

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
vs.)
)
KEVIN W. GLADO,)
)
 Defendant.) CIVIL ACTION NO. 86-C-637-E

DEFAULT JUDGMENT

This matter comes on for consideration this _____ day of September, 1986, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Kevin W. Glado, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Kevin W. Glado, acknowledged receipt of Summons and Complaint on July 27, 1986. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

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

Kevin W. Glado, for the principal sum of \$294.04, plus interest at the rate of 9 percent per annum and administrative costs of \$.67 per month from May 5, 1985, until judgment, plus interest thereafter at the current legal rate of 5.63 percent per annum until paid, plus costs of this action.

S/ JAMES O. ELISON

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 10 1986

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

LEONARD D. POWELL,)

Defendant.)

CIVIL ACTION NO. 86-C-242-C

ORDER OF DISMISSAL

Now on this 9 day of September, 1986, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve Leonard D. Powell have been unsuccessful.

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

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

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

STEVEN HUGHES and TERRY HUGHES,)
)
Plaintiffs,)
)
vs.)
)
REDMAN INDUSTRIES, INC., a)
Texas corporation,)
)
Defendant.)

No. 85-C-955-C

FILED

SEP 10 1986

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

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the Plaintiffs by and through their attorney of record, Jack Y. Goree of Goree, King, Rucker and Finnerty, and the Defendant comes by its attorney, Eugene Robinson of McGivern, Scott, Gilliard, McGivern and Robinson, and the parties advise the Court that all of the issues between the Plaintiffs and the Defendant have been settled to the satisfaction of the Plaintiffs and the Defendant and a Release has been executed by the Plaintiffs.

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

GOREE, KING, RUCKER & FINNERTY

JACK Y. GOREE (OBA #3481)

By: 

Attorney for Plaintiffs

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

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

SEP 10 1986

SEP 10 1986

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

JOHN WHITNEY,

Plaintiff,

vs.

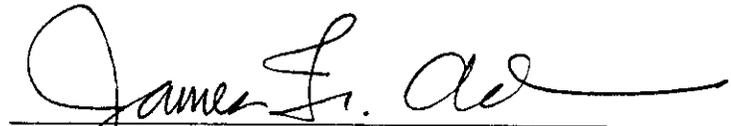
EDUCATIONAL DEVELOPMENT
CORPORATTON, a Delaware
corporation,

Defendant.

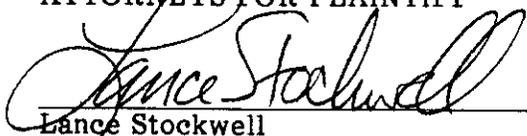
No. 86-C-549-E

STIPULATION OF
DISMISSAL WITH PREJUDICE

COME now the Plaintiff, John Whitney and the Defendant, Educational Development Corporation, and hereby jointly Stipulate to the dismissal, with prejudice to the refiling of the same, of all of Plaintiff's claims herein against the Defendant, Educational Development Corporation.



Theodore Q. Eliot
James F. Adams
GABLE & GOTWALS, INC.
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119
ATTORNEYS FOR PLAINTIFF

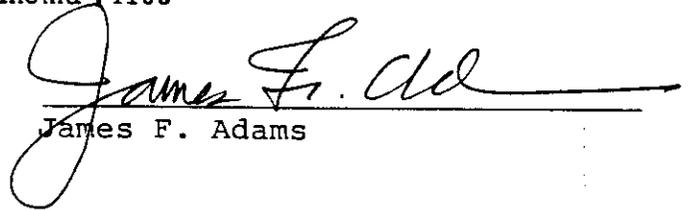


Lance Stockwell
BOESCHE, MCDERMOTT & ESKRIDGE
800 Oneok Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF MAILING

I hereby certify that on the ^{10th}~~9th~~ day of September, 1986, I forwarded a true and correct copy hereof, by depositing same in the United States mails, in Tulsa, Oklahoma, with first-class postage thereon, pre-paid, to the following counsel of record:

Lance Stockwell
Boesche, McDermott & Eskridge
800 Oneok Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103


James F. Adams

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

LONNELL EUGENE SMITH,)
)
 Plaintiff,)
)
 vs.)
)
 CITY, et al.,)
)
 Defendants.)

No. 86-C-772-E

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

SEP -9 1986

FILED

O R D E R

The Court has before it for its consideration the question of whether the Plaintiff's in forma pauperis complaint is frivolous and subject to dismissal under 28 U.S.C. §1915(d).

In Collins v. Cundy, 603 F.2d 825 (10th Cir. 1979) the United States Court of Appeals for the Tenth Circuit held that a complaint filed in forma pauperis is subject to dismissal as frivolous prior to the issuance of summons if the Plaintiff can make no rational argument on the law or facts in support of his claim.

That standard is particularly relevant to this case because Plaintiff's complaint is not a rational, comprehensible pleading setting forth facts giving rise to any claim for relief. The complaint is instead irrational, and fails to state a claim upon which relief can be granted. In addition, Plaintiff indicates on the face of his complaint that the actions were not performed under color of state law, an essential element of 42 U.S.C. §1983.

Accordingly, this matter is dismissed pursuant to 28 U.S.C. §1915(d).

DATED this 9th day of September, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

9 1986

CAL WIRE STRANDING,

Plaintiff,

vs.

No. 85-C-931-E

ATLAS TOWER CORPORATION, A
corporation, and GEORGE J.
BURRICK d/b/a ATLAS TOWER
CORP.,

Defendants.

O R D E R

NOW on this 9th day of September, 1986 comes on for hearing the above styled case and the Court, being fully advised in the premises finds:

This case is dismissed as to Defendant George J. Burrick for failure of Plaintiff to comply with the Court's order of July 24, 1986.

It is so Ordered.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

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

SEP -8 1986

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

MARGE MOODY,
Plaintiff,

vs.

COLONIAL PENN INSURANCE
COMPANY,
Defendant.

Case No. 85-C-830-B

STIPULATION ~~AND~~ DISMISSAL

It is hereby stipulated that the above-entitled action may be dismissed with prejudice to the right to the bringing of any other future action, each party to bear its own costs.

Dated September 9th, 1986.

HALL, ESTILL, HARDWICK, GABLE,
COLLINGSWORTH & NELSON, INC.

By: Mark Blongewicz
Mark K. Blongewicz
4100 Bank of Oklahoma Tower
Tulsa, OK 74172
Attorneys for Plaintiff

BUTLER AND BURNETTE

By: Guy Burnette Jr.
Guy E. Burnette Jr.
One Mack Center Suite 1100
501 East Kennedy Boulevard
Tampa, FL 33602
Attorneys for Defendant

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

ROBERT M. MILES and JULIE)
A. MILES,)
)
Plaintiffs,)
)
vs.) No. 86-C153-E
)
HOWARD CHEVROLET, INC., TEAM)
CHEVROLET, INC., JACK W.)
CLARK d/b/a HOWARD CHEVROLET)
INC., and d/b/a TEAM CHEVROLET)
INC., and JIM CLARK d/b/a)
HOWARD CHEVROLET, INC., and)
d/b/a TEAM CHEVROLET, INC.,)
)
Defendants.)

ORDER

It appearing to the satisfaction of this court that all matters and controversies have been compromised by and between the parties, as evidenced by the signatures of their attorneys on the stipulation filed herein on Sept 5, 1986; therefore,

IT IS ORDERED that the above captioned suit be, and the same is hereby dismissed with prejudice without costs to either party.

No attorney's fee will be taxed, the same having been waived by counsel.

DATED this 9th day of Sept, 1986.

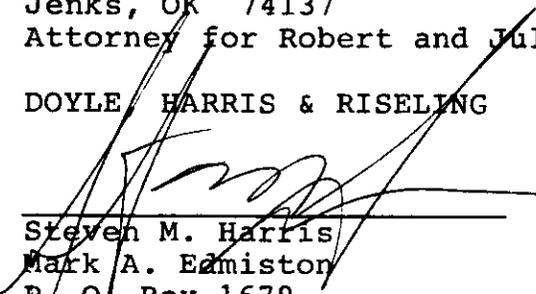
S/ JAMES O. ELLISON

James O. Ellison
Judge of the United States District

APPROVED AS TO FORM AND CONTENT:

John M. Gerkin
P. O. Box 691
Jenks, OK 74137
Attorney for Robert and Julie Miles

DOYLE, HARRIS & RISELING



Steven M. Harris
Mark A. Edmiston
P. O. Box 1679
Tulsa, OK 74127
Attorneys for defendant, Howard
Chevrolet, Inc.

David R. Sobel
2021 South Lewis
Suite 675
Tulsa, OK 74055
Attorney for Team Chevrolet, Inc.,
Jack W. Clark d/b/a Howard
Chevrolet, Inc., and d/b/a Team
Chevrolet, Inc., and Jim Clark
d/b/a Howard Chevrolet, Inc., and
d/b/a Team Chevrolet, Inc.

306-002-1:080186:rb

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

SAMSON RESOURCES COMPANY,)
)
 Plaintiff,)
)
 vs.) No. 86-C-46-E
)
 SOUTHERN NATURAL GAS COMPANY,)
)
 Defendant.)

ORDER OF DISMISSAL

There having been filed in the above styled and numbered cause 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 action filed in this case be, and the same hereby is, dismissed with prejudice. All parties to bear their own costs and attorneys' fees as per the stipulations filed.

