistrate.

This Court has carefully considered the entire record, including the proceedings before the Magistrate, and concurs with Findings and Recommendations of the Magistrate that, although somewhat conflicting evidence exists in the medical record,

substantial evidence exists in the record as a whole to support the decision of the Administrative Law Judge.

Based upon the limited standard of review, this Court finds that the record as a whole contains substantial evidence to support the Secretary's decision, and the Secretary's decision is hereby affirmed.

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



Entered

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

FILED

AUG 25 1986

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

SANGUINE, LTD.,  
Plaintiff,

vs.

SOUTHERN NATURAL GAS COMPANY,  
Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 84-C-984-E

consolidated with No. 85-C-1068-C

ORDER OF DISMISSAL

There having been filed in the above styled and numbered cause, and in Sanguine, Ltd. v. Southern Natural Gas Company, No. 85-C-1068-C, which action has been consolidated for all purposes with the captioned action, a Stipulation of Dismissal with Prejudice, which said stipulations have been entered into by counsel for all parties and said stipulations now being before the Court:

IT IS ORDERED, ADJUDGED AND DECREED that plaintiff's actions filed in the captioned case and in Sanguine, Ltd. v. Southern Natural Gas Company, No. 85-C-1068-C, which action has been consolidated for all purposes with the captioned action, be, and the same hereby are, dismissed with prejudice. All parties to bear their own costs and attorneys' fees as per the stipulations filed.

Dated this 21 day of August, 1986.

**S/ JAMES O. ELLISON**

United States District Judge

**F I L E D**

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

AUG 24 1986

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 HENRY L. FRANKE d/b/a )  
 FRANKE EXPLORATION, )  
 )  
 Defendant. )

No. 85-C-810-C

J U D G M E N T

This matter came on before the Court for determination of the motion of plaintiff United States of America 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 THEREFORE ORDERED, ADJUDGED, AND DECREED that Judgment be hereby entered on behalf of plaintiff as against defendant Henry L. Franke d/b/a/ Franke Exploration in the amount of \$90,000.00.

IT IS SO ORDERED this 22 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

FILED  
MAY 22 1985  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

MARMAC RESOURCES COMPANY, )  
an Oklahoma partnership, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
C & J ENTERPRISES, et al., )  
 )  
Defendants. )

Case No. 85-C-1101-B

CONSENT ORDER CONSTITUTING FINAL JUDGMENT

Upon consideration of the various pleadings herein and Compromise Settlement Agreement and Stipulation of Plaintiff and Abraham L. Goldman, Francis L. Spalding and Martin Revson to settle this litigation, in part as evidenced by their attorneys' respective signatures to the Stipulation annexed to this Consent Order, it is hereby ORDERED, ADJUDGED and DECREED:

1. The Court finds that it has jurisdiction of the above named parties and the subject matter of this suit.

2. The Court finds that all material allegations of Plaintiff's Complaint are true and Plaintiff is entitled to judgment as prayed for.

3. The Counterclaim of the above named defendants are dismissed with prejudice.

4. The Court finds that Plaintiff is in possession of and owns against all claims of said defendants oil and gas leases

on land described as follows:

Hall Lease, The Southeast Quarter (SE-1/4) of Section 6, Township 24 North, Range 10 East, containing 160 acres, more or less,

Hightower Lease, The Northeast Quarter (NE-1/4) of Section 6, Township 24 North, Range 10 East, containing 160 acres, more or less,

Pershing Lease, The Southwest Quarter (SW-1/4) of Section 5, Township 24 North, Range 10 East, containing 160 acres, more or less.

5. The Court finds that the above mentioned leases are controlled by and are subject to the Code of Federal Regulations Title 25, Indians, Chapter 1, Bureau of Indian Affairs, Part 226, all as more fully stated in Plaintiff's Complaint.

6. The above mentioned Federal law requires that any assignment of an Osage lease must be approved by the Superintendent of the Osage Indian Agency. The assignment must be on a form prescribed by the Agency, must be filed with the Agency, together with a filing fee being paid. The claims of the above named defendants do not meet these requirements and are therefore void.

7. Plaintiff has acquired all the right, title and interest of Osage Exploration Company in the subject leases pursuant to a sale conducted in Case No. 83-00658 of the United States Bankruptcy Court for the Northern District of Oklahoma, all as more fully stated in Plaintiff's Complaint.

8. Plaintiff is granted judgment quieting title to the three above described oil and gas leases against said Abraham L. Goldman, Francis L. Spalding and Martin Revson and all production from said leases from and after July 30, 1984.

9. Plaintiff and the above named defendants, having settled the cause of action alleged in the Complaint and Counterclaim as to damages, costs and attorney fees, neither of said parties shall have or recover any damages, costs or attorney fees against the other with respect to these proceedings and cause of action.

