

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

CLINTON ALLEN ROLLINGS, a )  
minor, born January 11, 1982, )  
by and through ROBERT STANELY )  
ROLLINGS, II, and HELEN )  
ROLLINGS, natural parents, )  
guardians, and next friends, )

Plaintiff, )

vs. )

SAINT FRANCIS HOSPITAL, INC., )  
an Oklahoma corporation, and )  
MILTON GILES FORT, M.D., )

Defendants, )

No. 86-C-358-C

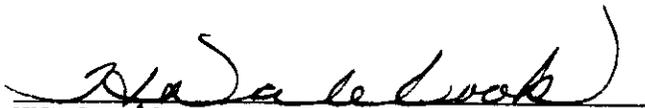
**FILED**  
**APR 10 1987**

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

ORDER OF DISMISSAL

On this 9<sup>th</sup> day of April, 1987, the above matter comes on for hearing upon the written Application to Dismiss Without Prejudice of the Plaintiff herein. The Court having examined said Application, and being fully advised in the premises, finds that said cause of action should be dismissed without prejudice pursuant to said Application.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the above-entitled cause of action be and the same is hereby dismissed without prejudice.

  
UNITED STATES DISTRICT JUDGE

Entered

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

**F I L E D**

APR 10 1987

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

ST. PAUL GUARDIAN INSURANCE )  
COMPANY, )

Plaintiff, )

v. )

ROY AND JUDITH ANN FOOTE, )

Defendants. )

No. 86-C-727B

ROY AND JUDITH ANN FOOTE, )

Plaintiffs, )

v. )

ST. PAUL GUARDIAN INSURANCE )  
COMPANY; McMASTERS INSURANCE )  
AGENCY; and CLAIMS RESEARCH )  
SERVICES, INC., )

Defendants. )

No. 87-C-55-B

O R D E R

These matters came before the court at Status/Scheduling Conference on April 9, 1987. Case No. 86-C-727 is a Declaratory Judgment action first brought by St. Paul Guardian Insurance Company ("St. Paul") against the Footes to determine St. Paul's liability for payment of insurance proceeds under a fine arts endorsement to a homeowner's insurance policy. Case No. 87-C-55 was later initiated by Roy and Judith Ann Foote ("the Footes") in the District Court for Creek County, Oklahoma, and removed by St. Paul to this court on theories of diversity jurisdiction and pendent jurisdiction. No. 87-C-55 is a tort action for breach of implied covenant to deal fairly and in good faith, intentional infliction of emotional distress and defamation.

Case No. 86-C-727 is presently set for jury trial at 9 a.m. on April 20, 1987.

St. Paul has filed a motion to dismiss the Footes' claims in 87-C-55. St. Paul contends that these are compulsory claims which may not be brought in a separate action. Fed.R.Civ.P. 13(a) provides:

"A pleading shall state as a counterclaim any claim which at the time of serving of the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction."

It is clear here that the Footes' claims against St. Paul in 87-C-55 arise out of the same transactions which is the subject of St. Paul's declaratory judgment action. Therefore, the court concludes these claims are compulsory counterclaims and will be tried with the declaratory judgment action on April 20, 1987, at 9 a.m. The parties are to file in 86-C-727, a supplemental Agreed Pre-Trial Order including the claims by the Footes against St. Paul in 87-C-55 and adding any additional witnesses. The court further concludes that the Footes' pendent claims against McMasters Insurance Agency and Claims Research Service, Inc., for intentional infliction of emotional distress and defamation are remanded to the District Court for Creek County, Oklahoma.

IT IS SO ORDERED, this 10<sup>th</sup> day of April, 1987.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



1. That the garnishee is in default.
2. That plaintiff is entitled to default judgment in its favor, for the relief prayed for.
3. That garnishee, Four-T-Manufacturing is indebted to the plaintiff in the principal sum of \$27,838.84, with interest thereon at the rate of 10.03% per annum from the date of judgment, until paid in full.

THEREFORE, IT IS ORDERED AND ADJUDGED BY THE COURT, that the plaintiff Memberloan II Plan, Inc., recover of garnishee, Four-T-Manufacturing, judgment in the sum of \$27,838.84, with interest thereon at the rate of 10.03% per annum on said sum from the date of judgment, until paid in full.

  
UNITED STATES DISTRICT JUDGE

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

FILED

APR 10 1987

DAN HOLT, an individual, and )  
PAM BLEHM, an individual, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
LIFECALL SYSTEMS, INC., a )  
New Jersey corporation, )  
 )  
Defendant. )

\_\_\_\_\_, Clerk  
DISTRICT COURT

No. 86-C-787-E

O R D E R

NOW on this 10<sup>th</sup> day of April, 1987 comes on for hearing the above styled case and the Court, being fully advised in the premises finds that Plaintiffs entered into a Franchise Agreement with Defendant in order to sell and monitor the products of Defendant. Defendant Lifecall filed a Motion to Dismiss for Improper Venue Or, In the Alternative, To Transfer, based upon a clause in the Franchise Agreement which selects New Jersey as the forum in which any actions between the parties are to be tried. A tripartite analysis may be utilized in determining the proper application of a forum selection clause such as the one present in this case.

The Court begins its evaluation with knowledge that forum selection clauses are prima facie valid and should be enforced unless they can be shown to be unreasonable under the particular facts and circumstances of the case. The Bremen v. Zopata Off-Shore Co., 407 U.S. 1, 9-12, 92 S.Ct. 1907, 1912-14, 32 L.Ed.2d 513 (1972). In examining the nature of the forum selection clause, the point of departure is whether this particular clause

is mandatory or permissive. The language of the clause in question is as follows:

17. To the extent permissible under applicable law, the interpretation and construction of this Agreement, wherever made and executed and wherever to be performed shall be construed, governed and enforced only in the Courts of the State of New Jersey wherein the Company maintains its principal office, applying the law of the State of New Jersey, and each party hereto hereby specifically waives recourse to any other Court.

Upon reviewing such language, the Court concludes that the clause must be interpreted as not permissive, but rather as mandating that any actions take place in the courts of New Jersey. Thus the Court turns its attention to whether the clause was obtained by fraud or overreaching. See The Bremen, 407 U.S. at 12, 92 S.Ct. at 1914; Bense v. Interstate Battery Systems of America, 683 F.2d 718, 721-2 (2d Cir. 1982).

Plaintiffs have not asserted that this particular clause was obtained by fraud. Yet the mere fact that the Plaintiffs' claims sound partially in fraud is insufficient to support the inference that the clause itself was a product of fraud or coercion. Furry v. First National Monetary Corp., 602 F.Supp. 6, 9 (W.D. Okla. 1984); see also Scherk v. Alberto-Culver Co., 417 U.S. 506, 519, 94 S.Ct. 2449, 2457, 41 L.Ed.2d 270 (1974). Thus the enforceability of the clause must be resolved upon the remaining factor in the tripartite analysis; the reasonableness of requiring these Plaintiffs to sue in a New Jersey forum.

The standard for determining unreasonableness is that Plaintiffs must show that "trial in the contractual forum will be

so gravely difficult and inconvenient that [the party opposing transfer] will for all practical purposes be deprived of his day in court." Furry, supra, at 10, quoting The Bremen, supra, 407 U.S. at 18, 92 S.Ct. at 1917. This standard has been described as a "heavy burden of proof." Janko v. Outboard Marine Corporation, 605 F.Supp. 51, 52 (W.D. Okla. 1985) quoting The Bremen, supra, 407 U.S. at 17, 92 S.Ct. at 1917. Plaintiffs have indicated, in the Memoranda Brief in Opposition filed by Plaintiffs' counsel, that inconvenience and additional expense will result if the case is transferred to New Jersey. However, the Court has not been persuaded that Plaintiffs would be deprived of a day in Court by effectuating such a transfer. Thus Plaintiffs have failed to meet the "heavy burden" and the Court finds that trial of the case in New Jersey would be neither unreasonable nor unjust.

The Court has reviewed the facts put forth by the Plaintiffs in this case with regard to the differences in bargaining power of the parties, use of "boiler plate" contractual language, lack of counsel present when the Agreement was signed, unawareness of the Plaintiffs of the clause in the Agreement, and the fact that the clause was neither a vital nor significant portion of the Agreement. However, even construing these factors in the light most positive for Plaintiffs, the Court remains unpersuaded that it would be either unreasonable or unjust to require Plaintiffs to pursue this action in New Jersey.

In conclusion, this Court finds that the forum selection clause is mandatory, rather than permissive, in its selection of

New Jersey as the proper forum for actions such as this one, and that the forum selected is neither invalid due to fraud or coercion, nor unreasonable or unjust. Under 28 U.S.C. §1406(b) this Court is vested with the authority to transfer this action to New Jersey or to dismiss for improper venue under Rule 12(b)(3), Fed.R.Civ.P. Having examined the matter fully, the Court finds that the interests of justice will be best served by transferring this action to the United States District Court for the District of New Jersey and hereby orders the same. This transfer obviates the need to rule upon other motions pending herein.

ORDERED this 10<sup>th</sup> day of April, 1987.

  
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JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

FILED

APR 10 1987

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

DAVID ANDERSON, an individual, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
LIFECALL SYSTEMS, INC., a )  
New Jersey corporation, )  
 )  
Defendant. )

No. 86-C-786-E

O R D E R

NOW on this 9<sup>th</sup> day of April, 1987 comes on for hearing the above styled case and the Court, being fully advised in the premises finds that Plaintiff entered into a Franchise Agreement with Defendant in order to sell and monitor the products of Defendant. Defendant Lifecall filed a Motion to Dismiss for Improper Venue Or, In the Alternative, To Transfer, based upon a clause in the Franchise Agreement which selects New Jersey as the forum in which any actions between the parties are to be tried. A tripartite analysis may be utilized in determining the proper application of a forum selection clause such as the one present in this case.

The Court begins its evaluation with knowledge that forum selection clauses are prima facie valid and should be enforced unless they can be shown to be unreasonably under the particular facts and circumstances of the case. The Bremen v. Zopata Off-Shore Co., 407 U.S. 1, 9-12, 92 S.Ct. 1907, 1912-14, 32 L.Ed.2d 513 (1972). In examining the nature of the forum selection clause, the point of departure is whether this particular clause

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Upon reviewing such language, the Court concludes that the clause must be interpreted as not permissive, but rather as mandating that any actions take place in the courts of New Jersey. Thus the Court turns its attention to whether the clause was obtained by fraud or overreaching. See The Bremen, 407 U.S. at 12, 92 S.Ct. at 1914; Bense v. Interstate Battery Systems of America, 683 F.2d 718, 721-2 (2d Cir. 1982).

Plaintiff has not asserted that this particular clause was obtained by fraud. Yet the mere fact that the Plaintiff's claims sound partially in fraud is insufficient to support the inference that the clause itself was a product of fraud or coercion. Furry v. First National Monetary Corp., 602 F.Supp. 6, 9 (W.D. Okla. 1984); see also Scherk v. Alberto-Culver Co., 417 U.S. 506, 519, 94 S.Ct. 2449, 2457, 41 L.Ed.2d 270 (1974). Thus the enforceability of the clause must be resolved upon the remaining factor in the tripartite analysis; the reasonableness of requiring this Plaintiff to sue in a New Jersey forum.

The standard for determining unreasonableness is that Plaintiff must show that "trial in the contractual forum will be

so gravely difficult and inconvenient that [the party opposing transfer] will for all practical purposes be deprived of his day in court." Furry, supra, at 10, quoting The Bremen, supra, 407 U.S. at 18, 92 S.Ct. at 1917. This standard has been described as a "heavy burden of proof." Janko v. Outboard Marine Corporation, 605 F.Supp. 51, 52 (W.D. Okla. 1985) quoting The Bremen, supra, 407 U.S. at 17, 92 S.Ct. at 1917. Plaintiff has indicated, in the Memoranda Brief in Opposition filed by Plaintiff's counsel, that inconvenience and additional expense will result if the case is transferred to New Jersey. However, the Court has not been persuaded that Plaintiff would be deprived of a day in Court by effectuating such a transfer. Thus Plaintiff has failed to meet the "heavy burden" and the Court finds that trial of the case in New Jersey would be neither unreasonable nor unjust.

The Court has reviewed the facts put forth by the Plaintiff in this case with regard to the differences in bargaining power of the parties, use of "boiler plate" contractual language, lack of counsel present when the Agreement was signed, unawareness of the Plaintiff of the clause in the Agreement, and the fact that the clause was neither a vital nor significant portion of the Agreement. However, even construing these factors in the light most positive for Plaintiff, the Court remains unpersuaded that it would be either unreasonable or unjust to require Plaintiff to pursue this action in New Jersey.

In conclusion, this Court finds that the forum selection clause is mandatory, rather than permissive, in its selection of

New Jersey as the proper forum for actions such as this one, and that the forum selected is neither invalid due to fraud or coercion, nor unreasonable or unjust. Under 28 U.S.C. §1406(b) this Court is vested with the authority to transfer this action to New Jersey or to dismiss for improper venue under Rule 12(b)(3), Fed.R.Civ.P. Having examined the matter fully, the Court finds that the interests of justice will be best served by transferring this action to the United States District Court for the District of New Jersey and hereby orders the same. This transfer obviates the need to rule upon other motions pending herein.

ORDERED this 9<sup>th</sup> day of April, 1987.

  
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JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

FILED

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

APR 10 1987

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

LINDA PATTERSON, an individual, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
LIFECALL SYSTEMS, INC., a )  
New Jersey corporation, )  
 )  
Defendant. )

No. 86-C-785-E

O R D E R

NOW on this 10<sup>th</sup> day of April, 1987 comes on for hearing the above styled case and the Court, being fully advised in the premises finds that Plaintiff entered into a Franchise Agreement with Defendant in order to sell and monitor the products of Defendant. Defendant Lifecall filed a Motion to Dismiss for Improper Venue Or, In the Alternative, To Transfer, based upon a clause in the Franchise Agreement which selects New Jersey as the forum in which any actions between the parties are to be tried. A tripartite analysis may be utilized in determining the proper application of a forum selection clause such as the one present in this case.

The Court begins its evaluation with knowledge that forum selection clauses are prima facie valid and should be enforced unless they can be shown to be unreasonable under the particular facts and circumstances of the case. The Bremen v. Zopata Off-Shore Co., 407 U.S. 1, 9-12, 92 S.Ct. 1907, 1912-14, 32 L.Ed.2d 513 (1972). In examining the nature of the forum selection clause, the point of departure is whether this particular clause

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so gravely difficult and inconvenient that [the party opposing transfer] will for all practical purposes be deprived of his day in court." Furry, supra, at 10, quoting The Bremen, supra, 407 U.S. at 18, 92 S.Ct. at 1917. This standard has been described as a "heavy burden of proof." Janko v. Outboard Marine Corporation, 605 F.Supp. 51, 52 (W.D. Okla. 1985) quoting The Bremen, supra, 407 U.S. at 17, 92 S.Ct. at 1917. Plaintiff has indicated, in the Memoranda Brief in Opposition filed by Plaintiff's counsel, that inconvenience and additional expense will result if the case is transferred to New Jersey. However, the Court has not been persuaded that Plaintiff would be deprived of a day in Court by effectuating such a transfer. Thus Plaintiff has failed to meet the "heavy burden" and the Court finds that trial of the case in New Jersey would be neither unreasonable nor unjust.

The Court has reviewed the facts put forth by the Plaintiff in this case with regard to the differences in bargaining power of the parties, use of "boiler plate" contractual language, lack of counsel present when the Agreement was signed, unawareness of the Plaintiff of the clause in the Agreement, and the fact that the clause was neither a vital nor significant portion of the Agreement. However, even construing these factors in the light most positive for Plaintiff, the Court remains unpersuaded that it would be either unreasonable or unjust to require Plaintiff to pursue this action in New Jersey.

In conclusion, this Court finds that the forum selection clause is mandatory, rather than permissive, in its selection of

New Jersey as the proper forum for actions such as this one, and that the forum selected is neither invalid due to fraud or coercion, nor unreasonable or unjust. Under 28 U.S.C. §1406(b) this Court is vested with the authority to transfer this action to New Jersey or to dismiss for improper venue under Rule 12(b)(3), Fed.R.Civ.P. Having examined the matter fully, the Court finds that the interests of justice will be best served by transferring this action to the United States District Court for the District of New Jersey and hereby orders the same. This transfer obviates the need to rule upon other motions pending herein.

ORDERED this 10<sup>th</sup> day of April, 1987.

  
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JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

*Entered*

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

APR 10 1987  
CLERK  
U.S. DISTRICT COURT

HABIB HOCHLAF, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
LABAT-ANDERSON, INC., a )  
Virginia Corporation, and )  
VICTOR J. LABAT, )  
 )  
Defendants. )

*86-C-277-B ✓*

O R D E R

The Court has before it the Report and Recommendation of the United States Magistrate, filed September 23, 1986, recommending that Defendant's Motion to Dismiss for lack of personal jurisdiction be denied. Defendant has objected thereto. On April 6, 1987, the court conducted an evidentiary hearing on Defendants' contacts with the State of Oklahoma. After review of the record and briefs of the parties, the Court hereby adopts the Report and Recommendation of the Magistrate in part.

This is an action for wrongful discharge of an employee. The Plaintiff is and was at all times relevant to this matter, a resident of Oklahoma. Defendant Labat-Anderson, Inc. ("LAI") is a Virginia corporation with its principal place of business in Arlington, Virginia. Defendant Victor J. Labat is a citizen of Virginia and president of LAI. The Defendants seek to dismiss this lawsuit on the ground that they have not had sufficient contacts with the State of Oklahoma to give this Court in personam jurisdiction over them. For the reasons set forth below, the Motion to Dismiss is denied in part and sustained in part.

The facts of this case, in brief, are these: In October 1982 and again in February 1983, Plaintiff wrote to Arthur Theisen, President of Soil and Land Use Technology ("SaLUT"), a Maryland firm, furnishing a resume regarding his qualifications for overseas employment. In August 1984, the defendant, Labat-Anderson, Inc. responded to a United States Agency for International Development (AID) competitive procurement. LAI sought to identify candidates for three positions as required in the AID Statement of Work. LAI sought SaLUT's assistance in finding candidates for these positions. SaLUT produced the resume of the Plaintiff and another person as candidates for the position of Applied Research Advisor. As an assist to LAI, in the summer of 1984, SaLUT contacted Plaintiff to obtain his consent to be a candidate for the Applied Research Advisor post in the LAI-SaLUT proposal to AID. (LAI was prime contractor, SaLUT subcontractor, on the proposal.) On August 6, 1984, Plaintiff agreed to be the LAI-SaLUT candidate for Applied Research Advisor. In October 1984, Victor Labat of LAI contacted Plaintiff by letter informing him that LAI had been selected for negotiation as prime contractor on the Niger Agricultural Production Review Support Project by AID. The letter stated that Plaintiff had been selected as the prime candidate for the Applied Research Advisor position, although it was emphasized that the letter did not constitute an offer of employment. As a minority firm LAI qualified as the prime contractor, SaLUT did not. Subsequently, in late 1984, Labat, President of LAI,

contacted Plaintiff by telephone to discuss the parameters of the Applied Research Advisor assignment with him and invite him to come to LAI's headquarters in Virginia for a personal interview. Between October 31, 1984, and February 5, 1985, Plaintiff was contacted several times by LAI to keep him apprised of the status of negotiations for the Niger contract and discuss his employment. There were telephone conversations back and forth. In early 1985, potential written employment agreements were discussed by mail. On February 5, 1985, Plaintiff traveled to Virginia to meet Victor Labat at LAI headquarters. Plaintiff completed insurance and other forms although no employment contract was signed at this time. Negotiations were substantially completed in Virginia except as to the final salary to be paid plaintiff. On February 20, 1985, LAI mailed to Plaintiff in Tulsa, Oklahoma, the final written offer of employment which Plaintiff signed in Tulsa and returned by mail to LAI about March 3, 1985. (PX-1\*). Plaintiff assumed his duties in Niger in March 1985, but on July 1, 1985, he was discharged by LAI. Plaintiff then returned to Oklahoma.

12 O.S. §2004(F) provides that a court in Oklahoma "may exercise jurisdiction on any basis consistent with the Constitution of this state and the Constitution of the United States." To comply with due process requirements of the Oklahoma and United States constitutions, in personam jurisdiction cannot be asserted over a non-resident defendant unless that defendant has had certain minimum contacts with the forum so that

\* Plaintiff's Exhibit #1, offered at evidentiary hearing April 6, 1987.

maintenance of the lawsuit does not offend traditional notions of fair play and substantial justice. International Shoe Co. v. Washington, 326 U.S. 310 (1945); World-Wide Volkswagen v. Woodson, 444 U.S. 286 (1980). A defendant not literally present in the forum state may not be required to defend himself in that state's courts unless the quality and nature of the defendant's activity in relation to the particular cause of action makes it fair to do so. Hanson v. Denckla, 357 U.S. 235, 252-53 (1958). In making a determination whether a defendant's contacts with the forum are sufficient for purposes of in personam jurisdiction, courts look to the totality of circumstances and contacts between the non-resident defendant and the forum. All American Car Wash v. National Pride Equipment, Inc., 550 F.Supp 166 (W.D.Okl. 1981). It is critical to this determination that the non-resident defendant have voluntarily committed some act by which he may be said to have purposely availed himself of the privilege of conducting activities within the forum state and has thus invoked the benefits and protections of the laws of the forum. Hanson v. Deckla, supra; Crescent Corporation v. Martin, 443 P.2d 111 (Okl. 1968); Lyon v. Bonneson, 451 F.Supp. 441 (W.D.Okl. 1977). The critical question before this Court, therefore, is whether the actions of the Defendants herein are sufficient to meet the minimum contacts tests of International Shoe and allow this Court to assert in personam jurisdiction over them.

After reviewing the recording to the hearing held before the Magistrate on September 16, 1986, as well as the evidentiary

hearing before the Court on April 6, 1987, and the briefs and documentary evidence submitted by the parties, the Court concludes that the totality of the circumstances herein establishes that the Defendant LAI acted voluntarily in such a way as to have purposely availed itself of the privilege of conducting activities within Oklahoma. Thus, this Court's assertion of in personam jurisdiction over the Defendant LAI does not offend traditional notions of fair play and substantial justice, International Shoe, supra. A review of the affidavits and evidence herein establishes a course of dealing between the Defendant in Virginia and the Plaintiff in Oklahoma, which extended over approximately six months and culminated with Plaintiff accepting an offer of employment in February 1985. Plaintiff was contacted by SaLUT in July/August 1984 concerning use of his resume in connection with AID application by LAI and SaLUT. Defendant contacted Plaintiff in Tulsa by letter in October 1984, advising him that LAI had been selected for negotiation on the AID project and that Plaintiff was the principal candidate for the Applied Research Advisor position. Later, Defendant contacted Plaintiff in Oklahoma by telephone to discuss the parameters of the AID job and to invite Plaintiff to Virginia for a personal interview. Additional phone calls were made by Defendant to Plaintiff in Oklahoma thereafter. Following Plaintiff's visit to Virginia, Defendant mailed to Plaintiff in Oklahoma an employment offer. This contract offer was signed and accepted by Plaintiff in Oklahoma and returned to Defendant by mail.