Dated this 9th day of September, 1986.

S/ JAMES O. ELLISON

James O. Ellison
United States District Judge

FILED

SEP -9 1986

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

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

ADAM WAYNE STERLING,)	
)	
Petitioner,)	
)	
v.)	86-C-802-E
)	
FRANK THURMAN, Sheriff,)	
)	
Respondent.)	

ORDER

Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is now before the Magistrate for consideration. A federal court may entertain an application for a writ of habeas corpus in behalf of a person in state custody only on the ground that he is in custody in violation of the laws or constitution of the United States.

Petitioner's application raises only one issue: inadequate medical care afforded by personnel of Tulsa County Jail.

Because petitioner in no way alleges that he is in custody in violation of the United States laws or constitution, this court may not further consider his petition for habeas corpus relief.

It is therefore ordered that petitioner's application for a writ of habeas corpus is dismissed.

It is so ordered this 9th day of September, 1986.


 JOHN LEO WAGNER
 UNITED STATES MAGISTRATE

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

MICHAEL H. GOLDSSEN, INC.,)
RAVENSONG MUSIC, CASS COUNTY)
MUSIC COMPANY, RED CLOUD)
MUSIC COMPANY, T.B. HARMS)
COMPANY and MILENE-OPRYLAND)
MUSIC, INC.,)
)
Plaintiffs,)
)
vs.) No. 86-C-589-E
)
DIANA HENKENFENT,)
)
Defendant.)

CONSENT JUDGMENT

The Complaint in this action was filed herein on June 18, 1986 and duly served upon the defendant, Diana Henkenfent, and the parties having advised the Court that judgment may be entered accordingly in favor of the plaintiffs and against the defendant.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Judgment is hereby entered against the defendant, Diana Henkenfent, in the sum of \$5,000.00, the parties having agreed that the judgment shall be satisfied if the defendant pays to the American Society of Composers, Authors and Publishers (ASCAP) on behalf of the plaintiffs the sum of \$2,475.00 payable as follows:

<u>DATE DUE</u>	<u>PAYMENT</u>
August 15, 1986	\$825.00
September 15, 1986	\$825.00
October 15, 1986	<u>\$825.00</u>
TOTAL	\$2,475.00

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

2. By entry of this Consent Judgment the parties have settled all claims and causes of action that each has against the other arising out of non-dramatic public performances of copyrighted musical compositions written and published by plaintiffs and all other members of ASCAP at defendant's establishment known as The Fountain, located in Bartlesville, Oklahoma for all periods through December 31, 1986.

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

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

(b) obtains and complies with the terms and conditions of ASCAP license agreements for The Fountain listed in paragraph 2 above for the period January 1, 1987 through December 31, 1987.

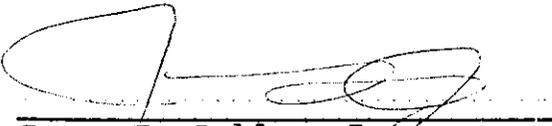
4. Upon the execution of this Consent Judgment, ASCAP shall offer to the defendant and the defendant agrees to accept and execute an ASCAP license agreement and tender payment of license fees for her club listed in paragraph 2 above.

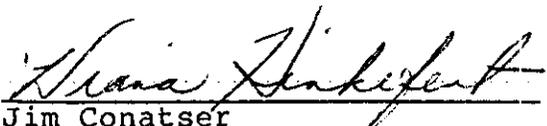
5. Failure to comply with the provisions of paragraphs 1 or 3 above within ten (10) days written notice to the defendant of such failure shall entitle the plaintiff to have execution on this judgment without further notice for the sum of \$5,000.00 less any payments made by the defendant.

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

IT IS SO ORDERED this 9th day of Sept, 1986.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE


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


Jim Conatser
417 South Dewey Street
Bartlesville, OK 74003

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

SEP 9 1986

CHALLENGER MINERALS, INC.,
a California corporation,

Plaintiff,

vs.

SOUTHERN NATURAL GAS COMPANY,
a Delaware corporation,

Defendant.

No. 84-C-357-E

JUDGMENT

This action came on for trial before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues as to liability having been duly tried and a decision having been duly rendered in favor of the Plaintiff, Challenger Minerals, Inc., and against the Defendant, Southern Natural Gas Company,

IT IS ORDERED AND ADJUDGED that the Plaintiff, Challenger Minerals, Inc., recover damages from the Defendant, Southern Natural Gas Company in an amount to be determined hereafter by subsequent proceedings.

DATED this 9th day of September, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

under the laws of the State of California, whose principal place of business is located in the State of Texas.

2. The Defendant, Southern Natural, is a corporation incorporated under the laws of the State of Delaware, whose principal place of business is located in the State of Alabama.
3. The amount in controversy exceeds \$10,000.00.
4. In its Answer to Plaintiff's Amended Complaint, Southern Natural admits that it has waived any objection to venue being laid in the United States District Court for the Northern District of Oklahoma.

Contract Terms and Performance

5. Southern Natural is an interstate natural gas pipeline company which operates over 8,500 miles of pipeline and two underground gas storage reservoirs.
6. On or about November 19, 1981 Southern Natural and Amoco Production Company entered into a Gas Sales and Purchase Agreement ("the Amoco Agreement") whereby Southern Natural agreed to purchase natural gas from wells in Blaine, Caddo, Custer, and Washita counties in the State of Oklahoma, which are located in an area designated by Exhibit B to the Amoco Agreement as the "Weatherford Area."
7. "Take or pay" provisions are contract clauses which

require that the purchaser either take delivery of a given volume of gas, or make payment for that given volume of gas, even if not taken.

8. The Amoco Agreement provides that Southern Natural must take or pay for at least 80% of the deliverability of each of the wells in the designated area each month, and must take or pay for 90% of the deliverability of these wells annually.
9. The Amoco Agreement provides that Southern Natural shall pay the difference every thirty days between the monthly minimum amount of natural gas which it is required to take and the quantity of natural gas actually taken. It also provides that if Southern Natural has paid for the gas, it can take it at any time within five years with no further payment, unless the price of the gas has increased in the interim.
10. Under the provisions of the Amoco Agreement, the price to be paid for the natural gas prior to deregulation is the highest applicable maximum lawful price allowed under the Natural Gas Policy Act of 1978. The price payable upon deregulation of natural gas is the highest of the following:
 - (a) \$6.02 per MMBTU commencing July, 1981, and escalating each month thereafter by the applicable escalation factor provided in Section 102(b) of the Natural Gas Policy Act of 1978;
 - (b) A price per MMBTU equivalent to 110% of Fuel Oil No. 2; or
 - (c) A price determined by averaging the highest of the two highest prices for natural gas being paid by

interstate pipelines to producers of natural gas in the State of Oklahoma.

11. The Amoco Agreement contains a force majeure clause, drafted by Southern Natural, which provides as follows:

SECTION E - FORCE MAJEURE

In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this agreement, other than to make payments due for gas delivered hereunder, it is agreed that, on such party giving notice and full particulars of such force majeure in writing or by telephone (followed by written confirmation) or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period; and such cause shall as far as possible be remedied with all reasonable dispatch, provided, however, that no party hereto shall be required against its will to adjust any labor dispute.

The term "force majeure" shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lighting, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for maintenance of or making repairs or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such terms shall likewise

include the inability of either party to acquire, or delays on the part of such party in acquiring at reasonable cost and by the exercise of reasonable diligence, servitudes, rights of way grants, permits, permissions, licenses, certificates issued by the Federal Energy Regulatory Commission, materials or supplies which are required to enable such party to fulfill its obligations hereunder.

12. The Amoco Agreement contains a choice of law clause which provides that it is governed by the law of the United States and the State of Oklahoma.
13. On or about January 29, 1982 Challenger and Amoco entered into a letter agreement whereby, in exchange for payment by Challenger of approximately \$55,000,000.00, Amoco assigned working interests to Challenger in certain oil and gas leaseholds in the Weatherford Area covered by the Amoco Agreement with Southern Natural.
14. Southern Natural has paid Challenger for all gas actually taken from the Weatherford wells.
15. Since November 1, 1983, Southern has made no payments to Challenger other than for gas actually taken.
16. Since mid-1985 Southern Natural's takes have been limited to 5% to 10% of the deliverability of the Challenger wells.
17. Challenger has performed all of its obligations and duties under the Amoco Agreement.

Commercial Impracticability and
Frustration of Purpose

18. Shortly after passage of the Natural Gas Policy Act of 1978, the United States began to experience an

oversupply of natural gas. This "gas bubble" continued to grow until in 1982 the oversupply of natural gas in the United States exceeded a trillion cubic feet, reaching a peak magnitude of 2.5 to 3.5 trillion cubic feet in 1983.

19. Factors causing or contributing to the oversupply of natural gas in the United States included the following:
 - (a) the deregulation of well-head gas prices pursuant to the National Gas Policy Act of 1978;
 - (b) the drilling boom which occurred in 1979-1982;
 - (c) a decline in the price of fuel oil in 1981-1982;
 - (d) a "decoupling" or disassociation of fuel oil and natural gas prices;
 - (e) an economic recession in 1981-1982;
 - (f) increased conservation by natural gas consumers;
 - (g) fuel-switching by natural gas consumers; and
 - (h) increased competition between natural gas pipelines, including increased use of transportation and special marketing programs and direct sales of gas to end users by producers.
20. The risk of a medium to long term oversupply of natural gas was recognized by several gas industry analysts and reported in the trade press prior to Southern Natural's execution of the Amoco Agreement in 1981.
21. The risk of medium to long term oversupply of natural gas was also recognized by some natural gas pipelines during 1980 and 1981. During this period between 30% to 50% of the gas purchase agreements signed contained "market out" provisions giving the pipelines the option of lowering the applicable price of gas or terminating

the agreement if the market price of natural gas fell below the contract price.

22. Prior to deregulation of natural gas in 1985, the price of natural gas was controlled. As a result, natural gas pipelines competed with each other to obtain natural gas from producers by offering more favorable take or pay clauses. An additional area of competition among pipelines was whether the contract would contain a "market out" clause allowing the pipeline to terminate the contract or renegotiate the price of the gas if the market price of natural gas dropped below the contract price.
23. Another reason for use of the take or pay contracts between natural gas producers and natural gas pipelines is to insure a secure market for the producer's gas. Otherwise, producers would be hesitant or unable to make the financial investment necessary to discover and develop natural gas. Thus, some risk of fluctuation in the market is inherently borne by a pipeline when a take or pay contract is employed without a "market out" clause.
24. Amoco selected Southern Natural's gas purchase agreement from several other pipeline's proposed contracts primarily because the Southern Natural Agreement did not contain a "market out" clause.
25. Challenger relied on the 90% annual deliverability take or pay clause in the Amoco Agreement in deciding to

participate with Amoco in the Weatherford area wells.

26. In 1981 Southern Natural projected that the demand for gas on Southern Natural's system would decline during the first four years of the term of the Agreement, and in 1981 Southern Natural was already experiencing an oversupply of natural gas.
27. Between 1981 and 1984, Southern Natural experienced a 25% drop in its sales, and projected a drop of 50% by 1986.

Oklahoma Natural Gas Conservation Statutes

28. Southern Natural has many sources of natural gas in addition to the wells involved in this action, and takes 100% of the lowest cost gas available from all sources before taking any higher cost gas.
29. Southern Natural treats the Challenger-Amoco wells as sources of high cost gas, and consequently takes less gas from the wells in question than it takes from its lower cost sources of gas.
30. Although Southern Natural began taking delivery of gas from the Weatherford area wells at 90% of deliverability, it decreased its takes until it was taking as little as 5% of deliverability.
31. No evidence was presented to prove that the Oklahoma Corporation Commission has entered any orders limiting production from the Challenger wells in question.

Maximum Price Allowable Under NGPA

32. 80% of the natural gas produced under the Amoco Agreement is unregulated Section 107 gas. 20% of the natural gas produced is Section 102 gas, which was regulated until January 1, 1985.
33. Southern Natural will be unable to make up all of the natural gas which it agreed to take under the Amoco Agreement during the period prior to deregulation of natural gas prices.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1332(a).
2. Although venue does not lie in this judicial district under 28 U.S.C. § 1391, any objection to improper venue was waived by the Defendant. 28 U.S.C. § 1406(b); Hoffman v. Blaski, 80 S.Ct. 1084, 363 U.S. 335, 4 L.Ed.2d 1254 (1960).

Sufficiency and Construction of the Contract

3. The Amoco Agreement is a valid and enforceable contract for the sale of goods as such term is defined in the

Oklahoma Uniform Commercial Code, 12A Okla.Stat. §1-101 et seq.; Southport Exploration, Inc. v. Producer's Gas Co., No. 83-C-550-B (N.D. Ok. June 1, 1984).

4. The letter agreement of January 29, 1982 executed by Challenger and Amoco is a valid and enforceable agreement. 15 Okla.Stat. §2 (1983).
5. With regard to the leases assigned from Amoco to Challenger, Challenger is entitled to enforce all rights which Amoco held under the Amoco Agreement at the time the leases were assigned to Challenger.
6. Any ambiguity in the Amoco Agreement must be construed against the party to the contract which drafted the ambiguous language. 15 Okla.Stat. §170 (1966).
7. The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the others. 15 Okla.Stat. §157 (1966).
8. Southern Natural has breached the Amoco Agreement with regard to those interests assigned to Challenger. Therefore Challenger is entitled to recover damages from Southern Natural for breach of contract.

Southern Natural's Affirmative Defense re:
Oklahoma Gas Conservation Statutes

9. The basis for the enactment of Oklahoma's gas conservation laws is to prevent waste and to protect correlative rights, Inexco Oil Co. v. Corporation

Commission, 628 P.2d 362 (Okla. 1981); Corporation Commission v. Phillips Petroleum Co., 536 P.2d 1284 (Okla. 1975); Anderson-Prichard Oil Corp. v. Corporation Commission, 252 P.2d 450 (Okla. 1953).

10. 52 Okla.Stat. §86.3 (1969) gives the Oklahoma Corporation Commission authority to make rules, regulations, and orders for the prevention of waste. This includes the authority to limit production of natural gas from a producing well to a percentage of the capacity of the well to produce.
11. The power of the Oklahoma Corporation Commission is limited to the power expressly granted by statute and that necessarily granted by implication. Carter Oil Co. v. State, 205 Okla. 541, 240 P.2d 787 (Okla. 1951).
12. The power of the Oklahoma Corporation Commission to prevent waste of natural gas does not give it power to invalidate contractual obligations between private litigants. Tenneco Oil Co. v. El Paso Natural Gas Co., 687 P.2d 1049 (Okla. 1984).
13. Enforcement of Southern Natural's take or pay obligation does not violate 52 O.S. §86.3 (1969). Southport Exploration, Inc. v. Producer's Gas Company, supra; Universal Resources Corporation v. Panhandle Eastern Pipeline Company, No. CA3-85-0723-R (N.D. Tex. Apr. 1, 1986).
14. Waste is defined by 52 O.S. § 86.3 (1969) as follows:

The term "waste," as applied to gas, in addition to its ordinary meaning,

shall include the inefficient or wasteful utilization of gas in the operation of oil wells drilled to and producing from a common source of supply; the inefficient or wasteful utilization of gas from gas wells drilled to and producing from a common source of supply; the production of gas in such quantities or in such manner as unreasonably to reduce reservoir pressure or unreasonably to diminish the quantity of oil or gas that might be recovered from a common source of supply; the escape, directly or indirectly, of gas from oil wells producing from a common source of supply into the open air in excess of the amount necessary in the efficient drilling, completion or operation thereof; waste incident to the production of natural gas in excess of transportation and marketing facilities or reasonable market demand; the escape, blowing or releasing, directly or indirectly, into the open air, of gas from wells productive of gas only, drilled into any common source of supply, save only such as is necessary in the efficient drilling and completion thereof; and the unnecessary depletion or inefficient utilization of gas energy contained in a common source of supply.

15. Economic waste is use of gas for inferior purposes.
Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U.S. 179, 71 S.Ct. 215, 95 L.Ed. 190 (1950).
16. Rule 1-101(56)(b) of the Oklahoma Corporation Commission Oil and Gas Rules defines waste exactly as waste is defined in 52 Okla.Stat. §86.3 (1969) except that economic waste is also specifically set forth in the Rule as a form of waste.
17. Rule 1-202(b) of the Oklahoma Corporation Commission Rules contains the following definition of waste:
 - (b) Waste, in addition to its statutory and ordinary meaning, shall include but not be restricted to economic waste,

underground waste, surface waste, and waste incident to the production of oil and gas in excess of the transportation or marketing facilities or reasonable market demand.

18. Waste is defined in 52 Okla.Stat. §237 (1969) as follows:

The term waste, as used herein in addition to its ordinary meaning, shall include escape of natural gas in commercial quantities into the open air, the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities, underground waste, the permitting of any natural gas well to wastefully burn and the wasteful utilization of such gas.

19. When a natural gas well is capable of producing gas in excess of market demand, 52 Okla.Stat. §239 (1969) limits production from a common source of supply of natural gas to the producer's pro rata share of that amount of natural gas which may be marketed without waste.
20. Waste, as defined in 52 Okla.Stat. §86.3 (1969), 52 Okla.Stat. §237 (1969) and Corporation Commission Rules 1-101(56)(b) and 1-202(b), does not include the payment of money pursuant to a take or pay contract. These statutes only address physical production or non-production of natural gas.
21. 52 Okla.Stat. §240 (1969) and Rule 1-305 of the Oklahoma Corporation Commission Rules have no application to a take or pay contract involving an interstate natural gas pipeline such as Southern Natural because state imposed ratable take requirements which require interstate

pipelines to purchase gas without discrimination as to producer or source of supply are preempted under the Natural Gas Policy Act of 1978. Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board of Mississippi, _____ U.S. _____, 106 S.Ct. 709, _____ L.Ed.2d _____ (1986).

22. Enforcement of Southern Natural's take or pay obligation to Challenger is not prohibited by 52 Okla.Stat. §86.3 (1969), 52 Okla.Stat. §239 (1969), 52 Okla.Stat. §240 (1969), Oklahoma Corporation Commission Rules 1-101(56)(b), 1-202(b), or 1-305.

Commercial Impracticability
and Frustration of Purpose

23. 12A Okla.Stat. §2-615(a) (1963) provides that delay in delivery or nondelivery by a seller is not a breach of contract if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made.
24. The defense of commercial impracticability set forth in 12A Okla.Stat. §2-615(a) (1963) is also available to a buyer. International Minerals v. Llano, Inc., 770 F.2d 879 (10th Cir. 1985).
25. The defense of commercial impracticability does not relieve a party from performing under the contract if the eventuality which has occurred is the collapse of

the market for the goods. That is exactly the type of business risk which business contracts made at fixed prices are intended to cover. Official Comment 4 to U.C.C. §2-615; W. R. Grace and Co. v. Local Union 759, 461 U.S. 757, 103 S.Ct. 2177, 76 L.Ed.2d 298 (1983).

26. The defense of commercial impracticability does not apply when the contingency in question is sufficiently foreshadowed at the time of contracting to be among the business risks assumed under the dickered terms of the contract. Official Comment 8 to U.C.C. §2-615. Kansas, Oklahoma & Gulf Ry. Co. v. Grand Lake Grain Co., 434 P.2d 153 (Okla. 1967); Bernina Distributors, Inc. v. Bernina Sewing Machine Co., 646 F.2d 434 (10th Cir. 1981); Iowa Elec. Light & Power Co. v. Atlas Corp., 467 F.Supp. 129 (N.D. Iowa 1978); Matter of Westinghouse Electric Corporation Uranium Contracts Litigation, 517 F.Supp. 440 (E.D. Va. 1981); Glidden Company v. Hellenic Lines, Limited, 275 F.2d 253 (2d Cir. 1960).
27. Although the parties may not foresee the precise eventuality claimed to excuse performance, an awareness that the marketplace is in flux and more than usually uncertain is sufficient to indicate that the party to the contract agreeing to be bound to a particular performance assumes the risk within the uncertain area. Electric Corporation Uranium Contracts Litigation, supra; Eastern Air Lines v. Gulf Oil Corp., 415 F.Supp. 429 (S.D. Fla. 1975).

28. Where the promisor can legitimately be presumed to have accepted some degree of abnormal risk of increase in the cost of performance, to excuse performance the unforeseen cost increase must be so great that it would be positively unjust to hold the parties bound to the contract. International Minerals and Chemical Corporation v. Llano, Inc., supra; Bernina Distributors, Inc. v. Bernina Sewing Machine Co., supra; Gulf Oil Corp. v. Federal Power Commission, 563 F.2d 588 (3rd Cir. 1977); L.A. Power & Light Company v. Allegheny Ludlum Industries, Inc., 517 F.Supp. 1319 (E.D. La. 1981); Transatlantic Financing Corp. v. United States, 124 U.S.App. D.C. 183, 363 F.2d 312 (D.C. Cir. 1966).
29. Because the purpose of the take or pay provision in the Amoco Agreement is to shift the risk of a decline in the market from Challenger to Southern Natural, and because the Amoco Agreement was negotiated at a time when all parties were aware that natural gas would be deregulated in 1985, it is not unjust to require Southern Natural to perform under the terms of its contract. Therefore, Southern Natural's performance is not relieved by 12A Okla.Stat. §2-615 (1963).
30. The doctrine of frustration of purpose is set forth in Section 265 of the Restatement of Contracts (Second)(1979) as follows:

Where, after a contract is made, a party's principal purpose is substantially frustrated without his fault by the occurrence of an event the

non-occurrence of which was a basic assumption on which the contract was made, his remaining duties to render performance are discharged, unless the language or circumstances indicate the contrary.

31. The principles regarding foreseeability and assumption of the risk applicable under the doctrine of commercial impracticability are also applicable to the doctrine of frustration of purpose. United States v. General Douglas MacArthur Senior Village, Inc., 508 F.2d 377 (2nd Cir. 1974); In the Matter of Westinghouse Electric Corporation Uranium Contracts Litigation supra.
32. Discharge under the doctrine of frustration of purpose has been limited to instances where a virtually cataclysmic, wholly unforeseeable event renders the contract valueless to one party. United States v. General Douglas MacArthur Senior Village, Inc., supra.
33. For the reasons previously discussed regarding Southern Natural's assumption of the risk of a change or collapse in the natural gas market, the doctrine of frustration of purpose does not relieve Southern Natural from its obligation to perform under the Amoco Agreement.

Natural Gas Policy Act of 1978

34. The take or pay provisions of the Amoco Agreement do not violate the maximum price provisions of the Natural Gas Policy Act of 1978. Koch Industries, Inc. v. Columbia Gas Transmission Corporation, No. 83-990-A (M.D. La.

1985); Southport Exploration Inc. v. Producer's Gas Co.,
supra; Sid Richardson Carbon and Gasoline v. InterNorth,
595 F.Supp. 497 (N.D. Tex. 1984).

Public Policy

35. A court should refrain from enforcing a contract which violates an explicit public policy. Hurd v. Hodge, 334 U.S. 24, 69 S.Ct. 847, 92 L.Ed. 1187 (1948). Such a public policy must be well defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests. W. R. Grace and Co. v. Local Union 759, supra; Muschany v. United States, 324 U.S. 49, 65 S.Ct. 442, 89 L.Ed. 744 (1945).
36. Enforcement of the Amoco Agreement would not violate any explicit public policy.

Force Majeure

37. An oversupply of natural gas causing a drastic decline in its market price does not constitute an event which would relieve Southern Natural of liability under the force majeure clause of the Amoco Agreement. Monolith Portland Cement Co. v. Douglas Oil Co., 303 F.2d 176 (9th Cir. 1962); Kaiser-Francis Oil Co. v. Producer's Gas Co., No. 83-C-400-B (N.D. Ok. June 19, 1985).

Liquidated Damages

38. The take or pay provisions of the Amoco Agreement constitute an alternative means of performance, and do not constitute liquidated damages or illegal penalties under 12A Okla. Stat. §2-718 (1963) or 15 Okla. Stat. §214 (1966). Universal Resources Corporation v. Panhandle Eastern Pipeline Company, supra; 5 Corbin, Corbin on Contracts §1070 (1962).

Limitation of Remedies

39. The Amoco Agreement does not limit the right of the seller to assert a claim for damages if Southern Natural should fail to take or pay for gas as agreed therein.

DATED this 9TH day of September, 1986.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

SUNRIZON HOMES, INC., d/b/a APPLE HOMES,)	
)	
Plaintiff,)	
)	
v.)	CASE NO.: 85-C-801-E
)	
SECURITY BANK, and LOIS WILLIAMS,)	
)	
Defendants.)	

ORDER OF DISMISSAL

Upon Application of Plaintiff and Defendant Security Bank, the Court finds that these parties have resolved the controversy between them by means of an agreed settlement, and that the Application for Order allowing dismissal herein should be and is hereby granted.

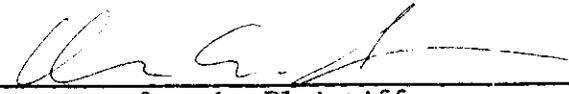
IT IS THEREFORE ORDERED that Plaintiff's claims against Security Bank are hereby dismissed with prejudice.

JAMES O. ELISON

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

Approvals:

ORVAL JONES,



Attorney for the Plaintiff,
Sunrizon Homes d/b/a Apple Homes

SCOTT D. CANNON,



Attorney for the Defendant,
Security Bank

Entered

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

SEP -8 1986

CLERK
U.S. DISTRICT COURT

JEFF GAUSE and COSTUME CORNER,
INC., f/n/a JEFF GAUSE d/b/a
COSTUME CORNER,

Plaintiffs,

vs.

NATIONAL LIFE INSURANCE COMPANY,

Defendant.

No. 85-C-998-B

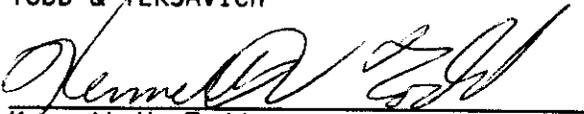
STIPULATION OF DISMISSAL WITH PREJUDICE

Come now plaintiffs Jeff Gause and Costume Corner, Inc., f/n/a Jeff Gause d/b/a Costume Corner, by and through their attorney Kenneth V. Todd, and defendant National Life Insurance Company, by and through its attorney Joan Godlove, pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, and stipulate and agree to a dismissal with prejudice of all of the claims presented in the above-styled and numbered action.

Dated this 5th day of ^{September} ~~July~~, 1986.

TODD & YEKSAVICH

By:



Kenneth V. Todd
1321 South Denver
Tulsa, Oklahoma 74119
Telephone: (918) 592-1318
ATTORNEYS FOR PLAINTIFFS

JONES, GIVENS, GOTCHER, BOGAN &
HILBORNE, A Professional Corporation

By:



Joan Godlove
3800 First National Tower
Tulsa, Oklahoma 74103
ATTORNEY FOR DEFENDANTS

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

ALICE BALLARD MUNN, et al.,

Plaintiff,

vs.

No. 85-C-648-E ✓

MID-STATES AIRCRAFT ENGINE,
INC.,

Defendant.

SUSAN B. THOMPSON,

Plaintiff,

vs.

No. 85-C-649-B

MID-STATES AIRCRAFT ENGINE,
INC.,

Defendant.

ELEANOR P. CLARK,

Plaintiff,

vs.

No. 85-C-650-E

MID-STATES AIRCRAFT ENGINE,
INC.,

Defendant.

ORDER APPROVING SETTLEMENT

THIS CAUSE having come before the Court on Plaintiffs' Petition for Approval of Settlement against Defendant **MID-STATES AIRCRAFT ENGINE, INC.**, and the Court being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. That the settlement with the Plaintiffs against the Defendant, MID-STATES AIRCRAFT ENGINE, INC. is hereby approved.

2. The Court recognizes that there are minor children claimants involved herein. Therefore, the Court orders that the Personal Representatives of the Clark and Munn Estates are directed to apply to the appropriate probate courts in Florence County, South Carolina and Mecklenburg County, North Carolina for the approval and the monitoring of the disposition of any settlement monies to the minor claimants involved herein, *PURSUANT TO THE PROVISIONS OF TITLE 12 OS 84. FOR*

3. This cause is now dismissed. Each party is to bear its own costs.

DONE AND ORDERED in Chambers at the United States District Court, Northern District of Oklahoma this 4th day of September, 1986.


U.S. DISTRICT COURT JUDGE

Copies furnished to all
counsel of record.

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

SEP 5 1986

ALICE BALLARD MUNN, et al.,

Plaintiff,

vs.

No. 85-C-648-E

MID-STATES AIRCRAFT ENGINE,
INC.,

Defendant.

SUSAN B. THOMPSON,

Plaintiff,

vs.

No. 85-C-649-B

MID-STATES AIRCRAFT ENGINE,
INC.,

Defendant.

ELEANOR P. CLARK,

Plaintiff,

vs.

No. 85-C-650-E

MID-STATES AIRCRAFT ENGINE,
INC.,

Defendant.

ORDER APPROVING SETTLEMENT

THIS CAUSE having come before the Court on Plaintiffs' Petition for Approval of Settlement against Defendant MID-STATES AIRCRAFT ENGINE, INC., and the Court being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. That the settlement with the Plaintiffs against the Defendant, MID-STATES AIRCRAFT ENGINE, INC. is hereby approved.

2. The Court recognizes that there are minor children claimants involved herein. Therefore, the Court orders that the Personal Representatives of the Clark and Munn Estates are directed to apply to the appropriate probate courts in Florence County, South Carolina and Mecklenburg County, North Carolina for the approval and the monitoring of the disposition of any settlement monies to the minor claimants involved herein, *PURSUANT TO THE PROVISIONS OF TITLE 12 OS 84.90E*

3. This cause is now dismissed. Each party is to bear its own costs.

DONE AND ORDERED in Chambers at the United States District Court, Northern District of Oklahoma this 4TH day of September, 1986.


U.S. DISTRICT COURT JUDGE

Copies furnished to all
counsel of record.

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

SEP 5 1986

ALICE BALLARD MUNN, et al.,

Plaintiff,

vs.

No. 85-C-648-E

MID-STATES AIRCRAFT ENGINE,
INC.,

Defendant.

SUSAN B. THOMPSON,

Plaintiff,

vs.

No. 85-C-649-B

MID-STATES AIRCRAFT ENGINE,
INC.,

Defendant.

ELEANOR P. CLARK,

Plaintiff,

vs.

No. 85-C-650-E

MID-STATES AIRCRAFT ENGINE,
INC.,

Defendant.

ORDER APPROVING SETTLEMENT

THIS CAUSE having come before the Court on Plaintiffs' Petition for Approval of Settlement against Defendant MID-STATES AIRCRAFT ENGINE, INC., and the Court being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. That the settlement with the Plaintiffs against the Defendant, MID-STATES AIRCRAFT ENGINE, INC. is hereby approved.

2. The Court recognizes that there are minor children claimants involved herein. Therefore, the Court orders that the Personal Representatives of the Clark and Munn Estates are directed to apply to the appropriate probate courts in Florence County, South Carolina and Mecklenburg County, North Carolina for the approval and the monitoring of the disposition of any settlement monies to the minor claimants involved herein, *PURSUANT TO THE PROVISIONS OF TITLE 12 OS 84.90E*

3. This cause is now dismissed. Each party is to bear its own costs.

DONE AND ORDERED in Chambers at the United States District Court, Northern District of Oklahoma this 4th day of September, 1986.


U.S. DISTRICT COURT JUDGE

Copies furnished to all
counsel of record.

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

BENMOR INTERNATIONAL, INC.)
and MERIT GAS AND OIL)
COMPANY,)
INC.,)

Plaintiff,)

vs.)

ELEKTRA POWER, INC.,)

Defendant.)

Case No. 85-C-835 E

Order 06
DISMISSAL WITH PREJUDICE

NOW on this 28th day of August, 1986, there comes on before me, Pretrial Conference, and Defendant's Motion To Dismiss, all pursuant to regular setting. The Plaintiffs' appeared by their attorney, H. I. ASTON, the Defendant, by its attorney, DANIEL DORIS. Upon a review of the pleadings and after argument of counsel, the Court finds that Plaintiffs' complaint against the Defendant should be dismissed with prejudice, and Defendant's Motion To Dismiss sustained.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's Motion To Dismiss be and is hereby sustained and Plaintiffs' complaint against the Defendant is dismissed with prejudice.

S/ JAMES O. ELLISON

JUDGE JAMES O. ELLISON

APPROVED AS TO FORM:



H. I. ASTON, Attorney for Plaintiff
3242 East 30th Place
Tulsa, Oklahoma 74114



DANIEL DORIS, Attorney for Defendant
2727 E. 21st Street, Suite 305
Tulsa, Oklahoma 74114
(918) 743-2096
O.B.A. No. 002432

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

FILED

SEP -4 1985

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

FLINT STEEL CORPORATION,)
)
 Plaintiff,)
)
 v.)
)
 INTERNATIONAL BROTHERHOOD OF)
 BOILERMAKERS, IRON SHIP)
 BUILDERS, BLACKSMITHS,)
 FORGERS & HELPERS, AFL-CIO)
 and LOCAL LODGE 592 OF THE)
 INTERNATIONAL BROTHERHOOD OF)
 BOILERMAKERS, IRON SHIP)
 BUILDERS, BLACKSMITHS,)
 FORGERS & HELPERS, AFL-CIO,)
)
 Defendants.)

No. 85-C-879-B ✓

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This case, in which the parties have stipulated to the record comprising the evidence in the case, came on for trial to the Court, sitting without a jury. The case is an action by plaintiff to vacate the conclusion of an arbitrator that a grievance filed on behalf of the Union was timely commenced under the collective bargaining agreement.¹ The arbitrator concluded that the collective bargaining agreement did not speak to the time for filing the particular grievance under the facts

¹ The basic dispute between the parties is whether certain employees of plaintiff who were members of the Defendant Union and were laid off previous to April 20, 1984, were entitled to severance pay following plant closing on May 31, 1984. The parties agreed to first submit the issue of the timeliness of the filing of the grievance to arbitration, which is the sole issue herein. If timely, the merits of the severance pay grievance issue is yet to be arbitrated.

and circumstances herein, and therefore concluded that it was timely filed. Plaintiff urges that the collective bargaining agreement does provide for the method and time for filing such a grievance so the arbitrator's conclusion does not draw its essence from the agreement.

After considering the pleadings, the evidence, applicable legal authority, and arguments of counsel, the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff Flint Steel Corporation (hereinafter sometimes referred to as the "Company") is an Oklahoma corporation engaged in the business of steel manufacturing with its principal office in Tulsa, Oklahoma.

2. Plaintiff is an "employer" within the meaning of, and subject to, the Labor Management Relations Act, as amended, 29 U.S.C. §141 et seq. ("LMRA").

3. Local Lodge 592 of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO (the "Union") is an unincorporated labor organization with its principal office in Tulsa, Oklahoma. Its principal purpose is to represent employees in collective bargaining and in the negotiation, execution, and administration of collective bargaining agreements. The Union is the sole and exclusive bargaining representative for certain of plaintiff's former employees.

4. The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO (the "International") is the parent organization of the Union.

5. This suit is an action to vacate an arbitration award that concluded the subject union grievance was timely commenced. It arises under section 301 of the LMRA and under 9 U.S.C. §10.

6. The parties executed a collective bargaining agreement on or about May 15, 1981, the term of which was April 15, 1981, through April 15, 1984 (hereinafter sometimes referred to as the "Agreement"). The effective date of the Agreement was extended until April 14, 1985, by an amendment to the Agreement executed December 15, 1983.

7. Under Article 15 of the Agreement, the steps of the grievance procedure as outlined therein apply to any grievance, whether filed by an individual, a group of individuals, or by the Union. Article 15 is attached hereto as Exhibit A.

8. Under Step 1 of the grievance procedure outlined in Article 15 of the Agreement, the grievant must present the facts underlying such grievance to his Supervisor within five (5) working days of the occurrence complained of or within five (5) working days after the grievant should reasonably have knowledge thereof. When the Union is the grievant any such presentation of the facts to an appropriate supervisor or official of Flint would comport with Article 15. Such procedure includes a grievance relative to severance pay from plant closing.

9. Pursuant to Article 15(C) of the Agreement, failure of the grievant or Union Representative to proceed within the time limits contained in the grievance procedure shall render the last decision of the Company final.

10. According to the terms of the grievance procedure outlined in Article 15 of the Agreement, extension of the time limits contained therein may be made only by mutual agreement of the Union and the Company. Further, according to Article 15 an arbitrator was without authority to amend or modify the specified grievance procedure.

11. On November 15, 1982, the parties executed an Addendum to the Agreement which, inter alia, incorporated into the collective bargaining agreement a "Severance Pay Clause."

12. The plant was officially closed for normal manufacturing operations on May 31, 1984, but a small final winding down and clean-up crew with six union members remained at the facility until approximately June 29, 1984.

13. The Union lodged the first written notice of the subject grievance (see footnote 1) through its legal counsel on August 6, 1984. In response, Flint asserted both that the grievance was not timely filed and that employees laid off prior to April 20, 1984 were not entitled to severance pay.

14. Thereafter the parties selected the Honorable Langley Coffey to serve as a neutral arbitrator on the question of whether or not the Union's severance pay grievance was timely filed.

15. A hearing was held and evidence was presented before arbitrator Coffey on February 4, 1985. On or about July 9, 1985, arbitrator Coffey rendered his decision concluding that the subject grievance (severance pay entitlement of certain employees following plant closing) did not fall within the contemplation of the parties in the grievance procedure established in Article 15, and therefore concluded the subject grievance was timely filed.

16. The arbitrator made no specific findings under the grievance procedure of Article 15 relative to when the Union first had notice severance pay would not be paid to employees laid off prior to April 20, 1984, relative to oral notification by the Union to Flint, if any, of the subject grievance, nor relative to conduct of the employer that might give rise to waiver or estoppel of the Article 15 procedure, if any.

17. The arbitrator erred in not applying the grievance procedure set forth in Article 15 to the facts and circumstances relative to the timeliness of the filing of the subject grievance herein.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and of the subject matter herein. 28 U.S.C. §1337. The Court has proper venue under 29 U.S.C. §185(a), 28 U.S.C. §1391(b), and 9 U.S.C. §10.

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

3. The narrow scope of judicial review of arbitration awards was outlined by the Supreme Court in the Steelworkers trilogy, Steelworkers v. American Mfg. Co., 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed.2d 1403, Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409, and Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424. The courts may not review the merits of a grievance or an award. 363 U.S. at 568, 80 S.Ct. 1343.

4. The award of the arbitrator rendered on July 9, 1985, did not draw its essence from the terms of the Collective Bargaining Agreement and is therefore vacated. Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424; Mistletoe Express Service v. Motor Expressman's Union, 566 F.2d 692 (10th Cir. 1977); Amanda Bent Bolt Co. v. U.A.W., 451 F.2d 1277, 1280 (6th Cir. 1971); Texas Utilities Generating Co., 77 Lab. Arb. 872, 875 (1981)(Baroni, Arb.); Diamond Power Specialty Corp., 4 Lab. Arb. 878, 882 (1964) (Dworkin, Arb.); and Ekco Products Co., 40 Lab. Arb. 1339, 1341 (1963)(Duff, Arb.).

5. The arbitrator exceeded his authority in concluding that the grievance procedure set out in Article 15 did not cover or extend to the subject grievance.

6. The matter is remanded to arbitration for the arbitrator to render written Findings and Conclusions on the issue of the timeliness of the filing of the subject grievance, under the facts and circumstances presented, and within the

procedure of Article 15 of the Collective Bargaining Agreement
and applicable law.

IT IS SO ORDERED this 4th day of September, 1986.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

deems such action to be necessary. Consumption of food and beverages during working hours shall not be permitted except during such rest periods and during lunch periods. An employee shall not take more than ten (10) minutes for each such break period, and it is understood that the employee shall be at his work station ready to commence work immediately upon the expiration of said ten (10) minutes rest period. If a ten (10) hour shift is to be worked, an additional ten (10) minute rest break will be permitted.

ARTICLE 15 — EMPLOYEE GRIEVANCE PROCEDURE

A. The term "Grievance," as used in this Contract, shall mean any dispute between the Company and the Union or between the Company and any employee alleging failure of the Company to comply with some provision of this Contract and steps in the grievance procedure as outlined in Paragraph "B" shall apply. Efforts shall be made by both parties to settle the grievance at each step of the procedure.

B. For the purpose of settling grievances, the following steps and conditions shall govern:

STEP 1: (Supervisor) The aggrieved employee shall, within five (5) working days of the occurrence giving rise to the complaint, or within five (5) working days after the employee should reasonably have had knowledge thereof, present the facts to his immediate supervisor personally. The aggrieved employee may have his shop committeeman present if he so desires. The supervisor shall, within two (2) working days after presentation of the grievance, give his oral decision. If no settlement is made, then:

STEP 2: (Manufacturing Manager or His Designee) Within three (3) working days after receipt of the immediate supervisor's decision, the employee or the

employee and his committeeman shall reduce the grievance to writing and be signed by the aggrieved employee and his committeeman on forms supplied by the Union and present same to the Manufacturing Manager. The said grievance shall specify in detail the provision of the contract violated and the relief requested. The Manufacturing Manager shall meet with the aggrieved party, his supervisor and the chairman of the shop committee and attempt to settle the dispute. The Manufacturing Manager shall, within five (5) working days after a presentation of the grievance to him, give his written answer to said grievance. If no settlement is made, then:

STEP 3: (Vice President of Manufacturing or His Designee) Within three (3) working days after receipt of the Manufacturing Manager's decision, the matter will be referred to a representative of the Union, the Shop Committee, the Manufacturing Manager, and the Vice President of Manufacturing, or his designee, who will then attempt to settle said grievance. A decision will be rendered, in writing, within three (3) working days. The aggrieved employee and his supervisor to attend Third Step meeting, if requested by either party.

STEP 4: If the grievance is not settled pursuant to Step 3, above, either party may demand that the grievance be submitted to arbitration in accordance with the procedure and conditions set forth herein. The demand for arbitration by either party must be made within fifteen (15) working days after the matter is referred to the representatives of the parties as provided in Step 3, above. Concurrently with the demand for arbitration, the party demanding the arbitration shall request the Director of the Federal Mediation and Conciliation Service to submit the names of nine (9) arbitrators, who shall be members of the American Academy of Arbitrators. From such list of nine (9) arbitrators, the Company and the union shall alternately strike one (1)

name until eight (8) names have been eliminated, and the person whose name remains on the list shall be selected to act as the impartial arbitrator. The matter shall be submitted to the arbitrator within forty-five (45) days after his acceptance unless extended by mutual agreement between the parties. The arbitrator shall submit a decision, in writing, within thirty (30) days after the conclusion of the hearing, or hearings, as the case may be, and the decision of the arbitrator so rendered shall be final and binding upon the employees involved and the parties of this Agreement. The compensation and necessary expenses of the arbitrator shall be shared equally by the parties to this Agreement.

The jurisdiction of any arbitrator shall be limited to a grievance involving the interpretation or application of the provisions of this Agreement. The arbitrator shall have no right to add to, subtract from, disregard, change, modify or amend any of the terms or provisions of this Agreement.

C. Failure of Company representatives to act within the time limits specified above shall automatically advance the matter to the next succeeding step of the grievance procedure. Failure of the aggrieved employee or Union Representative to proceed within the time limits set forth above shall render the Company's last decision final. Extension of time limits set forth above may be made by mutual agreement. Any final decision reached in the first two (2) steps of the grievance procedure shall apply only to the grievance at hand and shall not be considered as precedence in the administration of this Agreement or in the settlement of future grievances.

D. No member of the Union will be discriminated against by reason of his acting on the Shop Committee to adjust any differences that may arise between the supervisory officials of the Company and an employee of this Contract.

E. A Committeeman will be excused from his regular work assignment for the investigation of grievances only, however, he may also be present during conversations between the employee and his supervisor at Step 1 of the grievance procedure. To provide a minimum of interference to production, the parties agree to the following rules of conduct for duly elected committeemen:

1. Committeemen will be excused during working hours only for the investigation of grievances or to attend a meeting scheduled by the Company.

2. If a Committeeman wishes to be excused to investigate a grievance or to be present with the employee at Step 1, he will inform his supervisor of the place of the Step 1 meeting or the grievance investigation.

3. Upon entering the department of a supervisor, other than his own, the Committeeman will inform that supervisor of the grievance he is investigating.

4. It is mutually agreed that there will be no abuse or excessive use of time spent investigating grievances, and that otherwise no employee shall engage in Union activities on Company time.

5. The Company shall not be liable for the pay of any Committeeman or other employee represented by the Union when involved in preparation for arbitration hearings at Step 4 of the grievance procedure.

6. Committeemen and/or Local Union Officers will be excused, without pay, upon the request of the Business Manager of Local #592 to attend regular or special membership Union meetings.

F. The Shop Committee shall consist of eight (8) Committeemen.

G. The Union and the Company agree that all disciplinary suspensions or discharges (except probation-

any employees) shall be conducted in the presence of a Committeeman. The Union shall have the right to take up any suspension or discharge case (except probationary employees) as a grievance within five (5) days after such suspension or discharge takes place, and such case shall be subject to review under the grievance procedure beginning at Step 3.

ARTICLE 16 — NO STRIKES OR LOCK OUTS

A. The employees shall not engage in any strike or any form of interference with production during the life of this Agreement and the Union agrees that it will not authorize a strike or any form of interference with production during the life of this Agreement. The Company agrees there will be no lock out of employees during the life of this Agreement. In the event of an unauthorized strike or work stoppage, the Union will advise the employees involved that the action is not authorized and order them to return to work; further advising them that refusal to return to work may result in disciplinary action against them up to and including discharge at the discretion of the Company.

ARTICLE 17 — SICKNESS AND INJURY BENEFITS

A. Employees having been in continuous service of the Company for a period of six (6) months shall be entitled to receive disability pay, subject to the following conditions:

1) Weekly disability pay shall be paid to employees injured or sick for the second day of their absence from work for a maximum period of twenty-six (26) weeks for each disability.

2) Claims shall be paid as follows:

Per day \$25.00 or 1/7th of Weekly Benefits

Per Calendar Week (Maximum) \$125.00 (for the 1st, 2nd & 3rd Week)

Per Calendar Week (Maximum) \$150.00 (for the 4th thru the 26th Week)

Twenty-five dollars (\$25.00) per day rate are paid for the second or third days sick or injured that are regular scheduled work days. Days paid for at one-seventh (1/7th) of Weekly Benefits are for all other days after the first three (3) days of an employee's illness.

3) If the employee does not live in Tulsa and the Personnel Director cannot be reached by telephone, the Personnel Director is to be notified by U.S. mail post-marked the first day of an employee's illness.

4) The Company Personnel Director shall be notified on the first day that the employee expects to receive benefits as the result of his illness or injury.

5) An employee who is eligible for sick benefits, if injured while off the job, shall receive sick benefits providing the injury does not occur while the employee is under the influence of intoxicating liquor or drugs of abuse, or providing the employee was not violating the City, County, State or Federal laws when injured, or providing the disability did not result from attempted suicide, or providing the injury did not result from a fight instigated by the employee.

6) An employee must be currently working for the Company in order to be eligible for sick leave pay. Employees on leave of absence, on strike or layoff, or otherwise not performing work are considered as not currently working.

7) Benefits are payable only when the employee has been treated by a legally qualified physician or surgeon. The employee must present a statement from the physician stating the nature of his illness and his inability to perform his normal work assignment.

Entered

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

LO-HI OF OKLAHOMA, INC.)
an Oklahoma corporation,)
)
Plaintiff,)
)
v.)
)
FRONTIER PRESSURE SYSTEMS, INC.,)
WEPUKO HYDRAULICS, and HORST)
GEHRUNG,)
)
Defendants.)

No. 86-C-751B

F I L E D

SEP. 4 1986

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

ORDER APPROVING STIPULATION OF DISMISSAL AND REMAND

The stipulation of dismissal and remand filed herein by the Plaintiff and the Defendant, Frontier Pressure Systems, Inc., comes on for hearing by the Court, and the Court being fully advised in the premises finds that the petition for removal filed herein by Defendant, Frontier Pressure Systems, Inc., should be dismissed, that this cause should be remanded to the District Court of Osage County, Oklahoma, and that the removal bond filed by Defendant, Frontier Pressure Systems, Inc., be exonerated and released to Defendant, Frontier Pressure Systems, Inc.

AND IT IS SO ORDERED.

Dated this 4th day of September, 1986.

S/ THOMAS R. BRETT

Honorable Judge Thomas Brett

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 RICHARD H. MYLES II; KARLA S.)
 MYLES; COUNTY TREASURER, Tulsa)
 County, Oklahoma; and BOARD OF)
 COUNTY COMMISSIONERS, Tulsa)
 County, Oklahoma,)
)
 Defendants.)

SEP 4 1986

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

CIVIL ACTION NO. 86-C-572-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 4th day
of September, 1986. The Plaintiff appears by Layn R.
Phillips, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, 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, Richard H. Myles II and Karla S.
Myles, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendants, Richard H. Myles II and
Karla S. Myles, acknowledged receipt of Summons and Complaint
on July 16, 1986; that Defendant, County Treasurer, Tulsa County,
Oklahoma, acknowledged receipt of Summons and Complaint on
June 12, 1986; and that Defendant, Board of County Commissioners,
Tulsa County, Oklahoma, acknowledged receipt of Summons and
Complaint on June 12, 1986.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on June 30, 1986; and that the Defendants, Richard H. Myles II and Karla S. Myles, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Twenty-one (21), Block Six (6), LEISURE PARK II, an Addition to the City of Broken Arrow, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on May 7, 1985, the Defendants, Richard H. Myles II and Karla S. Myles, executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, their mortgage note in the amount of \$57,500.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half percent (12-1/2%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Richard H. Myles II and Karla S. Myles, executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, a mortgage dated May 7, 1985, covering the above-described property. Said mortgage was recorded on

May 10, 1985, in Book 4861, Page 2127, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Richard H. Myles II and Karla S. Myles, 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, Richard H. Myles II and Karla S. Myles, are indebted to the Plaintiff in the principal sum of \$57,856.00, plus interest at the rate of twelve and one-half percent (12-1/2%) per annum from September 1, 1985, until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Richard H. Myles II and Karla S. Myles, in the principal sum of \$57,856.00, plus interest at the rate of twelve and one-half percent (12-1/2%) per annum from September 1, 1985, until judgment, plus interest thereafter at the current legal rate of 5.63 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Richard H. Myles II and Karla S. Myles, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

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

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any

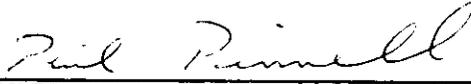
right, title, interest or claim in or to the subject real property or any part thereof.

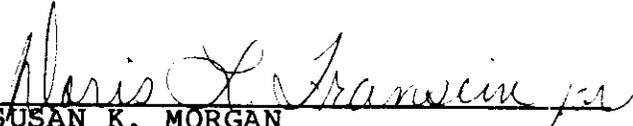
S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney


PHIL PINNELL
Assistant United States Attorney


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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

SEP. 4 1986

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
MARK J. LITTLE; TONI A. LITTLE;)
COUNTY TREASURER, Tulsa County,)
Oklahoma; and BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
)
Defendants.)

CIVIL ACTION NO. 86-C-573-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 4th day
of September, 1986. The Plaintiff appears by Layn R.
Phillips, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, 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, Mark J. Little and Toni A. Little,
appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendants, Mark J. Little and Toni A.
Little, acknowledged receipt of Summons and Complaint which
acknowledgments were filed herein on June 25, 1986; that
Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged
receipt of Summons and Complaint on June 12, 1986; and that
Defendant, Board of County Commissioners, Tulsa County, Oklahoma,
acknowledged receipt of Summons and Complaint on June 12, 1986.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on June 30, 1986; and that the Defendants, Mark J. Little and Toni A. Little, have failed to answer and their default has been entered by the Clerk of this Court on July 28, 1986.

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

Lot Eight (8), Block One (1), BEAULIEU SUBDIVISION to the City of Sperry, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on October 11, 1985, the Defendants, Mark J. Little and Toni A. Little, executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, their mortgage note in the amount of \$27,500.00, payable in monthly installments, with interest thereon at the rate of eleven and one-half percent (11-1/2%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Mark J. Little and Toni A. Little, executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, a mortgage dated October 11, 1985, covering the above-described property. Said mortgage was recorded on

October 11, 1985, in Book 4898, Page 2045, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Mark J. Little and Toni A. Little, 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, Mark J. Little and Toni A. Little, are indebted to the Plaintiff in the principal sum of \$27,500.96, plus interest at the rate of eleven and one-half percent (11-1/2%) per annum from December 1, 1985, until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Mark J. Little and Toni A. Little, in the principal sum of \$27,500.96, plus interest at the rate of eleven and one-half percent (11-1/2%) per annum from December 1, 1985, until judgment, plus interest thereafter at the current legal rate of 5.63 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Mark J. Little and Toni A. Little, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

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

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any

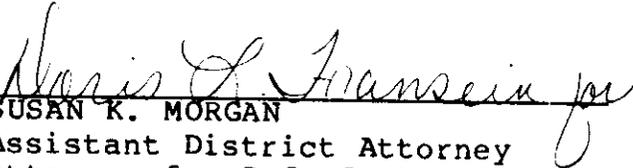
right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney


PHIL PINNELL
Assistant United States Attorney


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

Entered

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

F I L E D

SEP. 4 1986

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

_____)
Lansing Overhaul & Repair, Inc.,)
))
Plaintiff,)
))
v.)
))
Fross Industries, Inc., d/b/a)
Niagara Development and)
Manufacturing Co., Silvio)
DeRubeis, Robert Schultz,)
and Richard Korff,)
))
Defendants.)
_____)

Civ. No. 86-C-627B

ORDER

Upon agreement of the parties, it is this 4th day
of September, 1986 hereby

ORDERED that this action be and hereby is
transferred to the United States District Court for the
Western District of New York; and it is

FURTHER ORDERED that defendants shall answer or
otherwise plead to the complaint on or before twenty days
after this action has been docketed by the clerk of such
Court; and it is

FURTHER ORDERED that defendants shall have until
and including 60 days after the date of this Order to respond
to the discovery previously filed by plaintiff in this
action; and it is

FURTHER ORDERED that to the extent not granted herein defendants' motion to dismiss or for transfer is denied as moot.

S/ THOMAS R. BRETT

United States District Judge

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

JIM EVANS,)
)
Plaintiff,)
)
-vs-)
)
GAB BUSINESS SERVICES,)
INC., et al,)
)
Defendants.)

No. 84-C-909-E

ORDER OF DISMISSAL

Upon stipulation of the parties and by reason of settlement it is herewith ordered that the above styled and numbered cause of action be and is hereby dismissed with prejudice to refiling.

UNITED STATES DISTRICT JUDGE

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

FILED

SEP -4 1935

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

JAMES DONALD,)
)
Petitioner,)
)
v.)
)
GARY MAYNARD, WARDEN,)
STATE OF OKLAHOMA,)
)
Respondents.)

86-C-167-E

ORDER

Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is now before the Magistrate for consideration. In his application petitioner asserts some twenty-three (23) grounds upon which he seeks federal habeas relief. While it is difficult to ascertain precisely what petitioner is alleging, his primary contentions appear to involve denial of the rights to effective assistance of counsel and to confront and cross-examine witnesses, violation of his Fifth Amendment right by adverse inference made concerning petitioner's failure to testify, use of an unconstitutionally suggestive photo line-up, and use of improper jury instructions.

Title 28 U.S.C. §2254(b) and (c) provide:

(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if

he has the right under the law of the State to raise, by any available procedure, the question presented.

An examination of the record of petitioner's direct appeal and state post-conviction proceedings reveals that several of petitioner's claims have not been raised either on direct appeal or by post-conviction relief application.

The Magistrate finds that the claims raised in petitioner's application have not been "fairly presented" to the state courts. Anderson v. Harless, 459 U.S. 4, 103 S.Ct. 276 (1982). The Magistrate further finds that petitioner has an available state remedy for his claims under the Post-Conviction Relief Act, Title 22 O.S. §§1080-1088.

It is therefore Ordered that Donald's application for writ of habeas corpus is denied for failure to exhaust his available state remedies.

Dated this 4th day of September, 1986.


JOHN LEO WAGNER
UNITED STATES MAGISTRATE

FILED

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

SEP - 3 1986

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

JAMES DUKE LOGAN and)
DOROTHY LOGAN,)
)
 Plaintiffs,)
)
 vs.)
)
 BURLINGTON NORTHERN RAILROAD)
 COMPANY, a corporation,)
)
 Defendant.)

No. 86-C-562-C

ORDER

Upon stipulation of the parties and for good cause shown,
plaintiff's cause of action against the defendant is hereby
dismissed with prejudice to the refiling of such action.

IT IS SO ORDERED this 3 day of Sept, 1986.

s/H. DALE COOK

United States District Judge

Entered

FILED

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

SEP 3 1986

Jack C. ...
U.S. DISTRICT COURT

Facet Enterprises, Inc.,)
)
Plaintiff,)
)
v.)
)
Motive Parts Warehouse, Inc.,)
)
Defendant.)

No. 80-C-657-BT

ORDER OF DISMISSAL

THE COURT having considered the stipulation of Motive Parts Warehouse, Inc. ("MPW") and Facet Enterprises, Inc. ("Facet") to the entry of the Court's order of dismissal, and being otherwise fully advised in the premises,

NOW THEREFORE, it is hereby ordered that the complaint filed herein by Facet against MPW, and the counterclaim filed herein by MPW against Facet, shall be, and the same hereby are dismissed with prejudice and without costs to any party. The Court further orders that supersedeas bond number 926 09 57, the only remaining supersedeas bond in this matter, shall be, and the same hereby is exonerated.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT COURT JUDGE

Dated: *September 2*
~~August~~ __, 1986

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

GENERAL ELECTRIC COMPANY,)

Plaintiff,)

vs.)

No. 83-C-1069-E)

W. M. SMITH ELECTRIC COMPANY)
OF OKLAHOMA, INC., et al.,)

Defendants.)

SEP - 2 1986

O R D E R

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

NOW on this 2⁴ day of September, 1986 comes on for hearing the above styled case and the Court, being fully advised in the premises finds:

The scheduling order previously entered in the above-styled case is amended as follows: Jury will be selected February 17, 1987 at 9:30 a.m.; pre-trial will be held January 12, 1987 at 1:00 p.m.; trial briefs and agreed pre-trial order must be submitted on or before January 5, 1987; motions must be filed on or before December 1, 1986; discovery must be completed on or before November 7, 1986; and requested instructions and voir dire must be submitted on or before February 10, 1987.

Further, the Court has reviewed the documents previously submitted for in camera inspection and finds them to be nondiscoverable.

Also before the Court is stipulation of dismissal without prejudice as to Defendant Brian Jacobs which was filed in conjunction with joint application for preliminary injunction

which was entered May 15, 1986. The Court finds dismissal without prejudice should be granted as to Defendant Brian Jacobs.

Application to waive undisclosed order was filed which seeks modification of a Stipulated and Agreed Protective Order between Plaintiff General Electric and Defendant Evans Electric entered by this Court, under seal, August 9, 1984. Defendant Carl Pons claims that it sought to depose Joseph McKendree about certain data processing materials he inspected and analyzed. It claims General Electric objected to any questions pertaining to those materials or McKendree's analysis of them because of the protective order. Carl Pons seeks waiver of that order because none of the other parties in this action were notified of it. The Court has reviewed the response which was filed under seal and finds certificate of mailing does not reflect service on Evans. Carl Pons is directed to send notice of this application to Evans pursuant to the continuing jurisdiction of this Court via permanent injunction issued February 11, 1985. Notice is to be sent within three (3) days. Evans is given fifteen (15) days from this date within which to respond.

Motion to dismiss, or in the alternative for protective order filed by Defendants Whitefield and Mid-America's Processing Services, Inc. is referred to the United States Magistrate for hearing along with all pending discovery motions. The parties are to submit motions to withdraw all discovery motions which are mooted by this order within ten (10) days.

Motions to dismiss filed June 6, 1986 and June 17, 1986 by W. M. Smith Electric Co., W. M. Smith Electric Co. of Oklahoma,

Inc., Power Electric Co., Inc. and Allen Grayson, Jr., and by Defendants Allen M. Grayson, III and Carl Pons Electric Motor Service, Inc. based upon applicable statute of limitation are also referred to the United States Magistrate for resolution.

Finally, the Court has reviewed the objection to ruling of the Magistrate filed July 1, 1986 and finds it should be denied. All other motions currently pending will be addressed by separate order or will be set for hearing as necessary.

It is so Ordered.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

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

SEP 2 1986
Jack C. Smith, Clerk
U. S. DISTRICT COURT

DUNN QUARTER HORSES, INC.,)
a foreign corporation,)
)
Plaintiff,)
)
v.)
)
TURNBOW TRAILERS, INC.,)
an Oklahoma corporation,)
)
Defendant.)

Case No. 85-C-662-B ✓

J U D G M E N T

This matter comes before the Court on agreement of counsel for the parties herein. Counsel have advised the Court that Defendant has breached the Settlement Stipulation of the parties by failing to pay Plaintiff the money agreed upon at the time specified in the Settlement Stipulation. IT IS THEREFORE ORDERED AND ADJUDGED that Plaintiff, Dunn Quarter Horses, Inc., is to have judgment against the Defendant, Turnbow Trailers, Inc., for \$21,374.00, with interest at 10 percent per annum from April 4, 1986, until the date herein and interest at the rate of 6.18 percent per annum thereafter, and Plaintiff's costs of this action, including attorney's fees, if timely applied for pursuant to the local rules.

DATED this 28th day of August, 1986.

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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 GEORGE W. BODIFORD; GLYNDA J.)
 BODIFORD; COUNTY TREASURER,)
 Tulsa County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.) CIVIL ACTION NO. 86-C-418-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 2nd day
of September, 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, George W. Bodiford
and Glynda J. Bodiford, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendants, County Treasurer, Tulsa
County, Oklahoma, and Board of County Commissioners, Tulsa
County, Oklahoma, acknowledged receipt of Summons and Complaint
on May 1, 1986; and that the Defendant, Glynda J. Bodiford,
acknowledged receipt of Summons and Complaint on or about
June 27, 1986.

The Court further finds that the Defendant, George W. Bodiford, was served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six consecutive weeks beginning May 23, 1986, and continuing to June 27, 1986, as more fully appears from the verified Proof of Publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. §2004(C)(3)(c). Since counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, George W. Bodiford, service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, George W. Bodiford. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, have fully exercised due diligence in ascertaining the true name and identity of the party served by publication, with respect to

his present or last known place of residence and/or mailing address.

The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on May 19, 1986, disclaiming any right, title, or interest in the subject property; and that the Defendants, George W. Bodiford and Glynda J. Bodiford, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Sixteen (16), Block Twelve (12) AMENDED PLAT OF VAN ACRES ADDITION A Subdivision to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on June 7, 1983, the Defendants, George W. Bodiford and Glynda J. Bodiford, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$50,000.00, payable in monthly installments, with interest thereon at the rate of 11.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, George W. Bodiford and Glynda J. Bodiford, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated June 7, 1983, covering the above-described property. Said mortgage was recorded on June 7, 1983, in Book 4696, Page 1729, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, George W. Bodiford and Glynda J. Bodiford, made default under the terms of the aforesaid mortgage 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, George W. Bodiford and Glynda J. Bodiford, are indebted to the Plaintiff in the sum of \$49,514.63 as of July 1, 1985, plus interest thereafter at the rate of 11.5 percent per annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, George W. Bodiford and Glynda J. Bodiford, in the sum of \$49,514.63 as of July 1, 1985, plus interest thereafter at the rate of 11.5 percent per annum until judgment, plus interest thereafter at the current legal rate of 5.63 percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, George W. Bodiford and Glynda J.

Bodiford, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

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

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

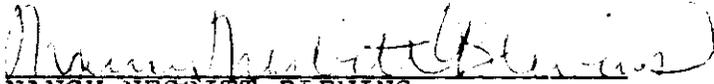
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney


NANCY NESSBITT BLEVINS
Assistant United States Attorney