10. This Consent Order shall constitute the findings of fact and conclusions of law as between the above named parties with respect to all material allegations in the Complaint and Counterclaim.

11. The parties to this Consent Order have and do hereby waive any and all right to appeal herefrom.

Dated this 22<sup>nd</sup> day of Aug, 1986.

  
United States District Judge

STIPULATION

The parties named below, through their respective attorneys, hereby stipulate and consent to the entry of the foregoing Consent Order Constituting Final Judgment without further notice.

Dated this \_\_\_\_ day of July, 1986.

MARMAC RESOURCES COMPANY,  
An Oklahoma partnership

By \_\_\_\_\_  
James R. Eagleton OBA No. 2584

ABRAHAM L. GOLDMAN  
FRANCIS L. SPALDING  
MARTIN REVSON

By \_\_\_\_\_  
David A. Carpenter OBA NO.

*Entered*

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

FILED

AUG 21 1986

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

OBO, et al.,  
Plaintiffs,

v.

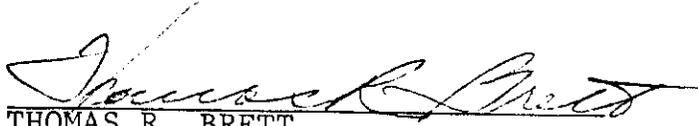
CITY OF TULSA, et al.,  
Defendants.

No. 83-C-246-B

J U D G M E N T

In accordance with the Order entered this date, IT IS HEREBY ORDERED AND ADJUDGED that Judgment is entered in favor of the Defendants and against Plaintiffs, Dwight Cole, Charles Rose, Izetta Corbbrey, Victor Driver, Ben Williams, C.V. Hill, Jr., Manuel Dickens, Phillip Johnson and A.M. Renell (Hanee) Muwwakkil, and the claims of these plaintiffs are hereby dismissed with prejudice. The parties are to pay their respective costs, including attorney fees.

DATED, this 21<sup>ST</sup> day of August, 1986.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



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

FILED

DOROTHY DeCAMP; DONNA DEAN DeCAMP;  
and DENNIS SEACAT,

Plaintiffs,

vs.

JOHN P. SULLENDER, d/b/a BILL &  
JOHN'S ENTERPRISE, INC., a Missouri  
corporation, and ROBERT V. MARKT,  
Individually, and ROBERT V. MARKT  
d/b/a ROBERT V. MARKT TRUCKING,

Defendants.

vs.

MISSION INSURANCE COMPANY, a  
California corporation, and BRUCE  
BUNNER, in his official capacity as  
California Insurance Commissioner  
and Conservator of Mission  
Insurance Company,

Third Party Defendants.

AUG 21 1986

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

No. 85-C-247-B

ORDER OF DISMISSAL WITH PREJUDICE

On this 21 day of August, 1986, upon the written application of the Plaintiffs, Dorothy DeCamp, Donna Dean DeCamp and Dennis Seacat, the Defendants, John P. Sullender d/b/a Bill & John's Enterprise, Inc., Robert V. Markt, individually and Robert V. Markt d/b/a Robert V. Markt Trucking, and the Third Party Defendants, Mission Insurance Company, a California corporation, and Bruce Bunner, in his official capacity as California Insurance Commissioner and Conservator of Mission Insurance Company, for a Dismissal with Prejudice of the Complaint and Third Party Complaints of DeCamp v. Sullender, and all causes of action therein, the Court having examined said Application, finds that said parties have entered into a compromise settlement

covering all claims involved in the Complaint and Third Party Complaints and have requested the Court to Dismiss said Complaint and Third Party Complaints with prejudice to any future action. The Court being fully advised in the premises finds said settlement is to the best interest of said Dorothy DeCamp, Donna Dean DeCamp, Dennis Seacat, Defendants, Third Party Plaintiffs, and Third Party Defendants.

THE COURT FURTHER FINDS that said Complaint and Third Party Complaints should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and Third Party Petition and all causes of action of the Plaintiffs, Dorothy DeCamp, Donna Dean DeCamp and Dennis Seacat against the Defendants, John P. Sullender d/b/a Bill & John's Enterprise, Inc, Robert V. Markt, individually and Robert V. Markt d/b/a Robert V. Markt Trucking and all causes of action of the Defendants John P. Sullender d/b/a Bill & John's Enterprise, Inc., Robert V. Markt, individually and Robert V. Markt d/b/a Robert V. Markt Trucking against Third Party Defendants Mission Insurance Company, a California corporation and Bruce Bunner, in his official capacity as California Insurance Commissioner and Conservator of Mission Insurance Company be and the same hereby are dismissed with prejudice to any future action.

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

APPROVALS:

*Dennis Seacat*

Dennis Seacat  
Attorney for Plaintiffs

*Carol Seacat*

Carol Seacat  
Attorney for Plaintiffs

*Barry V. Denney*

Barry V. Denney  
Attorney for Defendants

*John B. Stuart*

John B. Stuart  
Attorney for Third Party Defendants

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

LEAMON D. GARRISON, JR., )

Plaintiff )

v. )

UNITED STATES OF AMERICA, )

Defendant )

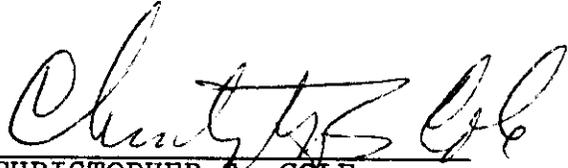
CIVIL NO. 86-C-97-C

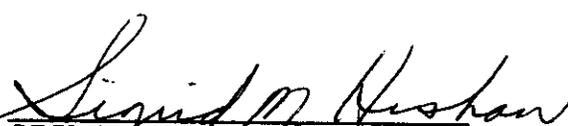
**FILED**

1986

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1)(ii), Federal Rules of Civil Procedure, it is hereby stipulated and agreed that the above-entitled action be dismissed with prejudice, the parties to bear their respective cost, including any possible attorney's fees or other expenses of litigation.

  
CHRISTOPHER S. COLE  
Attorney, Tax Division  
Department of Justice  
1100 Commerce, Room 5B31  
Dallas, Texas 75242  
(214) 767-0293

  
SIGRID M. HENSHAW  
Attorney at Law  
7666 E. 61st, Suite 251  
Tulsa, Oklahoma 74133

1986  
Clerk  
DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 21 1986

Jack C. Sims  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LOUIS D. FLORES,

Defendant.

CIVIL ACTION NO. 86-C-457-E

DEFAULT JUDGMENT

This matter comes on for consideration this 20<sup>th</sup> day of Aug., 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, Louis D. Flores, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Louis D. Flores, was served with Summons and Complaint on June 20, 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,

Louis D. Flores, for the principal sum of \$460.33, plus interest at the rate of 12.25 percent per annum and administrative costs of \$.68 per month from May 13, 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

*Entered*

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

FILED

AUG 21 1986

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

OBO, et al.,  
Plaintiffs,

v.

CITY OF TULSA, et al.,  
Defendants.

No. 83-C-246-B

ORDER

This matter comes before the Court on Defendants' Motion for Entry of Final Judgment, pursuant to Fed.R.Civ.P. 54(b). The Court having been advised that counsel for the specified Plaintiffs concurs in this request, and for the reasons set forth below, the Motion is sustained.

On October 21, 1985, this Court dismissed the claims of Plaintiffs Dwight Cole, Charles Rose, Izetta Corbbrey, Victor Driver and Ben Williams, with prejudice for failure to comply with discovery orders. On July 29, 1986, the Court denied Plaintiffs' Motion to Reconsider the October 21, 1985, Order.

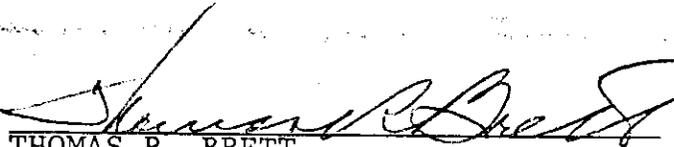
On July 29, 1986, the Court sustained in part Defendants' Motion for Summary Judgment and dismissed all claims of Plaintiffs C.V. Hill, Jr., Manuel Dickens, Phillip Johnson, and A.M. Renell (Hanee) Muwakkil, with prejudice.

Fed.R.Civ.P. 54(b) provides, in pertinent part:

When more than one claim for relief is presented in an action . . . or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment . . . .

After review of the record herein, the Court concludes there is no just reason to delay entry of final judgment against Plaintiffs Cole, Rose, Corbbrey, Driver, Williams, Hill, Dickens, Phillip Johnson and Muwakkil. For this reason, pursuant to Fed.R.Civ.P. 54(b), the Defendants' Motion is sustained.

IT IS SO ORDERED, this 21<sup>ST</sup> day of August, 1986.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

AUG 20 1986

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JACKIE LEE GREEN, )  
 )  
Defendant. )

85-C-906-BV  
~~NO. 85-CR-63-B~~

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

O R D E R

Pursuant to the order of the Court of Appeals of the Tenth Circuit dated August 18, 1986, the judgment and sentence entered herein on the 2nd day of July, 1985, is hereby vacated and set aside.

DATED this 20<sup>th</sup> day of August, 1986.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE