

Entered

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

FILED

OCT 31 1986

OXY PETROLEUM, INC.,  
Plaintiff,

vs.

UNITED GAS PIPE LINE COMPANY,  
Defendant.

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

No. 85-C-605-B

STIPULATION OF DISMISSAL PURSUANT TO FED.R.CIV.P. 41(a)(1)

COME NOW the plaintiff and the defendant and pursuant to Fed.R.Civ.P. 41(a)(1) stipulate that this action is dismissed without prejudice. This stipulation is premised upon the Agreement of the parties signed October 13, 1986 tolling the statute of limitations.

CITIES SERVICE OIL & GAS  
CORPORATION, successor  
in interest of Oxy  
Petroleum, Inc.

By *Joe H. Crosby*  
its Vice President

ATTEST:

*Linda Frick*  
Its ASSISTANT Secretary

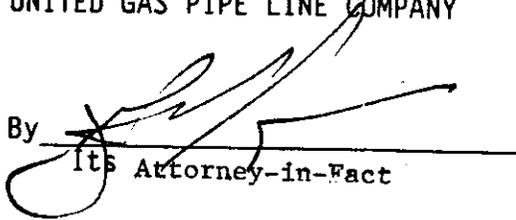
JONES, GIVENS, GOTCHER, BOGAN &  
HILBORNE, a Professional Corporation

By *Graydon Dean Luthey, Jr.*  
Graydon Dean Luthey, Jr.  
3800 First National Tower  
Tulsa, Oklahoma 74103  
918/581-8200

ATTORNEYS FOR PLAINTIFF

UNITED GAS PIPE LINE COMPANY

By

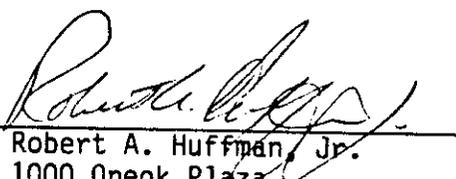
  
Its Attorney-in-Fact

ATTEST:

  
Its Assistant Secretary

HUFFMAN ARRINGTON KIHLE  
GABERINO & DUNN

By

  
Robert A. Huffman, Jr.  
1000 Oneok Plaza  
Tulsa, Oklahoma 74103  
918/585-8141

ATTORNEYS FOR DEFENDANT

0467013001-19

*Entered*

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

FILED

OCT 31 1985

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

JOHN A. MOSIER, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MIKE WATKINS, PETE IVERSON, )  
 JOHN J. MAKOWSKI, et al, )  
 )  
 Defendants. )

85-C-982-B

ORDER

Defendants' motion to dismiss in the above-styled case is now before the court for determination. Having reviewed the relevant pleadings and applicable law, the court finds as follows.

Plaintiff filed this action under 42 U.S.C. §1983 for alleged civil rights violations. In Count 1, plaintiff claims that his due process rights were violated when defendants dismissed him without a hearing from his job as a prison law clerk for violation of department policy OP-090201. He contends that after his dismissal defendants discriminated against him by refusing to grant him an interview for another law clerk position.

In Count 2, plaintiff claims that he has been denied meaningful access to the courts. In support he states that because he is not a law clerk he is not allowed to use law clerk typewriters. The only typewriters available to the general inmate population are out for repairs. Plaintiff further states that he is the only inmate with a paralegal degree and that by depriving him of a law clerk job, defendants have engaged in a

scheme to deprive the prisoners of meaningful access to the courts.

In order to state a cause of action under §1983 plaintiff must establish (1) that the conduct complained of was committed by a person acting under color of state law, and (2) that such conduct deprived plaintiff of some right, privilege or immunity secured by the Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. 527, 101 S.Ct. 1908 (1981).

Although the conduct plaintiff complains of was done under color of state law, the court finds that defendants have not deprived plaintiff of any right secured by the Constitution of the United States.

"Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." Price v. Johnston, 334 U.S. 266, 285, 68 S.Ct. 1049, 1060 (1948). One such limitation is on the privilege of choosing your own employment. The work assignments of prisoners are administrative matters and are left to the discretion of prison officials. A prisoner does not have a constitutional right to any particular prison job. Coyle v. Hughs, 436 F.Supp. 591, 593 (W.D.Okl. 1977).

Plaintiff was dismissed from his position of law clerk after prison officials determined that he had violated Department of Corrections Policy OP-090201(G)(5)(a) which provides:

It shall be understood by inmate research assistants that they are to assist all fellow inmates in their legal claims for no fee or any type of

remuneration other than inmate wages paid by the Department. Upon an administrative determination, supported by evidence after hearing that an inmate research assistant has engaged in extortion for his services, he shall be removed from the position and may never be returned to such position in this Department. Appropriate disciplinary action shall be taken as specified in OP-060401, entitled "Disciplinary Procedures; Including Allowable Levels of Punishments."

The documents on file reveal that while plaintiff was incarcerated at Lexington Correctional Center he was found guilty of a misconduct charge of bartering by taking money from other inmates for performing legal/<sup>type</sup>work. Under Department of Corrections policy, once plaintiff had been removed as a legal assistant, he was no longer eligible to work as a legal research assistant. Failure to grant a prisoner an interview for a job for which he is ineligible cannot by any means constitute unconstitutional discrimination.

Federal courts generally have a hands-off attitude toward prison administration matters. In Procunier v. Martinez, 416 U.S. 396, 404, 94 S.Ct. 1800, 1807 (1974), the Supreme Court noted that "[p]rison administrators are responsible for maintaining internal order and discipline, for securing their institutions against unauthorized access or escape, and for rehabilitating, to the extent that human nature and inadequate resources allow, the inmates placed in their custody."

It is clear that prisoners have a constitutional right to access to the courts. Supreme Court decisions have struck down restrictions of this right and have required remedial measures to insure that prisoners are afforded adequate and effective access

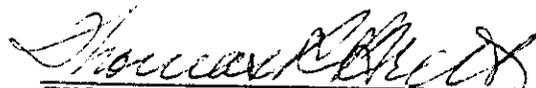
to the courts. In Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747 (1969), the Court struck down a prison regulation which prohibited prisoners from assisting each other in researching and preparing habeas corpus applications and other legal matters. The Court concluded that the effect of such a regulation was to prevent illiterate and unlearned prisoners from challenging the constitutionality of their confinement. 393 U.S. at 489. The Court subsequently held that states must protect prisoners' rights to court access by providing them with law libraries or alternative sources of legal knowledge. Bounds v. Smith, 430 U.S. 817, 97 S.Ct. 1491 (1977).

Prisoner's access to courts does not include a federally protected right to use a typewriter. Twyman v. Crisp, 584 F.2d 352 (10th Cir. 1978). Even if such a right existed, the court notes that several legal papers filed by plaintiff in this matter have been typewritten.

A review of plaintiff's complaint reveals no allegations, which if true, would rise to a deprivation of plaintiff's constitutional right to access to the courts. Conner Correctional Center has a law library and inmate legal assistants to help prepare prisoner legal papers. Plaintiff's complaint only states that he has unfairly been deprived of the position of legal assistant and of the privileges that go along with that job. There is no showing that plaintiff or any other inmate is deprived of court access as contemplated by the Supreme Court decisions of Johnson v. Avery, supra, or Bounds v. Smith, supra.

Because plaintiff has not shown that as a result of defendants' conduct he has been deprived of a federally protected right, it is hereby ordered that plaintiff's complaint be dismissed.

It is so Ordered this 31<sup>st</sup> day of October, 1986.

  
\_\_\_\_\_  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
OCT 31 1986  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MICHAEL W. MEGEE, )  
 )  
Defendant. )

CIVIL ACTION NO. 86-C-618-E

DEFAULT JUDGMENT

This matter comes on for consideration this 31<sup>st</sup> day of October, 1986, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Michael W. Megee, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Michael W. Megee, was served with Summons and Complaint on September 9, 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,

Michael W. Megee, for the principal sum of \$557.70, plus interest at the rate of 9 percent per annum and administrative costs of \$.67 per month from August 2, 1985, until judgment, plus interest thereafter at the current legal rate of 5.75 percent per annum until paid, plus costs of this action.

S/ JAMES O. ELLISON

---

UNITED STATES DISTRICT JUDGE

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

FILED

OCT 31 1985

Jack C. Stone  
U.S. DISTRICT COURT

JAMES MARTIN DIXON,

Plaintiff,

vs.

HARVEY MASSEY, et al.,

Defendants.

No. 84-C-883-E

O R D E R

The Court has before it for its consideration the motion of the Plaintiff for reconsideration of this Court's order of October 16, 1985 dismissing his Complaint, and the motion of Defendants Massey, Todd, Wade, Jr., Wachman, Burgess & Fedor to dismiss Plaintiff's Amended Complaint. The Court has reviewed Plaintiff's motion for reconsideration and is satisfied that there are no arguments therein which would require the Court to reconsider its earlier ruling. Furthermore, the Court has reviewed the Plaintiff's amendment to Complaint and has reviewed the Defendants' motion to dismiss.

The Court dismissed Plaintiff's Complaint for failure to state a claim upon which relief can be granted because Plaintiff's claim that the Defendants were treating all citizens of Pawhuska equally with regard to utility rates did not state a claim for deprivation of a constitutional right under 42 U.S.C. §1983. In the Plaintiff's Amended Complaint, Plaintiff states that he is adding claims under 42 U.S.C. §1982 and the First Amendment of the United States Constitution. However,

Plaintiff's Complaint as amended still fails to state a claim upon which relief can be granted. 42 U.S.C. §1982 has no application to the allegations of Plaintiff's Amended Complaint because it applies only to racial discrimination with regard to transactions in real and personal property. Neither do Plaintiff's allegations state any claim under the First Amendment to the United States Constitution.

Accordingly, Plaintiff's motion for reconsideration is denied and the motion of the Defendants to dismiss is granted. This action shall be dismissed as against all Defendants for failure to state a claim upon which relief can be granted.

DATED this 31<sup>st</sup> day of October, 1986.

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



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

OCT 1985

UNITED STATES OF AMERICA, )  
 )  
 Respondent, )  
 )  
 vs. )  
 )  
 BOB THOMPSON, )  
 )  
 Movant. )

No. 84-CR-106 ✓  
§6-C-906-B

O R D E R

Now before the Court is Movant's Petition for Writ of Habeas Corpus, to which the Government has responded. For the reasons set forth below, the petition is denied.

Movant contends that his rights to due process under the Fifth and Fourteenth Amendments to the United States Constitution have been violated by the acts of the United States Parole Commission in denying him early release from prison. Movant was convicted in January 1985 of one count of violation of 21 U.S.C. §846(a)(1) and was sentenced to 3 years in prison. The court sentenced Movant under the provisions of 18 U.S.C. §4205(b)(2), which provides in pertinent part:

"Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interest of the public require that the defendant be sentenced to imprisonment for a term exceeding one year . . . (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may be released on parole at such time as the Commission may determine."

On August 6, 1985, the Parole Commission denied Movant a parole and ordered that he serve his full sentence.

Movant contends that the intent of a §4205(b)(2) sentence is that the sentencing judge is sending the Parole Commission a message that the defendant may be released earlier than the one-third parole eligibility date. Movant contends that the Parole Commission has stated that the criteria for parole are the same whether the sentence is determinate, 18 U.S.C. §4205(a), or indeterminate, §4205(b)(1) or (b)(2). Movant contends that the parole criteria are not the same for sentences imposed under these sections.

Sentencing under §4205(b) does not guarantee early release from prison. All that is guaranteed by §4205(b)(2) is immediate eligibility for parole, not entitlement to release by a certain time. United States v. Baylin, 531 F.Supp. 741, 750 (D.Del. 1982). "By setting an early eligibility date, the sentencing court insures only that 'the defendant will be considered at that time by the Parole Commission.'" Baylin, supra, at 750 (quoting, U. S. v. Addonizio, 442 U.S. 178, 189 (1979)). Whether the defendant will actually be paroled, however, remains a matter for the discretion of the Parole Commission. Addonizio at 189 n. 5. Sentencing under §4205(b) creates only the possibility of release. "[S]ubsequent denial of parole does not give rise to any cognizable legal claim for which appropriate redress can be obtained." Baylin at 750. Likewise, prisoners sentenced pursuant to §4205(b) are to be judged by the same parole criteria governing all other prisoners in determining the advisability and time of release. Id.; Moore v. Nelson, 611 F.2d 434, 437 (2d

Cir. 1979); Shahid v. Crawford, 599 F.2d 666, 669-70 (5th Cir. 1979). Thus, Movant's contention that the Parole Commission ignored the intent of §4205(b) or erred in evaluating Movant by the same standards as other inmates, is without merit.

Movant next contends that the Parole Commission's action in denying him parole was arbitrary and capricious and a violation of the Commission's rules and regulations. Judicial review of a Parole Commission decision is limited to a determination of whether the Commission abused its discretion in making its decision. O'Brien v. Putnam, 591 F.2d 53, 55 (9th Cir. 1979); Dye v. United States Parole Commission, 558 F.2d 1376, 1378 (10th Cir. 1977). The Court concludes that the Commission did not abuse its discretion in denying Movant a parole. By sentencing Movant under §4205(b)(2), this Court set the maximum sentence of imprisonment to be served and specified that Movant could be released on parole "at such time as the Commission may determine." Movant contends that the purpose of sentencing under this section is to allow the sentencing judge "to send the Parole Commission a message" that a prisoner should be paroled early. The Court finds this contention unsupported by the law. It is well established that sentencing judges do not have authority "to supervise, control, or second-guess the Parole Board." Edwards v. United States, 574 F.2d 937, 942 (8th Cir.), cert. dismissed, 439 U.S. 1040 (1978).

In Addonizio, supra, the Supreme Court addressed the issue of a sentencing judge's authority with respect to decisions of

the Parole Commission. The Court noted that the authority of sentencing judges to select "precise release dates" is narrowly limited. Id. at 189. The Court went on to say:

"[T]he judge has no enforceable expectations with respect to the actual release of a sentenced defendant short of his statutory term. The judge may well have expectations as to when release is likely. But the actual decision is not his to make, either at the time of sentencing or later if his expectations are not met. To require the Parole Commission to act in accordance with judicial expectations, and to use collateral attack as a mechanism for ensuring that these expectations are carried out, would substantially undermine the congressional decision to entrust release determinations to the Commission and not the courts."

Id. at 190. In making parole decisions, the Commission must balance a variety of considerations. Section 4206(a), as well as the rules and regulations of the Commission, mandate that the Commission consider the nature and circumstances of a prisoner's offense and the history and characteristics of the prisoner in making parole decisions. The health of the prisoner is one consideration in this equation. In its decision of August 6, 1985, denying Movant parole, the Commission specifically addressed the issues of Movant's health and the severity of his offense. The Commission noted:

"From the medical information submitted to this panel, there is not an indication that subject is in a serious life threatening situation at this time, although it is acknowledged that he does have a heart condition, emphysema, as well as other medical problems. However, it appears that subject has refused to take the necessary exploratory tests in order to fully determine the extent of his illness.

This subject was involved with a significant amphetamine laboratory which produced over 300

pounds of drugs. Other than his medical condition, there does not appear to be any mitigating factors in the case with the notation that release by the end of his sentence will occur considerably below the guidelines."

Based on these factors, the Commission concluded that parole was not merited. This court cannot conclude that such a finding reflects an abuse of discretion by the Commission. Clearly, Movant's medical problems were taken into account in reaching the decision to deny parole. Based on the medical reports submitted to the Commission, Movant's medical problems were found not to be so serious as to merit early release from prison. Such a conclusion is not arbitrary or capricious.

Movant's final contention is that the Bureau of Prisons and the Parole Commission have been negligent in caring for Movant's health while he has been incarcerated. If Movant can establish the necessary elements of negligence in his treatment by prison medical personnel, he may have a valid claim for medical malpractice. Not every such claim rises to the level of a constitutional violation. See, Estelle v. Gamble, 429 U.S. 97, 107 (1976). Movant's Medical Summary, prepared by Dr. S. Hosain of the Fort Worth Federal Correctional Institution, states that Movant has been diagnosed as suffering from hypertension, asthma and diverticulosis. Movant has been given some eight medications to control his medical problems. Dr. Hosain concludes that Movant's condition "is stable and well-controlled on medication. Mr. Thompson is receiving proper medical care. The Federal Prison System is fully capable of providing good medical care to

this patient." Movant's claims that prison medical personnel have lost tests and records and otherwise taken his medical problems too lightly are insufficient to entitle him to habeas corpus relief. For the stated reasons, the Petition for Writ of Habeas Corpus is denied.

IT IS SO ORDERED, this 30<sup>th</sup> day of Oct,  
1986.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

*Entered*

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

C.I.T. CORPORATION, a foreign )  
corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
PORT PRECISION METALS )  
CORPORATION, an Oklahoma )  
corporation, J.P. OIL )  
CORPORATION, a Kansas )  
corporation, and PHILIP A. )  
HAMM, an individual, )  
 )  
Defendants. )

No. 85-C-1135-B ✓

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

O R D E R

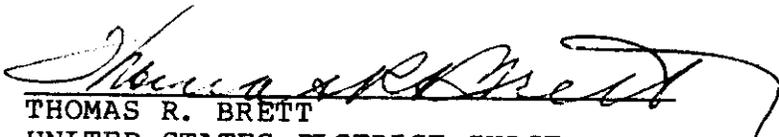
This matter comes before the Court on the plaintiff's motion for summary judgment filed September 23, 1986. The defendants have not responded to the plaintiff's motion. The Court has reviewed the plaintiff's motion and affidavits and finds that the defendants have not responded within the prescribed time outlined in Local Rule 14(a) of the United States District Court for the Northern District of Oklahoma. The Court further finds that summary judgment should be granted to the plaintiff, C.I.T. Corporation, now known as the C.I.T. Group/Equipment Financing, Inc.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that plaintiff, C.I.T. Corporation, now known as the C.I.T. Group/Equipment Financing, Inc., is hereby awarded judgment against the defendants and each them, Port Precision Metals Corporation, J. P. Oil Corporation, and Philip A. Hamm, in the

1

sum of Sixty-Four Thousand One Hundred Thirty-Seven and 32/100  
Dollars (\$64,137.32), together with interest thereon and costs.

DATED this 29<sup>th</sup> day of Oct, 1986.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

Entered

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

C.I.T. CORPORATION, a foreign )  
corporation, )  
) )  
Plaintiff, )  
) )  
v. )  
) )  
PORT PRECISION METALS )  
CORPORATION, an Oklahoma )  
corporation, J.P. OIL )  
CORPORATION, a Kansas )  
corporation, and PHILIP A. )  
HAMM, an individual, )  
) )  
Defendants. )

No. 85-C-1135-B

1986  
OCT 29  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

JOURNAL ENTRY OF JUDGMENT

Now on this 29 day of Oct, 1986, upon the order sustaining the plaintiff's motion for summary judgment, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the plaintiff, C.I.T. Corporation, now known as the CIT Group/Equipment Financing, Inc., have and recover judgment against the defendants, Port Precision Metals Corporation, an Oklahoma corporation, J. P. Oil Corporation, a Kansas corporation, and Philip A. Hamm, an individual, in the sum of Sixty-Four Thousand One Hundred Thirty-Seven and 32/100 Dollars (\$64,137.32), together with interest, costs and such other relief as the Court may deem proper.

ENTERED this 29 day of Oct, 1986.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

OCT 30 1986

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

Linda Newsom, et al., )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 RTC Transportation, Inc.; )  
 and CITICORP INDUSTRIAL )  
 CREDIT, INC., )  
 )  
 Defendants. )

Case No. 86-C-351-E

STIPULATION <sup>et</sup> FOR DISMISSAL WITH PREJUDICE  
OF CERTAIN CLAIMS AND COUNTERCLAIMS

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, Plaintiffs Linda O. Newsom ("Newsom") and William Brenner II ("Brenner") hereby dismiss with prejudice their claims against Citicorp Industrial Credit, Inc. ("Citicorp"). Citicorp hereby dismisses with prejudice the counterclaims it asserted against Newsom and Brenner. These mutual dismissals with prejudice resolve and release any and all claims or counterclaims which were or could have been asserted by these parties in this litigation.

*D.D. Hayes*

\_\_\_\_\_  
D.D. Hayes  
BONDS, MATTHEWS & HAYES  
P. O. Box 1906  
Muskogee, Oklahoma 74402-1906

Attorneys for Plaintiffs  
Newsom and Brenner

*J. Daniel Morgan*

\_\_\_\_\_  
J. Daniel Morgan  
GABLE & GOTWALS  
2000 Fourth National Bank Bldg.  
Tulsa, Oklahoma 74119

Attorneys for Defendant,  
Citicorp Industrial Credit, Inc.

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

**FILED**

OCT 30 1986

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

FRED B. WELCH, )  
 )  
 Movant, )  
 )  
 v. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Respondent. )

84-C-870-C  
82-CR-97-C

ORDER

The Court has for consideration the Findings and Recommendation of the Magistrate filed October 10, 1986, in which the Magistrate recommended that movant's motion to vacate, set aside or correct sentence be dismissed. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that movant Fred B. Welch's motion to vacate, set aside or correct sentence under 28 U.S.C. §2255 be and is hereby dismissed.

Dated this 30<sup>th</sup> day of October, 1986.

  
H. DALE COOK, CHIEF  
UNITED STATES DISTRICT JUDGE

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

HAROLD SHEPPARD and JUNE )  
SHEPPARD, husband and wife, )  
 )  
Plaintiffs, )

v. )

No. 85-C-1102-B

THE HANOVER INSURANCE COMPANY, )  
NEW HAMPSHIRE INSURANCE, )  
 )  
Defendant, )

v. )

BANK OF INOLA, an Oklahoma )  
banking corporation, )  
 )  
Intervenor. )

**F I L E D**

**OCT 28 1986**

Jack C. Sive  
U.S. DISTRICT OF

J U D G M E N T

In keeping with the verdicts of the jury entered this 24th day of October, 1986, judgment is entered as follows:

The plaintiffs, Harold Sheppard and June Sheppard, are granted judgment against the defendant, The Hanover Insurance Company, in the amount of Thirty Thousand Dollars (\$30,000.00), plus interest at the rate of 5.75% per annum from this date, with costs to be assessed against the defendant Hanover if timely applied for under Local Court Rule 6. Plaintiffs as prevailing party, are entitled to a reasonable attorney fee if timely applied for under Local Rule 6.

The defendant Hanover Insurance Company is granted judgment against the intervenor, Bank of Inola, on intervenor's claim.

Further, the intervenor, Bank of Inola, is entitled to a mortgage lien on the Thirty Thousand Dollar (\$30,000.00) judgment rendered plaintiffs, Harold Sheppard and June Sheppard, against the defendant, Hanover Insurance Company.

DATED this 27<sup>th</sup> day of October, 1986.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

COPY

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

FILED

OCT 29 1986

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

UTICA NATIONAL BANK & TRUST CO., )  
a national banking association, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CALVIN RANSOM, et al., )  
 )  
Defendants. )

No. 85-C-537-C

STIPULATION OF DISMISSAL

PURSUANT to the provisions of Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereto agree that Plaintiff's claims against Joel Nathanson and Rosemarie Nathanson asserted herein are hereby dismissed with prejudice, each party to bear its/their own costs incurred herein.

This dismissal shall have no effect on any other claims made against any other Defendant herein.

Dated this 27<sup>th</sup> day of October, 1986.



Charles V. Wheeler  
GABLE & GOTWALS  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-9201

ATTORNEYS FOR PLAINTIFF  
UTICA NATIONAL BANK & TRUST CO.



Katie J. Colopy  
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2400 First National Tower  
Tulsa, Oklahoma 74103  
(918) 586-5711

ATTORNEYS FOR DEFENDANTS JOEL  
NATHANSON AND ROSEMARIE NATHANSON

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

FILED

OCT 29 1986

UTICA NATIONAL BANK & TRUST CO., )  
a national banking association, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CALVIN RANSOM, et al., )  
 )  
Defendants. )

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

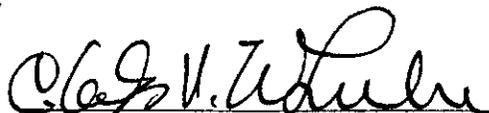
No. 85-C-537-C

STIPULATION OF DISMISSAL

PURSUANT to the provisions of Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereto agree that Plaintiff's claims against Orrin E. Greene asserted herein are hereby dismissed with prejudice, each party to bear its/his own costs incurred herein.

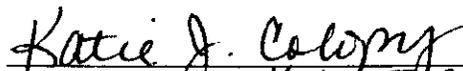
This dismissal shall have no effect on any other claims made against any other Defendant herein.

DATED this 27<sup>th</sup> day of October, 1986.



Charles V. Wheeler  
GABLE & GOTWALS  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-9201

ATTORNEYS FOR PLAINTIFF  
UTICA NATIONAL BANK & TRUST CO.



~~Thomas H. Donk~~ Katie J. Colopy  
FITZGERALD, BROWN, LEAHY, STROM,  
SCHORR & BARMETTLER  
1000 Woodmen Tower  
Omaha, Nebraska 68102

ATTORNEYS FOR DEFENDANT  
ORRIN E. GREENE

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

FILED

OCT 29 1986

UTICA NATIONAL BANK & TRUST CO., )  
a national banking association, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CALVIN RANSOM, et al., )  
 )  
Defendants. )

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

No. 85-C-537-C

STIPULATION OF DISMISSAL

PURSUANT to the provisions of Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereto agree that Plaintiff's claims against Thomas M. Lloyd asserted herein are hereby dismissed with prejudice, each party to bear its/his own costs incurred herein.

This dismissal shall have no effect on any other claims made against any other Defendant herein.

DATED this 27th day of October, 1986.

*Charles V. Wheeler*

Charles V. Wheeler  
GABLE & GOTWALS  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-9201

ATTORNEYS FOR PLAINTIFF  
UTICA NATIONAL BANK & TRUST CO.

*Katie J. Colomy*

Thomas H. Dattk *Katie J. Colomy*  
FITZGERALD, BROWN, LEAHY, STROM,  
SCHORR & BARMETTLER  
1000 Woodmen Tower  
Omaha, Nebraska 68102

ATTORNEYS FOR DEFENDANT  
THOMAS M. LLOYD

COPY

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

FILED

OCT 29 1986

UTICA NATIONAL BANK & TRUST CO., )  
a national banking association, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CALVIN RANSOM, et al., )  
 )  
Defendants. )

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

No. 85-C-537-C

STIPULATION OF DISMISSAL

PURSUANT to the provisions of Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereto agree that Plaintiff's claims against James Woodward and Brent Petersen asserted herein are hereby dismissed with prejudice, each party to bear its/their own costs incurred herein.

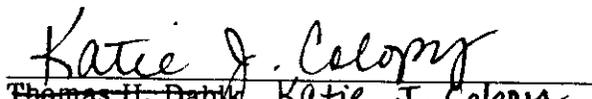
This dismissal shall have no effect on any other claims made against any other Defendant herein.

DATED this 27<sup>th</sup> day of October, 1986.



Charles V. Wheeler  
GABLE & GOTWALS  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-9201

ATTORNEYS FOR PLAINTIFF  
UTICA NATIONAL BANK & TRUST CO.



~~Thomas H. Dahly~~ Katie J. Colopy  
FITZGERALD, BROWN, LEAHY, STROM,  
SCHORR & BARMETTLER  
1000 Woodmen Tower  
Omaha, Nebraska 68102

ATTORNEYS FOR DEFENDANTS  
JAMES WOODWARD  
BRENT PETERSEN

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

FILED

OCT 29 1986

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

UTICA NATIONAL BANK & TRUST CO., )  
a national banking association, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CALVIN RANSOM, et al., )  
 )  
Defendants. )

No. 85-C-537-C

STIPULATION OF DISMISSAL

PURSUANT to the provisions of Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereto agree that Plaintiff's claims against Blaine Hudson Printing, a corporation, asserted herein are hereby dismissed with prejudice, each party to bear its/their own costs incurred herein.

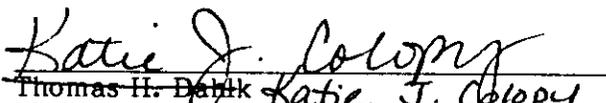
This dismissal shall have no effect on any other claims made against any other Defendant herein.

DATED this 27th day of October, 1986.



Charles V. Wheeler  
GABLE & GOTWALS  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-9201

ATTORNEYS FOR PLAINTIFF  
UTICA NATIONAL BANK & TRUST CO.



~~Thomas H. Dattk~~ Katie J. Colopy  
FITZGERALD, BROWN, LEAHY, STROM,  
SCHORR & BARMETTLER  
1000 Woodmen Tower  
Omaha, Nebraska 68102

ATTORNEYS FOR DEFENDANT  
BLAINE HUDSON PRINTING

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

FILED

OCT 29 1986

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

UTICA NATIONAL BANK & TRUST CO., )  
a national banking association, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CALVIN RANSOM, et al., )  
 )  
Defendants. )

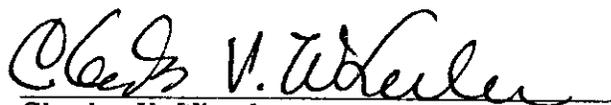
No. 85-C-537-C

STIPULATION OF DISMISSAL

PURSUANT to the provisions of Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereto agree that Plaintiff's claims against C. A. Christofferson asserted herein are hereby dismissed with prejudice, each party to bear its/his own costs incurred herein.

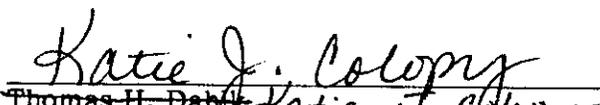
This dismissal shall have no effect on any other claims made against any other Defendant herein.

DATED this 27<sup>th</sup> day of October, 1986.



Charles V. Wheeler  
GABLE & GOTWALS  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-9201

ATTORNEYS FOR PLAINTIFF  
UTICA NATIONAL BANK & TRUST CO.



~~Thomas H. Danz~~ Katie J. Colopy  
FITZGERALD, BROWN, LEAHY, STROM,  
SCHORR & BARMETTLER  
1000 Woodmen Tower  
Omaha, Nebraska 68102

ATTORNEYS FOR DEFENDANT  
C. A. CHRISTOFFERSON

COPY

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

FILED

OCT 29 1986

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

UTICA NATIONAL BANK & TRUST CO., )  
a national banking association, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CALVIN RANSOM, et al., )  
 )  
Defendants. )

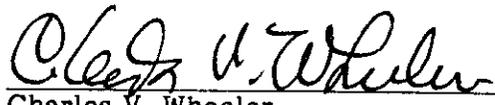
No. 85-C-537-C

STIPULATION OF DISMISSAL

PURSUANT to the provisions of Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereto agree that Plaintiff's claims against Thomas L. Fox and Margie A. Fox asserted herein are hereby dismissed with prejudice, each party to bear its/their own costs incurred herein.

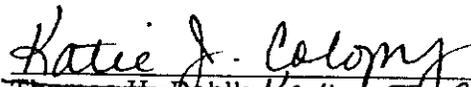
This dismissal shall have no effect on any other claims made against any other Defendant herein.

DATED this 27th day of October, 1986.



Charles V. Wheeler  
GABLE & GOTWALS  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-9201

ATTORNEYS FOR PLAINTIFF  
UTICA NATIONAL BANK & TRUST CO.



~~Thomas H. Danik~~ Katie J. Colopy  
FITZGERALD, BROWN, LEAHY, STROM,  
SCHORR & BARMETTLER  
1000 Woodmen Tower  
Omaha, Nebraska 68102

ATTORNEYS FOR DEFENDANTS  
THOMAS L. FOX  
MARGIE A. FOX

COPY

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

FILED

OCT 29 1986

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

UTICA NATIONAL BANK & TRUST CO., )  
a national banking association, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CALVIN RANSOM, et al., )  
 )  
Defendants. )

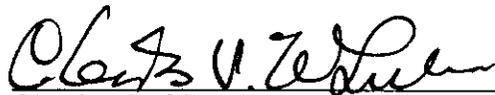
No. 85-C-537-C

STIPULATION OF DISMISSAL

PURSUANT to the provisions of Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereto agree that Plaintiff's claims against Charles M. Williams asserted herein are hereby dismissed with prejudice, each party to bear its/his own costs incurred herein.

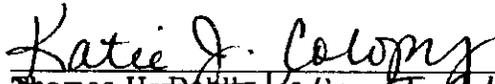
This dismissal shall have no effect on any other claims made against any other Defendant herein.

DATED this 27th day of October, 1986.



Charles V. Wheeler  
GABLE & GOTWALS  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-9201

ATTORNEYS FOR PLAINTIFF  
UTICA NATIONAL BANK & TRUST CO.



~~Thomas H. DeHick~~ Katie J. Colopy  
FITZGERALD, BROWN, LEAHY, STROM,  
SCHORR & BARMETTLER  
1000 Woodmen Tower  
Omaha, Nebraska 68102

ATTORNEYS FOR DEFENDANT  
CHARLES M. WILLIAMS

COPY

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

FILED

OCT 29 1986

UTICA NATIONAL BANK & TRUST CO., )  
a national banking association, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CALVIN RANSOM, et al., )  
 )  
Defendants. )

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

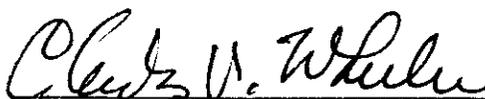
No. 85-C-537-C

STIPULATION OF DISMISSAL

PURSUANT to the provisions of Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereto agree that Plaintiff's claims against Jack <sup>N.</sup> H. Abbott and Marlene A. Abbott asserted herein are hereby dismissed with prejudice, each party to bear its/their own costs incurred herein.

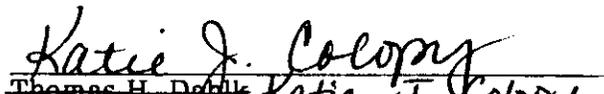
This dismissal shall have no effect on any other claims made against any other Defendant herein.

DATED this 27<sup>th</sup> day of October, 1986.



Charles V. Wheeler  
GABLE & GOTWALS  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-9201

ATTORNEYS FOR PLAINTIFF  
UTICA NATIONAL BANK & TRUST CO.

  
~~Thomas H. DeBak~~ Katie J. Colopy  
FITZGERALD, BROWN, LEAHY, STROM,  
SCHORR & BARMETTLER

1000 Woodmen Tower  
Omaha, Nebraska 68102

ATTORNEYS FOR DEFENDANTS  
JACK H. ABBOTT  
MARLENE A. ABBOTT

COPY.

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

FILED

OCT 29 1986

UTICA NATIONAL BANK & TRUST CO., )  
a national banking association, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CALVIN RANSOM, et al., )  
 )  
Defendants. )

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

No. 85-C-537-C

STIPULATION OF DISMISSAL

PURSUANT to the provisions of Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereto agree that Plaintiff's claims against H. Gene McKeown, Trustee and H. Gene McKeown, an Individual asserted herein are hereby dismissed with prejudice, each party to bear its/their own costs incurred herein.

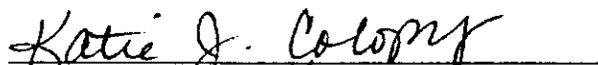
This dismissal shall have no effect on any other claims made against any other Defendant herein.

DATED this 27<sup>th</sup> day of October, 1986.



Charles V. Wheeler  
GABLE & GOTWALS  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-9201

ATTORNEYS FOR PLAINTIFF  
UTICA NATIONAL BANK & TRUST CO.



~~Thomas H. DeHik~~ Katie J. Colopy  
FITZGERALD, BROWN, LEAHY, STROM,  
SCHORR & BARMETTLER  
1000 Woodmen Tower  
Omaha, Nebraska 68102

ATTORNEYS FOR DEFENDANTS  
H. GENE McKEOWN, Trustee  
H. GENE McKEOWN, an Individual

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

**FILED**

OCT 29 1986

UTICA NATIONAL BANK & TRUST CO., )  
 a national banking association, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CALVIN RANSOM, et al., )  
 )  
 Defendants. )

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

No. 85-C-537-C

STIPULATION OF DISMISSAL

PURSUANT to the provisions of Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereto agree that Plaintiff's claims against Charles I. McBride asserted herein are hereby dismissed with prejudice, each party to bear its/his own costs incurred herein.

This dismissal shall have no effect on any other claims made against any other Defendant herein.

DATED this 27<sup>th</sup> day of October, 1986.

*Charles V. Wheeler*

Charles V. Wheeler  
GABLE & GOTWALS  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-9201

ATTORNEYS FOR PLAINTIFF  
UTICA NATIONAL BANK & TRUST CO.

*Katie J. Colopy*  
~~Thomas H. Dahlk~~ *Katie J. Colopy*

FITZGERALD, BROWN, LEAHY, STRUM,  
SCHORR & BARMETTLER  
1000 Woodmen Tower  
Omaha, Nebraska 68102

ATTORNEYS FOR DEFENDANT  
CHARLES I. McBRIDE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA  
FILED  
OCT 29 1986

UTICA NATIONAL BANK & TRUST CO.,  
a national banking association,  
  
Plaintiff,  
  
vs.  
  
CALVIN RANSOM, et al.,  
  
Defendants.

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

No. 85-C-537-C

STIPULATION OF DISMISSAL

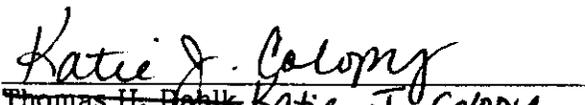
PURSUANT to the provisions of Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereto agree that Plaintiff's claims against G. E. Schultz asserted herein are hereby dismissed with prejudice, each party to bear its/his own costs incurred herein.

This dismissal shall have no effect on any other claims made against any other Defendant herein.

DATED this 27<sup>th</sup> day of October, 1986.

  
Charles V. Wheeler  
GABLE & GOTWALS  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-9201

ATTORNEYS FOR PLAINTIFF  
UTICA NATIONAL BANK & TRUST CO.

  
~~Thomas H. Bohlk~~ Katie J. Colopy  
FITZGERALD, BROWN, LEAHY, STROM,  
SCHORR & BARMETTLER  
1000 Woodmen Tower  
Omaha, Nebraska 68102

ATTORNEYS FOR DEFENDANT  
G. E. SCHULTZ

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

FILED

OCT 29 1986

PATRICK MCKINNON, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 RON BARNES and JANE )  
 LIVINGSTON, )  
 )  
 Defendants. )

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

86-C-133-C

ORDER

The Court has for consideration the Findings and Recommendation of the Magistrate filed October 7, 1986, in which the Magistrate recommended that defendants' motion to dismiss be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that defendants' motion to dismiss is granted.

Dated this 29<sup>th</sup> day of October, 1986.

  
H. DALE COOK, CHIEF  
UNITED STATES DISTRICT JUDGE

Entered

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

JAMES H. BULLARD and )  
COYWILLOW F. BULLARD, )  
 )  
 )  
 ) Plaintiffs, )  
 )  
 )  
 )  
 ) v. )  
 )  
 )  
 ) COLLINS INDUSTRIES, INC., )  
 ) a New Jersey corporation, )  
 ) a/k/a COLLINS COMPANY, LTD., )  
 )  
 ) Defendant. )

NO. 86-C-732-B

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

OCT 29 1986

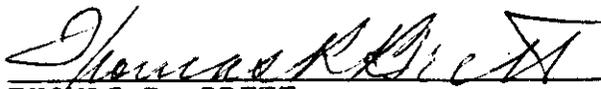
FILED

AMENDED JOURNAL ENTRY OF JUDGMENT

Now, on this 29<sup>th</sup> day of Oct, 1986, upon the motion of plaintiffs and supporting affidavit in the above entitled case, and pursuant to Fed.R.Civ.P. 55(b)(2); further, upon the finding of the failure of the defendant to plead or otherwise defend in this action, and its default having been entered herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiffs have and recover judgment against the defendant in the sum of Three Hundred Ninety-Eight Thousand Five Hundred Fifty-Eight and 95/100 Dollars, together with costs and other such relief as the Court may deem proper.

ENTERED this 29<sup>th</sup> day of Oct., 1986.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

*Entered*

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

FILED  
OCT 28 1986  
JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

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

Case No. 85-C-1101-B ✓

NOTICE OF DISMISSAL

Plaintiff hereby dismisses the subject cause as to  
Thomas C. Smith.

*James R. Eagleton*  
James R. Eagleton OBA No. 2584  
Houston and Klein, Inc.  
3200 University Tower  
1722 South Carson  
P. O. Box 2967  
Tulsa, Oklahoma 74101-2967  
(918) 583-2131  
Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on this 28th day of October, 1986, I  
mailed a true and correct copy of the foregoing Notice of Dis-  
missal, postage prepaid, to:

David A. Carpenter  
Bagley, Stutman & Carpenter  
2415 East Skelly Drive, Suite 103  
Tulsa, Oklahoma 74105

*James R. Eagleton*  
James R. Eagleton

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

OCT 27 1986  
FILED  
OCT 28 1986

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

TONY MASON, d/b/a )  
The Solar Works, )  
 )  
Plaintiff, )  
 )  
vs. ) Case No. 85-C-971-C  
 )  
AL COBERLY )  
 )  
Defendant.)

JOURNAL ENTRY OF JUDGMENT

NOW ON THIS 15th day of September, 1986, this cause comes on for hearing pursuant to regular setting. Plaintiff, Tony Mason, d/b/a The Solar Works, appeared personally and by his Attorney, Alan R. Carlson; and the Defendant Al Coberly appeared by his Attorney of Record, Alvin Hayes.

All parties in open Court waived their rights of trial by jury and agreed to submit to a trial by the Court.

Whereupon, after hearing, the Court finds as follows:

That this action has been regularly and properly brought, and that this Court has jurisdiction of the parties and the subject matter involved herein.

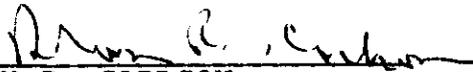
The Court finds that the Settlement Agreement reached by the parties is a fair settlement and in the best interest of said Plaintiff.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED by  
this Court that the Plaintiff, should be and he is hereby awarded  
judgment against the Defendant, Al Coberly, in the sum of Six  
Thousand Six Hundred and Ninety-Nine (\$6,699.00).

s/H. DALE COOK

JUDGE OF THE UNITED STATES DISTRICT COURT

Approved as to Form

  
ALAN R. CARLSON  
Attorney for Plaintiff

  
ALVIN HAYES  
Attorney for Defendant

\\mason\jourent.cob



Oklahoma, acknowledged receipt of Summons and Complaint on March 20, 1986; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 19, 1986.

The Court further finds that the Defendants, Terry Foster and Brenda K. Foster, formerly known as Brenda K. Olden, were 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 August 12, 1986, and continuing to September 16, 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 Defendants, Terry Foster and Brenda K. Foster, formerly known as Brenda K. Olden, service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter with respect to the last known addresses of the Defendants, Terry Foster and Brenda K. Foster, formerly known as Brenda K. Olden. 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 parties served by publication, with respect to their present or last known places of residence and/or mailing addresses.

The Court accordingly approves and confirms that 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 Defendants served by publication.

It appears that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on April 4, 1986, disclaiming any right, title, or interest in the subject real property; and that the Defendants, Terry Foster, Brenda K. Foster, formerly known as Brenda K. Olden, and City Finance Company of Oklahoma, Inc., have failed to answer and their default has 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-four (24), Block One (1),  
SCOTTSDALE ADDITION, An Addition in Tulsa  
County, State of Oklahoma, according to the  
recorded Plat thereof.

The Court further finds that on November 1, 1982, Terry Foster and Brenda K. Olden executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, their mortgage note in the amount of \$37,000.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half percent (12.5%) per annum.

The Court further finds that as security for the payment of the above-described note, Terry Foster and Brenda K. Olden executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, a mortgage dated November 1, 1982, covering the above-described property. Said mortgage was recorded on November 4, 1982, in Book 4648, Page 674, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Terry Foster and Brenda K. Foster, formerly known as Brenda K. Olden, 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, Terry Foster and Brenda K. Foster, formerly known as Brenda K. Olden, are indebted to the Plaintiff in the principal sum of \$37,052.55 as of March 1, 1985, plus interest thereafter accruing at the rate of twelve and one-half percent (12.5%) per annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, City Finance Company of Oklahoma, Inc., is in default and has no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Terry Foster and Brenda K. Foster, formerly known as Brenda K. Olden, in the principal sum of \$37,052.55 as of March 1, 1985, plus interest thereafter accruing at the rate of twelve and one-half percent (12.5%) per annum until judgment, plus interest thereafter at the current legal rate of 5.75 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, City Finance Company of Oklahoma, Inc. has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Terry Foster and Brenda K. Foster, formerly known as Brenda K. Olden, 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.

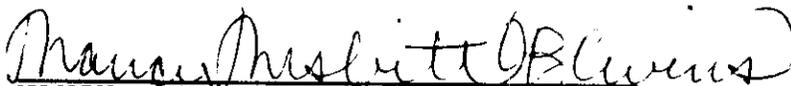
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS  
United States Attorney

  
NANCY NESBITT BLEVINS  
Assistant United States Attorney

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

FILED

OCT 28 1986

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

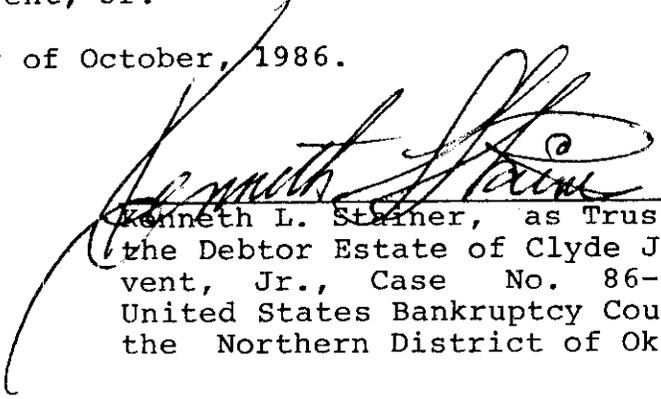
CENTURY BANK,	)
	)
Plaintiff,	)
	)
vs.	)
	)
WILLIAM D. MCKENZIE,	)
	)
Defendant and Third	)
Party Plaintiff,	)
	)
vs.	)
	)
CLYDE J. DUNAVENT, JR.,	)
ET AL.,	)
	)
Third Party	)
Defendants.	)

Case No. 85-C-66-E

NOTICE OF DISMISSAL OF CROSS-COMPLAINT WITHOUT PREJUDICE

COMES NOW Kenneth L. Stainer, as Trustee of the Debtor Estate of Clyde J. Dunavent, Jr., United States Bankruptcy Court for the Northern District of Oklahoma, Case No. 86-01134, and dismisses without prejudice the Cross-Claim filed in this matter by Clyde J. Dunavent, Jr.

Dated this 27th day of October, 1986.



Kenneth L. Stainer, as Trustee of  
the Debtor Estate of Clyde J. Dunavent, Jr., Case No. 86-01134,  
United States Bankruptcy Court for  
the Northern District of Oklahoma

CERTIFICATE OF MAILING

I, Kenneth L. Stainer, Trustee of the Debtor Estate of Clyde Jenkins Dunavent, Jr., do hereby certify on this 27th day of October, 1986, I mailed a true and exact copy of the above and foregoing Notice of Dismissal of Cross-Complaint Without Prejudice to the following persons, with proper and sufficient postage thereon, fully prepaid.

Robert S. Payne  
Richard D. Forshee  
P. O. Box 1907  
Oklahoma City, OK 73101

Ronald S. Grant  
Oneok Plaza  
100 West Fifth Street  
Tulsa, Oklahoma 74103

Jack R. Straight  
8336 E. 73rd St. South  
Suite 100  
Tulsa, Oklahoma 74133

Brian J. Rayment  
515 South Main  
Tulsa, Oklahoma 74103

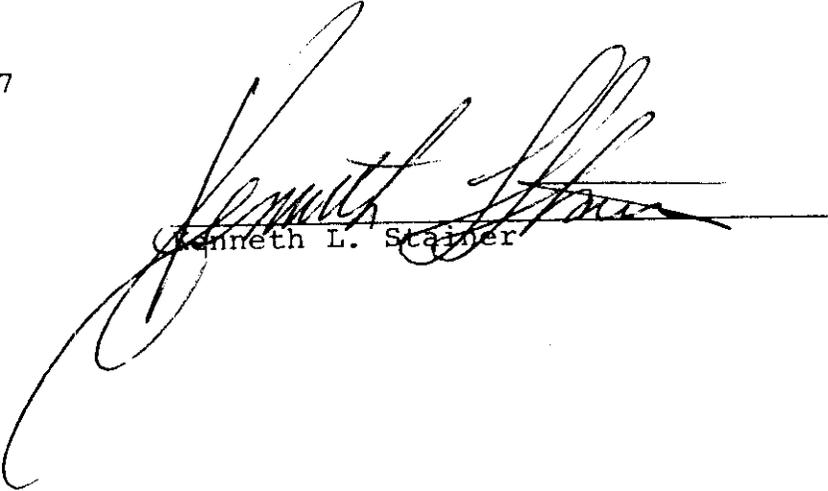
Clyde J. Butler  
5525 W. Skelly Drive  
Tulsa, Oklahoma 74107

Mark K. Blongewicz  
4100 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, Oklahoma 74172

Rick Ford  
Gayle L. Barrett  
1800 Mid-America Tower  
Oklahoma City, OK 73102

Richard T. Garren  
244 E. 21st Street  
Tulsa, Oklahoma 74152

Joe & Merli Fermo  
1145 S. Utica, Suite 460  
Tulsa, Oklahoma 74127

  
Kenneth L. Stainer

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

FILED

OCT 27 1986

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

RONALD D. MAIN, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BRUMBAUGH & FULTON MORTGAGE )  
 COMPANY, formerly Mager )  
 Mortgage Company, an )  
 Oklahoma corporation; and )  
 WILLIAM M. BRUMBAUGH, )  
 )  
 Defendants. )

No. 86-C-938-C

ORDER OF DISMISSAL

NOW on this 27 day of October, 1986, there comes on for consideration the Joint Stipulation of Dismissal in the above referenced action, and for good cause shown,

IT IS HEREBY ORDERED that this matter be dismissed with prejudice pursuant to the Joint Stipulation of Dismissal filed herein on the 24 day of October, 1986.

SUCH IS THE ORDER OF THE COURT.

s/H. DALE COOK

United States District Judge

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 27 1986

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DONALD WAYNE HAYNIE; PATSY R. )  
 HAYNIE; COUNTY TREASURER, )  
 Creek County, Oklahoma; and )  
 BOARD OF COUNTY COMMISSIONERS, )  
 Creek County, Oklahoma, )  
 )  
 Defendants. )

CIVIL ACTION NO. 86-C-512-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 24 day  
of Oct, 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, Donald Wayne Haynie, Patsy R. Haynie, County  
Treasurer, Creek County, Oklahoma, and Board of County  
Commissioners, Creek County, Oklahoma, appear not, but make  
default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, County Treasurer, Creek  
County, Oklahoma, acknowledged receipt of Summons and Complaint  
on May 27, 1986; that Defendant, Board of County Commissioners,  
Creek County, Oklahoma, acknowledged receipt of Summons and  
Complaint on July 14, 1986.

The Court further finds that the Defendants, Donald  
Wayne Haynie and Patsy R. Haynie, were served by publishing

notice of this action in the Sapulpa Legal News, a newspaper of general circulation in Creek County, Oklahoma, once a week for six consecutive weeks beginning August 14, 1986, and continuing to September 18, 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 Defendants, Donald Wayne Haynie and Patsy R. Haynie, service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter with respect to the last known addresses of the Defendants, Donald Wayne Haynie and Patsy R. Haynie. 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 Phil Pinnell, Assistant United States Attorney, have fully exercised due diligence in ascertaining the true names and identities of the parties served by publication, with respect to their present or last known places of residence and/or mailing addresses.

The Court accordingly approves and confirms that 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 Defendants served by publication.

It appears that the Defendants, Donald Wayne Haynie, Patsy R. Haynie, County Treasurer, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, have failed to answer and their default has therefore been entered by the Clerk of this Court October 23, 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 Creek County, Oklahoma, within the Northern Judicial District of Oklahoma:

The South Half (S/2) of Lot Six (6), Block Thirty-seven (37), in the ORIGINAL TOWN OF MOUNDS, Creek County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on March 26, 1982, the Defendants, Donald Wayne Haynie and Patsy R. Haynie, 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 \$29,000.00, payable in monthly installments, with interest thereon at the rate of 15.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Donald Wayne Haynie and Patsy R. Haynie, executed and delivered to the United States of America, acting on behalf of the Administrator of

Veterans Affairs, a mortgage dated March 26, 1982, covering the above-described property. Said mortgage was recorded on March 30, 1982, in Book 175, Page 2139, in the records of Creek County, Oklahoma.

The Court further finds that the Defendants, Donald Wayne Haynie and Patsy R. Haynie, 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, Donald Wayne Haynie and Patsy R. Haynie, are indebted to the Plaintiff in the sum of \$29,945.68, plus interest at the rate of 15.5 percent per annum from December 1, 1984 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 and Board of County Commissioners, Creek County, Oklahoma, are in default and have 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, Donald Wayne Haynie and Patsy R. Haynie, in the sum of \$29,945.68, plus interest at the rate of 15.5 percent per annum from December 1, 1984 until judgment, plus interest thereafter at the current legal rate of 5.75 percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners,

Creek 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, Donald Wayne Haynie and Patsy R. Haynie, 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.

15/ H. Dale Cook  
UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS  
United States Attorney

---

PHIL PINNELL  
Assistant United States Attorney

FILED

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

OCT 27 1986

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

JERRY RICHARDSON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ROCKWELL INTERNATIONAL, )  
 a corporation, )  
 )  
 Defendant. )

Case No. 81-C-110-C

JUDGMENT

On the 16th day of October, 1986, the above-described cause came on for nonjury trial before the Court. After hearing the testimony of witnesses, reviewing the exhibits admitted into evidence and hearing the argument of the parties, the Court announced its Findings of Fact and Conclusions of Law in open Court. Based upon the Court's Findings of Fact and Conclusions of Law, the Court finds that judgment should be entered in favor of the Defendant, Rockwell International, together with its costs and against the Plaintiff, Jerry Richardson.

IT IS THEREFORE ORDERED that Judgment be, and hereby is, entered in favor of the Defendant, Rockwell International, together with its costs and against the Plaintiff, Jerry A. Richardson.

DATED this 27 day of oct, 1986.

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

*Entered*

J74-951/MAC  
10/21/86/ljr

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

OCT 27 1986

CHARLES & CHARLES INSURANCE )  
AGENCY INCORPORATED, an )  
Oklahoma corporation, and )  
WILLIAM BRUCE CHARLES, )  
an individual, )

Plaintiffs, )

vs. )

Case No. 86-C-124-B

AETNA LIFE INSURANCE COMPANY, )  
a Connecticut corporation, )  
AETNA LIFE AND CASUALTY )  
COMPANY, a Connecticut )  
corporation, and )  
AETNA LIFE INSURANCE AND )  
ANNUITY COMPANY, a )  
Connecticut corporation, )

Defendants. )

JOINT STIPULATION OF ALL PARTIES  
FOR DISMISSAL WITHOUT PREJUDICE

It is hereby stipulated by the Plaintiffs, Charles & Charles Insurance Agency Incorporated and William Bruce Charles and the Defendants, Aetna Life Insurance Company, Aetna Life and Casualty Company and Aetna Life Insurance and Annuity Company that the Plaintiffs' claims and the Defendants' Counterclaim be dismissed without prejudice pursuant to the Federal Rules of Civil Procedure, Rule 41(a)(1).

WHEREFORE, in accordance with clause (ii) of said Rule, this action is hereby dismissed without prejudice.

Dated this 24<sup>th</sup> day of October, 1986.

PRAY, WALKER, JACKMAN,  
WILLIAMSON & MARLAR

By:

*James F. Bullock*

JAMES F. BULLOCK, OBA #1304  
Oneok Plaza, 9th Floor  
Tulsa, Oklahoma 74103  
(918) 584-4136

Attorneys for Plaintiffs

FELLERS, SNIDER, BLANKENSHIP,  
BAILEY & TIPPENS

By:

*K. Nicholas Wilson*

K. NICHOLAS WILSON  
2400 First National Center  
Oklahoma City, Oklahoma 73102  
(405) 232-0621

Attorneys for Defendants

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

FILED

OCT 27 1986

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

WILLIE J. SCOTT,

Plaintiff,

vs.

MARGARET M. HECKLER, Secretary  
of Health and Human Services,

Defendant.

No. 85-C-288-BT

J U D G M E N T

In accordance with the Court's order entered October 24, 1986, Judgment affirming the decision of defendant Margaret M. Heckler, Secretary of Health and Human Services of the United States of America, is hereby entered.

DATED this 27<sup>th</sup> day of October, 1986.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

FILED

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

OCT 27 1986 *jm*

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

C. WILLIAM SIMCOE, M.D.

Plaintiff,

v.

CILCO, INC. and  
JAMES R. COOK, M.D.

Defendants.

§  
§  
§  
§  
§  
§  
§  
§  
§

Civil Action No.  
85-C-277 C ✓

STIPULATED JUDGMENT BY CONSENT

The parties, while not admitting any of the allegations of the complaint, answer and counterclaims except as to jurisdiction, which they concede for the purpose of entering this Judgment only, hereby consent to the entry of Final Judgment as set forth below.

Upon consideration of the proceedings heretofore conducted in this case and the Settlement Agreement executed between the parties dated October 22, 1986, the Court this 27 day of oct, 1986, has hereby

ORDERED, ADJUDGED and DECREED that:

1. The Settlement Agreement executed by the parties dated October 22, 1986, of which is made part hereof (but is not attached because certain provisions are to be maintained in confidence), is ratified by the Court and incorporated in this Judgment.

2. The parties shall abide by and carry out their respective obligations and duties under said Settlement Agreement in every respect.

3. In the event of a breach of this Judgment or said Settlement Agreement in any respect, the parties shall have the right to apply to this Court and this Court shall award appropriate relief in light of the facts and circumstances pertaining to any such breach.

4. This action, including all claims made by Plaintiff and counterclaims by Defendants, is dismissed with prejudice, and the parties shall not re-litigate any claim or contention that was or could have been included in this action.

5. Each party shall bear its own attorneys fees and costs.

6. Neither this Judgment nor the Settlement Agreement nor anything contained herein or therein shall constitute evidence or an admission or adjudication with respect to any allegation of the complaint, answer or counterclaims or any fact or conclusion of law with respect to any matter alleged in or rising out of the pleadings, or of any wrongdoing or misconduct or liability on the part of any of the parties, or any director, officer or affiliated person thereof.

*Oliver S. Howard*

Oliver S. Howard  
Gable & Gotwals  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-9201

ATTORNEY FOR PLAINTIFF

*Robert A. Briggs for #10215*

Jim Gassaway  
Houston & Klein, Inc.  
3200 University Tower  
1722 South Carson  
Tulsa, Oklahoma 74101  
(918) 583-2131

ATTORNEY FOR DEFENDANTS

Dated oct. 27, 1986.

*W. Dale Cook*  
United States District Judge



filed an application for a warrant to enter premises on July 9, 1985. On July 16, 1985, this Court issued the warrant. On July 19, 1985, the warrant was executed by Officer Bowen, who seized all business assets of the Plaintiff. All cash collected was applied to the delinquent taxes. On July 26, 1985, Plaintiff paid the balance of the taxes owed and filed an application for release of levy. Releases were mailed to all parties who received notice of levy.

On July 23, 1985, Plaintiff filed a motion for temporary restraining order without notice, which was denied by the Court. On the same day, Plaintiff also filed this suit for injunctive relief. In this suit, Plaintiff claims that Plaintiff has overpaid on levies and that no money is due and owing, that the seizure of Plaintiff's business is unlawful and that Plaintiff's business should be released from seizure.

Based on Defendants' actions, Plaintiff sought a permanent injunction restraining Defendants from taking further action pending final disposition of this action (essentially a temporary injunction) and costs expended.

Plaintiff also alleges a libel claim premised upon the posting of notices of seizure at Plaintiff's business and urges the statements made therein were false and made with malice and intent to cause injury. Plaintiff requests general damages, lost earnings, medical expenses and punitive damages of \$1,000,000.00. Plaintiff also asserts a claim for intentional infliction of emotional distress due to the mental anguish and humiliation suffered. He requests the same damages as urged

under the libel claim.

Defendants filed their answer on September 20, 1985 raising the defense of subject matter jurisdiction to the Plaintiff's claim for a refund. Defendant correctly asserts that 28 U.S.C. §1246 governs suits for refund claims against the United States. However, a careful reading of the complaint reveals no claim for refund, but a claim for injunctive relief and damages.

Defendants assert that the Anti-Injunction Act, 26 U.S.C. §7421 bars the claim for injunctive relief. This section bars suits in any court for the purpose of restraining the assessment or collection of any tax, except as otherwise provided. The purpose of the Act is to protect the government's need to assess and collect taxes as expeditiously as possible with a minimum of pre-enforcement individual interference and to require that legal rights to disputed funds be determined in suits for refund. Bob Jones University v. Simon, 416 U.S. 725, 94 S.Ct. 2038 (1974), on Tax Court Suit; National Ass'n of Mfrs. v. Blumenthal, 466 F.Supp. 905 (D.C. Dist. 1979). A collateral purpose is protection of tax collectors from litigation pending suits for refund. Bob Jones. The Act has been applied to bar suits seeking an injunction compelling removal of federal tax lien, Hudson v. Crenshaw, 224 F.2d 324 (4th Cir. 1955), and to suits seeking replevin of property seized for failure to pay tax assessment. Starr v. Salemi, 329 F.Supp. 332 (E.D. Va. 1978). In Application of J. W. Schonfeld, Ltd., 460 F.Supp. 332 (E.D. Va. 1978), the court held that the Act did not apply to suits seeking the return of property illegally seized under the Fourth

Amendment. In the present suit, Plaintiff asserts no constitutional basis for illegal seizure, but merely asserts the Defendants exceeded their statutory authority.

A number of statutory and judicial exceptions exist for the Act. Section 7426(b)(1) allows injunctions against levy upon showing of irreparable harm, but only for persons who claim interest in property other than the one against whom the tax is assessed. 26 U.S.C. §7426(b)(1). In Enochs v. Williams Packing Co., 360 U.S. 1 (1962) the court allowed an exception upon a showing that the government cannot prevail on the merits, and a showing of special circumstance with no adequate remedy at law. Because the Plaintiff can file a claim for refund, an adequate remedy at law exists. Brunswasser v. Jacob, 453 F.Supp. 567 (W.D. Pa. 1978).

In addition, Defendants have filed a release of levy pursuant to the code. Plaintiff's business has been released. Any injunction seeking return of that property is moot. The Court concludes any injunction, temporary or permanent, seeking restraint on Defendants from taking further action, is barred by the Act, 26 U.S.C. §7421, because this is precisely the type of suit that the Act was designed to forestall. Bob Jones.

Defendants assert that the damage claims are barred by sovereign immunity and qualified immunity. The Federal Tort Claims Act bars claims arising from the assessment or collection of any claims or customs duties. 26 U.S.C. §2680(c). This section has been applied to encompass communications to third parties regarding tax liabilities, Heritage Hills Fellowship v.

Plouff, 555 F.Supp. 1290 (E.D. Mich. 1983), and to claims that harrassment caused health damage. Kopuneck v. Director of Internal Revenue, 528 F.Supp. 134 (S.D.N.Y. 1981). The asserted acts here occurred during the assessment and collection of taxes. The alleged libel arose from the statutory seizure and posting of notice of seizure. The alleged infliction of emotional distress arose through statutory attempts to collect taxes. The claims are therefore barred by the Tort Claims Act.

In Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971) the court recognized a limited exception to the Tort Claims Act for certain torts implied by the constitution. In Seibert v. Baptist, 594 F.2d 423 (5th Cir. 1979) the court refused to apply Bivens to a claim arising from the collection of federal taxes. The court held that the constitutional privileges asserted must create special rights for the plaintiff, that congressional activity in the field must show intent to allow a remedy, and whether a federal common law cause of action would be consistent with the constitutional right asserted. As no constitutional rights have been asserted in these damage claims, Bivens has no application.

Any claims against Defendants Bowen and the Internal Revenue Service are likewise barred. Federal employees are immune from monetary liability for common law torts resulting from acts "within the outer primeter of [their] line of duty." Blinder, Robinson & Co. v. U.S. S.E.C., 748 F.2d 1415 (10th Cir. 1984). Although federal employees have only qualified immunity for constitutional torts, Harlow v. Fitzgerald, 457 U.S. 800 (1982),

none are herein alleged. Actions against the IRS or its employees are considered suits against the United States for the purposes of the Tort Claims Act. Young v. IRS, 596 F.Supp. 141 (N.D. Ind. 1984), see Morris v. United States, 521 F.2d 872 (9th Cir. 1975).

Because Plaintiff has failed to respond to this motion, he must rest upon the allegations asserted in his pleadings. Rule 56(e) F.R.C.P. requires summary judgment be entered where appropriate when this occurs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants' motion to dismiss or for summary judgment is granted. It is further ordered that Defendant United States of America's objection to "Motion for Pro Hac Vice Appearance" is stricken as moot.

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

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

JOSE LUIS VASQUEZ TORRES and )  
JOSE D. TORRES, )  
 )  
 ) Plaintiffs, )  
 )  
 )  
v. )  
 )  
 )  
ERNEST M. FLEISHER, an individual, )  
J. L. PATTERSON, an individual, )  
LAWRENCE GOLDSTEIN, an individual, )  
FREIGHT SAVERS, INC., a Missouri )  
corporation, BEST-WAY TRUCKING, )  
INC., FSI-BESTWAY, INC., FSI- )  
BESTWAY, a partnership, ART BILTON, )  
an individual, and BILL CURRY, )  
 )  
 ) Defendants. )

No. 86-C-409-B ✓

**FILED**

OCT 24 1986

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

O R D E R

This matter comes before the Court on the motion of defendants Ernest M. Fleisher, J. L. Patterson, Lawrence Goldstein, Freight Savers, Inc., Best-Way Trucking, Inc., FSI-Bestway, Inc., and FSI-Bestway, a partnership, to dismiss pursuant to Fed.R.Civ.P. 12(b)(1), 12(b)(2), 12(b)(3) and 12(b)(6). The Court has reviewed the briefs of the parties and the relevant case law and finds that venue is improper and therefore the case should be dismissed under Rule 12(b)(3). Dismissal of the case on Rule 12(b)(3) grounds makes discussion of the other Rule 12 challenges unnecessary.

The contract clause limits the venue of any disputes arising from the parties' contract to Clay County, Missouri. The plaintiffs argue extensively in their objection to the motion to dismiss the issue of proper jurisdiction in this forum. However,

the plaintiff does not mention the fact that the contract contained a clause which limited venue to the State of Missouri. Courts in recent years have upheld such contract provisions if, upon consideration of the facts of each case, they are ascertained to be reasonable. See, M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972), and Pelleport Investors, Inc. v. Budco Quality Theatres, Inc., 569 F.Supp. 612 (D.C.Cal. 1983), aff'd, 741 F.2d 273 (9th Cir. 1983). Although the Bremen case, supra, involved a district court sitting in admiralty and involved issues affecting international trade, the case has not been narrowly construed. In fact, numerous courts have relied on Bremen to uphold forum selection clauses. See, Bense v. Interstate Battery System of America, Inc., 683 F.2d 718, 721 (2d Cir. 1982); In re Fireman's Fund Insurance Cos., 588 F.2d 93, 95 (5th Cir. 1979).

Determining the reasonableness of a forum selection clause depends on the circumstances of each case. As a guide, the court in D'Antuono v. CCH Computax Systems, Inc., 570 F.Supp. 708 (D.R.I. 1983), identified nine factors that courts have looked at in applying the reasonable standards announced by the Supreme Court.

These factors are instructive when applied to the venue selection clause contained in the subject contract:

1. The identity of the law which governs the construction of the contract.
2. The place of execution of the contract(s).
3. The place where the transactions have been or are to be performed.

4. The availability of remedies in the designated forum.
5. The public policy of the initial forum state.
6. The location of the parties, the convenience of prospective witnesses, and the accessibility of evidence.
7. The relative bargaining power of the parties and the circumstances surrounding their dealings.
8. The presence or absence of fraud, undue influence or other extenuating circumstances.
9. The conduct of the parties.

Application of the first five factors to this case show that Missouri law would govern the construction of the contract. The plaintiff does not argue that Missouri law on contract interpretation differs from Oklahoma or would cause any prejudice. Clearly, the contract was executed in Missouri. The transactions were to be performed throughout the country as the plaintiff hauled freight from various points.

It has not been shown that the plaintiff cannot take advantage of remedies afforded by Missouri law. The public policy of Oklahoma would undoubtedly desire to protect the plaintiff as one of its residents. The convenience factor weighs heavily in favor of the defendants who all are residents of the State of Missouri. It would appear to be more convenient for the numerous defendants to engage in discovery and case preparation in a Missouri forum. The inconvenience to the plaintiff does not outweigh the difficulties the defendants face defending the case in Oklahoma.

Some courts have found that a plaintiff by consenting to the inclusion of a forum selection clause, in effect subordinates his convenience to the bargain. Central Contracting Co. v. Maryland Casualty Co., 367 F.2d 341, 344 (3d Cir. 1966); Kline v. Kawai America Corp., 498 F.Supp. 868 (D.Minn. 1989).

The last three factors add little to the equation as no overreaching, superior bargaining power or improper conduct by the parties has been shown.

In addition to the nine factors, the court also stated:

"While each of these factors has some degree of relevance and some claim to weight, there are no hard-and-fast rules, no precise formulae. The totality of the circumstances, measured in the interest of justice, will--and should--ultimately control. In the end, the party seeking to avoid the strictures of the forum selection clause must convince the court of the reality of 'a set of qualitative factual circumstances warranting denial of enforcement.'"

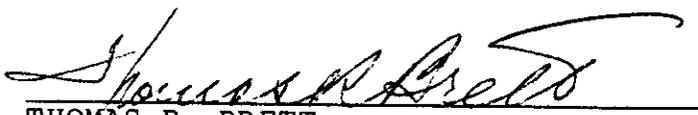
D'Antuono, 570 F.Supp. at 712.

The forum selection clause in the contract between Jose D. Torres and the defendants clearly meets the reasonable test laid down by the numerous cases that have allowed such a clause. The agreement between the parties was entered into in Jackson County, Missouri and Missouri is the place of business of the numerous defendants named by the plaintiffs in this case. Plaintiffs argue as Spanish-speaking plaintiffs that litigation in Missouri creates more of a hardship than would this Oklahoma litigation. Plaintiffs' reasoning on the language barrier is without citation and strained. Plaintiffs have failed to satisfy their burden of proof by showing that enforcement of the contract clause would

cause undue hardship or is an unreasonable burden on the plaintiffs' ability to bring this case.

The court recognizes the general rule that a plaintiff is entitled to select the forum of his choice, E.g., Texas Eastern Transmission Corp. v. Marine Office-Appleton & Cox Corp., 579 F.2d 561, 567 (10th Cir. 1978). The plaintiff here, however, has entered into a contractual obligation expressly providing for venue in the event of litigation. Under the facts of this case the court finds nothing unreasonable about the selection of the Clay County, Missouri forum and therefore orders that the motion to dismiss be granted as to all defendants.

IT IS SO ORDERED this 24<sup>th</sup> day of October, 1986.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

FILED

OCT 24 1986

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

BILL G. BROWN,  
Plaintiff,

v.

Case No. 85-C-161-E

SECURITY PROPERTIES - '79 II, a  
Washington general partnership,  
SECURITY PROPERTIES - '79, a  
Washington general partnership,  
SECURITIES PROPERTIES, INC., a  
Washington corporation,  
FIRST COLUMBIA MANAGEMENT, INC.,  
a Washington corporation, and  
UNKNOWN parties in control of  
the foregoing,  
Defendants.

(Consolidated)

SEVILLE MANAGEMENT CORPORATION,  
an Oklahoma corporation,  
Plaintiff,

v.

Case No. 85-C-162-E

SECURITY PROPERTIES - '79 II, a  
Washington general partnership,  
SECURITY PROPERTIES - '79, a  
Washington general partnership,  
SECURITIES PROPERTIES, INC., a  
Washington corporation,  
FIRST COLUMBIA MANAGEMENT, INC.,  
a Washington corporation, and  
UNKNOWN parties in control of  
the foregoing,  
Defendants.

STIPULATION OF  
DISMISSAL WITH PREJUDICE

COME NOW, Seville Management Corporation and Bill G. Brown, Plaintiffs in this action, Security Properties-'79 ("SP-'79"), Defendant and Counterclaimant in this action, and Security Properties-'79 II, Security Properties, Inc. and First Columbia Management, Inc., Defendants in this action, and, being all parties who have appeared and claim an interest in the matters pertaining to this action, hereby stipulate as follows:

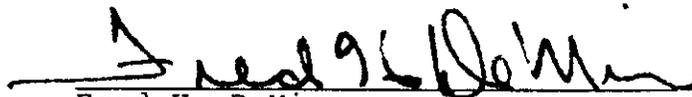
1. This action and all the claims asserted by Plaintiffs against Defendants in Plaintiffs' Petition filed herein are hereby dismissed with prejudice by Plaintiffs.

2. This action and all the claims asserted by Defendants against Plaintiffs in the Counterclaim filed herein are hereby dismissed with prejudice by Defendants.

3. No matters remain before this Court for adjudication in this action.

4. Each party shall bear its own costs in this action.

DATED this 24th day of October, 1986.



Fred H. DeMier  
Morrel & West, Inc.  
Suite 800  
Keplinger Energy Plaza  
1717 South Boulder  
Tulsa, Oklahoma 74119

Attorney for Plaintiffs  
Seville Management Corporation  
and Bill G. Brown

*James E. Carrington*  
Craig W. Hoster  
James E. Carrington  
Baker, Hoster, McSpadden,  
Clark & Rasure  
800 Kennedy Building  
Tulsa, Oklahoma 74103  
(918) 592-5555

Attorneys for Defendants  
Security Properties-'79,  
Security Properties-'79 II,  
Security Properties, Inc., and  
First Columbia Management, Inc.

FILED

OCT 24 1986

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA  
JOHN C. SILVER, CLERK  
U.S. DISTRICT COURT

BILL G. BROWN,  
Plaintiff,

v.

SECURITY PROPERTIES - '79 II, a  
Washington general partnership,  
SECURITY PROPERTIES - '79, a  
Washington general partnership,  
SECURITIES PROPERTIES, INC., a  
Washington corporation,  
FIRST COLUMBIA MANAGEMENT, INC.,  
a Washington corporation, and  
UNKNOWN parties in control of  
the foregoing,  
Defendants.

Case No. 85-C-161-E

(Consolidated)

SEVILLE MANAGEMENT CORPORATION,  
an Oklahoma corporation,  
Plaintiff,

v.

SECURITY PROPERTIES - '79 II, a  
Washington general partnership,  
SECURITY PROPERTIES - '79, a  
Washington general partnership,  
SECURITIES PROPERTIES, INC., a  
Washington corporation,  
FIRST COLUMBIA MANAGEMENT, INC.,  
a Washington corporation, and  
UNKNOWN parties in control of  
the foregoing,  
Defendants.

Case No. 85-C-162-E

STIPULATION OF  
DISMISSAL WITH PREJUDICE

COME NOW, Seville Management Corporation and Bill G. Brown, Plaintiffs in this action, Security Properties-'79 ("SP-'79"), Defendant and Counterclaimant in this action, and Security Properties-'79 II, Security Properties, Inc. and First Columbia Management, Inc., Defendants in this action, and, being all parties who have appeared and claim an interest in the matters pertaining to this action, hereby stipulate as follows:

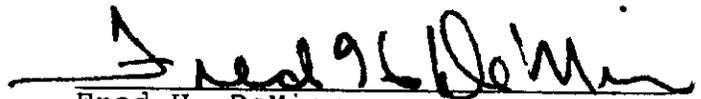
1. This action and all the claims asserted by Plaintiffs against Defendants in Plaintiffs' Petition filed herein are hereby dismissed with prejudice by Plaintiffs.

2. This action and all the claims asserted by Defendants against Plaintiffs in the Counterclaim filed herein are hereby dismissed with prejudice by Defendants.

3. No matters remain before this Court for adjudication in this action.

4. Each party shall bear its own costs in this action.

DATED this 24th day of October, 1986.



Fred H. DeMier  
Morrel & West, Inc.  
Suite 800  
Keplinger Energy Plaza  
1717 South Boulder  
Tulsa, Oklahoma 74119

Attorney for Plaintiffs  
Seville Management Corporation  
and Bill G. Brown

James E. Carrington  
Craig W. Hoster  
James E. Carrington  
Baker, Hoster, McSpadden,  
Clark & Rasure  
800 Kennedy Building  
Tulsa, Oklahoma 74103  
(918) 592-5555

Attorneys for Defendants  
Security Properties-'79,  
Security Properties-'79 II,  
Security Properties, Inc., and  
First Columbia Management, Inc.

Entered

~~ORIGINAL~~

FILED

OCT 24 1986

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

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

IN THE MATTER OF BULLDOGGER  
HOUSING ASSOCIATION, an  
Oklahoma limited partnership,

BILL G. BROWN,

Plaintiff,

v.

SECURITY PROPERTIES - '79, a  
Washington general partnership,

Defendant.

Case No. 85-C-105-B

(Consolidated)

IN THE MATTER OF IRONMAN  
HOUSING ASSOCIATION, an  
Oklahoma limited partnership,

BILL G. BROWN,

Plaintiff,

v.

SECURITY PROPERTIES - '79, a  
Washington general partnership,

Defendant.

Case No. 85-C-106-B

STIPULATION OF  
DISMISSAL WITH PREJUDICE

COME NOW, Bill G. Brown, Plaintiff in this action, and  
Security Properties-'79, Defendant and Counterclaimant in this  
action, and, being all parties who have appeared and claim an  
interest in the matters pertaining to this action, hereby  
stipulate as follows:

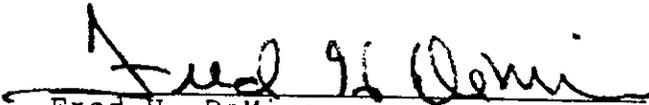
1. This action and all the claims asserted by Plaintiff against Defendant in Plaintiff's Amendments to Petition filed herein are hereby dismissed with prejudice by Plaintiff.

2. This action and all the claims asserted by Defendant against Plaintiff in Defendant's Counterclaim filed herein are hereby dismissed with prejudice by Defendant.

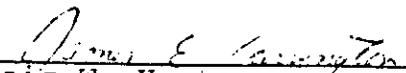
3. No matters remain before this Court for adjudication in this action.

4. Each party shall bear his or its own costs in this action.

DATED this 24<sup>th</sup> day of October, 1986.

  
Fred H. DeMier  
Morrel & West, Inc.  
Suite 800  
Keplinger Energy Plaza  
1717 South Boulder  
Tulsa, Oklahoma 74119

Attorney for Plaintiff  
Bill G. Brown

  
Craig W. Hoster  
James E. Carrington  
Baker, Hoster, McSpadden,  
Clark & Rasure  
800 Kennedy Building  
Tulsa, Oklahoma 74103  
(918) 592-5555

Attorneys for Defendant  
Security Properties-'79

*Order*

FILED

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

OCT 24 1986

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

EVELYN GARDNER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 86-C-331-B
	)	
LANDMARK BUILDING	)	
MAINTENANCE, INC.,	)	
	)	
Defendant.	)	

*of*  
STIPULATION FOR DISMISSAL

It is hereby stipulated by all parties appearing in this action that the above titled action be dismissed with prejudice and that each party pay their own costs and attorney's fees.

DATED this 23<sup>rd</sup> day of October, 1986.

By: *J. Anthony Miller*  
J. Anthony Miller, OBA #10404  
J. RICHARD STUDENNY & ASSOC.  
1924 S. Utica, Suite 1200  
Tulsa, Oklahoma 74104

ATTORNEY FOR PLAINTIFF

*John K. Harlan, Jr.*  
John K. Harlan, Jr.  
2622 E. 21st Street, Suite 11  
Tulsa, Oklahoma 74114

ATTORNEY FOR DEFENDANT

JKS/sc

*Entered*

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

SUSAN COSTELLO, individually, )  
and as surviving spouse of )  
Dr. Kenneth Costello, and as )  
mother and natural guardian )  
of Peter Costello and Caitlin )  
Costello, both minors, )

Plaintiff, )

vs. )

VALLEY FORGE INSURANCE )  
COMPANY, a foreign cor- )  
poration, )

Defendant. )

NO. 86-C-182-B

FILED

OCT 2 1986

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

ORDER OF DISMISSAL WITH PREJUDICE

Now on this 24 day of October, 1986,  
this Court, having been advised that a settlement agreement has  
been reached between the parties and the Court having reviewed  
the terms and conditions of said settlement and the Stipulation  
of Dismissal entered into by and between the parties hereby  
orders this action dismissed with prejudice.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

*Entered*

FILED

OCT 24 1986

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

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

IN THE MATTER OF BULLDOGGER )  
HOUSING ASSOCIATION, an )  
Oklahoma limited partnership, )

BILL G. BROWN, )

Plaintiff, )

v. )

SECURITY PROPERTIES - '79, a )  
Washington general partnership, )

Defendant. )

Case No. 85-C-105-B

(Consolidated)

IN THE MATTER OF IRONMAN )  
HOUSING ASSOCIATION, an )  
Oklahoma limited partnership, )

BILL G. BROWN, )

Plaintiff, )

v. )

SECURITY PROPERTIES - '79, a )  
Washington general partnership, )

Defendant. )

Case No. 85-C-106-B

STIPULATION OF  
DISMISSAL WITH PREJUDICE

COME NOW, Bill G. Brown, Plaintiff in this action, and Security Properties-'79, Defendant and Counterclaimant in this action, and, being all parties who have appeared and claim an interest in the matters pertaining to this action, hereby stipulate as follows:

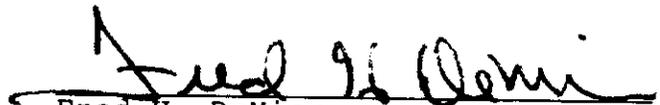
1. This action and all the claims asserted by Plaintiff against Defendant in Plaintiff's Amendments to Petition filed herein are hereby dismissed with prejudice by Plaintiff.

2. This action and all the claims asserted by Defendant against Plaintiff in Defendant's Counterclaim filed herein are hereby dismissed with prejudice by Defendant.

3. No matters remain before this Court for adjudication in this action.

4. Each party shall bear his or its own costs in this action.

DATED this 24th day of July, 1986.



Fred H. DeMier  
Morrel & West, Inc.  
Suite 800  
Keplinger Energy Plaza  
1717 South Boulder  
Tulsa, Oklahoma 74119

Attorney for Plaintiff  
Bill G. Brown



Craig W. Hoster  
James E. Carrington  
Baker, Hoster, McSpadden,  
Clark & Rasure  
800 Kennedy Building  
Tulsa, Oklahoma 74103  
(918) 592-5555

Attorneys for Defendant  
Security Properties-'79

Entered

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

DELLA KAY McCULLOCH, et al., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
ROGERS STATE COLLEGE, )  
et al., )  
 )  
Defendants. )

Case No. 81-C-868-B

F I L E D

OCT 28 1981

ORDER

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

This matter having come before this Court, after having been fully advised in the premises thereof, and after due consideration, this Court finds that for good cause shown, the Joint Stipulation of Dismissal by the Plaintiffs Betty Cagle, Mary Martin and Mary Malley and the Defendants should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Joint Stipulation of Dismissal be granted with prejudice, with each party to bear their own costs and attorneys fees.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

*Entered*

JKS/sc

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

SUSAN COSTELLO, individually, )  
and as surviving spouse of )  
Dr. Kenneth Costello, and as )  
mother and natural guardian )  
of Peter Costello and Caitlin )  
Costello, both minors, )

Plaintiff, )

vs. )

VALLEY FORGE INSURANCE )  
COMPANY, a foreign cor- )  
poration, )

Defendant. )

NO. 86-C-182-B

F I L E D  
OCT 28 1986  
Jack C. ... Clerk  
U.S. District Court

JOURNAL ENTRY OF JUDGMENT

Now on this 22nd day of October, 1986,

this cause comes on for hearing pursuant to regular setting. Plaintiff appeared by and through her attorney, Dan A. Rogers. The defendant appeared by and through its attorney, James K. Secrest, II. The parties announced that a settlement agreement had been reached between the parties as set forth in a Release and Settlement Agreement and a Parent Guardian Release and Indemnity Agreement which were reviewed by the Court.

All parties agreed to waive trial by jury and to try the case before the Court and without a jury.

Whereupon, the cause proceeded to trial and the Court being fully advised in the premises and on consideration of the testimony and evidence adduced in open court, finds:

1. That the Court approves in all respects the Release

and Settlement Agreement between the parties and the Parent Guardian Release and Indemnity Agreement.

2. That this Court has jurisdiction and venue and the action is properly brought.

3. The Court further finds that Peter Costello, a minor is to receive 10,000<sup>00</sup> for any and all claims that he might have as a result of the death of his father, Dr. Kenneth Costello, on the 8th day of July, 1985. The Court further finds that Caitlin Costello, is to receive 4,000<sup>00</sup> for any and all claims that she might have as a result of the death of her father, Dr. Kenneth Costello, on the 8th day of July, 1985. The Court further finds that said sums paid to each minor should be deposited in a trust savings account with the North Carolina National Bank, 11005 North Dale Mabry Highway, Tampa, Florida which the Court approves as a depository for said sum. Said trust fund shall be specifically held in accordance with the provisions of Title 12 Okla. Stat. Section 83 and subject to withdrawal pursuant only to order of the court until the respective child reaches the age of eighteen (18) years, all as provided by statute.

4. The Court further finds that Susan Costello, guardian ad litem is authorized to open up the trust account referenced herein.

5. A certified copy of this Journal Entry of Judgment shall be served by certified mail by the plaintiffs' attorney upon the depository hereinabove named and proof of said service shall be filed in this case.

BE IT THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is rendered herein against the defendant and each of them in the total sum of 10,000<sup>00</sup> in favor of Peter Costello, a minor and in the sum of 10,000<sup>00</sup> in favor of Caitlin Costello, a minor, to be deposited in a trust savings account as noted above for each child's loss arising out of the death of their father, Dr. Kenneth Costello.

AND IT IS SO ORDERED.

S/ THOMAS R. BRETT  

---

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

---

DAN A. ROGERS

---

JAMES K. SECREST, II

*Entered*

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

OCT 25 1981

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

DELLA KAY McCULLOCH, et al., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
ROGERS STATE COLLEGE, )  
et al., )  
 )  
Defendants. )

Case No. 81-C-868-B

ORDER

This matter having come before this Court, after having been fully advised in the premises thereof, and after due consideration, this Court finds that for good cause shown, the Joint Stipulation of Dismissal by Plaintiff Nancy Mauzy and the Defendants should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Joint Stipulation of Dismissal be granted without prejudice, with each party to bear their own costs and attorneys fees.

S/ THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

OCT 23 1996

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

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

Case No. 85-C-1101-B

CONSENT ORDER CONSTITUTING FINAL JUDGMENT

Upon consideration of the various pleadings herein and  
Compromise Settlement Agreement and Stipulation entered on the  
16th day of October, 1996 before Magistrate John Wagner of Plaintiff  
and C & J Enterprises, Peter H. S. Wood, F. L. Kellogg, Empresas  
Sanca, S.A., Dipetco, S.A., Wendy Wood, Andrew DeWeil, William  
A. Anders, C & S Properties, Texpetro, S.A., Estate of Mark  
J. Millard, Estate of A. Lightfoot Walker, Dr. Camille Abboud,  
Seymour R. Askin, Jr., George Chasanas, Nina Wood, Dr. Walter A.  
Wood, Joan R. Muss, Mary C. Phipps, Thomas C. Phipps, J. S.  
Henderson, J & N Enterprises, Jacques Leviant, Leo C. Kimmel, Julie  
C. McConnell, Renee A. Wood, Wendy L. Gurney, Robert Chuckrow,  
Dr. E. T. Presley, Howard S. Soper, Peter H. Wood, and W. E. Gurney  
to settle this litigation, in part as evidenced by their attorneys'  
respective signatures to the Stipulation annexed to this Consent  
Order, it is hereby ORDERED, ADJUDGED and DECREED:

*Robert Matthews*  
*DAC*

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

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

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

4. The Court finds that Plaintiff is in possession of and owns against all claims of said defendants oil and gas leases on land described as follows:

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

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

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

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

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

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

8. Plaintiff is granted judgment quieting title to the three above described oil and gas leases and all production from said leases from and after July 30, 1984, against the above named defendants.

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

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

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

Dated this 22nd day of October, 1986.

S/ THOMAS R. BRETT  
United States District Judge

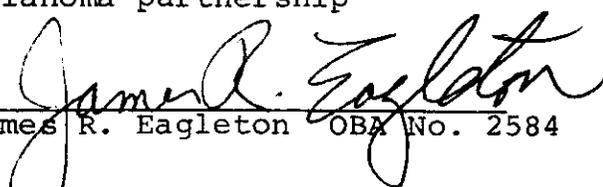
STIPULATION

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

Dated this 20 day of October, 1986.

MARMAC RESOURCES COMPANY,  
An Oklahoma partnership

By

  
James R. Eagleton OBA No. 2584

C & J ENTERPRISES  
PETER H. S. WOOD  
F. L. KELLOGG  
EMPRESAS SANCA, S.A.  
DIPETCO, S.A.  
WENDY WOOD  
ANDREW DeWEIL  
WILLIAM A. ANDERS  
C & S PROPERTIES  
TEXPETRO, S.A.  
ESTATE OF MARK J. MILLARD  
ESTATE OF A. LIGHTFOOT WALKER  
DR. CAMILLE ABBODD  
SEYMOUR R. ASKIN, JR.  
GEORGE CHASANAS  
NINA WOOD  
DR. WALTER A. WOOD  
JOAN R. MUSS  
MARY C. PHIPPS  
THOMAS C. PHIPPS  
J. S. HENDERSON  
J & N ENTERPRISES  
JACQUES LEVIANT  
LEO C. KIMMEL  
JULIE C. McCONNELL  
RENEE A. WOOD  
WENDY L. GURNEY  
ROBERT CHUCKROW  
DR. E. T. PRESLEY  
HOWARD S. SOPER  
PETER H. WOOD  
W. E. GURNEY  
Robert Matthews

By

  
David A. Carpenter OBA No.



*Entered*

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

ELLEN F. JOHNSEN, R.N., )  
 )  
 Plaintiff, )

v. )

No. 85-C-54-B

INDEPENDENT SCHOOL DISTRICT NO. 3 )  
 OF TULSA COUNTY, OKLAHOMA a/k/a )  
 BROKEN ARROW PUBLIC SCHOOLS; )  
 THEO SMITH, JIM GOODWIN, MAX )  
 BRISSEY, BOB MORRIS and D. G. )  
 ANDERSON, Individually and in )  
 their official capacities as )  
 Board Members of Independent )  
 School District No. 3; DR. C.G. )  
 OLIVER, JR., Education Director; )  
 Individually and in his official )  
 capacity as Superintendent of )  
 Independent School District No. 3; )  
 and DR. DON HALL, Education )  
 Director, Individually and )  
 in his official capacity, )

Defendants. )

FILED

OCT 22 1965

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

J U D G M E N T

In keeping with the Court's Order Sustaining Defendants' Motion for Judgment Notwithstanding the Verdict, the defendants, Independent School District No. 3 of Tulsa County, Oklahoma a/k/a Broken Arrow Public Schools, Theo Smith, Jim Goodwin, Max .Brissey, Bob Morris and D. G. Anderson, individually and in their official capacities as Board Members of Independent School District No. 3, Dr. C. G. Oliver, Jr., Education Director, individually and in his official capacity as Superintendent of Independent School District No. 3, and Dr. Don Hall, Education Director, individually and in his official capacity, and each of them, are hereby granted judgment against the plaintiff,

Ellen F. Johnsen, and costs are assessed against said plaintiff.  
The parties are to pay their own respective attorneys fees.

DATED this 22<sup>nd</sup> day of October, 1986.

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

THOMAS R. BRETT  
UNITED STATES DISTRICT COURT

*Entered*

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

SAMUEL R. KIRK and RICHARD )  
E. WELLS, )  
 )  
 PLAINTIFFS, )  
 )  
 v. )  
 )  
 GENERAL SIGNAL CORPORATION, )  
 a New York Corporation, et )  
 al., )  
 )  
 Defendants. )

No. 85-C-48-B ✓

**F I L E D**

OCT 22 1955 8

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

O R D E R

This matter comes before the Court on the Renewed and Supplemental Motion to Dismiss of the Defendants. For the reasons set forth below, the Motion is denied in part and sustained in part.

Plaintiffs have alleged various claims of state and federal securities violations, common law fraud, breach of contract, breach of fiduciary duty and wrongful interference with contractual relations. Defendants have moved to dismiss these claims on various grounds which the court will address separately below.

Defendants first contend that Plaintiffs have failed to plead their claims of fraud with the particularity required by Fed.R.Civ.P. 9(b). The court finds this contention without merit. Rule 9(b) requires particularity in pleading the "circumstances constituting fraud." Generally, this means that plaintiff must provide the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained through the misrepresentation. Wright & Miller, Federal Practice and Procedure: Civil §1297 at 403 (1969). Rule 9(b) must be read in conjunction with Rule 8 which requires "a short and plain statement of the claim" for

relief. In their Fourth Amendment to Complaint, the Plaintiffs state the alleged misrepresentations upon which their fraud claims are based, the persons who made the representations, the gist of the statements and the dates upon which the representations were made. The Plaintiffs alleges that the misrepresentations were made, inter alia, to induce them to sell their stock in Arrow Engineering, Inc., to General Signal Corporation. The Court concludes that this is sufficient to meet the requirements of Rule 9(b) and Rule 8. See, In Re Homestake Production Co. Securities Litigation, 76 F.R.D. 337 (N.D.Okla. 1975). For this reason, the Motion to Dismiss for failure to plead the circumstances of fraud with particularity is denied.

Defendants next contend that Plaintiffs have failed to state a claim for General Signal's alleged failure to provide "working capital" for Arrow Engineering. Plaintiffs have alleged that General Signal made the promise of working capital in order to induce Plaintiffs to sell their Arrow stock. Defendants contend this is insufficient to state a claim under Fed.R.Civ.P. 12(b)(6). In order to prevail on a motion to dismiss, defendants must establish that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Haines v. Kerner, 404 U.S. 519 (1972). In passing on the motion, the Court should construe the allegations in the complaint in favor of the petitioner, Scheurer v. Rhodes, 416 U.S. 232 (1974), and assume the allegations are true. Gardner v. Toilet Goods Assn., 387 U.S. 167 (1957). Applying this standard to the instant case, the Court concludes the Motion to Dismiss must be denied.

Defendants next contend that Plaintiffs' claim for interference with their contractual relationship with their attorney and accountant also fails to state a claim under Rule 12(b)(6). This contention is

also without merit. A claim for wrongful interference with business or contractual relationships is well established in the law. See, Prosser and Keeton, The Law of Torts §129 (5th ed. 1984); Restatement (Second) of Torts §766 (1979). Such a cause of action has been recognized in Oklahoma. See, Mac Adjustment, Inc. v. Property Loss Research Bureau, 595 P.2d 427 (Okla. 1979); Del State Bank v. Salmon, 548 P.2d 1024 (Okla. 1976). Plaintiffs allege that Defendants wrongfully interfered with their business relationship with Plaintiffs' attorney and accountant by influencing them to inadequately representing their clients through promises of future employment with General Signal. Plaintiffs' claim meets the requirements of Rule 8 in providing a "short and plain statement of the claim showing that the pleader is entitled to relief." For this reason, the Motion to Dismiss Plaintiffs' claims for wrongful interference with contractual relations is denied. It remains to be seen if evidence will establish a factual issue on such a claim. If not, there may be a violation of Fed.R.Civ.P. 11 by Plaintiffs' counsel.

Defendants next contend that Plaintiffs' claim for breach of good faith and fair dealing fails to state a claim upon which relief can be granted. It is now recognized that every contract contains an implied covenant that a party act in good faith by not frustrating the objective of the contract. Gruenberg v. Aetna Insurance Company, 9 Cal.3d 566, 510 P.2d 1032 (1973) (quoted by Christian v. American Home Assur. Co., 577 P.2d 899 (Okla. 1977) ("There is an implied covenant of good faith and fair dealing in every contract that neither party will do anything which will injure the right of the other to receive the

benefits of the agreement.") Less clear, however, is whether a claim for breach of this implied covenant is a breach of contract claim or a tort claim which, under proper circumstances, might entitle one to punitive damages. Under Hall v. Farmers Insurance Exchange, 713 P.2d 1027 (Ok1. 1985), a cause of action for breach of the implied covenant of good faith may arise from a party wrongfully resorting to a termination-at-will clause in an employment contract. However, such a breach amounts to breach of contract. It does not give rise to a tort cause of action for bad faith breach of contract. Burk v. K-Mart Corporation, No. 86-C-440-B, (N.D.Ok1. October 2, 1986) (Order overruling a Motion to Dismiss in part and sustaining it in part); Solberg v. Reading & Bates, No. 85-C-158-B (W.D.Ok1. Nov. 18, 1985) (Order overruling a Motion to Dismiss in part and sustaining it in part). Thus, while a cause of action for breach of contract may exist for breach of the implied covenant of good faith, fair dealing, under Hall there is no tort claim for bad faith breach. Further, while Christian, supra, recognizes a tort cause of action for breach of the implied duty to act in good faith and deal fairly, this case concerned the specific obligation of a disability insurer to its insured. This court declines to extend the tort cause of action recognized in Christian beyond the facts of that case. Therefore, Plaintiffs' claim for breach of the implied contractual covenant to deal fairly and in good faith is a cause of action for breach of contract for which punitive damages are not available under Oklahoma law. Therefore, while Defendants'

Motion to Dismiss Plaintiffs' claim for breach of this implied covenant is denied insofar as Plaintiffs are asserting a claim for breach of covenant, Plaintiffs' claim for punitive damages under this cause of action is stricken.

Defendants next contend that even if Plaintiffs' allegations are sufficient to sustain their claims herein the Complaint fails to assert any cause of action against the individual officers and directors of General Signal except as "control persons" for purposes of the securities laws. Plaintiffs have conceded that they have no intention of asserting a claim for breach of implied duty of good faith and fair dealing against the individual defendants. Thus, the Motion to Dismiss with respect to this claim is now moot. The Court further concludes that Plaintiffs have asserted claims against the individual defendants only in their capacity as "control persons" for purposes of the securities laws. The individual defendants herein are all officers or directors of Defendant General Signal. Some of Plaintiffs' claims clearly cannot be sustained against the individual defendants. For example, Plaintiffs' claim for breach of contract cannot be maintained against the individual defendants since they were not parties to the contract. Further, Plaintiffs' allegations against the individual defendants concern actions taken by these defendants only in their capacities as officers or directors of General Signal. Plaintiffs have not alleged that any of the individual defendants were acting independently of General Signal. Finally, Plaintiffs have been given four opportunities to amend their Complaint to state clearly their claims against the Defendants. From a review of the initial Complaint and the subsequent amendments, the Court concludes that Plaintiffs have not

asserted any claims against the individual defendants other than in their capacity as representatives of General Signal. Therefore, Defendants' Motion to Dismiss Plaintiffs' claims against the individual defendants for breach of contract, fraud, breach of fiduciary duty, and wrongful interference with contractual relations, is sustained. The individual defendants remain in this lawsuit as "control persons" for purposes of the state and federal securities law claims.

This case is set for Status Conference at 10 a.m. on November 4, 1986.

IT IS SO ORDERED, this 22<sup>nd</sup> day of October, 1986.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED  
OCT 22 1988  
JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

ROBERT S. MILTENBERGER, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
WALTER GRAY, )  
 )  
Defendant. )

Case No. 85-C-917-*pc*

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to the Joint Stipulation of Dismissal With Prejudice filed by all parties in the above entitled action, it is hereby,

ORDERED that the above-captioned action, including all claims and counterclaims, is hereby dismissed with prejudice, each party to bear his own costs.

s/H. DALE COOK

---

UNITED STATES DISTRICT JUDGE

*Entered*

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

SCHNEIDER NATIONAL, INC.,  
Plaintiff,  
v.  
TERRY HOUGH and TWILA JEAN  
HOUGH, and BREWSTER, SHALLCROSS  
AND RIZLEY, an Oklahoma general  
partnership,  
Defendants.

No. 86-C-487-B

**FILED**

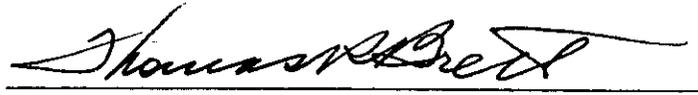
OCT 22 1986

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

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered this date, Judgment is hereby entered in favor of the defendants, Terry Hough and Twila Jean Hough, and Brewster, Shallcross and Rizley, and against the plaintiff, Schneider National, Inc.; the defendants being entitled to the Forty-Six Thousand Two Hundred Ninety-Eight and 65/100 Dollars (\$46,298.65), as follows: Defendants, Terry Hough and Twila Jean Hough, Thirty-Two Thousand Four Hundred Nine and 06/100 Dollars (\$32,409.06), and defendant, Brewster, Shallcross and Rizley, Thirteen Thousand Eight Hundred Eighty-Nine and 59/100 Dollars (\$13,889.59). Costs are assessed against the plaintiff. The parties are to pay their own respective attorneys fees.

DATED this 22<sup>nd</sup> day of October, 1986.

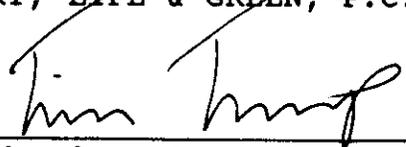
  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



WHEREFORE, the Plaintiffs notify the Court that the above-referenced matter is dismissed with prejudice.

Respectfully submitted,

COMFORT, LIPE & GREEN, P.C.

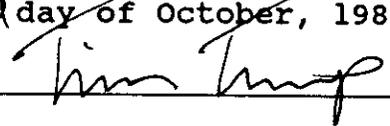
By: 

Richard E. Comfort  
Timothy T. Trump  
2100 Mid-Continent Tower  
One Williams Center  
Tulsa, Oklahoma 74103  
(918) 599-9400

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing Notice of Dismissal was mailed to Don Gasaway, 2118 E. 15th, Tulsa, Oklahoma on this 22nd day of October, 1986.



Entered

FILED

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

OCT 22 1986

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

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

Case No. 85-C-1101-B

CONSENT ORDER CONSTITUTING FINAL JUDGMENT

Upon consideration of the various pleadings herein and  
Compromise Settlement Agreement and Stipulation entered on the  
16th day of October, 1986 before Magistrate John Wagner of Plaintiff  
and C & J Enterprises, Peter H. S. Wood, F. L. Kellogg, Empresas  
Sanca, S.A., Dipetco, S.A., Wendy Wood, Andrew DeWeil, William  
A. Anders, C & S Properties, Texpetro, S.A., Estate of Mark  
J. Millard, Estate of A. Lightfoot Walker, Dr. Camille Abboud,  
Seymour R. Askin, Jr., George Chasanas, Nina Wood, Dr. Walter A.  
Wood, Joan R. Muss, Mary C. Phipps, Thomas C. Phipps, J. S.  
Henderson, J & N Enterprises, Jacques Leviant, Leo C. Kimmel, Julie  
C. McConnell, Renee A. Wood, Wendy L. Gurney, Robert Chuckrow,  
Dr. E. T. Presley, Howard S. Soper, Peter H. Wood, and W. E. Gurney  
to settle this litigation, in part as evidenced by their attorneys'  
respective signatures to the Stipulation annexed to this Consent  
Order, it is hereby ORDERED, ADJUDGED and DECREED:

Robert Matthews

Handwritten initials: JAC

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

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

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

4. The Court finds that Plaintiff is in possession of and owns against all claims of said defendants oil and gas leases on land described as follows:

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

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

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

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

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

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

8. Plaintiff is granted judgment quieting title to the three above described oil and gas leases and all production from said leases from and after July 30, 1984, against the above named defendants.

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

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

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

Dated this 21 day of October, 1986.

  
United States District Judge

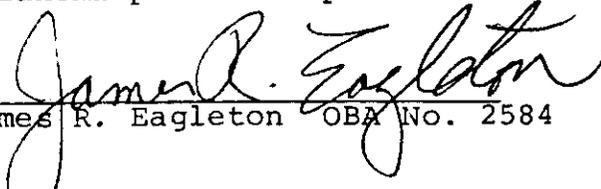
STIPULATION

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

Dated this 20 day of October, 1986.

MARMAC RESOURCES COMPANY,  
An Oklahoma partnership

By

  
James R. Eagleton OBA No. 2584

C & J ENTERPRISES  
PETER H. S. WOOD  
F. L. KELLOGG  
EMPRESAS SANCA, S.A.  
DIPETCO, S.A.  
WENDY WOOD  
ANDREW DeWEIL  
WILLIAM A. ANDERS  
C & S PROPERTIES  
TEXPETRO, S.A.  
ESTATE OF MARK J. MILLARD  
ESTATE OF A. LIGHTFOOT WALKER  
DR. CAMILLE ABOUD  
SEYMOUR R. ASKIN, JR.  
GEORGE CHASANAS  
NINA WOOD  
DR. WALTER A. WOOD  
JOAN R. MUSS  
MARY C. PHIPPS  
THOMAS C. PHIPPS  
J. S. HENDERSON  
J & N ENTERPRISES  
JACQUES LEVIANT  
LEO C. KIMMEL  
JULIE C. McCONNELL  
RENEE A. WOOD  
WENDY L. GURNEY  
ROBERT CHUCKROW  
DR. E. T. PRESLEY  
HOWARD S. SOPER  
PETER H. WOOD  
W. E. GURNEY  
Robert Matthews

By

  
David A. Carpenter OBA No.



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

FILED

OCT 22 1986

In re: ) Appeal No. 86-C-770-C  
HESTON OIL COMPANY, )  
Debtor. ) Case No. 83-00173  
) (Chapter 11)  
)

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

ORDER OF DISMISSAL

Now on this 21 day of October, 1986 upon the stipulation of Black Lightning Oil Company and Heston Oil Company that the issues raised in the above captioned appeal have been resolved, the court finds that the appeal should be dismissed.

It is therefore ordered that the above captioned appeal be dismissed.

s/H. DALE COOK

THE HONORABLE H. DALE COOK  
UNITED STATES DISTRICT COURT JUDGE

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

JAMES ALVIN MOORE, III, )  
 )  
 ) Petitioner, )  
 )  
 ) v. )  
 )  
 ) GARY MAYNARD, WARDEN, )  
 ) and MIKE TURPEN, The )  
 ) Attorney General of the )  
 ) State of Oklahoma, )  
 )  
 ) Respondents. )

FILED

86-C-583-E

OCT 22 1986

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

ORDER

Petitioner James Alvin Moore's application for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is now before the Magistrate for initial consideration. On October 7, 1981, petitioner plead guilty to the charges filed against him in Tulsa County District Court Case Nos. CRF-80-4124, 4155, 4157, 4158, 4159, and 4163, and was sentenced to the custody of the Oklahoma Department of Corrections in accordance with the sentencing agreement worked out between the State and petitioner's defense counsel.

At the time of sentencing petitioner was fully advised of his appeal rights and of the procedural requirements to perfect an appeal; however, petitioner failed to file a direct appeal of his conviction in these cases. His application for post-conviction relief was denied by the trial court. Such denial was affirmed by the Oklahoma Court of Criminal Appeals, Case No. PC-86-192. It appears that petitioner has deliberately bypassed his direct appeal. Under such circumstances federal habeas review is generally precluded. See, Fay v. Noia, 372 U.S. 391,

83 S.Ct. 822 (1963); Reed v. Ross, 83 L.Ed.2d 1 (1985). Procedural default notwithstanding, the Magistrate has examined petitioner's application and finds that for the following reasons it should be dismissed under Rule 4 of the Rules governing §2254 cases.

Moore's petition is based upon two alleged grounds: (1) petitioner's guilty plea was unknowingly and involuntarily made due to the trial court's failure to advise petitioner of his privilege against compulsory self-incrimination; and (2) the trial court erred in denying petitioner's motion for pretrial psychiatric observation.

Together with his application for §2254 relief, petitioner has submitted a transcript of his plea and sentencing in Case Nos. CRF-80-4158, 4124, 4155, 4157, 4159, and 4163. A review of the transcript reveals that Judge Jennings fairly apprised petitioner of his privilege against self-incrimination. At page 3 of the transcript the judge inquired of petitioner:

THE COURT: Do you understand that the law presumes that you are innocent of these charges until your guilt is established by evidence beyond a reasonable doubt?

MR. MOORE: Yes.

THE COURT: Do you understand that at such a trial you have a right to confront the State's witnesses and a right to cross-examine them and a right to subpoena any witnesses of of [sic] your own to testify in your behalf; you have a right to

take the stand and testify in your own defense, although you could not legally be compelled to do that?

MR. MOORE: Yes.

The Magistrate finds that petitioner was fully advised of his constitutional rights. His first ground is therefore without merit.

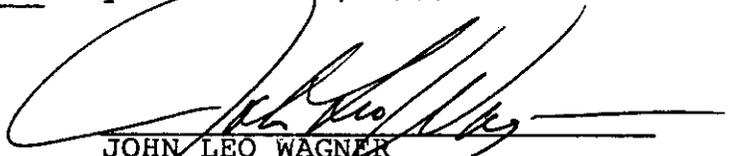
Petitioner's second ground is likewise without merit. Petitioner contends that the trial court denied his motion requesting pretrial psychiatric observation. The documentation he submits in support of this claim indicates that such a request for psychiatric observation and treatment was made in Case No. CRF-80-4156. The court in that case committed petitioner to Eastern State Hospital for observation and, following such observation, conducted a competency hearing to determine whether petitioner was competent to stand trial in Case No. CRF-80-4156. He was found competent, tried, convicted, and sentenced of the charges pending against him.

Several months later petitioner plead guilty to the numerous charges pending against him in the remaining cases. The transcript fully supports the conclusion that petitioner's plea entered October 7, 1981, was knowing and voluntary. At that time petitioner advised the court that his medical status had not changed nor had he taken any drugs since his prior competency hearing. By pleading guilty, petitioner waived all his defenses to the charges, including his insanity defense.

Rule 4 of the Rules Governing §2254 Cases provides that if it plainly appears from the face of the petition and any exhibits attached thereto that petitioner is not entitled to relief, the court shall enter an order summarily dismissing the application. The Magistrate finds that such an order is appropriate in this case.

It is therefore ordered that petitioner James Alvin Moore's application for a writ of habeas corpus in this matter be and is hereby dismissed.

It is so Ordered this 22<sup>d</sup> day of October, 1986.



JOHN LEO WAGNER  
UNITED STATES MAGISTRATE



UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

OCT 20 1986

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

WILLIE D. SHANNON, )

Defendant. )

CIVIL ACTION NO. 86-C-794-E

DEFAULT JUDGMENT

This matter comes on for consideration this 21<sup>st</sup> day of October, 1986, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Willie D. Shannon, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Willie D. Shannon, was acknowledged receipt of Summons and Complaint on August 29, 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,

Willie D. Shannon, for the principal sum of \$726.93, plus interest at the rate of 9 percent per annum and administrative costs of \$.67 per month from September 5, 1985, until judgment, plus interest thereafter at the current legal rate of 5.79 percent per annum until paid, plus costs of this action.

W. JAMES O. ELISON

---

UNITED STATES DISTRICT JUDGE

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

FILED

OCT 21 1986

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

ROTO-ROOTER CORPORATION, )  
 )  
 Plaintiff, )  
 )  
 vs. ) Civil Action No.  
 ) 86-C-725 E  
 TIMOTHY BAKER, )  
 )  
 Defendant. )

FINAL JUDGMENT OF INJUNCTION BY DEFAULT AND ORDER

The above-captioned action having coming before this Court on the motion by plaintiff, Roto-Rooter Corporation, for the entry of a default judgment granting it permanent injunctive relief against use by defendant of plaintiff's marks and requiring defendant to remove all of plaintiff's trademarks and service marks from his van, and it further appearing that defendant, Timothy Baker, is in default for his failure to answer to otherwise respond to the complaint, and plaintiff having shown the Court that it is entitled to the entry of default judgment, the Court now finds and concludes as follows:

Findings of Fact

(1)

This is an action at law and in equity for trademark infringement and unfair competition arising under 15 United States Code Section 1114(1); Title 78, Oklahoma State Statutes, Section 31 and the common law of unfair competition of the State of Oklahoma. This Court has jurisdiction over the

subject matter and parties, pursuant to 15 U.S.C. §1121, 28 U.S.C. §§1332 and 1338(b), and the doctrine of pendent jurisdiction.

(2)

Plaintiff, Roto-Rooter Corporation, is an Iowa corporation having its principal place of business at 300 Ashworth Road, West Des Moines, Iowa 50265.

(3)

Defendant, Timothy Baker, is an individual having a residence at 10168 East Admiral Place, Apt. E, Tulsa, Oklahoma 74116.

(4)

Since at least as early as 1935 nationally, and in the Tulsa, Oklahoma area since January 1955, and continuing to date, plaintiff has engaged directly and/or through licensees and franchisees, in the business of providing municipal, industrial and residential sewer, drain and pipe cleaning services under the service mark ROTO-ROOTER and AND AWAY GO TROUBLES DOWN THE DRAIN (hereinafter sometimes jointly referred to as the "Roto-Rooter Marks"). It has also developed an extensive nationwide network of franchisees and licensees which perform such services under the Roto-Rooter Marks. Plaintiff and its licensees and franchisees have expended large sums of money over a long period of time in the advertising of services under the Roto-Rooter Marks throughout the United States including the area in and around Tulsa, Oklahoma. As a result of this long and widespread provision of sewer, drain and pipe

cleaning services, and extensive advertising and promotion engaged in by plaintiff, and its licensees and franchisees, plaintiff has generated an extensive amount of good will in its marks which have become well known to the trade and general public throughout the United States and in the Tulsa, Oklahoma area. Plaintiff is the owner of United States Federal Registrations Nos. 597,721; 745,984; and 1,199,063 for the mark ROTO-ROOTER; and, Reg. No. 1,120,089 for the mark AND AWAY GO TROUBLES DOWN THE DRAIN. Plaintiff is also the owner of Oklahoma Registration Nos. 17,228 and 17,229 for the mark ROTO-ROOTER.

(5)

Beginning in about May, 1985, the defendant Baker began operating a white, 1982 Ford van bearing plaintiff's registered marks ROTO-ROOTER and AND AWAY GO TROUBLES DOWN THE DRAIN in and around the Tulsa, Oklahoma area. By virtue of the operation of this vehicle, the defendant has been and continues to be engaged in the advertising of sewer, drain and pipe cleaning services under the Roto-Rooter Marks in the same trade area as an authorized franchisee of plaintiff Roto-Rooter Corporation.

(6)

The defendant Baker, a former employee of a franchisee of plaintiff Roto-Rooter Corporation, presently has no connection with plaintiff and is not authorized by plaintiff to use the Roto-Rooter Marks, or any colorable variations thereof, in any manner whatsoever.

(7)

Defendant's use of the registered marks ROTO-ROOTER and AND AWAY GO TROUBLES DOWN THE DRAIN is likely to create confusion or to cause mistake or to deceive customers of plaintiff by falsely representing or designating that defendant is licensed, sponsored, affiliated or otherwise connected with plaintiff when in fact defendant has no connection with or authorization from plaintiff to use its registered marks. Such use by defendant has and will continue to result in serious and irreparable damage to the reputation and good will of plaintiff.

Conclusions of Law

(8)

Defendant's use of the name and marks ROTO-ROOTER, and AND AWAY GO TROUBLES DOWN THE DRAIN, in connection with the advertisement of sewer and drain cleaning services, is likely to cause confusion or to cause mistake or to deceive, and infringes plaintiff's rights in its federally registered marks in violation of §32(1) of the Lanham Act, 15 U.S.C. §1114(1).

(9)

The names and marks appearing on defendant's van are reproductions, counterfeits, copies or colorable imitations of plaintiff's Oklahoma state service mark registrations which are used by defendant in connection with the advertisement of sewer, drain and pipe cleaning services by virtue of defendant's operation of his vehicle in the Tulsa area. Such use by defendant is without the consent of plaintiff and is likely to

cause confusion or to cause mistake or to deceive in violation of Title 78, Oklahoma State Statutes, Section 31.

(10)

The defendant's operation of a vehicle in the Tulsa, Oklahoma area bearing plaintiff's registered marks, with full knowledge of the plaintiff's prior advertisement and use of such marks for sewer, drain and pipe cleaning services, conveys a false impression to the public mind and induces the public to believe that there is some association, sponsorship or license between plaintiff and defendant, contrary to fact. This dilutes the distinctive quality of plaintiff's marks and constitutes unfair competition under the common laws of the State of Oklahoma.

NOW, THEREFORE, this Court being fully advised on the premises, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

Injunction and Order

(11)

The defendant, and all those in active concert or participation with him, are hereby permanently enjoined and restrained from any use of the designation ROTO-ROOTER, AND AWAY GO TROUBLES DOWN THE DRAIN, or any other colorable imitations of plaintiff's marks, and from any other acts which will injure or be likely to injure the business reputation of plaintiff.

(12)

The defendant Baker is required to remove all of plaintiff's registered marks from his vehicle and file with this Court and serve on plaintiff, within thirty (30) days of the entry of this order, a report in writing, under oath setting forth in detail the manner and form in which the defendant has complied with this order.

*These Findings and Conclusions are entered by reason of default and are based upon allegations of the Complaint.*

SO ORDERED this 21<sup>ST</sup> day of October,

1986.

*James Allison*  
United States District Judge  
Northern District of Oklahoma



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

DENA R. LOMAX,

Plaintiff,

vs.

OTIS R. BOWEN, Secretary  
of Health and Human Services,

Defendant.

No. 83-C-465-E

**F I L E D**

ADMINISTRATIVE CLOSING ORDER

OCT 21 1986

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

The above styled action having been remanded to the Secretary of Health and Human Services pursuant to the mandate of the Tenth Circuit Court of Appeals, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

It is so ORDERED this 21<sup>st</sup> day of October, 1986.

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