Defendants cite numerous cases which they contend are directly on point with the facts herein and preclude the assertion of personal jurisdiction. However, while these cases are similar to this case, all are distinguishable. In Anderson v. Shiflett, 435 F.2d 1036 (10th Cir. 1971), a Texas resident contracted with an Oklahoma architect for certain services. The contract was made in Texas and covered projects located in Texas, although the architect performed all of his work in his office in Oklahoma. On a suit for breach of contract brought by the architect in Oklahoma, the Court of Appeals found insufficient contacts for the assertion of jurisdiction. The court noted, however, "We have here a single, isolated transaction in the form of a contract for personal service. . . . Nothing in the record discloses the reasonable anticipation of contractual consequences in Oklahoma. To support jurisdiction, the plaintiff relies on his own unilateral activities." Id. at 1038. Anderson differs significantly from the case before us. Here, there was a series of contacts between the Defendant LAI and Plaintiff by telephone and mail, a personal visit by Plaintiff to Virginia at Defendant's request and offer of employment mailed to Plaintiff in Oklahoma. Plaintiff signed the contract at issue herein in Oklahoma. In Anderson, the only contact with Oklahoma was the performance of the plaintiff's work in that state. The contract was entered into in Texas for work covering projects in Texas.

In Molybdenum Corp. of Am. v. Superior Ct. Co. of Pima, 498 P.2d 166 (Ariz.Ct.App. 1972), the forum state's only connection

to the parties' dispute was that an employment offer made by a non-resident was accepted by an Arizona resident by depositing his written acceptance in the mail in Arizona. The obvious similarity to the instant case is the manner of accepting an employment offer, but the instant case establishes a six-month pattern of contact between the parties leading up to Plaintiff's acceptance of the written employment offer in Oklahoma.

In Bennett v. Computers Intercontinental, Inc., 372 F.Supp. 1082 (D.Md. 1974), the issue before the court was:

"[W]hether the nonresident defendant's mailing of an offer for employment outside of Maryland to plaintiff's decedent in Maryland, which offer was accepted in Maryland, constitutes without more sufficient contact between the defendant and Maryland to subject defendant to personal jurisdiction in Maryland under the Maryland 'Long Arm' statute."

Id. at 1083. Here, in addition to the employment offer being mailed to and accepted in Oklahoma, there was a documented pattern of contact between Defendant in Virginia and Plaintiff in Oklahoma, as well as between Defendant's subcontractor in Maryland and Plaintiff, which led up to the employment offer.

Finally, the Court is not persuaded by the reasoning of the Ninth Circuit Court of Appeals in Thos. P. Gonzalez Corp. v. Consejo Nacional, Etc., 614 F.2d 1247 (9th Cir. 1980). Defendants cite Gonzalez for the proposition that long distance telephone communication and use of the mail are not "purposeful activity" sufficient to invoke personal jurisdiction. Telephone communication may be considered in examining the totality of contacts for purposes of determining in personam jurisdiction.

Gregory v. Grove, 547 P.2d 381 (Okl. 1976). If such activity is necessary for an act to be done or transaction consummated in the forum state or if it is an act by which the defendant purposefully avails himself of the privilege of conducting activities within the forum state, then it would meet the requirements of Hanson, supra, at 250-54. Further where a non-resident buyer or seller actively initiates contact with an Oklahoma resident and deals with him directly by mail or telephone, such contact may be sufficient to subject the non-resident to the in personam jurisdiction of Oklahoma courts. See, Yankee Metal Products Co. v. District Court, 528 P.2d 311 (Okl. 1974); Vacu-Maid, Inc. v. Covington, 530 P.2d 137 (Okl.App. 1974). While an isolated instance of telephone or mail communication, standing alone, would establish only the most tenuous of contacts between the non-resident and the forum, the same is not so where there is an ongoing pattern of activity conducted through such communication.

The Court concludes that the Defendant LAI has conducted sufficient activity in Oklahoma that the assertion of personal jurisdiction by this court over Labat-Anderson, Inc., will not offend traditional notions of fair play and substantial justice. The Court further concludes, however, that the actions of Victor J. Labat as representative of Labat-Anderson, Inc. are insufficient for this court to assert personal jurisdiction over him individually. Although a similar standard is applied in determining the propriety of jurisdiction over individuals as in

cases involving corporate defendants, an individual is not always amenable to suit when he commits an act that would render a corporate defendant amenable to process. Wilshire Oil Company of Texas v. Riffe, 409 F.2d 1277 (10th Cir. 1969); Wright & Miller, Federal Practice and Procedure: Civil §1069. In this case, Victor Labat acted only on behalf of Labat Anderson, Inc., and as an officer of that company. Under these circumstances, the Court concludes that the assertion of in personam jurisdiction over Victor J. Labat would offend traditional notions of fair play and substantial justice. For this reason, the Recommendation of the Magistrate is adopted in part and rejected in part. Accordingly, the Motion to Dismiss for lack of personal jurisdiction is sustained with respect to Defendant Victor J. Labat and denied with respect to Defendant Labat-Anderson, Inc.

IT IS SO ORDERED, this 10<sup>th</sup> day of April, 1987.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

APR 10 1987

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

MICHAEL J. EAGAN and )  
PATRICIA EAGAN, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
THE COLONIAL BANK, )  
NICK MIRANDA, and )  
DALE A. COOK, )  
 )  
Defendants. )

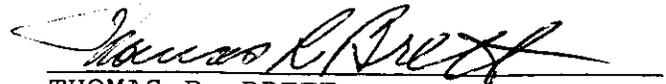
No. 85-C-539-B and  
No. 85-C-691-C

DEFAULT JUDGMENT

On this 10<sup>th</sup> day of April, 1987, this matter comes on upon application of Dale A. Cook for a default judgment against The Colonial Bank, a Missouri State Banking corporation, the court finds that on or about the 13th day of February, 1987, a post-judgment garnishment was issued by this court to the garnishee, The Colonial Bank, and that the Colonial Bank was duly served by Certified Mail on the 20th day of February, 1987, and has wholly failed and refused to answer. The Clerk certified default on April 1, 19

WHEREFORE, the court finds that the Colonial Bank, a Missouri State Banking corporation is in default pursuant to 12 O.S. section 1179 and Rule 55 of the Federal Rules of Civil Procedure and Rule 69 of the Federal Rules of Civil Procedure. Accordingly, default judgment of \$150,000.00 is hereby entered against the Colonial Bank and in favor of Dale A. Cook.

DATED, this 10<sup>th</sup> day of April, 1987.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

APR 10 1987

CLERK  
U.S. DISTRICT COURT

MARTA HALL, individually, JACK )  
HALL, individually, CARRIE )  
HALL, a minor, by and through )  
her next friend MARTA HALL, )  
TIFFANY HALL, a minor by and )  
through her next friend )  
MARTA HALL, )  
 )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
DR. ROGER A. SIEMENS, )  
 )  
 )  
Defendant. )

No. 86-C-125-B

O R D E R

This matter comes before the Court on the Defendant's Motion to Compel Costs and Attorney Fees incurred during the preparation and trial of the above-entitled action. The Defendant requests the Court to order the Plaintiffs' attorney to pay the deposition and witness fees of Dr. C. T. Thompson and Dr. John Phillips, who testified as expert witnesses in the Plaintiffs' case. Defendant asks the Court to order Plaintiffs' attorney to pay said costs on the basis of an agreement reached between the Plaintiffs' attorney and Defendant's attorney in the presence of the Court during the trial.

As stated, attorney J. Michael Busch agreed to pay the reasonable charges for appearance at trial and giving testimony of physicians, Dr. C. T. Thompson and Dr. John Phillips, when they were called as witnesses for Plaintiffs.

The Plaintiffs and attorney J. Michael Busch have not responded to Defendant's motion to assess such cost or expense against J. Michael Busch. Pursuant to Local Rule 14(a), such failure to respond constitutes an admission of Defendant's Motion.

IT IS THEREFORE ORDERED that Plaintiffs' counsel, J. Michael Busch, is to pay Dr. C. T. Thompson the sum of \$750.00, and Dr. John Phillips the sum of \$650.00, as reasonable expert witness fees, and judgment is hereby entered for said sums as costs herein. The Defendant's request for attorney fees is denied.

DATED this 10<sup>th</sup> day of April, 1987.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

APR 10 1987

SAUL J. SILVER, CLERK  
U.S. DISTRICT COURT

DENIS D. WATTS, )  
)  
Plaintiff, )  
)  
vs. )  
)  
FEDERAL LAND BANK OF WICHITA, )  
et al. )  
)  
Defendants. )  
\_\_\_\_\_ )

Case No. 85-C-904-E

STIPULATION OF DISMISSAL WITH PREJUDICE

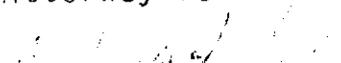
COME NOW the plaintiff, Denis D. Watts, and the defendants, the Federal Land Bank of Wichita and Felix Hensley, and stipulate to the dismissal with prejudice of this action. The plaintiff and the defendants stipulate as follows:

1. This stipulation is entered in accordance with and pursuant to Fed.R.Civ.P. 41 (a)(1).
2. The plaintiff wishes to dismiss with prejudice this action.
3. The plaintiff hereby voluntarily dismisses with prejudice this action against all defendants.
4. Each party will pay its own attorney fees and court costs.
5. This stipulation does not in any manner affect the plaintiff's liability on and under any documents signed by plaintiff at any time in favor of the Federal Land Bank of Wichita, including, but not limited to a promissory note dated July 24, 1981 and a mortgage dated July 24, 1981.

6. The plaintiff has consulted with counsel prior to entering into this stipulation and understands the meaning and effect(s) of this stipulation.

  
DENIS D. WATTS, PLAINTIFF

  
RUSSELL D. PETERSON  
Attorney for Defendants

  
BARBARA J. COEN  
Attorney for Defendants

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

FILED

APR 9 1987

LYNN F. CROSS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PHYLLIS AND FRANK MESSINA, )  
 )  
 Defendants, )  
 )  
 and )  
 )  
 LORRI L. CROSS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PHYLLIS AND FRANK MESSINA, )  
 )  
 Defendants. )

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

Case No. 86-C-215-B

Case No. 86-C-216-B

ORDER AND JUDGMENT

In keeping with the Findings of Fact and Conclusions of Law entered by the court this day in the captioned cases, the judgment entered herein on December 16, 1986, is hereby amended to include an attorney's fee for the Plaintiffs in the sum of \$4,700.00.

IT IS THEREFORE ORDERED AND ADJUDGED that the judgment entered herein on December 16, 1986, is modified to include attorney's fees to the Plaintiffs in the sum of \$4,700.00.

S/ THOMAS R. BRETT  
 \_\_\_\_\_  
 Thomas R. Brett  
 United States District Judge

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

F I L E D

APR 9 1987

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

LYNN F. CROSS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PHYLLIS AND FRANK MESSINA, )  
 )  
 Defendants, )  
 )  
 and )  
 )  
 LORRI L. CROSS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PHYLLIS AND FRANK MESSINA, )  
 )  
 Defendants. )

Case No. 86-C-215-B

Case No. 86-C-216-B

ORDER AND JUDGMENT

In keeping with the Findings of Fact and Conclusions of Law entered by the court this day in the captioned cases, the judgment entered herein on December 16, 1986, is hereby amended to include an attorney's fee for the Plaintiffs in the sum of \$4,700.00.

IT IS THEREFORE ORDERED AND ADJUDGED that the judgment entered herein on December 16, 1986, is modified to include attorney's fees to the Plaintiffs in the sum of \$4,700.00.

S/ THOMAS R. BRETT

\_\_\_\_\_  
Thomas R. Brett  
United States District Judge

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

**F I L E D**

APR 9 1987

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

KRISTY PERRYMAN, a minor, by )  
and through THOMAS and )  
LORETTA PERRYMAN, her natural )  
parents, guardians, and next )  
friends, )

Plaintiffs, )

vs. )

MELISSA ANN HIATT, a/k/a )  
MISSY HYATT, individually, )  
and MID-SOUTH SPORTS, INC., )  
a Louisiana corporation, )

Defendants. )

Case No. 86-C-987 B

ORDER OF DISMISSAL AGAINST DEFENDANT, MID-SOUTH SPORTS, INC.

On this 8th day of April, 1987, the above matter comes on for hearing upon the written Application to Dismiss With Prejudice against Defendant, MID-SOUTH SPORTS, INC., of the Plaintiff herein. The Court having examined said Application, and being fully advised in the premises, finds that said Defendant, MID-SOUTH SPORTS, INC., should be dismissed pursuant to said Application.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the Defendant, MID-SOUTH SPORTS, INC., be and the same is hereby dismissed with prejudice.

S/ THOMAS E. BERRY

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 9 1987

FRANK TELLO, Individually, and as )  
Next of Kin of NANCY ELLEN TELLO, )

Plaintiff, )

vs. )

DONALD WAYNE PHILLIPS, an )  
Individual, and )  
LIBERTY TRANSPORT, INC., a )  
Missouri Corporation, )

Defendants, )

and )

SHELLY BOGART, SHANNON BOGART, )  
and SHANE VAN CLEVE, )

Intervenors. )

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

CASE NO: 85-C-76-B

ORDER FOR VOLUNTARY DISMISSAL WITH PREJUDICE

THE COURT having considered the Motion of Plaintiff, Frank Tello, Individually, and as next of kin of Nancy Tello, and Intervenors, Shelly Bogart, Shannon Bogart, and Shane Van Cleve, for the voluntary dismissal of the claim filed herein for the wrongful death of Nancy Tello, deceased, finds that said claim has been fully settled, compromised and adjusted by and between Plaintiff, Intervenors, and Defendants, and said claim is hereby ordered to be dismissed, with prejudice.

S/ THOMAS R. BRETT

U.S. DISTRICT JUDGE

Dated

April 9, 1987

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 9 1987

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

FRANK TELLO, Individually, and as )  
Next of Kin of NANCY ELLEN TELLO, )  
Plaintiff, )  
vs. )  
DONALD WAYNE PHILLIPS, an )  
Individual, and )  
LIBERTY TRANSPORT, INC., a )  
Missouri Corporation, )  
Defendants, )  
and )  
SHELLY BOGART, SHANNON BOGART, )  
and SHANE VAN CLEVE, )  
Intervenors. )

CASE NO: 85-C-76-B

ORDER APPROVING SETTLEMENT  
AND DISTRIBUTION OF SETTLEMENT PROCEEDS

NOW ON THIS 8<sup>th</sup> day of April, 1987, comes on  
for hearing the Application of Plaintiff, Frank Tello, and  
Intervenors, Shelly Bogart, Shannon Bogart, and Shane Van Cleve, for  
an Order approving settlement of the claim for the wrongful death of  
Nancy Ellen Tello, deceased, presently pending in the above styled  
cause, and for a further order approving distribution of said settle-  
ment proceeds. After considering the Application and statements of  
counsel contained therein, reviewing pleadings filed herein, and being  
fully advised in the premises, the Court finds that Plaintiff and  
Intervenors have fully compromised and settled their claim for the  
wrongful death of Nancy Ellen Tello, deceased, with Defendant Donald  
Wayne Phillips, and Defendant Liberty Transport, Inc., for the sum of  
Forty-Nine Thousand, Nine Hundred (\$49,900.00) Dollars, said sum being

the applicable limit of all liability insurance coverage available for said claim. The Court further finds that Plaintiff and Intervenor constitute all of the heirs of Nancy Ellen Tello, and are the sole persons entitled to share in any recovery for the death of Nancy Ellen Tello. The Court further finds that the terms of the aforementioned settlement are fair and reasonable.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the settlement of the claim of Plaintiff and Intervenor against Defendants for the wrongful death of Nancy Ellen Tello be, and is hereby APPROVED. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the proceeds of the settlement be distributed as follows: Fifty (50%) Percent of said proceeds to be paid to the Plaintiff, Frank Tello, and Fifty (50%) Percent of said proceeds to be paid to Intervenor, Shelly Bogart, Shannon Bogart, and Shane Van Cleve, to be divided equally amongst said Intervenor.

BY THOMAS R. BRETT

---

District Court Judge

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

100-8 107

CLERK OF DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

FARMERS INSURANCE COMPANY, INC., )  
a foreign insurance company; )  
FARMERS INSURANCE EXCHANGE, )  
a foreign insurance company; )  
TRUCK INSURANCE EXCHANGE, )  
a foreign insurance company; )  
FIRE INSURANCE EXCHANGE, )  
a foreign insurance company; )  
MID-CENTURY INSURANCE COMPANY, )  
a foreign insurance company; )  
FARMERS NEW WORLD LIFE )  
INSURANCE COMPANY, )  
a foreign insurance company, )  
 )  
Plaintiffs, )  
vs. )  
 )  
HOMER H. HUBBARD, )  
 )  
 )  
Defendant. )

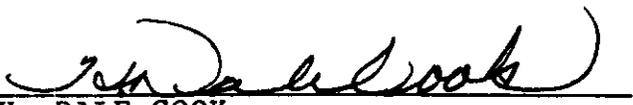
No. 83-C-1042-C

J U D G M E N T

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

IT IS ORDERED AND ADJUDGED that the defendant Homer H. Hubbard have judgment in his favor against all plaintiffs in the sum of One Hundred Thousand and no/100 Dollars (\$100,000.00) together with post judgment interest from the date of this Judgment until paid, and costs as assessed by the Court Clerk.

IT IS SO ORDERED this 7<sup>th</sup> day of April, 1987.

  
H. DALE COOK

Chief Judge, U. S. District Court

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

LAWRENCE E. BRANSON and  
RICHARD L. BRANSON,

Plaintiffs,

vs.

PIPELINERS LOCAL UNION 798 OF  
THE UNITED ASSOCIATION OF  
JOURNEYMEN AND APPRENTICES OF  
THE PLUMBING AND PIPEFITTING  
INDUSTRY OF THE UNITED STATES  
AND CANADA, AFL-CIO, and UNITED  
ASSOCIATION OF JOURNEYMEN AND  
APPRENTICES OF THE PLUMBING  
AND PIPEFITTING INDUSTRIES OF  
THE UNITED STATES AND CANADA,

Defendants.

No. 86-C-1141-C

**FILED**  
**APR 7 1987**

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

ORDER

For good cause shown, and upon Joint Application of the  
parties, this case is dismissed with prejudice on this 6<sup>th</sup>  
day of April, 1987.

  
United States District Judge

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

CHARLES S. COX, )

Defendant. )

CIVIL ACTION NO. 86-C-1017B

**FILED**  
APR 7 1987  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

NOTICE OF DISMISSAL

COMES NOW the United States of America by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Nancy Nesbitt Blevins, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 7th day of April, 1987.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS  
United States Attorney

*for* NANCY NESBITT BLEVINS  
Assistant United States Attorney  
3600 United States Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

FILED

APR 7 1987

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

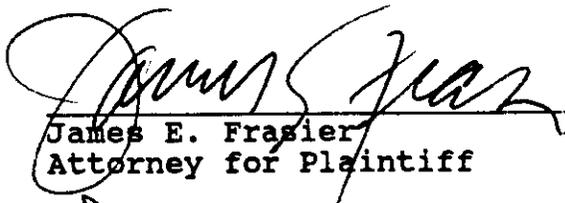
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DAN FULPS, Guardian of Elizabeth Fulps, )  
Plaintiff, )  
vs. )  
R.B.S., INC., a Kansas corporation, )  
Defendant. )

No. 86-C-993-C

STIPULATION OF DISMISSAL

COMES NOW the each of the undersigned representing the parties hereto and requests of this Court an order dismissing this cause with prejudice to the filing of a new action.

  
James E. Frasier  
Attorney for Plaintiff

  
Earl Donaldson  
Attorney for Defendant



hypothetical situation, i.e., the rights of the parties in the event claims be made in the future. Because this case does not represent an actual controversy, the Court orders sua sponte that it be DISMISSED as to all defendants.

It is the Order of the Court that all remaining defendants are hereby DISMISSED.

IT IS SO ORDERED this 7<sup>th</sup> day of April, 1987.

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

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

LIBERTY MUTUAL INSURANCE COMPANY, )

Plaintiff, )

v. )

No. 87-C-68-C )

KIMBERLY DAWN MALHAM, PATRICIA MALHAM, )  
TERRY MALHAM, WANDA PARENT, )  
individually and as Personal )  
Representative of the Estate of Clyde )  
Wayne Parent and as legal guardian and )  
next friend of Erik Parent; and UNITED )  
STATES FIDELITY & GUARANTY COMPANY, a )  
Maryland corporation, )

Defendants. )

**FILED**

**APR 7 1987**

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

ORDER

NOW ON this 7<sup>th</sup> day of April, 1987, comes on for consideration the Motion of Defendant, United States Fidelity & Guaranty Company, a Maryland corporation, to dismiss the cause against it. After due consideration, the Court finds as follows:

1. The Defendant, United States Fidelity & Guaranty Company, has waived any rights of subrogation against the Plaintiff, Liberty Mutual, in the underlying state court action, Parent, et al. v. Malham, Case Number C-86-457, which has been filed in the District Court in and for Wagoner County, State of Oklahoma;
2. The Defendant, United States Fidelity & Guaranty Company, has tendered its total policy limit of \$10,000 for uninsured/underinsured motorist coverage;
3. There is no controversy between the Plaintiff, Liberty Mutual Insurance Company, and the Defendant, United States Fidelity & Guaranty Company, and the Defendant, United States Fidelity & Guaranty Company, should be dismissed from this action for the reason that Plaintiff's Complaint does not state a cause of action against this Defendant.

(Signed) H. Dale Cook

---

United States District Court Judge

APPROVED AS TO FORM AND CONTENT:

Renee J. Harter

Renee J. Harter  
Attorney for Plaintiff

Alfred B. Knight

Alfred B. Knight  
Attorney for Defendant  
United States Fidelity  
& Guaranty Company

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

JOHN HANCOCK MUTUAL LIFE INSURANCE  
COMPANY,

Plaintiff,

vs.

DAVID E. TUBBS, EMILY FAITH TUBBS,  
ELIZABETH MIRIAM TUBBS and EUGENE  
O'CONNOR TUBBS, minors; and KIM  
KLICKNA, Trustee of any insurance  
proceeds passing to Emily Faith  
Tubbs, Elizabeth Miriam Tubbs  
and Eugene O'Connor Tubbs, as  
a result of the death of insured  
decedent Mark A. Tubbs,

Defendants.

Case No. 86-C-774-B

FILED

APR 6 1987

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

ORDER OF DISMISSAL

NOW, on this 6<sup>th</sup> day of April, 1987, upon the written Application To Dismiss With Prejudice of the Defendant David E. Tubbs, and the Defendants Emily Faith Tubbs, Elisabeth Miriam Tubbs and Eugene O'Connor Tubbs, by and through their mother and next friend, Danida M. Tubbs, and the Plaintiff, John Hancock Mutual Life Insurance Company, having heretofore been discharged herein, prays this Court for an Order of Dismissal with prejudice as to the complaint of John Hancock Mutual Life Insurance Company, Plaintiff, v. David E. Tubbs, Emily Faith Tubbs, Elisabeth Miriam Tubbs and Eugene O'Connor Tubbs, and all causes of action therein, and the Court having examined said Application, finds that said parties have entered into a compromise settlement covering all claims involved in the complaint and have

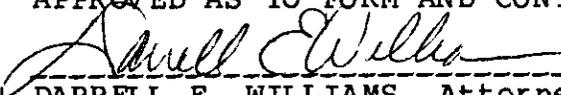
requested the Court to dismiss said complaint with prejudice to any future action.

The Court being fully advised in the premises, FINDS that the settlement is in the best of said Plaintiff and all Defendants.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the complaint and all causes of action of the Plaintiff, John Hancock Mutual Life Insurance Company, the Defendant David E. Tubbs and the Defendant, Emily Faith Tubbs, Elisabeth Miriam Tubbs and Eugene O'Connor Tubbs, by and through their mother and next friend, Danida M. Tubbs, be, and the same are hereby dismissed with prejudice to any future action.

  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

  
DARRELL E. WILLIAMS, Attorney for  
Defendants Emily Faith Tubbs,  
Elisabeth Miriam Tubbs and Eugene  
O'Connor Tubbs

  
DAVID ROBERTSON, Attorney for  
David E. Tubbs

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

TIMOTHY L. OLIVER and VALCOM )  
COMPUTER CENTERS, INC. OF TULSA, )  
OKLAHOMA, an Oklahoma Corporation, )  
Plaintiffs, )  
vs. )  
VALMONT INDUSTRIES, INC., a )  
Delaware Corporation; et al., )  
Defendants. )

**FILED**  
**APR 3 1987**  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

Case No. 86-C-753-E

*of*  
STIPULATION ~~FOR~~ DISMISSAL OF DEFENDANTS  
BILL FAIRFIELD, CRIS FREIWALD, PAT  
FITZGERALD AND MIKE PETERSON

COME NOW the Plaintiffs above named and state to this Court that they have entered into a stipulation with Theodore Q. Eliot, counsel for Defendants Bill Fairfield, Cris Freiwald, Pat Fitzgerald and Mike Peterson, whereby Defendants Bill Fairfield, Cris Freiwald, Pat Fitzgerald and Mike Peterson are dismissed with prejudice from this cause of action. Said parties have further agreed to be responsible for their respective attorneys fees and court costs incurred in this matter concerning said Defendants.

R. Kenneth King  
R. Kenneth King, Attorney for  
Plaintiffs

Theodore Q. Eliot  
Theodore Q. Eliot, Attorney for  
Defendants Bill Fairfield, Cris  
Freiwald, Pat Fitzgerald and  
Mike Peterson



FILED

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

APR -3 1987

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

WAYNE L. COX,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 85-C-832-E
	)	
AT&T INFORMATION SYSTEMS,	)	
INC., a Delaware corporation,	)	
and SOUTHWESTERN BELL	)	
TELEPHONE COMPANY, an	)	
Oklahoma corporation,	)	
	)	
Defendants.	)	

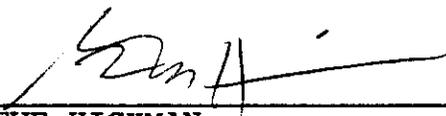
STIPULATION <sup>of</sup> ~~FOR~~ DISMISSAL WITHOUT PREJUDICE

Plaintiff, Wayne Cox, and defendant Southwestern Bell Telephone Company\* hereby stipulate by and through their respective attorneys that the above-entitled action be discontinued and dismissed without prejudice to the refiling of plaintiff's action and without costs to either party.

Nothing contained herein will prevent the plaintiff from refiling the action within a year in accordance with 12 Okla. Stat. Ann. 1985 § 100.

Dated: March 31, 1987.

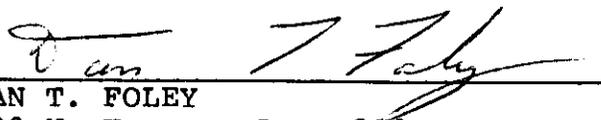
Respectfully Submitted,

By: 

---

STEVE HICKMAN  
FRASIER & FRASIER  
P. O. Box 799  
Tulsa, OK 74101  
Telephone: 918/584-4724  
ATTORNEY FOR PLAINTIFF

By:

  
DAN T. FOLEY  
800 N. Harvey, Room 310  
Oklahoma City, Oklahoma 73102  
Telephone: 405/236-6757  
ATTORNEY FOR DEFENDANT  
SOUTHWESTERN BELL TELEPHONE COMPANY

\*Southwestern Bell Telephone Company is the only remaining defendant in this action, AT&T Information Systems, Inc., having previously been dismissed.

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

BERNARD ROSENFELD d/b/a )  
BENSON INTERNATIONAL, and )  
VOEST-ALPINE TRADING USA )  
CORPORATION, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
EDGCOMB METALS COMPANY, )  
 )  
Defendant. ) No. 86-C-911 B

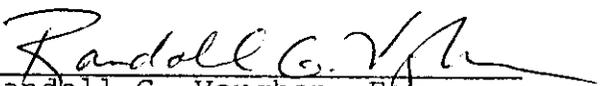
STIPULATION AS TO DISCONTINUANCE

Plaintiffs Bernard Rosenfeld d/b/a Benson International and Voest-Alpine Trading USA Corporation and defendant Edgcomb Metals Company, acting through their respective attorneys, hereby stipulate (i) the above-styled action shall be discontinued and dismissed with prejudice and without cost to any party and (ii) that any party may file this stipulation with the court clerk without further notice.

Done this 4<sup>th</sup> day of March, 1987.

  
Harry E. Styron, Esq.  
Biram & Kaiser  
2442 East 21 Street  
Tulsa, OK 74114  
(918) 745-0360

Attorney for Defendant  
Edgcomb Metals Company

  
Randall G. Vaughan, Esq.  
Pray Walker Jackman  
Williamson & Marlar  
900 Oneok Plaza  
Tulsa, OK 74103  
(918) 584-4136

Attorneys for Plaintiffs  
Bernard Rosenfeld d/b/a  
Benson International & Voest-  
Alpine Trading USA Corporation

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

SHEARSON LEHMAN MORTGAGE )  
CORPORATION, a Delaware )  
corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
INVESTMENT REALTY SERVICE, )  
RONALD SWADLEY, et al., )  
 )  
Defendants. )

No. 86-C-593-C

**FILED**

**APR 3 1987**

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

ORDER

There comes before the Court the Plaintiff, Shearson Lehman Mortgage Corporation's Motion to Dismiss Without Prejudice the complaint in this action, after answer of several Defendants. Upon reviewing the file, the Court finds that the Motion of the Plaintiff should be granted and, accordingly, it is therefore ORDERED

that the complaint in the above-captioned action is dismissed without prejudice.

(Signed) H. Dale Cook

---

H. Dale Cook  
Chief Judge of the United  
States District Court for the  
Northern District of Oklahoma

APPROVED AS TO FORM AND CONTENT:



---

L. K. Smith  
J. Schaad Titus  
Boone, Smith, Davis & Hurst

---

Thomas S. Vandivort  
Allis & Vandivort, Inc.

---

Curtis J. Biram  
Biram & Kaiser

---

Richard L. Carpenter, Jr.  
Sanders & Carpenter

---

John R. Paul and Barry V. Denney  
Richards, Paul & Wood

---

Craig Blackstock  
Blackstock & Prather

---

Gregory D. Nellis  
Best Sharp Thomas Glass  
& Atkinson

---

Joseph A. McCormick  
D. Kevin Ikenberry  
McCormick, Andrew & Clark

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

**F I L E D**

**APR 3 1987**

MASSACHUSETTS MUTUAL LIFE )  
INSURANCE COMPANY, a )  
Massachusetts corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
OMEGA PROPERTY MANAGEMENT, )  
INC., an Oklahoma )  
corporation, )  
 )  
Defendant. )

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

Case No. 85-C-1116-C

AGREED JOURNAL ENTRY OF JUDGMENT

On April 3, 1987, there came before the Court for consideration this Agreed Journal Entry of Judgment in the above-styled action. The Court has examined the pleadings and evidence, and has been advised that all parties to this action have, by and through their respective attorneys, agreed that this Journal Entry of Judgment for Massachusetts Mutual Life Insurance Company ("Mass Mutual"), and against Omega Property Management, Inc. ("Omega") should be entered and have further approved the form and content of this Agreed Journal Entry of Judgment.

WHEREFORE, the Court finds as follows:

1. This Court has jurisdiction over the subject matter herein and has personal jurisdiction over the Defendant, Omega.
2. The Defendant, Omega, was properly served with a copy of Mass Mutual's Second Amended Complaint filed herein on March 19, 1987.

3. Mass Mutual is entitled to judgment against the Defendant, Omega, for the reasons set forth in Mass Mutual's Second Amended Complaint in the principal sum of \$160,000.00, plus post-judgment interest as allowed by law.

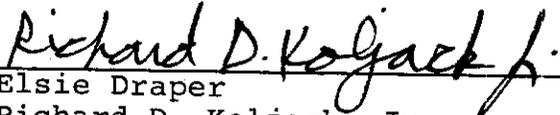
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court as follows: Mass Mutual shall have and recover a judgment against the Defendant, Omega, in the principal sum of \$160,000.00, together with post-judgment interest as allowed by law, for all of which let execution issue.

*Omega Property Management, Inc.*  

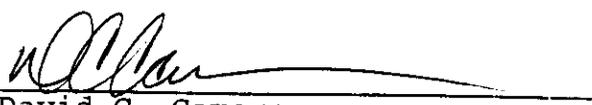
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UNITED STATES DISTRICT COURT JUDGE

APPROVED AS TO FORM AND CONTENT:

  
Elsie Draper  
Richard D. Koljack, Jr.  
GABLE & GOTWALS  
2000 Fourth National Bank Bldg.  
Tulsa, Oklahoma 74119

ATTORNEYS FOR PLAINTIFF,  
MASSACHUSETTS MUTUAL LIFE  
INSURANCE COMPANY

  
David C. Cameron  
JONES, GIVENS, GOTCHER, DOYLE,  
BOGAN & HILBORNE  
3800 First National Tower  
Tulsa, Oklahoma 74103

ATTORNEYS FOR DEFENDANT,  
OMEGA PROPERTY MANAGEMENT, INC.

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

JANEAN C. FIELDS,

Plaintiff,

vs.

DEBORAH JEAN DISHMAN;  
ROSE FAYE PAYNE; and  
ALLSTATE INSURANCE COMPANY,

Defendants.

NO. 85-C-959-C

**FILED**

**APR 2 1987**

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

ORDER ALLOWING DISMISSAL WITH PREJUDICE

NOW on this 2<sup>nd</sup> day of April, 1987, the above referenced cause of action comes on before the undersigned Judge of the District Court on the Plaintiff's Application to Dismiss her cause of action against the Defendant, Allstate Insurance Company, with prejudice, reserving Plaintiff's right to proceed against the Defendant, Deborah Jean Dishman.

The Court being advised that a settlement has been reached between the Plaintiff and the Defendant, Allstate Insurance Company, which fully concludes all issues raised by this matter, between Plaintiff and said Defendant, grants Plaintiff's Application, allowing her to dismiss her action against said Defendant, and reserves her action against the Defendant, Deborah

Jean Dishman.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff's action against the Defendant, Allstate Insurance Company, is hereby dismissed with prejudice, and the Plaintiff's cause of action against the Defendant, Deborah Jean Dishman, is reserved and not made part of this dismissal.

(Signed) H. Dale Cook  
HONORABLE H. DALE COOK  
United States District Judge  
Northern District of Oklahoma

FILED

APR 2 1987

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

GREAT TAN, INC., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 INTERNATIONAL FITNESS CENTER )  
 OF TULSA, INC., et al., )  
 )  
 Defendants. )

Case No. 85-C-755-E

STIPULATED JOURNAL ENTRY OF JUDGMENT

NOW on this 2nd day of April, 1987, upon agreement of the parties hereto, the Court enters the following judgment:

IT IS ORDERED that the plaintiff, Great Tan, Inc., have a joint and several money judgment against the defendant William McDonald, individually and defendant Greg Fairchild, individually, in the amount of \$13,552.94 for breach of contract.

IT IS ORDERED that the plaintiff, Great Tan, Inc., have money judgment against the defendant, Greg Fairchild, individually, in the amount of \$16,500.00 for conversion of the subject tanning beds by the defendant, Greg Fairchild.

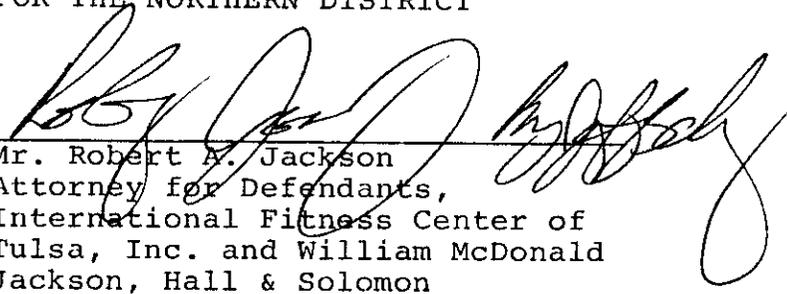
IT IS FURTHER ORDERED that International Fitness Center of Tulsa, Inc., is hereby dismissed without prejudice.

IT IS FURTHER ORDERED that plaintiff has a joint and several money judgment against defendant William McDonald, individually,

and defendant Greg Fairchild, individually in the amount \$7,000 for plaintiff's costs and attorney fees.

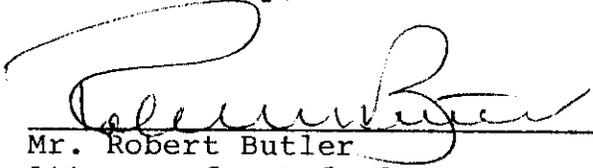
**S/ JAMES O. ELLISON**

JUDGE OF THE UNITED STATES COURT  
FOR THE NORTHERN DISTRICT



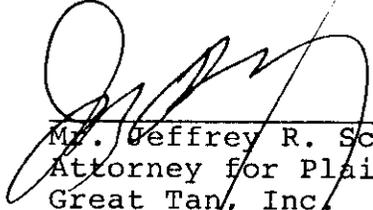
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Mr. Robert A. Jackson  
Attorney for Defendants,  
International Fitness Center of  
Tulsa, Inc. and William McDonald  
Jackson, Hall & Solomon  
3315 N.W. 63rd Street  
Oklahoma City, Oklahoma 73116



---

Mr. Robert Butler  
Attorney for Defendant,  
Greg Fairchild  
1710 South Boston Aveune  
Tulsa, Oklahoma 74119



---

Mr. Jeffrey R. Schoborg  
Attorney for Plaintiff,  
Great Tan, Inc.  
Blackstock, Joyce, Pollard  
and Montgomery  
515 S. Main Mall  
Tulsa, Oklahoma 74103

054/jrs9

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

FILED

APR 2 1987

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

DAVE CATHER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DUCOMMUN METALS COMPANY, )  
 )  
 Defendant. )

No. 83-C-43-E

ORDER

The Court has before it for determination the issue of damages to be awarded to the Plaintiff, Dave Cather, on his claims for breach of contract and bad faith termination. The Court has previously ruled that Defendant is liable to the Plaintiff on these claims.

Based on the evidence submitted in the Plaintiff's exhibits, including the depositions of the Plaintiff, Bobby Strickland, Rudy Forsman, and John Coleman, and the testimony presented to the Court, the Court finds that actual damages in the amount of \$446,392.43 should be awarded against Defendant Ducommun Metals Company for breach of contract, and that with regard to Plaintiff's bad faith claim additional damages should be awarded against Defendant Ducommun Metal Company for pain and suffering in the amount of \$25,000.00. The Court finds that punitive damages are not justified by the evidence in this case.

DATED this 2<sup>d</sup> day of April, 1987.

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

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

FILED

DAVE CATHER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DUCOMMUN METALS COMPANY, )  
 )  
 Defendant. )

APR 2 1987

Jack C. Silver, Clerk

No. 83-C-43-EJ U. S. DISTRICT COURT

JUDGMENT

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

IT IS ORDERED AND ADJUDGED that the Plaintiff Dave Cather recover of the Defendant Ducommun Metals Company the sum of \$446,392.43 on his claim for breach of contract, in the alternative, the sum of \$471,392.43 on his claim for bad faith termination, plus his costs of action.

DATED at Tulsa, Oklahoma this 2<sup>d</sup> day of April, 1987.

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



IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff's action against the Defendant, Rose Faye Payne, is hereby dismissed with prejudice, and the Plaintiff's cause of action against the Defendant, Deborah Jean Dishman, is reserved and not made part of this dismissal.

(Signed) H. Dale Cook

---

HONORABLE H. DALE COOK  
United States District Judge  
Northern District of Oklahoma



become moot, there is no controversy before the Court, and the case should be dismissed.

IT IS THEREFORE ORDERED that Defendants' motion to dismiss is granted.

DATED this 22 day of April, 1987.

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

APR 2 1987

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

James W. Silver, Clerk  
U.S. DISTRICT COURT

JAMES P. JOHNSON, Receiver, )  
et al., )  
Appellants, )  
vs. )  
R. DOBIE LANGENKAMP, Trustee, )  
Appellee. )

Case No. 86-C-319-E  
Bankruptcy  
No. 82-01269  
Chapter 11

O R D E R

The Court has for its consideration the appeal of James P. Johnson, Receiver for Chilcott Commodities, Chilcott Portfolio Management, Inc., Thomas D. Chilcott and Thomas D. Chilcott d/b/a Chilcott Futures Fund (hereinafter "Receiver") against R. Dobie Langenkamp, Trustee for the bankruptcy estate of Kenneth E. Tureaud. The Receiver appeals from an order of the Bankruptcy Court entered on March 14, 1986 which overruled the Receiver's objection to the Trustee's accounting and application for order approving the accounting and distribution of funds regarding operation of oil and gas properties.

The Receiver contends that the Bankruptcy Court erred in overruling its objection and approving the Trustee's accounting because the Trustee charged drilling and operating expenses on wells operated by Saket Petroleum Company (hereinafter "Saket") after Chilcott had withdraw from participation in the oil and gas ventures involved. The Receiver contends that Chilcott's withdrawal from participation and the drilling ventures was manifested by his failure to respond to calls for joint interest

expenses in May and June of 1981. The Receiver further contends that the Trustee is estopped to deny the termination of the Chilcott interest because of the filing of a lawsuit for a judicial declaration of termination of the interest in Okmulgee County by Saket Petroleum. Finally, the Receiver contends that the Bankruptcy Court erred in denying the Receiver's objection to the Trustee's accounting with regard to charging Chilcott with drilling and operating expenses in connection with the interest which Chilcott purchased from Morris Burk.

In response to these positions, the Trustee contends that he is not estopped by the filing of the lawsuit for judicial determination of the Chilcott interest because the Receiver filed an action in the United States District Court for the District of Colorado which sought an accounting from Tureaud d/b/a Saket Petroleum Company, a determination of Chilcott's interest in the oil and gas properties, and an injunction against declaration of a forfeiture of any interest owned by Chilcott and Saket Petroleum Company. In this action the Receiver contended that Chilcott had been billed by Saket for more than his pro rata share of previous expenses and that his interest should not be forfeited because of his refusal to pay the last demand for drilling expenses. The Trustee also contends that when Chilcott purchased the interest in the Saket Petroleum ventures from Burk, he purchased them with the intent to participate in the expenses of drilling so that no further agreement between Chilcott and Saket Petroleum was required.

The stipulation of facts entered into by the parties

indicates that the termination suit in Okmulgee County was stayed shortly after it was filed by the receivership proceedings brought in the Colorado federal court by Chilcott's Receiver. The Appellee's brief indicates that the federal case in Colorado was stayed by the filing of the Tureaud bankruptcy. As a result, neither action proceeded to final judgment. It is apparent that both the Receiver for Chilcott and the Trustee for the Tureaud/Saket interests now seek to assert different positions than those which were taken in the prior litigation. Thus, any estoppel and change of position urged by the Receiver would also apply to the Receiver itself, who previously sought to prevent forfeiture of the Chilcott interest.

With regard to the Burk interest, by the letter agreement of March 1, 1981 Chilcott agreed to pay his pro rata share of costs borne by his working interest. The letter agreement states that Chilcott was the owner of a 39/128th working interest in the oil and gas properties of Saket. When Chilcott purchased an additional 1/128th working interest in all properties owned by Saket Petroleum Company from Morris Burk, the agreement of sale between Burk and Chilcott provided that the interest purchased by Chilcott would bear a proportionate share of all costs associated with or related to the exploration, drilling, development, production or operation of the oil and gas properties of Saket, including direct or indirect overhead expenses of Saket. Combining the agreement of sale between Burk and Chilcott and the letter agreement between Chilcott and Tureaud d/b/a Saket Petroleum Company, it is clear that Chilcott intended to pay the

expenses billed by Saket in connection with the 1/128th interest he purchased from Burk. Therefore this Court concludes that the Bankruptcy Court correctly denied both objections of the Receiver to the accounting rendered by the Trustee on behalf of the Tureaud bankruptcy estate.

IT IS THEREFORE ORDERED that the action of the Bankruptcy Court in denying the objections of the Receiver to the Trustee's accounting is hereby affirmed.

DATED this 2<sup>d</sup> day of April, 1987.

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

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

FILED

APR 2 1987

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

FORD MOTOR CREDIT COMPANY,  
a Delaware corporation,  
  
Plaintiff,  
  
vs.  
  
MARION ROSA and  
PAUL ROSA,  
  
Defendants.

No. 87-C-178-E ✓

ORDER OF DISMISSAL

THIS cause came on to be heard on Plaintiff's Motion to Dismiss the action against the Defendants, Marion Rosa and Paul Rosa, pursuant to Rule 41(a) of the Fed.R.Civ.P., and it appearing to the Court that good cause has been shown, it is

ORDERED that this action be, and it is hereby, dismissed without prejudice against the Defendants, Marion Rosa and Paul Rosa without costs.

Dated April 2, 1987.

*James A. ...*  
UNITED STATES DISTRICT JUDGE



FILED

APR 1 1987

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

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

SAM R. KIRK and RICHARD E. WELLS, )  
 Plaintiffs, )  
 vs. )  
 GENERAL SIGNAL CORPORATION, et al., )  
 Defendants. )  
 and )  
 GENERAL SIGNAL CORPORATION, )  
 Third-Party Plaintiff, )  
 vs. )  
 SAMUEL R. KIRK and THE SIERRA )  
 COMPANY, INC., )  
 Third-Party Defendants. )

Case No. 85-C-48-B

CONSOLIDATED

Case No. 85-C-295-B

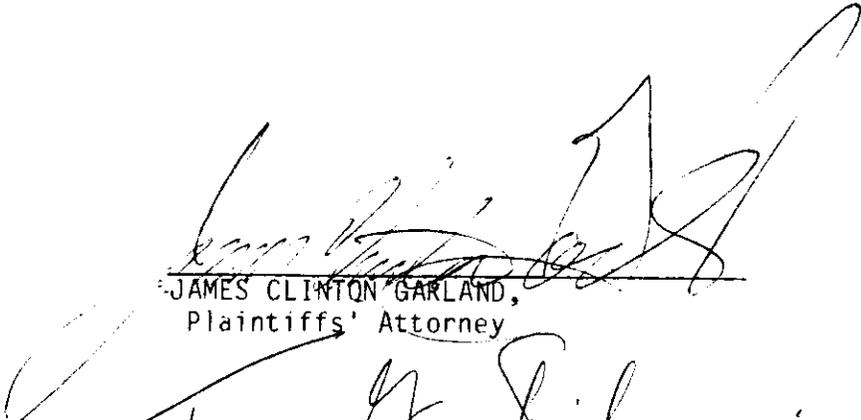
NOTICE OF DISMISSAL WITH PREJUDICE

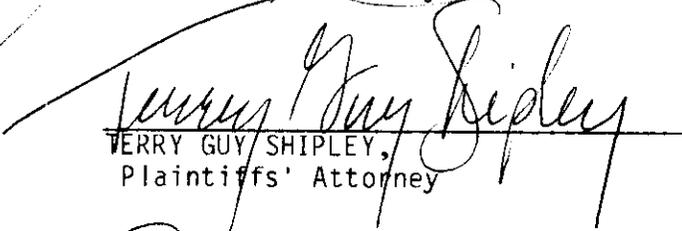
Samuel R. Kirk and Richard Wells, Plaintiffs herein, hereby dismiss with prejudice their claims against Defendants Beusking, Prellwitz, Hannay and Dunn in the above-entitled action.

DATED: March 13, 1987.

  
SAMUEL R. KIRK, Plaintiff

  
RICHARD E. WELLS, Plaintiff

  
\_\_\_\_\_  
JAMES CLINTON GARLAND,  
Plaintiffs' Attorney

  
\_\_\_\_\_  
JERRY GUY SHIPLEY,  
Plaintiffs' Attorney

  
\_\_\_\_\_  
PHILIP W. REDWINE,  
Plaintiffs' Attorney

AGREED TO:

  
\_\_\_\_\_  
JACK R. GIVENS  
Attorney for Defendants  
Beusking, Prellwitz, Hannay & Dunn

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARY L. KING,  
Plaintiff,  
vs.  
OTIS R. BOWEN, M.D.,  
Secretary of Health and  
Human Services,  
Defendant.

FILED

APR 1 1987

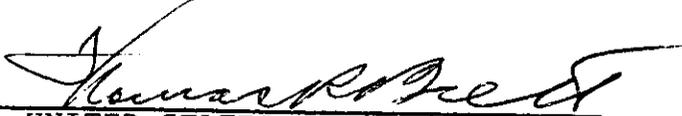
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 86-C-859-B

ORDER

For good cause shown, pursuant to 42 U.S.C. §405(g),  
this cause is remanded for further administrative action.

Dated this 31<sup>ST</sup> day of March, 1987.

  
UNITED STATES DISTRICT JUDGE

10

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

APR 1 1987

HAROLD SHEPPARD and JUNE SHEPPARD, )  
husband and wife, )  
 )  
 ) Plaintiffs, )  
 )  
v. )  
 )  
THE HANOVER INSURANCE COMPANY, )  
a New Hampshire Insurance )  
Corporation, )  
 )  
 )  
 ) Defendant. )

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

No. 85-C-1102-B

JUDGMENT - ATTORNEYS' FEE

In keeping with the Findings of Fact and Conclusions of Law entered this date, Judgment is hereby entered in favor of the Plaintiffs, Harold Sheppard and June Sheppard, and against the Defendant, The Hanover Insurance Company, in the amount of Thirty-Five Thousand Two Hundred Sixty Five and 70/100 Dollars (\$35,265.70), as and for attorney's fees with interest thereon to run at the rate of 6.04% per annum from the date hereon.

DATED this 15<sup>th</sup> day of April, 1987.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

ARTHUR SULENSKI, SUSAN SULENSKI, )  
DANIEL SULENSKI and DAVID SULENSKI, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
HOWELL COUNTY, et al., )  
 )  
Defendants. )

No. 85-C-826-C

**F I L E D**  
APR 1 1987

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

ORDER

NOW on this 1 day of April, 1987, upon joint application of the parties for an order dismissing the above captioned case with prejudice, and upon premises considered, the court finds that the same should be dismissed with prejudice.

IT IS SO ORDERED.

(Signed) H. Dale Cook

\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

FILED

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

APR 1 1987

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

DARRELL RAY TUCKER, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 JOHN MAKOWSKI, et al., )  
 )  
 Respondents. )

No. 85-C-1098-E

O R D E R

The Court has before it for its consideration the Findings and Recommendations of the Magistrate in which he recommends that the Petitioner's Petition for Writ of Habeas Corpus be denied.

The Petitioner is in state custody pursuant to two convictions, one for Armed Robbery and one for Kidnapping. In essence, the Petitioner claims that his right to be free from double jeopardy was violated when he was tried in separate trials for each offense, but evidence of both crimes was introduced in each trial. The Magistrate relied on Blockburger v. United States, 284 U.S. 299 (1932) in considering whether a claim under the double jeopardy clause had been shown. The Blockburger test requires the Court to consider whether the elements of the crimes charged are identical. Clearly the essential elements of the crimes of kidnapping and armed robbery are not the same. Furthermore, the introduction of evidence of one crime at the trial of the Defendant on charges for a second crime is allowed under Rule 404(b) of the Federal Rules of Evidence.

The Findings and Recommendations of the Magistrate are

hereby accepted by this Court and the Petitioner's Petition for  
Writ of Habeas Corpus is denied. "

DATED this 1<sup>st</sup> day of April, 1987.

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

FILED

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

APR 1 1987

LUCILLE ECCHER, surviving spouse )  
of Robert Norman Eccher, deceased, )  
 )  
 ) Plaintiff, )  
vs. )  
 )  
THOMAS B. MOORE, M.D., )  
 )  
 ) Defendant. )

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

No. 87-C-102-E

ORDER

Now on this 1st day of April, 1987, the parties  
"Stipulation and Request For Transfer" being filed with the Court  
and coming on for hearing and it appearing to the Court that:

1. That the parties agree and stipulate that pursuant to 28  
U.S.C. §1391 venue for this cause properly lies in the Northern  
District of Oklahoma as well as the Western District of Missouri,  
Southwestern Division.

2. That the parties agree and stipulate that the defendant  
is not subject to the in personam jurisdiction of this Court.

3. That the parties have agreed and stipulated that this  
cause may be transferred to the Western District of Missouri,  
Southwestern Division.

4. That the parties have agreed, and stipulated that the  
defendant have 20 days after the transfer of this action to the  
Western District of Missouri, Southwestern Division within which  
to file his answer to the complaint of plaintiff.

It is therefore,

ORDERED, ADJUDGED and DECREED that this cause is hereby  
transferred to the Western District of Missouri, Southwestern  
Division and that defendant be and is hereby given 20 days after

the date of said transfer within which to file his answer to plaintiff's complaint.

S/ JAMES O. ELLISON

---

Judge

FILED

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

APR 1 1987

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

LARRY HUGGINS, )  
 )  
 Plaintiff, )

v. )

85-C-1109-B

LARRY MEACHUM OF THE OKLA. )  
 DEPT. OF CORRECTIONS, )  
 OKLAHOMA CITY, OK, )  
 )  
 Defendant. )

Consolidated with

LARRY HUGGINS, )  
 )  
 Plaintiff, )

v. )

86-C-74-B

DAVID MOSS, DISTRICT )  
 ATTORNEY, TULSA COUNTY, )  
 )  
 Defendant. )

ORDER

Plaintiff was allowed to file these actions in forma pauperis seeking monetary and equitable relief for the alleged violation of his civil rights under 42 U.S.C. §1983. Except for the named defendants, the complaints in 85-C-1109-B and 86-C-74-B are identical and were consolidated by the court. In 85-C-1109-B plaintiff names Larry Meachum, Director of the Department of Corrections, as defendant; David Moss, District Attorney for Tulsa County, is the named defendant in 86-C-74-B.

Plaintiff alleges that in February, 1985, he was on the house arrest program under the Oklahoma Department of Corrections. On or about February 26, 1985, plaintiff was charged with escape from a penal institution and arrested in Lumberton, North Carolina, on a detainer warrant from Tulsa County, Oklahoma. He

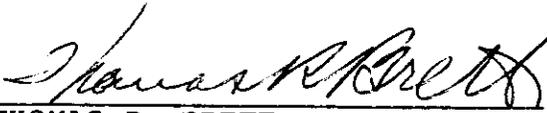
contends that after spending ninety days in custody in North Carolina, Tulsa County dropped the detainer, thereby depriving itself of the right to further prosecute plaintiff on the escape charge. On or about October 14, 1985, plaintiff was arrested at his home in Sand Springs and charged with escape from a penal institution. Plaintiff contends that the above actions by the Oklahoma State officials deprived him of his constitutional rights.

With regard to the complaint in 85-C-1109-B, plaintiff has not shown any personal participation of Meachum in the alleged deprivation of his constitutional rights. To be liable under §1983, a public official must have been personally involved in the deprivation. Coleman v. Turpen, 697 F.2d 1341, 1346, n.7 (10th Cir. 1982); Bennett v. Passic, 545 F.2d 1260 (10th Cir. 1976).

In Case No. 86-C-74-B plaintiff attempts to hold Moss liable under §1983 for actions he took in extraditing plaintiff from North Carolina. David Moss, as the District Attorney for Tulsa County, is entitled to absolute prosecutorial immunity from suit for acts done in the scope of his official duties. Imbler v. Pachtman, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976). Actions taken in furtherance of extradition are clearly within the scope of a prosecutor's official duties. Therefore, Moss is immune from suit based upon allegations of improper extradition.

Based upon the above, it is Ordered that plaintiff's civil rights complaints in Case Nos. 85-C-1109-B and 86-C-74-B be and are hereby dismissed.

Dated this 19<sup>th</sup> day of ~~March~~ <sup>April</sup>, 1987.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT COURT

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

IN RE: REPUBLIC TRUST &  
SAVINGS COMPANY (d/b/a  
WESTERN TRUST & SAVINGS  
COMPANY,

Debtor,

R. DOBIE LANGENCAMP,  
Successor Trustee,

Plaintiff,

vs.

BROWN J. AKIN, JR., and  
LAURIE AKIN,

Defendants.

FILED

APR 1 1987

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

No. 86-C-903-E

ORDER

The Court has before it for its consideration the Defendants' application for leave to appeal, in which the Defendants seek leave for an interlocutory appeal from an order of the Bankruptcy Court denying Defendants' motion to dismiss for lack of jurisdiction. The Plaintiff's application for leave to appeal is opposed by the Defendants on the basis that an immediate appeal would not materially advance the ultimate termination of litigation because the same issue involved in this appeal, whether Republic Trust & Savings Company and Republic Financial Company qualify as Debtors under 11 U.S.C. §109, is pending before the Honorable Thomas R. Brett in cases 86-C-77-B and 86-C-312-B.

Subsequent to the briefs of the parties with regard to this issue, Judge Brett has ruled on the issues for which appeal is sought herein, holding that Republic Financial Company and

Republic Trust & Savings Company are eligible for relief under Chapter 11. Therefore the Court concludes that Plaintiff's appeal from the Order of the Bankruptcy Court denying its motion to dismiss is moot, the district court having previously ruled on these issues.

Accordingly, Plaintiff's application for leave to appeal is denied.

DATED this 15<sup>th</sup> day of April, 1987.

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

*Entered*

**F I L E D**

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

APR 1 1987

R. JAMES WOOLF, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THOMAS W. McLAIN, et al., )  
 )  
 Defendants. )

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

No. 85-C-1033-E

O R D E R

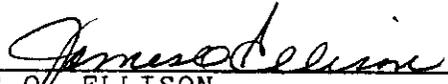
The Court has before it for its consideration the motion to dismiss filed by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma on behalf of Defendants Thomas W. McLain, Connie Marie Brasel, Jerald L. Hilsher, Jerry Emmons, Rodney P. Baker, the Honorable Thomas R. Brett, and Layn R. Phillips, individually (hereinafter collectively referred to as the "federal Defendants"). The federal Defendants have moved to dismiss Plaintiff's amended complaint for failure to state a claim upon which relief can be granted due to the absolute immunity of Judge Brett and the qualified immunity of the remaining Defendants.

In his amended complaint, the Plaintiff alleges that the Defendants are in violation of the Racketeer Influence and Corrupt Organizations Act, that the racketeer enterprises involved include the United States District Court for the Northern District of Oklahoma, the Federal Bureau of Investigation, the United States Probation Office, and the Office of the United States Attorney, all in the Northern District of

Oklahoma. In this Court's Order of July 8, 1986, the Plaintiff was ordered to file an amended complaint alleging in detail the facts indicating that official immunity of the Defendants would not bar his claim. Plaintiff has failed to allege any facts which would avoid the bar of the official immunity of these Defendants under Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978), Harlow v. Fitzgerald, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). Therefore, Plaintiff's amended complaint fails to state a claim upon which relief could be granted.

Accordingly, the Defendants' motion to dismiss is granted.

DATED this 15<sup>th</sup> day of April, 1987.

  
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JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

*Entered*

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

FILED  
APR 1 1987

INDIAN COUNTRY, U.S.A, INC., )  
a South Dakota corporation, )  
and the MUSCOGEE (CREEK )  
NATION, a federally recognized )  
Indian Tribe, )

Plaintiff, )

vs. )

THE STATE OF OKLAHOMA, ex rel )  
The Oklahoma Tax Commission, )  
and THE DISTRICT ATTORNEY FOR )  
TULSA COUNTY, )

Defendants. )

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

No. 85-C-643-E ✓

ORDER

Having previously addressed the propriety of state regulation and taxation of the tribal bingo enterprises which were the subject of this action, the Court must now address various issues concerning claims for attorneys' fees and costs. The Plaintiff has filed an application for attorneys' fees in excess of \$200,000.00, and costs have been taxed by the Clerk in the amount of \$3,513.45. In response to Plaintiff's application for attorneys' fees, both Defendants have filed motions for summary judgment contesting the Plaintiff's right to a fee award. Both the Plaintiff and Defendant Oklahoma Tax Commission have moved the Court to review taxation of costs by the Clerk.

Plaintiff's Application for Attorneys' Fees

The Plaintiff asserts three bases for an award of attorneys'

fees as the prevailing party in this action. First, the Plaintiff seeks fees pursuant to 42 U.S.C. §1988. Second, Plaintiff seeks attorneys' fees under the bad faith exception to the "American Rule", contending that the Defendants have maintained unfounded defenses and have litigated for vexatious and oppressive reasons. Third, Plaintiff seeks fees pursuant to Rule 37(c) of the Federal Rules of Civil Procedure, contending that Defendants failed to admit numerous matters in request for admissions which Plaintiffs were later required to prove at trial. In response, the Defendants claim that fees cannot be awarded pursuant to 42 U.S.C. §1988 for litigation of the issues involved in this case, that there has been no conduct by the Defendants which would constitute bad faith so as to justify an award of fees, and that the Plaintiff has waived any claim under Rule 37 because it was not asserted prior to judgment.

In J & J Anderson, Inc. v. Town of Erie, 767 F.2d 1469 (10th Cir. 1985) the United States Court of Appeals for the Tenth Circuit considered whether attorneys' fees could be awarded pursuant to 42 U.S.C. §1988 where the Plaintiff had prevailed on theories arising under the Commerce Clause and the Supremacy Clause of the United States Constitution. Citing Chapman v. Houston Welfare Rights Organization, 441 U.S. 600, 99 S.Ct. 1905, 60 L.Ed.2d 509 (1979), the Tenth Circuit stated that the Supremacy clause is not the source of any federal right, but simply secures federal rights created by treaty, statute or regulation. 42 U.S.C. §1983, it explained, was enacted to insure a right of action to enforce the protections of the Fourteenth

Amendment and the federal laws enacted pursuant thereto. Therefore §1983 does not provide a remedy for claims resulting for violations of the Supremacy clause, and attorneys' fees are therefore not available for such claims under §1988. Because the Plaintiff prevailed in this case based on the preemption of state regulation by the federal policy with regard to Indian self development, the Plaintiff is the prevailing party based on the Supremacy clause rather than as a result of any of the protections of the Fourteenth Amendment and the federal laws enacted pursuant thereto. Therefore, this Court holds that the Plaintiff is not entitled to an attorneys' fee under 42 U.S.C. §1988.

With regard to the question of whether the Defendants' actions justify the imposition of attorneys' fees under the bad faith exception to the American Rule, the controlling principles are set forth in another case decided by the United States Court of Appeals for the Tenth Circuit, Sterling Energy, Ltd. v. Friendly National Bank, 744 F.2d 1433 (10th Cir. 1984). A party acts in bad faith only when the claim "is entirely without color and has been asserted wantonly, for purposes of harassment or delay, or for other improper reasons." Sterling, supra, at 1435. Stringent standards are required for the imposition of fees under the bad faith exception, which may be resorted to only in exceptional cases and for dominating reasons of justice. Here, at the time the action was brought, the law of the State of Oklahoma as set forth in State of Oklahoma ex rel Thomas H. May, District Attorney of Ottawa County, Oklahoma v. Seneca-Cayuga &

Quapaw Tribes of Oklahoma, 711 P.2d 77 (1985) supported the position of the Defendants that the State of Oklahoma had the power to preclude operation of the Bingo Hall. Furthermore, the validity of the Defendants' concern with regard to potential abuse of Indian bingo enterprises by organized crime organizations was addressed by the United States Supreme Court in California v. Cabazon Band of Mission Indians, 107 S.Ct. 1083 (1987) in which the Court stated, "This is surely a legitimate concern, but we are unconvinced that it is sufficient to escape the preemptive force of federal and tribal interest apparent in this case." Certainly the advocacy of such a position by local authorities would not constitute bad faith justifying the imposition of a fee. While this litigation was hard fought, this Court is satisfied that the actions of the Defendants or Defendants' counsel were not vexatious or frivolous, and an attorneys' fee under the bad faith exception to the American Rule is not justified by the circumstances of this case. Therefore the discovery request of both Plaintiff and Defendant concerning the bad faith issues are unnecessary and are therefore denied.

Finally, with regard to the question of assessment of attorneys' fees under Rule 37 of the Federal Rules of Civil Procedure for failure to make admissions, the Defendants contend that any such fees have been waived by failure to raise the issue until after judgment has been entered. The Court concurs that under United States v. Diapolis Corporation of America, 748 F.2d 56 (2d Cir. 1984) and Popeil Brothers, Inc. v. Schick Electric Co., Inc., 516 F.2d 772 (7th Cir. 1975) a post-judgment motion

for attorneys' fees pursuant to Rule 37 comes too late.

The Plaintiff having failed to establish authority for the imposition of attorneys' fees against the Defendants, the Defendants' motions for summary judgment as to the attorneys' fee issue must be granted and Plaintiff's application for attorneys' fees must be denied.

#### Taxation of Costs

The Plaintiff has moved the Court to review taxation of costs with regard to the following areas:

1. Depositions of witnesses not used at trial;
2. Witness fees for employees of Plaintiff Indian Country U.S.A.;
3. Witness fees for deposition witnesses;
4. Transcripts of proceedings not read into the record.

Taxation of costs is governed by 28 U.S.C. §1920. In Ramos v. Lamb, 713 F.2d 546 (10th Cir. 1983) the United States Court of Appeals for the Tenth Circuit indicated that copies of depositions reasonably necessary to the litigation of the case were included within the subsection of §1920 which allowed taxation of fees of the court reporter. However, in Moe v. Avions Marcel Dassault-Breguet Aviation, 727 F.2d 917 (10th Cir. 1984) the Tenth Circuit held that Court may disallow costs of transcripts and depositions not actually read into evidence at the trial. Therefore the Court concludes that the Clerk's refusal to tax such costs was correct under the rules of this

circuit.

With regard to witness fees and expenses for Robert Leison, John Artichoker and Gordon Sjodin, witnesses called by the Plaintiff, it appears that the Clerk disallowed taxation of witness fees for these witnesses on the basis that they were employees of a nonprevailing party, Indian Country, U.S.A. The Court concurs in finding that these gentlemen were witnesses of the non-prevailing party, Indian Country, U.S.A.

Accordingly, the Plaintiff's motion to review taxation of costs by the Clerk is denied.

Defendant Oklahoma Tax Commission has also moved the Court to review taxation of costs by the Clerk, contending that no costs should have been taxed because Indian Country, U.S.A. was not a prevailing party, that costs should have been apportioned between the Defendants and that air fare for witness Renard Strickland should be disallowed for failure to furnish a receipt. The Muscogee (Creek) Indian Nation having prevailed, the Court finds that it should recover its costs without regard to the status of Indian Country, U.S.A. With regard to the question of imposition of costs on both Defendants, the Court's review of the bill of costs indicates that the Clerk taxed costs against both Defendants, as taxation is sought with regard to both Defendants, and no action by the Clerk is shown imposing costs on only one Defendant. The confusion may arise from the style of the case as provided by the Plaintiff on the bill of costs which list the Defendants as merely "The State of Oklahoma." Since the action was brought against the State of

Oklahoma ex rel the Oklahoma Tax Commission and the District Attorney for Tulsa County, the simple notation of "The State of Oklahoma" would not mean that costs were taxed only against the Oklahoma Tax Commission. Finally, the Court notes that Plaintiff's counsel furnished a letter from Mr. Strickland regarding the amount of his airfare, which was sufficient to establish the expense incurred.

Accordingly, the motion to review taxation of costs of Defendant State of Oklahoma ex rel Oklahoma Tax Commission is denied.

DATED this 13<sup>th</sup> day of ~~March~~<sup>APRIL</sup>, 1987.

  
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JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE