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

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
vs.	)	No. 85-C-238-C
$10,081.00 IN UNITED STATES CURRENCY,	)	
Defendant.	)	

FILED

JUN 30 1987

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

J U D G M E N T

This matter came on for consideration of the plaintiff's motion for summary judgment. The issues having been duly presented and a decision having been duly rendered in accordance with the Order filed simultaneously herein,

IT IS THEREBY ORDERED, ADJUDGED, AND DECREED that judgment be entered on behalf of plaintiff and that defendant $10,081.00 in United States Currency is declared forfeited to the plaintiff.

IT IS SO ORDERED this 27th day of June, 1987.

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

Entered

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

JOHN REIDEL, on his own behalf, and on behalf of all other owners of property along 96th Street South in the City of Tulsa, Tulsa County, Oklahoma, who are similarly situated,	)	
Plaintiffs,	)	
v.	)	No. 86-C-474-B
ELIZABETH DOLE, Secretary of Transportation of the United States of America, et al.,	)	
Defendants.	)	

FILED
JUN 30 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

FILED
JUN 30 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

This matter comes before the Court on motion for summary judgment by the federal, state and local defendants. The Court heard oral arguments on the pending motion for summary judgment on April 1, 1987, and allowed the parties to file additional authority thereafter. The Court has reviewed the motion and applicable legal authority provided by all parties and finds as follows.

All Defendants have moved in their motions for judgment on each of the four claims of the Amended Complaint, namely, (1) the National Environmental Policy Act (NEPA) claim, (2) the National Clean Water Act claim, (3) the waiver, laches and estoppel claim, and (4) Oklahoma Open Meeting Law claim. In the response brief to the various motions for summary judgment, the Plaintiffs have failed to respond in any way to the Defendants' motion for

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summary judgment on the Clean Water Act claim and the waiver, laches and estoppel claim. In addition, during the oral arguments on the motion for summary judgment, the Plaintiffs did not controvert facts or take issue with any of the Defendants' assertions on these two claims. Therefore, pursuant to Local Rule 14(a) of the Rules of the United States District Court for the Northern District of Oklahoma, the Court finds that the Plaintiffs have confessed the matters asserted by the Defendants in their motion for summary judgment on the Clean Water Act claim and the waiver, laches and estoppel claim.

Plaintiffs' response to the motion for summary judgment contains two new claims not raised in their Complaint or Amended Complaint. First, the Plaintiffs claim that the Defendants have failed to hold hearings required by 23 U.S.C. §128(a), and second, that the Defendants have failed to give proper consideration to the "Parkland" statute at 23 U.S.C. §138. The Court finds the assertion of these two new claims improper in response to the Defendants' motion for summary judgment. The Plaintiffs were afforded a considerable time period in which to amend their Complaint and in fact did on February 17, 1987. In the Amended Complaint no mention of the 23 U.S.C. §§ 128 and 138 claims was made. Therefore, the Court finds that such claims are improperly before the Court and the Court will consider the motion for summary judgment as it pertains to the Amended Complaint filed February 17, 1987.

Plaintiffs in their first claim allege a violation of the National Environmental Policy Act of 1969 for failure of the various defendants to comply with the Environmental Impact Statement (EIS) requirements of NEPA, 43 U.S.C. §4332. Plaintiffs allege that compliance is required since the Defendants have selected 96th Street in Tulsa as the location for a Federal-Aid Highway before the preparation of an EIS. Plaintiffs argue that the NEPA requirements have been invoked in the instant dispute for the following reasons:

1. The proposed expressway will link up I-44 in two different locations and serve as a major conduit for vehicular traffic in a two or three county area traversing several municipal city limits;

2. That the impact of the proposed expressway is so extensive and involves such an outlay of federal monies that compliance with NEPA and the preparation of an EIS is required whether or not federal funds are used for the acquisition of right-of-way;

3. That the approval of the Tulsa Regional Transportation Plan and the Tulsa Major Street and Highway Plan by various local and state agencies constitutes the type of "major federal action" which triggers a requirement for compliance;

4. That studies which have been prepared are wholly inadequate for purposes of compliance with the EIS requirements mandated by NEPA;

5. That the "no construction" alternative has not been considered and the impact of air and noise pollution and other facts affecting the environment have been given no consideration.

In the Plaintiffs' response to the Defendants' motion for summary judgment on the NEPA claim, the Plaintiffs argue that the requirements of NEPA are triggered as the proposed "Creek

Expressway" is an extension of the "Mingo Valley Expressway" with respect to which the Federal Defendants previously granted approval after the submission of an Environmental Impact Statement. Plaintiffs claim that the "Creek Expressway" project has been improperly segmented to thwart the preparatory environmental phase of the project. In determining whether transportation projects have been improperly segmented, the Court must decide whether each of the projects has independent utility. See, Piedmont Heights Civic Club, Inc. v. Moreland, 637 F.2d 430, 441 (5th Cir. 1981); Movement Against Destruction v. Volpe, 361 F.Supp. 1360, 1384 (D.Md. 1973), aff'd 500 F.2d 29 (4th Cir. 1974).

It is clear from a review of Exhibit A, the Environmental Impact Statement for the Mingo Valley Expressway dated December 1982, and Exhibit B, the Record of Decision of the Federal Highway Administration relating to the Mingo Valley Expressway, that the Mingo Valley Expressway was considered as a project having independent utility and logical termini. (See Exhibit A, pages 5-7). As stated in the final Environmental Impact Statement for the Mingo Valley Expressway:

> "... The termination of the proposal at US 64 represents the southern extent beyond which the arterial street system will provide adequate service." (Exhibit A, page 6).

In addition, pages 6 and 7 of the final EIS for the Mingo Valley Expressway show that the "Creek Expressway" was contemplated to serve the east-west corridor south of Tulsa connecting US 64 and US 75, and to alleviate east-west traffic congestion between US

64 and US 75. An analogous situation was faced by the court in Piedmont, supra,

> "... The projects, although interrelated as part of an overall transportation plan, should individually contribute to alleviation of the traffic problems in Atlanta, and are therefore not improperly segmented as separate projects. Furthermore, because of the independent utility of the projects, approval of each project does not irretrievably commit future resources or limit alternatives available to the transportation agencies."

637 F.2d at 441.

Plaintiffs' reliance on Hawthorn Environmental Preservation Association v. Coleman, 417 F.Supp. 1091 (N.D.Ga. 1976), is unpersuasive. In Hawthorn, the District Court found that a highway project had been improperly segmented to bypass the mandates of federal environmental law as the proposed segment of the bypass had no independent utility observable from the record before the court. Unlike the situation in Hawthorn, the Court here finds that the Mingo Valley and Creek Expressway projects, though contemplated in an overall plan for the Tulsa transportation system, each have independent utility. The Plaintiffs have failed to show an improper segmentation of the projects which would require compliance with the NEPA at this point.

Plaintiffs next contend that there have been recommendations and/or other major federal actions by the Defendants, concerning the "Creek Expressway" which have significantly affected the quality of the environment so that compliance with NEPA is mandated.

Plaintiffs argue that designation of the proposed expressway as a federal-aid highway has triggered the statutory procedural scheme to protect the environment during the planning and building of a highway project.

It is clear that the designation of the Creek Expressway by the State Highway Department pursuant to 23 U.S.C. §103 and 23 C.F.R. §470.107 does not trigger NEPA compliance. The designation of a highway pursuant to 23 U.S.C. §103 is categorically excluded by regulation from NEPA compliance because it does not have a significant effect on the human environment. 23 C.F.R. §771.115(b)(7).

Plaintiffs next argue that the Federal Highway Administration and previously the Bureau of Public Roads have approved plans and cooperated with various state and local agencies in planning of the Creek Expressway and therefore have expressly and impliedly approved the location chosen by the state and local agencies for the proposed highway. Plaintiffs agree that this is not the formal location approval as contemplated by 23 C.F.R. Part 790 but is an approval in fact that requires an Environmental Impact Statement at this time.

The Plaintiffs rely on La Raza Unida of Southern Alameda County v. Volpe, 337 F.Supp. 221 (N.D.Ca. 1971), affirmed, 488 F.2d 559 (9th Cir. 1973), for their proposition that major federal action has occurred regarding the Creek Expressway. The Court finds the La Raza Unida case distinguishable here as no location approval has yet been given by the federal defendants.

The affidavit of Gordon E. Penney attached to the Defendants' brief in support of their motion for summary judgment, makes clear that the Federal Highway Administration has not approved either the location or design of the Creek Expressway. See Affidavit of Penney at ¶26. Under the Federal Highway Administration regulations, location approval does not occur until approval of the final Environmental Impact Statement and the filing of public hearing transcripts, reports and certifications required by 23 U.S.C. §128. See, 23 C.F.R. §771.113(a) and (b), and see also, 23 C.F.R. §790.9(e)(1).

A review of the whole record before the Court indicates that no major federal action has taken place which would have required the 23 U.S.C. §128 hearing at this point in the development of the project. The affidavit of Monty Murphy, the Deputy Director of the Department of Transportation for the State of Oklahoma, states that the project is in the environmental phase of development and that a consultant will be selected to perform the Environmental Impact Statement and NEPA requirements as the project progresses. See Murphy Affidavit at ¶4.

The affidavits of Mr. Gordon E. Penney and Mr. Monty Murphy, supra, state they are aware of their duty under the NEPA and that they will comply with the requirements of the §128 public hearing after a draft Environmental Impact Statement is circulated for public comment.

The Court finds that the Plaintiffs' alleged NEPA violations are without merit and that the claims advanced regarding 23

U.S.C. §128(a) and 23 U.S.C. §138 are premature and not ripe for judicial review. See, Eastern Connecticut Citizens Action Group v. Dole, 638 F.Supp. 1297 (D.C.Conn. 1986), affirmed per curiam, Docket No. 86-6162 (2d Cir. November 2, 1986).

The Plaintiffs have failed to show any type of major federal action which would trigger the requirements of the NEPA and have asserted allegations not yet ripe for judicial review. Accordingly, the Defendants are hereby granted summary judgment on the Plaintiffs' first claim alleging violations of the NEPA of 1969.

The Defendants are also granted summary judgment on the Plaintiffs' National Clean Water Act and waiver, laches and estoppel claims, as the Plaintiffs have failed to respond to the Defendants' motion for summary judgment and therefore the matters are deemed confessed pursuant to Local Rule 14(a).

The Court finds that the Plaintiffs have wholly failed to invoke the federal question jurisdiction of this court pursuant to 28 U.S.C. §§ 1343 and 1344 as no showing of discrimination or constitutional deprivation can be inferred from the complaint.

The Court further finds that the jurisdictional basis alleged of 28 U.S.C. §1361 is inapplicable here as no need for mandamus to compel an officer or employee of the United States, the State of Okahoma and the City of Tulsa, Oklahoma, or any agency thereof to perform a duty has been shown. Likewise, the alleged jurisdiction under the federal Administration Procedure Act, 5 U.S.C. §701-706 does not apply as no final agency action

has occurred by an agency of the federal government in the instant dispute. The Court finds that jurisdiction based on 28 U.S.C. §2201 seeking a declaratory judgment is unavailing as the matters are not yet ripe for judicial review. The Defendants' motion for summary judgment is hereby granted and the Court deems it is improper to exercise jurisdiction over the pendent state law Open Meeting claim and orders that the state law claim be dismissed without prejudice.

IT IS SO ORDERED this 20th day of June, 1987.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 30 1987

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

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
vs.	)	
MICHAEL O. INGRAM, D.C.,	)	
Defendant.	)	CIVIL ACTION NO. 87-C-162-B

DEFAULT JUDGMENT

This matter comes on for consideration this 30th day of June, 1987, the Plaintiff appearing by Peter Bernhardt, Assistant United States Attorney, and the Defendant, Michael O. Ingram, D.C., appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Michael O. Ingram, D.C., was served with Summons and Complaint on April 30, 1987. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

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

Michael O. Ingram, D.C., for the principal sum of $8,204.46 as of June 30, 1986, plus interest and late charges accruing thereafter at the approximate rate of $3.41 per day until judgment, plus interest thereafter at the current legal rate of 7 percent per annum until paid, plus costs of this action.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

PB/mp

FILED

JUN 30 1988

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

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

UNITED STATES OF AMERICA, et al.,	)	
Plaintiffs,	)	
vs.	)	No. 82-C-1153-E
COMMUNITY BANK AND TRUST COMPANY, et al.,	)	
Defendants.	)	

O R D E R

This matter comes on before this Court on the motion of Defendant Community Bank to construe the order of October 7, 1986 or for hearing. Upon reviewing the pleadings and affidavits filed herein and reviewing the Mandate from the Court of Appeals for the Tenth Circuit the Court makes the following findings and conclusions:

CONSTRUCTION OF THE MANDATE
FILED HEREIN ON AUGUST 7, 1985

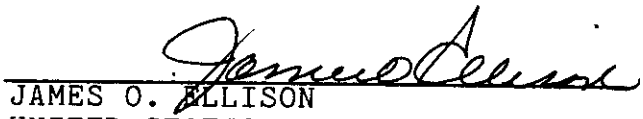
This Court in reviewing the mandate of the Court of Appeals is certain that it was directed to award attorney's fees, at the trial level, on the "Summons" issue only. It did not mandate award of attorney's fees for the appeal. The mandate vacated in part this Court's award of fees dated June 8, 1984 by disallowing for those fees awarded for the issue of "reimbursement". Thus remanded was a determination of the amount of fees allocable to the "summons issue only".

CONSTRUCTION AND PARTIAL VACATION OF THE ORDER DATED OCTOBER 7, 1986

It was the intention of this Court in its order dated October 7, 1986 to award fees and costs at the trial level on the summons issue only. The record appears to support Plaintiff's contention that the Court (albeit erroneously) awarded attorney's fees for the appeal. Thus, it is proper for this Court to vacate its order of October 7, 1986 as to judgment for attorney's fees in the sum of $5,081.25 and further vacates its basing of this award on Defendant's August 29, 1986 affidavit. The Court hereby awards the sum of $5,793.75 as attorney's fees on the summons issue only. This figure was derived from the testimony of the witnesses at the May 22, 1986 hearing as well as the affidavit filed prior to that hearing regarding attorney's fees. The Court notes that the issues are so intertwined as to have a common core, however some delineation must be made and based on the evidence before it, this sum represents a fair compensation for the summons issue only. This Court specifically declines to award attorney's fees for the appeal whether considered in the form of "costs" or as fees.

IT IS THEREFORE ORDERED that this Court's order of October 7, 1986 is vacated as to the sum of $5,081.25 in fees and further vacates its basing of this award on Defendant's August 29, 1986 affidavit; that Defendant is awarded attorney's fees in the sum of $5,793.75. The Court further declines to award attorney's fees or attorney's fees as costs to Defendant for the appeal work.

ORDERED this 29th day of June, 1988.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

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

FILED
JUN 30 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

JOHN H. WETZEL,	)	
Plaintiff,	)	
vs.	)	No. 87-C-253-B
ROY M. HUFFINGTON, INC.,	)	
Defendant.	)	

O R D E R

UPON the parties' Joint Stipulation For Dismissal With Prejudice, the captioned case is hereby dismissed with prejudice, each party to bear his or its own costs, expenses, and attorneys' fees.

DATED this 30th day of June, 1987.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

entered

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

UNITED STATES OF AMERICA, Plaintiff, vs. $10,081.00 IN UNITED STATES CURRENCY, Defendant.	)))))))))	No. 85-C-238-C

FILED

JUN 30 1987

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

O R D E R

Now before the Court for its consideration is the motion of the Government for summary judgment. The issues are now ready for the Court's determination.

This is an action against the defendant property seeking forfeiture pursuant to 21 U.S.C. §881. On June 26, 1984, claimant Riley Mitchell Jones was arrested by a highway patrol trooper, in what was undisputedly a proper manner. In a brown bag found in the back of Jones' vehicle were found syringe needles, bottles, bags of white powder, jewelry, and an address book containing a yellow note reading "Riley, call me when you return. I'll bring your money by, 743-1019 Jan." On August 28, 1984, federal officials obtained a federal search warrant to search the Jones' house. The warrant specified for seizure any documents, receipts, correspondence, items of money tending to establish the illegal involvement of Riley Mitchell Jones in the use, purchase

and/or distribution of amphetamine. On August 31, 1984, federal agents and Tulsa police officers entered Jones' home and seized $5,780.00 from the person of Jones, and $4,301.00 from the nightstand of Jones' upstairs bedroom. The total amount seized was therefore $10,081.00, which is the subject of this forfeiture action. Also seized during the search were syringe needles from the same nightstand where the money was found, and various drug paraphernalia from elsewhere in the home. The white powder seized from the back of Jones' vehicle, as well as white powder seized at Jones' home, proved to be illegal forms of amphetamine. Riley Mitchell Jones was subsequently tried and convicted for conspiracy to possess amphetamine and to distribute amphetamine pursuant to 21 U.S.C. §§841(a)(1) and 846.

The applicable statute is 21 U.S.C. §881(a)(6) which provides, in pertinent part, for the forfeiture of all money

> ... furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys ... used or intended to be used to facilitate any violation of this subchapter.

The sequence and burden of proof has been articulated as follows:

> The Government bears the initial burden of proving probable cause for seizure of the money at issue. 21 U.S.C. §881(d). After this showing has been made the burden shifts to the claimant to establish, by a preponderance of the evidence, that the money at issue is not so connected to a narcotics transaction as to be subject to forfeiture.
>
> The Government can satisfy its burden by showing a reasonable ground for belief that a substantial connection exists between the money to be forfeited and criminal activity,

> as defined in subchapter I of Title 21. Circumstantial evidence can be sufficient to make this showing, so long as the belief is reasonable when all circumstances are considered.

United States v. $4,000 in U.S. Currency, 613 F.Supp. 349, 350-51 (S.D.N.Y. 1985) (citations omitted). Therefore, the initial question before the Court is whether the Government has met its burden of proof. It has been held that to meet its burden,

> the government must show that it had reasonable grounds to believe that the property was related to an illegal drug transaction, supported by less than prima facie proof but more than mere suspicion.

United States v. $5,644,540.00 in U.S. Currency, 799 F.2d 1357, 1362 (9th Cir. 1986).

This quantity of cash is substantially greater than is commonly kept in residential premises by law-abiding wage earners. See United States v. $2,500 in United States Currency, 689 F.2d 10, 16 (2nd Cir. 1982). In considering the totality of the circumstances, the Court has concluded that the Government has met its burden of showing probable cause. See, e.g., United States v. $22,287, United States Currency, 709 F.2d 442, 449 (6th Cir. 1983) (money, heroin, powder scales, guns found in search sufficient); United States v. $2,355.96, 647 F.Supp. 1460, 1463 (E.D.Mo. 1986) (defendant currency found in close proximity to cocaine paraphernalia, and detectives had evidence of sales sufficient to generate large sums of cash).

Therefore, the Court moves to the second stage of its analysis. As noted earlier, the claimant must establish by a preponderance of the evidence that the money at issue is not so

connected to a narcotics transaction as to be subject to forfeiture. The claimant has noted trial testimony that he was involved in buying and selling gold and silver, and asserts that this demonstrates an alternative source for the cash. However, the only testimony stating that the money confiscated by the officers was proceeds of jewelry sales came from the claimant himself; the testimony was impeached on cross-examination by demonstrating that claimant, despite numerous inquiries during a deposition after his arrest, did not mention other sources of income until the trial. No documentary evidence of employment has been presented by the claimant. This Court cannot say that the claimant has proved by a preponderance of the evidence that the cash came from an alternate source and thus was not connected to a narcotics transaction.

It is the Order of the Court that the plaintiff's motion for summary judgment should be and hereby is GRANTED.

IT IS SO ORDERED this 27th day of June, 1987.

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

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

FILED
JUN 29 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

LACY DAWN BIBLE, a minor, by and through her parents and next friends, DONALD G. BIBLE and SUSAN L. BIBLE, and DONALD G. BIBLE and SUSAN L. BIBLE, individually,	)	
Plaintiffs,	)	
v.	)	No. 86-C-461-B
JANE PHILLIPS EPISCOPAL HOSPITAL, INC., a corporation,	)	
Defendant.	)	

ORDER SUSTAINING MOTION FOR DIRECTED VERDICT

The Plaintiffs, Lacy Dawn Bible, a minor, by and through her parents and next friends, Donald G. Bible and Susan L. Bible, and Donald G. Bible and Susan L. Bible, individually, brought this action for alleged negligence against the Jane Phillips Episcopal Hospital, Inc., a corporation, including a claim of res ipsa loquitur and strict liability (Pretrial Order, p. 7 ¶M).[1] Subject matter jurisdiction is based upon diversity of citizenship and the jurisdictional amount. The jury trial lasted approximately six days. At the conclusion of Plaintiffs' evidence, Defendant moved to dismiss and grant a directed verdict. The Court expressed serious reservation relative to whether Plaintiffs had established a prima facie case of negligence and reserved ruling on Defendant's motion. The Defendant introduced

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1 The Court has concluded the alleged doctrine of res ipsa loquitur and/or strict tort liability is not applicable for the reasons expressed herein.

evidence and Plaintiffs introduced rebuttal evidence and the parties rested. Defendant again moved for directed verdict. The Court restated its reservations but took Defendant's motion for a directed verdict under advisement and submitted the case to the jury on a negligence charge. After deliberating for approximately 8-9 hours, the jury announced it was irreconcilably deadlocked and was therefore discharged. The Court then invited briefs relative to Defendant's motion for directed verdict at the conclusion of the evidence.

The Plaintiff, Susan L. Bible, entered the Defendant Hospital on November 22, 1984, and gave what seemed to be an uneventful birth to the minor Plaintiff, Lacy Dawn Bible. Mother and baby were discharged from the Defendant Hospital on November 25, 1984. On or about November 29, 1984, blister-type lesions occupying a space about the size of a silver dollar appeared on the minor Plaintiff's back. On December 3, 1984, at St. John's Hospital in Tulsa, Oklahoma, the minor Plaintiff was diagnosed as having Herpes Simplex Virus Type II ("Herpes II").

The evidence established that Herpes Simplex Virus Type I ("Herpes I") and Herpes II are independent and different diseases; each quite prevalent and communicable in society. Of the two diseases, Herpes I is the more prevalent. People who have occasional cold sores on their mouth probably have Herpes I, but such in a small minority of cases could be Herpes II. Herpes II is also referred to as Genital Herpes but this is a misnomer because, as in the case of the minor Plaintiff, Herpes II may not

involve the genitalia at all. The symptoms of Herpes II are sporadic, recurrent blister-like lesions at various places on the body. The evidence established that some persons infected with Herpes II, unlike the minor Plaintiff herein, may not have any ostensible skin lesions and are said to be asymptomatic carriers. The evidence also established that Herpes II communicability is insidious in that a carrier will shed sporadically; meaning that the Herpes II infected person may test negative by culture much of the time and test positive and be communicable only during the time of active shedding. There is no known cure for Herpes II and its lesions are treated with topical medications.

The evidence established that nosocomial infections (acquired while a patient is in the hospital) are broken down into the following percentages: 35% - staph, 30% - strep, 35% - myriad of other infections of which 2% are Herpes I or Herpes II. Further, the evidence established that the principal medically recognized more probable source of newborn Herpes II infection is the birth canal of the mother, who in the majority of cases can be asymptomatic. Other possible sources, other than a parent, would be hospital personnel or equipment or from third parties while the minor plaintiff was in or out of the hospital.[2]

The Plaintiffs in the Pretrial Order and to the jury stated that Susan L. Bible did not now have and never previously had

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2 Evidence indicated that over a period of years numerous hospital personnel in the obstretics and nursery area of the hospital occasionally had cold sores on their mouth. A few days after the minor Plaintiff left the hospital a friend or relative visited the minor Plaintiff who had such a lesion.

Herpes II virus.[3] Near the end of trial Plaintiffs' counsel advised the jury that while Mrs. Bible had never been infected with Herpes II Virus she had previously been "exposed". The evidence reflected that Mrs. Bible had been asymptomatic relative to Herpes lesions before the childbirth.[4]

The uncontradicted evidence from all medical witnesses who testified on the subject was that Mrs. Bible is infected with both Herpes I and Herpes II. This medical fact was supported by evidence of a titre test administered Mrs. Bible on January 30, 1985, approximately two months following the birth of the minor Plaintiff. A pathologist testified that a Pap smear of Mrs. Bible done ten days following the minor's birth was "suggestive

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3 On Page 2 of the Joint Pretrial Order under I.A. PRELIMINARY STATEMENT BY THE PLAINTIFFS, it is stated:

> "The plaintiffs further state that neither plaintiff mother nor plaintiff father has any history of the virus, Herpes Simplex II, and that the parents of the newborn infant do not, in fact, have, nor have they ever had, the disease."

On Page 5 of the Joint Pretrial Order under III. CONTENTIONS, A. Plaintiffs: 1. Facts: (b), it is stated:

> "That neither the plaintiff mother nor plaintiff father has any history of the virus, Herpes Simplex II, and in fact do not have nor have they ever had the disease."

4 The evidence established that Mr. Bible had a suspicious lesion or lesions on his penis in the spring and fall of 1984 previous to the minor Plaintiff's birth in the latter part of November 1984. While it was not introduced in evidence, the record reveals that Plaintiffs' counsel represented to the Court that Mr. Bible was tested positive for Herpes II infection shortly before trial. Over objection of Defendant such was not admitted into evidence because the test results had not been previously given Defendant before trial nor listed as an exhibit.

of herpetic infection." The pediatric infectious disease specialists testified the antibody indications from the titre test established that it was more probable that Mrs. Bible's Herpes II infection predated the minor Plaintiff's birth and that the source of the minor Plaintiff's Herpes II was her mother's birth canal. In rebuttal, Plaintiffs called a qualified non-medical Ph.D. virologist who testified that in his opinion it was impossible to determine from the antibody indications of the titre test of January 30, 1985, whether Mrs. Bible's Herpes II infection pre- or postdated the child's birth. Plaintiffs' counsel urged that Mrs. Bible was "exposed" to the Herpes II virus from the newborn and not vice versa, i.e., the baby infected by the mother.

The alleged hospital negligence and causation of the minor Plaintiff's Herpes II disease is a subject for qualified expert testimony. Boxberger v. Martin, 552 P.2d 370 (Okla. 1976); White v. Burton, 71 P.2d 694 (Okla. 1937).

The only purported expert testifying at trial that the minor Plaintiff's Herpes II was acquired as a result of the negligence of the Jane Phillips Hospital was a registered nurse specializing in the field of epidemiology, Linda Spencer. She testified at trial that she had not previously been furnished a copy of Defendant's Exhibit 7 (the antibody titre test results) which conclusively established as of January 30, 1985, Mrs. Bible was infected with Herpes I and Herpes II. Nurse Spencer stated she was not qualified to testify concerning an interpretation of

titre test results (Defendant's Exhibit 7), nor their medical significance in this case. She stated that a qualified medical infection disease specialist, immunologist, or virologist should express such an opinion, not her. Because of her admitted lack of knowledge of and qualification to discuss the significance of this highly material exhibit, Defendant's Exhibit 7, the Court expressed serious concern regarding Nurse Spencer's qualifications to express her opinion of the probable source of the minor Plaintiff's Herpes II and/or hospital negligence. The Court permitted Nurse Spencer's opinion in evidence, pursuant to Fed.R.Evid. 104(a) and (b), following Plaintiffs' counsel's assurance that a qualified virologist would corroborate Nurse Spencer's opinion and provide his explanation of the significance of Defendant's Exhibit 7 in support. Plaintiffs did not call the qualified virologist in their case in chief but did so in rebuttal. The virologist did not corroborate Nurse Spencer's conclusions relative to causation and/or negligence, and stated that in his opinion Defendant's Exhibit 7 did not permit a definitive conclusion relative to the time Mrs. Bible acquired the Herpes II infection. Plaintiffs' virologist did testify, as did the Plaintiffs' medical experts, that there was no known or recorded incident in medical history of a newborn acquiring Herpes II from hospital personnel.

Nurse Spencer's expressed opinion relative to hospital causation and negligence in the minor Plaintiff's Herpes II infection was based on the fact that numerous hospital personnel

occasionally had recurrent "cold sores" over the years they worked at the hospital, and that although the hospital infection control policies met recognized medical standards, they fell short of Nurse Spencer's standards.

The Court expressed serious concern at trial relative to Nurse Spencer's qualifications to express her causation and negligence opinion from the limited facts and evidence presented to her. In retrospect, it is clear to the Court that Nurse Spencer's conclusions relative to causation and hospital negligence regarding the minor Plaintiff's Herpes II infection should not have been received in evidence. This is because, under the facts and circumstances of this case, Nurse Spencer was not qualified to express such an opinion. Gates v. United States, 707 F.2d 1141, 1145 (10th Cir. 1983); Randolph v. Collectramatic Inc., 590 F.2d 844 (10th Cir. 1979). With Nurse Spencer's opinion removed from the record, Plaintiffs have failed to establish a prima facie case of negligence and the trier of fact would be left to speculation and conjecture. The standard of review in assessing whether to grant a directed verdict is whether the evidence is sufficient to create an issue for the jury. Swearngin v. Sears, Roebuck & Company, 376 F.2d 637 (10th Cir. 1967); Hildalgo Properties, Inc. v. Wachovia Mortgage Company, 617 F.2d 196, 198 (10th Cir. 1980). When the evidence, excluding the testimony of Nurse Spencer, is viewed in a light most favorable to the Plaintiffs, no prima facie case of negligence submissible to a jury has been established. Taylor v.

Gilmartin, 686 F.2d 1346 (10th Cir. 1983), Anderson v. Hudspeth Pine, Inc., 299 F.2d 874 (10th Cir. 1962), Robertson v. LaCroix, 534 P.2d 17, 20 (Okl.App. 1975), and Martin v. Stratton, 515 P.2d 1366 (Okla. 1973). As previously stated the facts herein do not support application of the rule of evidence of res ipsa loquitur. See 76 Okl.Stat.Ann. §21 (1987 P.P.); Lambert v. Midwest City Mem. Hosp. Auth., 671 F.2d 372 (10th Cir. 1982).

Therefore, Defendant's motion for directed verdict at the conclusion of the evidence is hereby sustained. A separate Judgment in keeping with this Order is entered contemporaneous herewith.

DATED this 29th day of June, 1987.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

JUN 29 1987

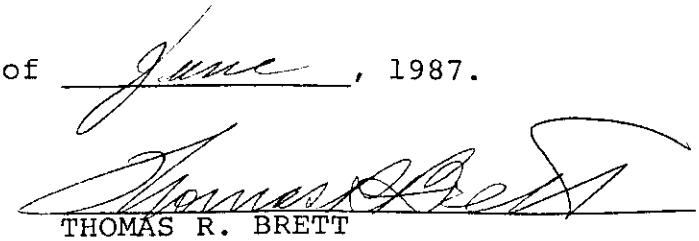
Jack C. Silver, Clerk
U.S. DISTRICT COURT

LACY DAWN BIBLE, a minor, by and through her parents and next friends, DONALD G. BIBLE and SUSAN L. BIBLE, and DONALD G. BIBLE and SUSAN L. BIBLE, individually,	)	
Plaintiffs,	)	
v.	)	No. 86-C-461-B
JANE PHILLIPS EPISCOPAL HOSPITAL, INC., a corporation,	)	
Defendant.	)	

J U D G M E N T

In accordance with the Order Sustaining Motion for Directed Verdict entered this date, Judgment is hereby entered in favor of the Defendant, Jane Phillips Episcopal Hospital, Inc., a corporation, and against the Plaintiffs, Lacy Dawn Bible, a minor, by and through her parents and next friends, Donald G. Bible and Susan L. Bible, and Donald G. Bible and Susan L. Bible, individually, and costs are hereby assessed against the Plaintiffs if timely applied for pursuant to local rule. The parties are to pay their own respective attorney fees.

DATED this 29th day of June, 1987.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

KENNETH MINTON,	)	
Plaintiff,	)	
vs.	)	No. 86-C-684-E
CINCINNATI, INC.,	)	
Defendant.	)	

FILED
JUN 29 1987
Jack C. Silver, Clerk
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 THEREFORE ORDERED that the Plaintiff Kenneth Minton take nothing from the Defendant Cincinnati, Inc., that the action be dismissed on the merits, and that the Defendant Cincinnati, Inc. recover of the Plaintiff Kenneth Minton its costs of action.

DATED this 29th day of June, 1987.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

28

FILED

JUN 30 1987

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

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

LEWIS JOHNSON, et al.,	)	
Plaintiffs,	)	
vs.	)	No. 85-C-1112-E
MARGARET HECKLER, Secretary of Health and Human Services,	)	
Defendant.	)	

O R D E R

This matter is before the Court on review of the recommendation of the Magistrate concerning the Plaintiffs' claims for recovery of overpayment of social security benefits. In this case the Plaintiffs and the Secretary differ regarding the correct method for calculating the amount of earnings received by the Plaintiffs prior to the time that Mr. Johnson reached the age of 70 years. The Secretary has promulgated a regulation providing that the amount of earnings for the month in which the individual turned 70 should be determined by prorating the earnings for the entire year into twelve equal segments, in essence averaging the earnings per month. The Plaintiff contends that this regulation is arbitrary and capricious because it does not allow for the situation in which a self-employed person receives a greater amount of income in one month than in another. The Secretary's explanation for the rationale of the regulation is that it enables the Secretary to calculate the month's income based on the annual tax return submitted by the individual, thus greatly easing administrative procedures.

18

In determining whether a regulation promulgated by the Secretary is arbitrary and capricious, this Court must consider whether the agency relied on factors which Congress had not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision which runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. Motor Vehicle Manufacturer's Association v. State Farm Mutual Insurance Co., 103 S.Ct. 2856, 463 U.S. 29, 77 L.Ed.2d 443 (1983). Here the Magistrate recommended that the Secretary be upheld for the reason that Congress has conferred on the Secretary exceptionally broad authority to prescribe standards for implementing the Social Security Act, and the method proposed by Plaintiffs is no more reasonable than the Secretary's to assure that earnings for work done after the age of 70 be excluded income from which excess earnings deductions are taken.

Here, in the Court's view, the ultimate issue is whether the greater efficiency of administration allowed by reference to the individual's tax return is a permissible factor which the Secretary can consider in promulgating regulations pursuant to statute which states that income received in the month in which an individual turns 70 years old is not to be considered in determining excess earnings. In Heckler v. Campbell, 461 U.S. 458, 103 S.Ct. 1952, 76 L.Ed.2d 66 (1983), the United States Supreme Court held that the use of vocational medical guidelines to determine an individual's right to disability benefits was not

arbitrary and capricious. The medical-vocational guidelines having been promulgated for administrative ease, and the Court having allowed their usage without requiring the government to prove that there was an actual job which the individual could have performed is indicative that efficiency of administrative application is a factor which the Secretary may consider in promulgating a regulation. Therefore the Court finds that the Secretary's regulation is not arbitrary and capricious.

A second issue raised by the Plaintiffs is whether amounts of money which have been withheld from their benefits are more than the amount of excess earnings required to be repaid if Plaintiffs do not prevail on their theory. The Administrative Law Judge did not make a finding with regard to the precise amount of overpayments, but his decision indicated that if such an overpayment had been made, it should be rectified by the agency. This Court would agree that it is not in a position to calculate the amount of overpayments, but that the excess earnings for 1983 should be limited to $3,730.00, and any amount paid by the Plaintiffs in excess of that amount would constitute an overpayment.

Accordingly, the Court hereby affirms the Magistrate's recommendation that the Secretary's decision in this matter be affirmed.

DATED this 29th day of June, 1987.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

entered

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

BILLY HARROLLE, Plaintiff,	)	
v.	)	86-C-555-C 6-29-87 rm
TOM NEWTON, Oklmulgee County Sheriff, Okmulgee, OK, Defendant.	)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

Plaintiff brought this action pro se seeking equitable relief and monetary damages for the alleged violations of his constitutional rights. Both parties consented to proceed to trial before the Magistrate, pursuant to 28 U.S.C. §636(c). Trial of the case was held before United States Magistrate John Leo Wagner on March 19, 1987, and having thoroughly reviewed the facts presented and relevant legal authority, the Magistrate makes the following Findings of Facts and Conclusions of Law.

FINDINGS OF FACTS

1. On December 19, 1985, defendant Tom Newton, Deputy Sheriff of Okmulgee County, Oklahoma, entered onto plaintiff's property on private business with the intent of purchasing automobile parts. Plaintiff came out of his trailer and when defendant told him the reason he was there, plaintiff advised him that he had no auto parts for sale.

2. Plaintiff states that there were "No Trespassing" signs posted at various locations on his land; however, defendant testified that if such signs were posted, he did not see them.

8.

3. While on plaintiff's property defendant observed a late model white Chevrolet Camaro with no license tag. Considering the remote and rugged terrain, the fact that the Camaro was not licensed, and the other types of vehicles on the premises, defendant became suspicious that the Camaro did not belong on the property and might possibly be stolen. Looking through the windshield of the Camaro, defendant wrote down the car's Vehicle Identification Number ("VIN").

4. Defendant left the vicinity of plaintiff's trailer and parked his car directly north of plaintiff's driveway. Defendant then called in the VIN to see if the Camaro had been reported stolen. He was advised by the dispatcher that there was no report on the car. Still feeling suspicious about the car, defendant asked the dispatcher to contact the dealer who sold the car to check into the identity of the buyer.

5. While defendant was waiting for the dispatcher's report, plaintiff emerged from the driveway driving the Camaro, which now had a license tag. Defendant pulled his vehicle onto the road attempting to block plaintiff's path. Plaintiff swerved to miss defendant, but did in fact hit defendant's vehicle. Plaintiff then drove off without stopping.

6. Defendant followed plaintiff for several miles. When plaintiff's car ran out of gas, plaintiff alighted and fled on foot through the woods, where he was apprehended and arrested by plaintiff for assault with a vehicle and leaving the scene of an accident.

7. Later that afternoon the dispatcher advised defendant that the Camaro was possibly stolen. On the basis of his suspicion about the Camaro, the numerous dismantled vehicles on plaintiff's property, and plaintiff's suspicious behavior, defendant sought and obtained a search warrant to search for tools and cut-up and dismantled vehicles. Plaintiff and several other officers returned to plaintiff's property and executed the search warrant, seizing some one hundred eighty-six (186) items.

8. The search warrant was subsequently vacated by Okmulgee County Special Judge April Sellers White on the grounds that probable cause did not exist for such warrant.

9. Plaintiff signed a note authorizing the police to release the seized items to his wife.

10. From the inventory list it appears that all of the items seized under the warrant were in fact returned to plaintiff's wife, with the exception of three which were released to plaintiff's brother Bennie Harrolle, two which were turned over to the Department of Transportation, and one grill which was not released.

CONCLUSIONS OF LAW

1. To state a §1983 claim against defendant, plaintiff must show that while acting under color of state law, defendant deprived him of some right or privilege secured by the Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981), rev'd in part on other grounds, 468 U.S. 517, 104 S.Ct. 3194, 82 L.Ed.2d 393.

2. As a government official performing his discretionary duties, defendant is entitled to qualified immunity from §1983 liability for damages. Harlow v. Fitzgerald, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982).

3. In Malley v. Briggs, 475 U.S. ___, 106 S.Ct. ___, 89 L.Ed.2d 271 (1986), the Supreme Court affirmed the First Circuit's ruling that a police officer who seeks an arrest warrant by submitting a complaint and supporting affidavit to a judicial officer is not entitled to immunity unless he has an objectively reasonable basis for believing that the affidavit he submitted was sufficient to establish probable cause. The same standard would also apply where the issue is whether a law enforcement officer had reasonable basis for believing probable cause existed for a search warrant.

4. The probable cause standard for a search warrant is a "practical, nontechnical conception". Brinegar v. United States, 338 U.S. 160, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949).

5. Probable cause exists for a search warrant if "given all the circumstances set forth in the [supporting] affidavit ... there is a fair probability that contraband or evidence of a crime will be found in a particular place." Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).

6. "Only where the warrant application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable ... will the shield of immunity be lost." Malley, 89 L.Ed.2d at 281.

7. The facts known to defendant and presented to the judge in his application for a search warrant, constitutued probable cause under the standard of Illinois v. Gates, supra.

8. Defendant is therefore entitled to immunity from suit in this action. Malley, supra.

9. Plaintiff's §1983 claim against defendant Tom Newton must be dismissed.

Dated this 25th day of June, 1987.

JOHN LEO WAGNER
UNITED STATES MAGISTRATE

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

BILLY HARROLLE, Plaintiff, v. TOM NEWTON, Okmulgee County Sheriff, Okmulgee, OK, Defendant.	)	86-C-555-C

FILED
JUN 29 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT

This action came on for trial before the Court, Honorable John Leo Wagner, United States Magistrate, presiding, and the issues having been duly tried and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiff Billy Harrolle take nothing from the Defendant Tom Newton, that the action be dismissed on the merits, and that each party bear his own costs of action.

Dated at Tulsa, Oklahoma this 29th day of June, 1987.

JOHN LEO WAGNER
UNITED STATES MAGISTRATE

9

entered

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

EMANUEL J. NIEVES and MARY C. NIEVES,	)	
Plaintiffs,	)	
vs.	)	NO. 86-C-1106-C
FITZGERALD, DeARMAN & ROBERTS, INC., an Oklahoma corporation; and RON C. SHAW, an individual,	)	
Defendants.	)	

FILED

JUN 29 1987

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

AMENDED ORDER OF DISMISSAL

This matter comes before the Court on the Joint Stipulation of Dismissal with Prejudice of the parties. The parties represent to the Court that they have entered into an agreement for an Order of Dismissal in this matter. In view of the agreement of dismissal and settlement between the parties, the parties stipulate there should be no finding of unauthorized trading or fraud on the part of the Defendants.

IT IS, THEREFORE, ORDERED that this matter is dismissed with prejudice. Each party shall bear their own attorney fees and costs.

UNITED STATES DISTRICT JUDGE

entered

FILED

JUN 29 1987

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

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

UTICA NATIONAL BANK & TRUST CO., a national banking association,	)	
Plaintiff,	)	
vs.	)	
CALVIN RANSOM, et al.,	)	
Defendants.	)	Case No. 85-C-537-C

STIPULATION OF DISMISSAL

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

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

DATED this 24 day of June, 1987.

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

ATTORNEYS FOR PLAINTIFF

Jerry Beazer

EXHIBIT "C"

Thomas H Dahlk

Thomas H. Dahlk
Fitzgerald & Brown
1000 Woodmen Tower
Omaha, Nebraska 68102
(402) 342-5550

ATTORNEYS FOR DEFENDANT,
Jerry Beazer

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FORD MOTOR COMPANY, Plaintiff, v. PAUL DENTON and ELLIS J. EASTERLING, a partnership; PAUL DENTON, an individual; ELLIS J. EASTERLING, an individual, Defendants.	)	No. 86-C-390-B

FILED
JUN 26 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

J U D G M E N T

In accordance with the Findings of Fact and Conclusions of Law entered this date, Judgment is hereby entered in favor of plaintiff, Ford Motor Company, and against the defendants, Paul Denton and Ellis J. Easterling, a partnership, Paul Denton, an individual, and Ellis J. Easterling, an individual, in the amount of Eighty Thousand Seven Hundred Twenty One and 60/100 Dollars ($80,721.60), with prejudgment interest at the rate of 6% from December 19, 1983, to the date of this order and postjudgment interest at the rate of 7% until paid. The plaintiff is entitled to its costs and a reasonable attorney fee if timely applied for pursuant to Local Rule.

DATED THIS 26th day of June, 1987.

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

58

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

JUN 2 1987
U. S. DISTRICT

ZACK D. McDANIEL, Plaintiff, v. OTIS R. BOWEN, M.D., Secretary of Health and Human Services, Defendant.	)	No. 86-C-844-E

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed on June 3, 1987, in which it is recommended that this case be remanded to the Secretary for further administrative proceedings. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the matters presented to it, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is hereby Ordered that this case be remanded to the Secretary for further proceedings including the consideration of the testimony of a vocational expert in making his determination whether plaintiff was disabled at any time from 1977 through 1984.

Dated this 26th day of June, 1987.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

FILED

JUN 26 1987

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

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

PAM MAULDIN,	)	
Plaintiff,	)	
vs.	)	Case No. 87-C-310-~~K~~ B
TCDC REALTY CORP., et al,	)	
Defendants.	)	

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, all parties in the above-styled case hereby file this Stipulation of Dismissal with Prejudice.

Rockne E. Porter
HOWARD & WIDDOWS
2021 South Lewis, Suite 570
Tulsa, Oklahoma 74104
(918) 744-7440

ATTORNEYS FOR PLAINTIFF, PAM MAULDIN

Richard D. Koljack Jr.

J. Ronald Petrikin, OBA No. 7092
Richard D. Koljack, Jr., OBA No. 11662
GABLE & GOTWALS
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119
(918) 582-9201

ATTORNEYS FOR DEFENDANTS, TCDC REALTY CORP. AND TRAMMEL-CROW COMPANY, INC.

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

FORD MOTOR COMPANY, Plaintiff, v. PAUL DENTON and ELLIS J. EASTERLING, a partnership; PAUL DENTON, an individual; ELLIS J. EASTERLING, an individual, Defendants.	)	No. 86-C-390-B

FILED
JUN 26 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter comes before the Court for decision after a nonjury trial held January 6, 1987, and April 7, 1987. Based upon the stipulated facts, evidence introduced at trial, and the briefs and arguments of the parties, the Court enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The parties in their jointly submitted Stipulation of Facts filed November 24, 1986, stipulated to the following facts:

(1) On June 1, 1972, Ford Marketing Corporation and Paul Denton and Ellis J. Easterling, a partnership d/b/a Denton-Easterling Motor Company (Denton-Easterling") executed a Ford Sales and Service Agreement whereby Denton-Easterling was appointed as an authorized Ford dealer. (Plaintiff's Exhibit 1).

(2) A Ford Sales and Service Agreement (FD 925A Gen. Sales 4-72) was incorporated by reference into Plaintiff's Exhibit 1. (Plaintiff's Exhibit 1A).

(3) Plaintiff's Exhibit 1A was the Ford Sales and Service Agreement Standard Provisions in effect in June 1981 through April 1, 1983. (The pertinent time period for this lawsuit.)

(4) As an authorized Ford dealer, Denton - Easterling had the right to purchase new passenger cars, new trucks and chassis, excluding all trucks and chassis of Series 850 or higher designations.

(5) A truck and chassis of Series 850 or higher is known in the industry as a "heavy truck" and only dealers with a heavy truck franchise from Ford can purchase directly from Ford.

(6) As a Ford dealer who was not authorized to purchase heavy trucks direct from Ford, Denton-Easterling is known in the trade as a "regular line" dealer.

(7) A regular line dealer, who is not allowed to purchase heavy trucks directly from Ford, nonetheless can sell heavy trucks to a retail or fleet customer so long as the original sale of the heavy truck is made by Ford to a franchised heavy truck dealer. In this instance, the regular line dealer is known in the trade as a "resale dealer."

(8) On June 22, 1981, Gateway Ford, a franchised heavy truck dealer in Dallas, Texas, placed a truck order for Denton-Easterling for 200 LT9000 Series heavy trucks with Ford's Kentucky truck plant for ultimate sale to the Dowell Division of Dow Chemical Company ("Dowell"). (Plaintiff's Exhibit 9).

(9) Denton-Easterling was the "resale dealer" in this transaction. (Plaintiff's Exhibit 9).

(10) This order for 200 heavy trucks LT9000 Series was subsequently reduced to 145 trucks. (Plaintiff's Exhibits 23 and 24).

(11) By May 4, 1982, 98 of the subject 145 heavy trucks had actually been delivered to Dowell and 47 were "on hand" at Denton-Easterling's lot in Tulsa awaiting subsequent delivery to Dowell. (Plaintiff's Exhibit 41).

(12) By June 22, 1982, all but 35 of the 145 subject trucks had actually been delivered to Dowell by Denton-Easterling. (Plaintiff's Exhibit 52).

(13) By August 25, 1982, all but 32 of the subject heavy trucks had actually been delivered by Denton-Easterling to Dowell. (Plaintiff's Exhibit 66).

(14) On or around March 10, 1983, Ford issued and Denton-Easterling subsequently received and cashed a check in the amount of $81,535.50, $80,721.60 of which represented a "close-out allowance" on the 32 subject heavy trucks. (Plaintiff's Exhibit 183).

(15) Under the 1982 model close-out allowance program for Ford heavy trucks, a close-out allowance in the amount of 5% of the suggested list price of each unit was allowed to the dealer if the subject unit was unused, undamaged and unsold and in the dealer's stock on September 23, 1982. (Plaintiff's Exhibit 78).

(16) A heavy truck was ineligible for a close-out allowance pursuant to the 1982 model close-out allowance program for heavy trucks if competitive price assistance had been approved on it prior to September 23, 1982. (Plaintiff's Exhibit 78).

(17) Ford's competitive price assistance program was developed to enable Ford dealers to bid competitively for heavy truck sales to fleet customers. A request for competitive price assistance is initiated by the dealer in writing. Competitive price assistance monies are payable to a dealer upon certification that the subject vehicles have actually been delivered to the fleet customer. (Plaintiff's Exhibit 119).

(18) Pursuant to Plaintiff's Exhibit 124, a heavy truck was considered "sold" and, therefore, ineligible for a close-out allowance under the 1982 model close-out allowance program for Ford heavy trucks if, among other things, Ford was "obligated to pay" the dealer competitive price assistance in connection with the sale of that heavy truck.

(19) By July 8, 1982, Denton-Easterling had applied for, had been approved and had actually been paid competitive price assistance on each of the subject 32 heavy trucks in the amount of $240,000.00 ($7,500.00 per truck). (Plaintiff's Exhibits 121, 121A, 125, 125, 127, 128, 175, 176, 181, 182).

(20) In light of the approval and payment of $240,000 in competitive price assistance on the subject 32 heavy trucks having occurred prior to September 23, 1982, the 32 subject heavy trucks were not eligible for the payment of a close-out allowance in the sum of $80,721.60.

(21) On September 24, 1982, Ford conducted its 1982 model close-out allowance program by conducting a "hands on hood" physical review of the inventory located at each of its dealerships. (Plaintiff's Exhibit 120).

(22) The 1982 model close-out allowance procedure provided that all physical reviews were to take place from Septemer 20 to September 27, 1982. (Plaintiff's Exhibit 120).

(23) On September 24, 1982, a Ford employee, Ralph Barnes, conducted the "hands on hood" physical audit of the inventory at Denton-Easterling's lot in Sapulpa, Oklahoma. (Plaintiff's Exhibit 81).

(24) The 32 subject heavy trucks were physically present on Denton-Easterling's lot on September 24, 1982, when Ralph Barnes conducted the "hands on hood" audit thereon.

(25) On September 24, 1982, Ellis Easterling certified in writing that the 32 subject heavy trucks were "unsold" on that date. (Plaintiff's Exhibit 81).

(26) Payment of the $80,721.60 close-out allowance occurred in the following manner:

a. On September 24, 1982, Ralph Barnes transferred the information contained on Plaintiff's Exhibit 81 which certified that the subject heavy trucks were unsold and, therefore, eligible for close-out allowance to a document known as a Model Carryover Stock Allowance Review Adjustment Summary which has been marked as Plaintiff's Exhibit 177.

b. This Model Carryover Stock Allowance Review Adjustment Summary was then forwarded to the accounting division of Ford Motor Company in Dearborn, Michigan, on or before October 6, 1982. (Plaintiff's Exhibit 120).

c. On November 10, 1982, Ford notified Denton - Easterling that the close-out allowance on the 32 subject heavy trucks would not be

payable at that time since "manual pricing" would be required in order to calculate the amount of the close-out allowance. (Plaintiff's Exhibit 84).

d. The actual close-out allowance in the amount of $80,721.60 was then mailed to Denton-Easterling via the dealer payment system on or around March 10, 1983. (Plaintiff's Exhibit 183).

e. Denton-Easterling took no action intended to cause the payment of a close-out allowance on the 32 subject heavy trucks after November 10, 1982.

(27) On August 17, 1982, Denton-Easterling billed Dowell $29,075.52 for "holding costs" on the subject 32 heavy trucks. These "holding costs" included the finance charges being paid by Denton-Easterling on the subject 32 heavy trucks. (Plaintiff's Exhibit 63).

(28) On September 22, 1982, Denton-Easterling billed Dowell $28,137.60 for "holding costs" on the subject 32 heavy trucks. These "holding costs" included the finance charges being paid by Denton-Easterling on the subject 32 heavy trucks. (Plaintiff's Exhibit 80).

(29) By June 16, 1982, Denton-Easterling had issued a "Memo Billing" to Dowell for each of the

subject 32 heavy trucks in the amount of $45,969.74. (Plaintiff's Exhibit 125 and 126).

(30) A front towing hook, an hour meter, a passenger bench seat, an AM-FM radio, grill guards, rear window screens, air shutdown kits and muffler guards were placed on each of the 32 subject heavy trucks after they were received by Denton-Easterling. (Affidavit of Joe Wilson attached to Ford Motor Company's Brief in Opposition to the Defendants' Motion for Summary Judgment).

(31) Pursuant to the 1982 Model Close-Out Allowance Program for heavy trucks and the terms of the 1982 Model Carryover Car and Truck Stock Review, Ford reserved the right to review the eligibility of those units on which it had previously paid a close-out allowance. (Plaintiff's Exhibit 78, 81).

(32) On January 18, 1983, Denton-Easterling gave notice (Defendant's Exhibit 1) of termination of the Sales and Service Agreement dated June 1, 1972 (Plaintiff's Exhibit 1). On February 24, 1983, Ford accepted this notice effective March 1, 1983. (Defendant's Exhibit 2).

(33) Paragraphs 19 and 19(a) of Plaintiff's Exhibit 1A provided that, "Upon termination or nonrenewal of this agreement by either party, the Dealer shall cease to be an authorized Ford dealer; and

the Dealer shall pay to the Company all sums owing to the Company by the Dealer."

2. Ford Motor Company, Plaintiff herein, was the surviving corporation in the December 31, 1974, merger of Ford Marketing Corporation into Ford Motor Company. (Plaintiff's Exhibit 189).

3. The Plaintiff, Ford Motor Company, entered into an amendment to the Ford Sales and Service Agreement between Ford Marketing Corporation and Paul Denton and Ellis J. Easterling, the Defendants herein, subsequent to the merger of the Ford Marketing Corporation into the Ford Motor Company. (Plaintiff's Exhibit 191).

CONCLUSIONS OF LAW

1. This Court has jurisdiction of this matter under 28 U.S.C. §1332. Venue is proper under 28 U.S.C. §1391.

2. Any Finding of Fact above properly characterized a Conclusion of Law is incorporated by reference herein.

3. The Court finds that the Ford Motor Company is the proper party plaintiff herein, having succeeded to the interest of the Ford Marketing Corporation after the merger of December 31, 1974. (Plaintiff's Exhibit 89).

4. Ford Motor Company became a party to the June 1, 1972, contract between Ford Marketing Corporation and Defendants. (Plaintiff's Exhibit 1). The June 1, 1972 Franchise Agreement constitutes a written contract between the parties. The Court finds that the merger of Ford Marketing Corporation into Ford Motor Company vested in Ford Motor Company the rights, privileges

and powers and franchises of Ford Marketing Company. See, Delaware Annotated Statutes, Chapter VIII, §259 (1974). In addition, the law of Michigan also provides that a surviving corporation has all the rights, privileges, immunities and franchises, public or private, of each of the merging or consolidating corporations. Michigan Comp. Laws, §450.1722; Accord, 18 O.S. §1.167(3) (1981).

Under the law of incorporation of the merging corporations (Delaware), the law governing the construction of the contract between the parties (Michigan), or the law of the forum (Oklahoma), Ford Motor Company became a party to the June 1, 1972 contract between Ford Marketing Corporation and the Defendants herein.

5. The Court finds that Plaintiff's Exhibit 78, the Memorandum sent to all Ford dealers pertaining to the 1982 model close-out allowance program for heavy trucks, constitutes "other notice pertaining thereto" within the meaning of Paragraph 2(h) of Plaintiff's Exhibit 1A, the Ford Sales and Service Agreement Standard Provisions. Therefore, Plaintiff's Exhibit 78 constitutes a part of the contract between the parties.

6. The Court finds that the instant action seeks recovery of the sum of $80,721.60, pursuant to the terms of Plaintiff's Exhibit 78.

7. An action for recovery based upon a contract can be brought within five years after the cause of action shall have accrued. See, 12 O.S. §95 (1981).

8. The law of the forum state, in this case, Oklahoma, controls the question of the applicable statute of limitations in this action. See, Edison v. Lewis, 325 P.2d 955 (Okla. 1958), and Mitchell v. Cloyes, 620 P.2d 398, 403 (Okla. 1980).

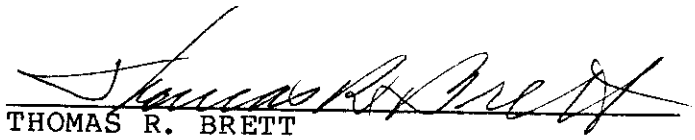
9. The Court finds that Ford Motor Company's cause of action based on breach of contract accrued at the time that the payment for the close-out allowance was made on or around March 10, 1983. This action was filed on April 21, 1986, clearly within the applicable five-year statute of limitations.

10. Based upon the stipulations of the parties, the Court finds that the close-out allowance paid by the Plaintiffs in the amount of $80,721.60, was paid on ineligible vehicles and therefore Defendants were not entitled to such payment. See, Stipulations of Fact No. 15, 16, 18, 19, 20, and 25. Based on said Stipulations of Fact the Court finds the Ford Motor Company is entitled to judgment in its favor in the amount of $80,721.60.

11. The Plaintiff, Ford Motor Company, as the prevailing party, is entitled to prejudgment interest pursuant to 23 O.S. §6 (1981). Such prejudgment interest should run on the judgment from December 19, 1983, at the rate of 6% pursuant to 15 O.S. §266 (1981).

12. As prevailing party the Plaintiff is entitled to the costs of this action and is entitled to a reasonable attorney fee pursuant to 12 O.S. §936 (1981), if timely requested according to the Rules of this court.

DATED this 26th day of June, 1987.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

26

CHARLES McCORKLE, et al.,	)	
Plaintiffs,	)	
vs.	)	No. 86-C-979-E
ANCHOR STONE CO., INC., et al.,	)	
Defendants.	)	

O R D E R

The Court has before it the Motions to Dismiss filed by a majority of the Defendants in this action. Plaintiffs are two individuals who drove five axle dump trucks under agreements with various motor carriers. The commodities transported in the trucks included sand, gravel, rock, asphalt mix, coal, coke, lime, powdered minerals and/or powered metals. Plaintiffs allege that they were paid a percentage of the revenue received by the motor carrier, and that the rates charged by the motor carrier were fixed by tariffs established by the Oklahoma Corporation Commission. Plaintiffs allege that the Defendants who sold the rock, gravel and other materials and who needed it transported (hereinafter "shippers") conspired with the Defendant motor carriers to cut transportation costs below those fixed by the tariff by the use of sham "buy/sell" agreements in order to destroy competition at the lawful price. Because the Plaintiffs

were paid on a percentage basis, Plaintiffs allege that they were injured by the price cutting between the shippers and motor carriers. Plaintiffs claim that the above-described actions of the Defendants have violated federal and state anti-trust laws, the civil RICO provisions, and that Defendants have conspired to commit fraud under Oklahoma common law.

Jurisdiction

Several of the Defendants have moved the Court to dismiss the Plaintiffs' claim on the basis that jurisdiction over this matter lies with the Oklahoma Corporation Commission rather than with the federal court. Although this action is related to tariffs established by the Corporation Commission, it is a claim for damages arising from alleged violations of the motor carrier tariffs. With regard to the power of the Corporation Commission to supervise motor carriers, 47 O.S. §162 provides as follows:

> The Corporation Commission is hereby vested with power and authority, and it shall be its duty: (1) to supervise and regulate every motor carrier whether operating between fixed termini or over a regular route or otherwise and not operating exclusively within the limits of an incorporated city or town in this state; (2) to fix or approve the maximum or minimum, or maximum and minimum rates, fares, charges, classifications and rules and regulations pertaining thereto, of each motor carrier, (3) to regulate and supervise the accounts, schedules and service of each such motor carrier, and for the conservation of the public highways; (4) to prescribe a uniform system and classification of accounts to be

> used, which among other things shall set up adequate description charges, and after such accounting system shall have been promulgated, motor carriers shall use no other; (5) to require the filing of annual reports, and other data as required from time to time by the Commission; and (6) to supervise and regulate motor carriers in all other matters affecting the relationship between such carriers and the traveling and shipping public. The Commission shall have the power and authority by general order or otherwise to prescribe rules and regulations applicable to any or all motor carriers. All regulatory power and authority over transportation and transmission companies now vested in the Commission is hereby specifically extended to include all motor carriers.

47 O.S. §163(E) provides:

> (E) No common carrier by motor vehicle shall charge or demand or collect or receive a greater, or less, or different compensation for transportation or for any service in connection therewith between the points enumerated or distances set out in such tariff than the rates, fares, and charges specified in the tariffs in effect at the time; and no such carrier shall refund or remit in any manner or by any device, directly or indirectly, any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities for transportation in intrastate commerce except such as are specified in its tariffs. <u>All actions at law for the recovery of undercharges or overcharges, or any part thereof, shall be begun within three (3) years from the time the cause of action accrues and not thereafter.</u> (Emphasis Added)

Finally, 47 O.S. §173 governs the venue of action against motor carriers. It provides:

> Any action against a motor carrier for damages by reason of any breach of duty, whether contractual or otherwise, may be brought, in addition to the other counties in which such action may be brought, in the county where the cause of action or some part thereof arose, and summons shall be issued to any other county against any one or more of the defendants at the plaintiff's request.

Thus, the legislature has created an action for recovery of undercharges under the tariffs, but has not vested the Corporation Commission with the power to try damage claims between private individuals. This same dichotomy of jurisdiction, vesting regulatory power in the Corporation Commission and vesting jurisdiction over controversies between individuals in the courts is reflected in disputes arising in the oil and gas industry. MM Resources, Inc. v. Huston, 710 P.2d 763 (Okl. 1985); Samson Resources Company v. Corporation Commission, 702 P.2d 19 (Okl. 1985).

Because the Corporation Commission has no jurisdiction over damage claims between private entities, exclusive jurisdiction of this action is not vested in the Corporation Commission, and this action need not be dismissed for lack of jurisdiction.

Anti-trust Claim

Plaintiffs have brought suit pursuant to Section 1 and Section 2 of the Sherman Act, 15 U.S.C. §1 and 15 U.S.C. §2, claiming that the Defendants conspired to depress the price for transportation of rock, sand, gravel, and other materials below

that established by the applicable tariffs. Defendants have moved to dismiss these claims on the basis that Plaintiffs lack standing because they are indirect purchasers, that the alleged injury to Plaintiffs is not an anti-trust injury, and that Plaintiffs have not stated a claim for monopolization of the relevant market under Section 2.

In Brunswick Corporations v. Pueblo Bowl-O-Mat, Inc., 97 S.C. 690, 429 U.S. 477, 50 L.Ed.2d 701 (1977) the United States emphasized that an anti-trust injury was one which prevented competition, and that anti-trust laws were enacted for the protection of competition, not competitors. The nature of the anti-trust injury required to state a claim is further illuminated by the Supreme Court in Cargill, Inc. v. Monfort of Colorado, Inc., 107 S.Ct. 484, _____ U.S. _____ , 93 L.Ed.2d 427 (1986) in which the Court stated:

> Brunswick holds that the antitrust laws do not require the courts to protect smll businesses from the loss of profits due to continued competition, but only against the loss of profits from practices forbidden by the antitrust laws. The kind of competition that Monfort alleges here, competition for increased market share, is not activity forbidden by the antitrust laws. It is simply, as petitioners claim, vigorous competition. To hold that the antitrust laws protect competitors from the loss of profits due to such price competition would, in effect, render illegal any decision by a firm to cut prices in order to increase market share. The antitrust laws require no such perverse result, for "[i]t is in the interest of competition to permit dominant firms to engage in vigorous competition, including price competition." (Cargill, at 492)

The Defendants contend that the price cutting scheme alleged promoted competition, and therefore no antitrust injury is demonstrated by Plaintiff's allegations. Plaintiffs respond that the injury to competition can occur where the price is depressed, that both the market for common carrier transportation and the market for driving services performed by the truck drivers were affected by the alleged conspiracy, and that tariff violations can give rise to an anti-trust claim.

In Western Concrete Structures Co., Inc. v. Mitsui & Company, 760 F.2d 1013 (9th Cir. 1985) and Farley Transportation Co., Inc. v. Mitsui Company, 760 F.2d 1013 (9th Cir. 1985) the United States Court of Appeals for the Ninth Circuit considered whether defendants who charged prices below the lawful tariff had committed anti-trust violations. In Farley Plaintiffs alleged that Defendants arranged to supply Defendants' products at a price below that which its competitors could lawfully pay, putting the competitors of Defendants at a competitive disadvantage and driving them out of the market. The Court held that these allegations demonstrated anti-trust injury because the price cutting was not "pro-competitive", but was rather "anti-competitive under the unique conditions of the market." In Western Concrete, also involving prices below tariff, Judge Sneed stated this legal theory as follows:

> The improper conduct alleged in this case is a conspiracy to sell at prices below those other competitors, acting within the law, could offer. This is no more and no less than a

> form of predatory pricing. The only difference between the conduct alleged in this case and ordinary predatory pricing is that here it is the law, rather than costs, that prevents the defendant's competitors from matching the defendant's price. (Western Concrete, at 1016)

This case falls within the rule of Farley and Western Concrete in that competitors in the transportation market would be disadvantaged by the motor carriers willingness to accept below tariff rates. Therefore the Plaintiff's allegations sufficiently allege antitrust injury to withstand dismissal for failure to state a claim.

The second hurdle of antitrust law which Plaintiffs must surmount is the rule established in Illinois Brick Co. v. Illinois, 97 S.Ct. 2061, 431 U.S. 720, 52 L.Ed.2d 707 (1977) that only the party directly injured by a defendant's anti-trust violation will be granted standing to bring suit. Unlike the broader standing rules developed for cases litigating constitutional questions, the United States Supreme Court has for practical reasons purposely narrowed the group of persons allowed to bring anti-trust cases. If every person in the chain of distribution were allowed to bring suit for injuries suffered from the original violation, problems of proof and apportioning damages would become overly complicated. Because direct purchasers would have the greatest incentive to enforce the anti-trust laws and indirect purchasers "would have ony a tiny stake in the lawsuit" the Court held that only a party directly injured would have standing. (Illinois Brick, at 2064).

More recently, in Associated General Contractors of Cal. v. Cal. St. Council, 103 S.Ct. 897, 459 U.S. 519, 74 L.Ed.2d 723 (1983) the United States Supreme Court again considered the standing necessary to bring an anti-trust action. Noting that it is reasonable to assume that Congress did not intend every person tangentially affected by an anti-trust violation to maintain an action to recover treble damages for the injury, the Court considered the Plaintiff's harm, the alleged wrongdoing by the Defendants, and the relationship between them. The Court considered that the Sherman Act was enacted to assure customers the benefits of price competition, and that prior Supreme Court cases have emphasized the central interest in protecting the economic freedom of participants in the relevant market. The Court stated that in each case the Plaintiff's alleged injury must be analyzed to determine whether it is of the type that the anti-trust statute was intended to forestall. Other factors considered by the Court included the directness of the injury, the speculative nature of the damages, and the extent to which there is a potential for duplicative recovery or complex apportionment of damages.

In several similar cases persons in the position of Plaintiffs were found to be too indirectly injured to have standing. In Eagle v. Star-Kist Foods, Inc., 87-1 CCH, Trade Cases, ¶67,470 (9th Cir. 1987) crew members of tuna fishing boats brought suit against canneries which had conspired to set tuna prices at artifically low levels. The crew members were paid on

a percentage of the catch basis. The Ninth Circuit applied the factors enumerated in Associated General Contractors. The Ninth Circuit held that the crew members were not sellers of tuna, even though they were paid by a percentage of the catch, because the crew members did not negotiate the prices with the canneries. Therefore the Ninth Circuit held that the crew members did not allege the type of injury antitrust laws were intended to forestall. The Ninth Circuit also held that the crew members' damages were indirect, that there was a risk of duplicative recovery because the owners of the fishing boats had also brought suit against the canneries, and that computation of damages would be complex. Considering all these factors, the Ninth Circuit affirmed the trial court's dismissal of the action for lack of standing.

In an earlier decision of the United States Court of Appeals for the Tenth Circuit, Reibert v. Atlantic Richfield Company, 471 F.2d 727 (10th Cir. 1973) the Court considered whether an employee of a corporation who was terminated as a part of a reduction in force following an illegal merger had standing to assert injury as a violation of the anti-trust laws. The Court held that the employee's injuries were too indirect to allow standing because the Sherman Act was enacted to prevent restraint of trade having a significant effect on business competition. In reaching its decision the Court discussed Wilson v. Ringsby Truck Lines, Inc., 320 F.Supp. 699 (D. Colo. 1970), a case almost identical to this case. In Wilson the defendant was a common

carrier transporting goods in Colorado and Wyoming. The plaintiffs were employees of defendant who worked as truck drivers and warehousemen. The plaintiffs alleged that defendant and other common carriers illegally conspired to divide up and control the business between Colorado and Wyoming, which caused a reduction in plaintiffs' wages and other compensation. The trial court in Wilson had ruled that plaintiffs had standing because of the broad language of Section 4 of the Clayton Act. Citing twelve cases, the Tenth Circuit stated, "with all due respect to the trial court's position, we do not feel the weight of authority is on his side."

Here, the Plaintiffs are not sellers of the transportation services offered by the motor carriers so that, like the crew members in Eagle v. Star-Kist, the plaintiffs are not within those groups which the anti-trust laws were intended to protect. Furthermore, their injuries are indirect and would be difficult to calculate because of the difficulty in determining what percentage of the business each motor carrier would have received if the alleged price cutting were not in effect. Considering the factors enumerated in Associated General Contractors and the decisions of the Ninth and Tenth Circuit discussed above, the Court determines that Plaintiffs are without standing to raise the anti-trust claims alleged.

Accordingly, the Motions to Dismiss are granted with regard to the Plaintiff's anti-trust claims. In addition, the Court, sua sponte, dismisses Plaintiff's anti-trust claims against those few Defendants who have not moved to dismiss.

RICO

The Plaintiffs also assert a RICO claim against the Defendants. In addition to the allegations of Plaintiffs' First Amended Complaint, Plaintiffs filed a RICO Case Statement pursuant to this Court's Order. Almost all of the Defendants have moved the Court to dismiss Plaintiffs' RICO case for failure to state a claim upon which relief can be granted. Defendants contend that the Plaintiffs' allegations, even if taken as true, do not demonstrate the existence of an enterprise within the meaning of the RICO statute, do not indicate a pattern of racketeering activity, and have not stated a fraud claim with sufficient particularity.

Title 18 U.S.C. §1962(a) provides that it shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity ... to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest or establishment or operation of any enterprise which is engaged in, or the activities of which affect, interstate commerce. Title 18 U.S.C. §1962(c) provides that it shall be unlawful for any person employed by or associated with any enterprise engaged in interstate commerce to participate in the conduct of such enterprise's affairs through a pattern of racketeering activity. Title 18 U.S.C. §1961(4) defines "enterprise" to include "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity. Title 18 U.S.C. §1964 provides that any person

injured in his business or property by reason of a violation of section 1962 may bring a civil action for treble damages.

Here, the Plaintiffs allege that the conspiracy described in regard to their antitrust claims constitutes an enterprise which has engaged in a pattern of racketeering activity. Plaintiffs allege that Defendants committed numerous acts of mail fraud and wire fraud in furtherance of their scheme to subvert the tariffs applicable to transportation of rock, sand, and gravel, and other commodities.

The first issue which must be addressed is whether, if Plaintiffs' allegations are taken as true, Plaintiffs have sufficiently alleged the existence of an enterprise within the meaning of the RICO provisions. Defendants contend that the enterprise must be an organization separate from the conspiracy alleged. Plaintiffs contend that the alleged conspiratorial actions of the Defendants are sufficient to constitute an enterprise.

The United States Supreme Court considered the nature of a RICO enterprise in United States v. Turkette, 452 U.S. 576, 69 L.Ed.2d 246, 101 S.Ct. 2524 (1981). It stated:

> The enterprise is an entity, for present purposes a group of persons associated together for a common purpose of engaging in a course of conduct. The pattern of racketeering activity is, on the other hand, a series of criminal acts as defined by statute.... The former is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit. The latter is proved by evidence of the requisite number of acts of racketeering committed by the participants in the enterprise. While the proof used to establish these separate elements may in particular cases coalesce, proof of

> one does not necessarily establish the other. The "enterprise" is not the "pattern of racketeering activity"; it is an entity separate and apart from the pattern of activity in which it engages. The existence of an enterprise at all times remains a separate element which must be proved... (Turkette at p. 2528-29)

Five federal appellate courts have held that under §1961(c) the enterprise must be separate and distinct from the persons liable for the offense. Schofield v. First Community Corp. of Boston, 793 F.2d 28 (1st Cir. 1986); Bennett v. United States Trust Co. of New York, 770 F.2d 308 (2nd Cir. 1985); B. F. Hirsch v. Enright Refining Co., 751 F.2d 628 (3rd Cir. 1984); United States v. Computer Sciences Corp., 689 F.2d 1181 (4th Cir. 1982); Haroco v. American National Bank and Trust Co. of Chicago, 747 F.2d 384 (7th Cir. 1984); Bennett v. Berg, 685 F.2d 1053 (8th Cir. 1982); Rae v. Union Bank, 725 F.2d 478 (9th Cir. 1984).

In Alcorn County, Mississippi v. U. S. Interstate Supplies, 731 F.2d 1160 (5th Cir. 1984), two employees of an office supply company conspired with an employee of the County whereby the County purchased supplies from the company without complying with the competitive bidding provisions. In addition, many of the supplies paid for, including 73,000 ballpoint pens, were never delivered. The county clerk later testified that she received payments of cash and other property in return for making the orders. She also admitted that she falsified invoices and entries in the County's claim docket to conceal the purchases. The trial court directed a verdict against the County on its RICO claim. The Fifth Circuit, in reviewing the elements for proof of an action under §1961(c) stated:

> The Plaintiffs maintain that the conduct of Cutchens, Creditor and USIS, which clearly affected interstate commerce, was an 'enterprise' within the meaning of RICO. The definition of 'enterprise' for purposes of RICO is very broad, and we think it beyond doubt that a reasonable jury could find that the association of Cutchens, USIS and its employees Creditor and Savitz, for the purpose of selling supplies to Alcorn County, constituted an enterprise affecting interstate commerce.

In Seville Industrial Machinery Corp. v. Southwest Machinery Corp., 742 F.2d 786 (3rd Cir. 1984), the Third Circuit reversed the trial court's dismissal of the Plaintiff's complaint for failure to state a claim under RICO where the trial court had dismissed the Plaintiff's claim for failure to plead the attributes of an enterprise set forth in Turkette. The Third Circuit reasoned that federal notice pleading simply required that the complaint put the Defendant on notice of the claims against him, and identification of the entities believed to comprise the enterprise was sufficient to state a claim.

Although the Plaintiffs' allegations and responses in their RICO Case Statement do not specifically identify the structure of the enterprise, they do identify the companies which allegedly comprise it, and identify the common purpose sought to be achieved. Therefore the Plaintiffs have alleged the minimum necessary to avoid dismissal for lack of an enterprise.

In Condict v. Condict, 815 F.2d 579 (10th Cir. 1987), and Torwest DBC, Inc. v. Dick, 810 F.2d 925 (10th Cir. 1987), the United States Court of Appeals for The Tenth Circuit considers the requirement of a "pattern of racketeering activity". In Sedima SPRL v. Imrex Company, 105 S.Ct. 3275 (1985), the United States Supreme Court, in discussing the legislative history of

RICO, stated that "The infiltration of legitimate business normally requires more than one 'racketeering activity' and the threat of continuing activity to be effective. It is this factor of continuity plus relationship which combines to produce a pattern." In Torwest and Condict the Court held that acts that are part of a common fraudulent scheme satisfy the relationship requirement of Sedima and can satisfy the continuity requirement if the plan contemplates open-ended fraudulent activity and does not have a single goal that when achieved will bring the activity to an end.

Here, the Plaintiffs allege that Defendants committed thousands of acts of mail fraud over a five-year period in furtherance of a scheme to avoid the tariff rates. Therefore the Court concludes that the patterning of racketeering element has been met.

With regard to the sufficiency of Plaintiffs' allegations of fraud, it is apparent that Plaintiffs have provided no detail concerning the dates and parties to the alleged mail fraud and wire fraud. Plaintiffs also do not specifically allege facts with regard to contracts or actions taken by specific Defendants. However, this type of allegation does not lend itself to further specification at this stage of the litigation.

Accordingly, Defendants' Motions to Dismiss are denied with regard to Plaintiffs' RICO claim. Plaintiffs should be aware, however, that if Plaintiffs are unable to present evidence in support of their claims, the Court will consider imposition of

costs under Rule 11 and an award of attorneys fees to Defendants pursuant to 18 U.S.C. §1964.

Statute of Limitations

On June 23, 1987 the United States Supreme Court held in Agency Holding Corp. v. Malley-Duff Associates, Inc., that the four-year statute of limitations of the Clayton Act is applicable to a RICO claim. The Court did not determine when such a claim would accrue. Therefore the Court hereby orders that the parties submit simultaneous briefs with regard to the effect of this decision on Plaintiffs' RICO claim.

State Antitrust

The antitrust laws of Oklahoma are patterned after the federal antitrust statutes. Therefore the Court's ruling with regard to the federal antitrust claims is dispositive as to Plaintiffs' state antitrust claims.

State Fraud and Conspiracy to Defraud

The Court's previous ruling concerning the sufficiency of Plaintiffs' RICO allegations is dispositive of Defendants' contention that Plaintiffs' claims for fraud and conspiracy to defraud should be dismissed for lack of specificity.

Motion to Dismiss of McNabb Stone Company
For Lack of Capacity to be Sued

Defendant McNabb Stone Company has moved the Court to dismiss for lack of capacity to be sued, stating that no such entity exists. Plaintiffs have never disputed this statement in their responsive pleadings.

Accordingly, the Motion to Dismiss of McNabb Stone Company is granted.

Motions to Dismiss of Rancher's Coal and Coal Corporation of America

These defendants contend that Plaintiffs' complaints fail to state a claim against them because coal is not a commodity subject to the prescribed tariff. Having reviewed the Order of the Oklahoma Corporation Commission dated October 14, 1986, which states that coal is a commodity not subject to prescribed rates, the Court is satisfied that this is the case. The Plaintiffs having not responded on this question, the Court deems their objection waived. The Motions to Dismiss of Rancher's Coal and Coal Corporation of America are granted.

Summary

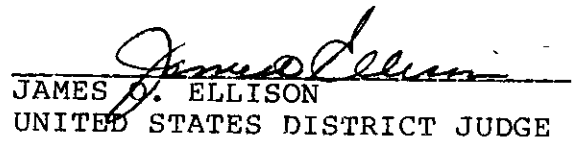
1. Defendants' Motions to Dismiss are granted in part regarding Plaintiffs' federal and state antitrust claims for failure to state a claim upon which relief can be granted.

2. Defendants' Motions to Dismiss, with the exception of the Motions of McNabb Stone Company, Rancher's Coal, and Coal Corporation of America, are denied with regard to the remaining claims.

3. The Motions to Dismiss of McNabb Stone Company, Rancher's Coal, and Coal Corporation are granted.

4. All remaining parties shall file simultaneous briefs on or before July 10, 1987 with regard to the issues raised by the decision of the United States Supreme Court in Agency Holding Corporation v. Malley-Duff Associates, Inc., decided June 23, 1987.

Dated this 26th day of June, 1987



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

FILED

JUN 25 1987

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

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

FORD MOTOR CREDIT COMPANY,	)	
Plaintiff,	)	
vs.	)	No. 87-C-488 B
OSAGE FORD, INC.,	)	
Defendant.	)	

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, Ford Motor Credit Company, and pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, hereby files its Notice of Dismissal in the above referenced matter.

Respectfully submitted,

MARSH & ARMSTRONG

Thomas G. Marsh
John D. Rothman
808 ONEOK PLAZA
100 West Fifth Street
Tulsa, OK 74103
(918) 587-0141

CERTIFICATE OF MAILING

This is to certify that on the 25 day of June, 1987, a true and correct copy of the foregoing Notice of Dismissal was mailed, postage prepaid to the following: Philip O. Bayouth, Esq., 3227 East 31st Street, Tulsa, OK 74135.

John D. Rothman

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

ALBERT P. ROWE, Plaintiff, v. FLIGHT SAFETY INTERNATIONAL, a New York corporation, Defendant.	)	No. 86-C-962-B

FILED

JUN 25 1987

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

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered this date, Judgment is hereby entered in favor of the Defendant, Flight Safety International, and against the Plaintiff, Albert P. Rowe, and the Plaintiff's Complaint is hereby dismissed. Costs are assessed against the Plaintiff and the parties are to pay their own respective attorneys' fees.

DATED this 25th day of June, 1987.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

JUN 25 1987

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

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

IN THE MATTER OF THE WILL OF RENALD V. REVARD, Osage Allottee No. 1761, Deceased; Lynn A. Revard, the duly appointed, qualified and acting executor of the estate of LOWELL A. REVARD, Deceased,	)	
Petitioner,	)	
vs.	)	No. 86-C-900-C
UNITED STATES OF AMERICA and DONALD HODEL, Secretary of the Interior of the United States of America,	)	
Respondents.	)	

O R D E R

Now before the Court for its consideration is the appeal of Lynn A. Revard, executor of the estate of petitioner Lowell A. Revard, of the findings and recommendations of the United States Magistrate filed on March 31, 1987.

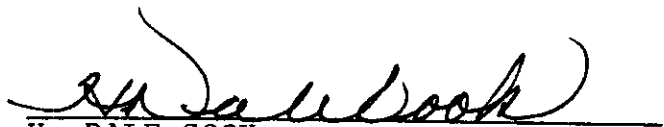
The petitioner brought this action for review of the decision of the Acting Regional Solicitor on behalf of the Secretary of the Interior. In its decision, the Acting Regional Solicitor reversed the decision of the Acting Superintendent from the Bureau of Indian Affairs, and held that the holographic will of Renald V. Revard be approved.

The parties filed briefs. The Magistrate conducted an evidentiary hearing on February 3, 1987, and entered his findings and recommendations based upon extensive review of arguments and authorities presented by the parties. The Magistrate found that, based upon the limited standard of review in such a case, the Solicitor's decision was not against the clear weight of the evidence or contrary to Oklahoma law. The Magistrate recommended that the Regional Solicitor's decision be affirmed and the petitioner's action be dismissed.

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

Therefore, premises considered, it is the Order of the Court that the decision of the Regional Solicitor is hereby AFFIRMED. It is the further Order of the Court that this action is hereby DISMISSED.

IT IS SO ORDERED this 24th day of June, 1987.



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

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

THE TRIDENT COMPANY, a Texas corporation, Plaintiff, vs. THERMA TECHOLOGY, INC., a Delaware corporation, d/b/a HAPPY DIVISION, et al, Defendants.	)	Case No. 86-C-745-BT

JUN 24 1987

ADMINISTRATIVE CLOSING ORDER

The Defendant/ THERMA TECHOLOGY, INC. having filed its petition in bankruptcy and these proceeding being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other prupose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 22nd day of JUNE, 1987.

UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

22.

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

Filed
6-24-87

JESS EVANS and AMY EVANS, Plaintiffs, v. SECURITY PACIFIC MORTGAGE CORPORATION, et al., Defendants.	)	No. 86-C-640-B

O R D E R

This matter comes before the Court on Plaintiffs' Motion to Add Party Defendant. Plaintiffs have advised the Court that the present Defendants have no objection to the motion. Plaintiffs further advise the court that addition of Lawrence Marion Clark as a Defendant herein will destroy complete diversity. Plaintiffs, therefore, ask this Court to remand the matter to the District Court for Tulsa County, Oklahoma. For the reasons set forth below, the Motion to Add Party Defendant is sustained. Because the court is without subject matter jurisdiction, the matter is dismissed without prejudice.

This action was originally filed in District Court for Tulsa County, Oklahoma, on May 23, 1986. Plaintiffs alleged, inter alia, that Defendant Allstate Insurance Company, acting through its agents and employees represented to the Plaintiffs that they were covered by a flood insurance policy, when, in fact, they were not. This matter was removed to this Court in July 1986.

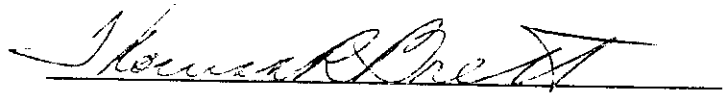
By Order of this Court, the parties were given until May 30, 1987, to add any additional parties. Plaintiffs' Motion to Add Party Defendant was timely filed. Plaintiffs seek to add Lawrence Marion Clark as a defendant. Plaintiffs contend that the alleged misrepresentations herein were made by Clark. If Clark were acting as agent for Allstate, Plaintiffs contend Allstate is liable for damages they incurred as a result of not having flood insurance. If Clark were not acting as Allstate's agent, Plaintiffs contend that Clark is liable to Plaintiffs.

Plaintiffs are residents of Oklahoma. Plaintiffs allege that Lawrence Marion Clark is also a resident of Oklahoma. Thus, the addition of Mr. Clark to this lawsuit will destroy diversity jurisdiction herein. Plaintiffs ask that if this court concludes that it will no longer have subject matter jurisdiction if Clark is added as a party defendant, that the court remand this matter to state court.

The court concludes that Lawrence Marion Clark should be added as a defendant in this action. Clark is an indispensible party pursuant to Fed.R.Civ.P. 19. Where a plaintiff seeks to add a non-diverse party whose presence in the lawsuit will strip the district court of subject matter jurisdiction, the court should examine the plaintiff's underlying reason for adding the party defendant. Boyd v. Diebold, Inc., 97 F.R.D. 720 (E.D.Mich. 1983). Where there is no showing that the plaintiff seeks to add a party solely to effectuate a remand, the court may in its discretion, allow the amendment although this will destroy diversity and require remand. Grogan v. Babson Bros. Co. of Illinois, 101 F.R.D. 697, 699-700

(N.D.N.Y. 1984); Desert Empire Bank v. Insurance Co. of America, 623 F.2d 1371 (9th Cir. 1980); Shaw v. Munford, 526 F.Supp. 1209 (S.D.N.Y. 1981); Miller v. Davis, 464 F.Supp. 458 (D.D.C. 1978). Remand is mandated where, after removal, diversity of citizenship either is lacking initially or is destroyed by addition of parties. 29 Fed Proc, L.Ed. §69:119 (1984). For this reason, this matter is remanded to the District Court for Tulsa County, Oklahoma, for further proceedings.

IT IS SO ORDERED, this 24th day of June, 1987.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

MICHAEL A. CAMPBELL,	)	
Petitioner,	)	6-24-87
v.	)	86-C-204-B
LARRY MEACHUM,	)	
Respondent.	)	

ORDER

Because the relief petitioner seeks is release from confinement, the court determined that petitioner's claim brought under 42 U.S.C. §1983 should be construed as an application for a writ of habeas corpus pursuant to Title 28 U.S.C. §2254. On October 16, 1986, the court ordered petitioner to submit within twenty days a statement advising the court what efforts he had taken to exhaust his state remedies. No such statement was ever submitted. By court order of May 6, 1987, petitioner was given an additional twenty days to comply with the October 16th order, and was advised that his failure to do so would result in dismissal of his application.

Petitioner having again failed to follow the court's direction, it is Ordered that petitioner's application for a writ of habeas corpus be and is hereby dismissed.

Ordered this 24 day of June, 1987.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

5-21-87
EWW:kd
OBA #9824

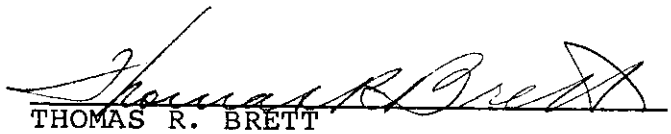
IN THE UNITED STATES DISTRICT COURT IN AND FOR
THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA FOR THE USE AND BENEFIT OF KENNETH WATKINS DOING BUSINESS UNDER THE ASSUMED NAME AND STYLE OF WATKINS ROOFING,	)	24
Plaintiff,	)	
vs.	)	No. 86-C-380-B
WEBSTER CONSTRUCTION, INC. and TRAVELERS INDEMNITY COMPANY,	)	
Defendants.	)	

ORDER OF DISMISSAL WITH PREJUDICE

Now on the 24 day of June, 1987, upon consideration of the joint motion of the use plaintiff and the defendant, Webster Construction, Inc. for dismissal of the above styled and numbered case with prejudice, it appearing that the said parties have reached a settlement agreement regarding all claims of the Use plaintiff and of the defendant, Webster Construction, Inc., in their respective complaint and counterclaim and that the settlement agreement reached before the Honorable John Leo Wagner, U.S. Magistrate, on May 11, 1987, has been fully performed,

IT IS HEREBY ORDERED that the causes of action set forth in the use plaintiff's complaint and the causes of action set forth in the counterclaim of the defendant, Webster Construction, Inc., be and the same are hereby dismissed with prejudice and that each party bear their own attorney's fees, costs and expenses.



THOMAS R. BRETT
U. S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. JERRY DEAN LEE; JUANITA LEE; COMMUNITY BANK, Bristow, Oklahoma; COUNTY TREASURER, Creek County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Creek County, Oklahoma, Defendants.	)	Filed 6-24-87 CIVIL ACTION NO. 87-C-113-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 24 day of June, 1987. The Plaintiff appears by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney; the Defendants, County Treasurer, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, appear by Wesley R. Thompson, Assistant District Attorney, Creek County, Oklahoma; and the Defendants, Jerry Dean Lee and Juanita Lee, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendants, Jerry Dean Lee and Juanita Lee, were served with Summons and Amended Complaint on April 30, 1987; that Defendant, Community Bank, Bristow, Oklahoma, acknowledged receipt of Summons and Amended Complaint on April 15, 1987; that Defendant, County Treasurer, Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on

February 24, 1987; and that Defendant, Board of County Commissioners, Creek County, Oklahoma, acknowledged receipt of Summons and Amended Complaint on April 17, 1987.

It appears that the Defendants, County Treasurer, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, filed their Answer herein on April 27, 1987; and that the Defendants, Jerry Dean Lee, Juanita Lee, and Community Bank, Bristow, Oklahoma, have failed to answer and their default has therefore been entered by the Clerk.

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

> Lot Nineteen (19), Block Ninety-six (96), in the ORIGINAL TOWN OF BRISTOW, Creek County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on January 31, 1985, the Defendants, Jerry Dean Lee and Juanita Lee, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of $17,500.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half percent (12.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Jerry Dean Lee and Juanita Lee, executed and delivered to the United States

of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated January 31, 1985, covering the above-described property. Said mortgage was recorded on February 7, 1985, in Book 181, Page 940, in the records of Creek County, Oklahoma.

The Court further finds that the Defendants, Jerry Dean Lee and Juanita Lee, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Jerry Dean Lee and Juanita Lee, are indebted to the Plaintiff in the principal sum of $17,696.56, plus interest at the rate of twelve and one-half percent per annum from December 1, 1985 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of $235.01 which became a lien on the property as of the year 1986. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Community Bank, Bristow, Oklahoma, is in default and has no right, title, or interest in the subject real property.

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

Dean Lee and Juanita Lee, in the principal sum of $17,696.56, plus interest at the rate of twelve and one-half percent (12.5%) per annum from December 1, 1985 until judgment, plus interest thereafter at the current legal rate of 7 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have and recover judgment in the amount of $235.01, plus penalties and interest, for personal property taxes for the year of 1986, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Community Bank, Bristow, Oklahoma, has no right, title, or interest in the subject real property.

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

First:

In payment of the costs of this action accrued and accruing incurred by the

Plaintiff, including the costs of sale of said real property;

Second:

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

Third:

In payment of the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, in the amount of $235.01, personal property taxes which are currently due and owing.

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

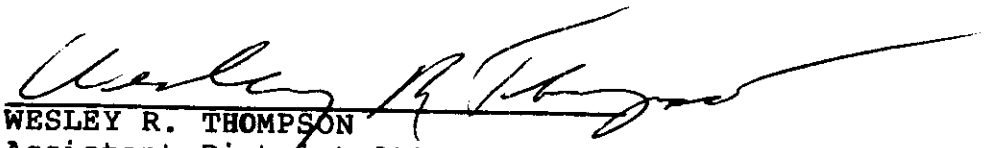
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

(Signed) H. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney

PHIL PINNELL
Assistant United States Attorney



WESLEY R. THOMPSON
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Creek County, Oklahoma

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. WILLIAM H. BOYD; PATTI K. BOYD; CAROLYN L. BOYD; COUNTY TREASURER, Washington County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Washington County, Oklahoma, Defendants.	)	CIVIL ACTION NO. 86-C-545-B

JUN 24 1987

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 22nd day of June, 1987. The Plaintiff appears by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney; the Defendant, County Treasurer, Washington County, Oklahoma, appears by Lewis B. Ambler, Assistant District Attorney, Washington County, Oklahoma; and the Defendants, William H. Boyd, Patti K. Boyd, Carolyn L. Boyd, and Board of County Commissioners, Washington County, Oklahoma, appear not, but make default.

The Court being fully advised and having examined the file herein finds that Defendant, County Treasurer, Washington County, Oklahoma, acknowledged receipt of Summons and Complaint on June 6, 1986; and that Defendant, Board of County Commissioners, Washington County, Oklahoma, acknowledged receipt of Summons and Complaint on August 4, 1986.

The Court further finds that the Defendants, William H. Boyd, Patti K. Boyd, and Carolyn L. Boyd, were served by

publishing notice of this action in the Bartlesville Examiner-Enterprise, a newspaper of general circulation in Washington County, Oklahoma, once a week for six (6) consecutive weeks beginning February 19, 1987, and continuing to March 26, 1987, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Since counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, William H. Boyd, Patti K. Boyd, and Carolyn L. Boyd, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstractor filed herein with respect to the last known addresses of the Defendants, William H. Boyd, Patti K. Boyd, and Carolyn L. Boyd. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Farmers Home Administration, and its attorneys, Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to

their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as the subject matter and the Defendants served by publication.

It appears that the Defendant, County Treasurer, Washington County, Oklahoma, accompanied its Acknowledgment of Receipt of Summons and Complaint with its answer filed herein on June 9, 1986; that the Defendants, William H. Boyd, Patti K. Boyd, Carolyn L. Boyd, and Board of County Commissioners, Washington County, Oklahoma, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

> Lot Forty-one (41), Eastman Second Addition to Ochelata, Washington County, Oklahoma.

The Court further finds that on February 13, 1980, Robert J. Peck, Jr., and Susan R. Peck executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of $27,500.00, payable in monthly installments, with interest thereon at the rate of ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, Robert J. Peck, Jr., s/p/a

Robert Jay Peck, Jr., and Susan R. Peck, s/p/a Susan Renee Peck executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated February 13, 1980, covering the above-described property. Said mortgage was recorded on February 13, 1980, in Book 734, Page 792, in the records of Washington County, Oklahoma.

The Court further finds that on May 20, 1981, the Defendants, William H. Boyd and Patti K. Boyd, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Assumption Agreement whereby they assumed liability for and agreed to pay to the United States the entire unpaid indebtedness represented by the note and mortgage referred to above in accordance with the terms thereof.

The Court further finds that on May 20, 1981, the Defendants, William H. Boyd and Patti K. Boyd executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note was reduced.

The Court further finds that on May 20, 1983, the Defendants, William H. Boyd and Carolyn L. Boyd executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note was reduced.

The Court further finds that on May 20, 1981, the Defendants, William H. Boyd and Patti K. Boyd executed and

delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of $5,700.00, payable in monthly installments, with interest thereon at the rate of 13 percent per annum.

The Court further finds that as security for the above-described notes and as security for the Assumption Agreement, the Defendants, William H. Boyd and Patti K. Boyd executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated May 20, 1981, covering the above-described property. This mortgage was recorded on May 20, 1981, in Book 759, Page 602, in the records of Washington County, Oklahoma.

The Court further finds that the Defendants, William H. Boyd and Patti K. Boyd, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, William H. Boyd and Patti K. Boyd, are indebted to the Plaintiff in the principal sum of $30,672.90, plus accrued interest of $4,312.30 as of June 13, 1985, plus interest thereafter at the rate of $8.7929 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of $5,844.00, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Washington County, Oklahoma, has a lien on the

property which is the subject matter of this action by virtue of ad valorem taxes in the amount of $414.70, plus penalties and interest, for the year of 1986. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, Carolyn L. Boyd and Board of County Commissioners, Washington County, Oklahoma, are in default and have no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, William H. Boyd and Patti K. Boyd, in the principal sum of $30,672.90, plus accrued interest of $4,312.30 as of June 13, 1985, plus interest thereafter at the rate of $8.7929 per day until judgment, plus interest thereafter at the current legal rate of _____ percent per annum until paid, and the further sum due and owing under the interest credit agreements of $5,844.00, plus interest on that sum at the current legal rate of _____ percent per annum from judgment until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Washington County, Oklahoma, have and recover judgment in the amount of $414.70, plus penalties and interest, for ad valorem taxes for the year of 1986, plus the costs of this action.

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

First:

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

Second:

In payment of the Defendant, County Treasurer, Washington County, Oklahoma, in the amount of $414.70, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

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

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

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney

for NANCY NESBITT BLEVINS
Assistant United States Attorney

LEWIS B. AMBLER
Assistant District Attorney
Attorney for Defendant,
County Treasurer,
Washington County, Oklahoma

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

SAND SPRINGS HOME, Plaintiff, vs. INTERPLASTIC CORPORATION; GENERAL ELECTRIC COMPANY; REID SUPPLY COMPANY, INC.; BOEING MILITARY AIRPLANE COMPANY, a division of The Boeing Company; CESSNA AIRCRAFT COMPANY; and DOES 1-50, inclusive, Defendants.	)	Case No. 86-C-85-B

FILED
JUN 24 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes before the Court on the Stipulation for Dismissal with Prejudice, filed herein by Plaintiff, Sand Springs Home, and Defendant, Reid Supply Company, Inc. ("Reid").

Being advised in the premises and for good cause shown, the Court hereby dismisses this action as to the Defendant, Reid, with prejudice to refiling; provided, that by Stipulation of Plaintiff, Sand Springs Home, and the Defendant, Reid, only the claims specifically alleged in the Complaint on file in this action are dismissed as to the Defendant, Reid, and that claims for payment or contribution to payment of the costs or types of costs specified in subparagraphs a), b) and c) of Article IV. of that certain Settlement Agreement between Sand Springs Home and certain "Settling Companies," entered into on or about January 31, 1986, under which Settlement Agreement the Defendant, Reid, became a party and

35

"Settling Company" by execution of an Addendum No. 6 to Settlement Agreement on or about June 17, 1987, are not dismissed with prejudice hereby or in any way compromised, settled or otherwise affected hereby, all rights and claims with respect thereto having been expressly reserved by Plaintiff, Sand Springs Home.

It is further ordered that the Plaintiff, Sand Springs Home, and the Defendant, Reid, shall each bear its own attorneys' fees and costs.

SO ORDERED THIS 24th DAY OF JUNE, 1987.

THOMAS R. BRETT
United States District Judge

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

FILED

JUN 24 1987

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

MARS GONZAGA, Plaintiff, vs. CENTURY BANK, an Oklahoma banking corporation, CLYDE J. DUNAVENT, JR., DAN G. MAILATH, LARRY T. JOHNSON, WOODLAND POINTE, an Oklahoma general partnership, WOODLAND POINTE NORTH, an Oklahoma general partnership, WOODLAND POINTE WEST, an Oklahoma limited partnership, and TULSA TURNPIKE WEST, an Oklahoma partnership, Defendants.	)	NO. 85-C-186-B

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to the stipulation of dismissal with prejudice filed by all remaining parties in the above captioned action, it is hereby:

ORDERED that the above captioned action is hereby dismissed with prejudice. Each party to bear their own costs and attorney's fees.

JUDGE

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

FILED
JUN 24 1987
CLERK
U.S. DISTRICT COURT

GEORGE SWIGER,	)	
Plaintiff,	)	
vs.	)	No. 85-C-180-B
WILLBROS ENERGY SERVICES, et al.,	)	
Defendants.	)	

JOINT STIPULATION OF DISMISSAL

It is hereby stipulated by the plaintiff and defendant Willbros Energy Services that, pursuant to F.R.C.P. 41(a)(1)(ii), this action be dismissed without prejudice.

D. Gregory Bledsoe
1515 South Denver
Tulsa, OK 74119
(918) 599-8118
and
Daniel V. Lane
Suite 305 Doctors Building
115 South Fourth Street
Clarksburg, WV 26301
(304) 622-3304

Attorneys for Plaintiff

HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON, P.C.

By
J. Patrick Cremin
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, OK 74172
(918) 588-2700

Attorneys for Defendant
Willbros Energy Services

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

ROBERT G. ANDERSON, individually and as Trustee, and ELIZABETH G. ANDERSON, individually and as Trustee of the R.G. ANDERSON CONSOLIDATED TRUST,	)	
Plaintiffs,	)	
v.	)	Case No. 87-C-187-B
SAM HOUSTON NATIONAL BANK and SERAKA GAS COMPANY,	)	
Defendants.	)	

JUN 24 1987

ORDER OF DISMISSAL

Upon Application of the Plaintiffs, the Court finds that the above-entitled and numbered cause should be and is hereby dismissed with prejudice.

IT IS SO ORDERED.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

DEBBIE RAE STANFIELD, Plaintiff, vs. BARNETT RANGE CORPORATION, a foreign corporation, d/b/a THE SPRINGS APARTMENTS, Defendant.	)	Case No. 87-C-73-B

ORDER OF DISMISSAL WITH PREJUDICE

NOW, on this 24th day of June, 1987, after being fully advised and for good cause shown, the Plaintiff's Complaint filed herein is dismissed with prejudice as to refiling, for the reason that the parties have reached a mutually agreeable settlement. Neither party has an objection to the dismissal of this cause.

S/ THOMAS R. BRETT

UNITED STATED DISTRICT JUDGE

C-11

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

THE FOURTH NATIONAL BANK OF TULSA, Plaintiff(s),	)	
vs.	)	No. 86-C-1078-BT
LYNXX BANKING CORPORATION, Defendant(s).	)	

FILED
JUN 24 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 23rd day of JUNE, 1987.

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

9

Entered

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

FILED

JUN 24 1987

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

FRANK TELLO, Individually,	)	
Plaintiff,	)	
-vs-	)	No. 85-C-76-B
MISSOURI INSURANCE GUARANTY ASSOCIATION,	)	
Defendant.	)	

ORDER OF DISMISSAL WITH PREJUDICE

The Court having considered the Application of plaintiff, Frank Tello, individually, and his attorney of record, Marion M. Dyer, for dismissal with prejudice of the above-captioned matter, due to the settlement and compromise thereof, finds that said matter and cause has been fully settled, compromised and adjusted by and between plaintiff, Frank Tello, and defendant, Missouri Insurance Guaranty Association, and, accordingly, hereby orders the above-captioned matter and cause to be dismissed with prejudice to any future filing thereof.

Dated this 22nd day of June, 1987.

S/ THOMAS R. BRETT

Thomas R. Brett
UNITED STATES DISTRICT COURT JUDGE

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

SOONER ASSOCIATION, W. H. CUNICO and C. B. WATSON, Plaintiff(s), vs. FEDERAL DEPOSIT INSURANCE CORPORATION, GANK OF COMMERCE & TRUST CO., S&T GAS TRANSMISSION CO., and WELLHEAD ENTERPRISES, INC. Defendant(s).	)	No. 84-C-771-BT

JUN 24 1987
Clerk
DISTRICT COURT

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 22nd day of JUNE, 1987.

UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

Entered

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

BURLINGTON NORTHERN RAILROAD COMPANY, Plaintiff,	)	
vs.	)	No. 84-C-213-B
NICKELL TRUCKING COMPANY, a Corporation, and FORUM INSURANCE COMPANY, an insurance corporation, Defendants,	)	
JACK R. ANDERSON, Administrator of the Estate of William Harold Walker, Deceased, Defendant and Third-Party Plaintiff,	)	
v.	)	
PHILLIP WAYNE HAIR, Third-Party Defendant.	)	

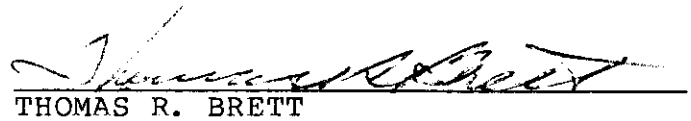
FILED
JUN 24 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

The parties having requested the Court to stay this cause pending determination of an appeal now pending in the Oklahoma Supreme Court, IT IS HEREBY ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within sixty days of a final determination by the Oklahoma Supreme Court of the appeal now pending, the parties have not reopened these proceedings for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED, this 24 day of June, 1987.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	No. 86-C-359-B
CHARLES L. BOWMAN,	)	
Defendant.	)	

FILED
JUN 24 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

The Court on its own motion hereby dismisses the above-entitled action without prejudice. The Court has reviewed the file and finds that service of the summons and complaint has not been made upon the defendant within 120 days after the filing of the complaint as required by Fed.R.Civ.P. 4(j). The case is therefore dismissed without prejudice.

DATED this 24 day of June, 1987.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

4

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 24 1987

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

WESTERN ALLENBEE OIL & GAS CO., LTD., Plaintiff,	)	
vs.	)	Case No. 82-C-419-BT
CHASE EXPLORATION CORP., Defendant.	)	

ORDER OF DISMISSAL

The above-styled and numbered cause of action coming on for hearing upon the Stipulation of Dismissal of the parties hereto, pursuant to Rule 41, Fed. R. Civ. P., 28 U.S.C., and the Court

FINDS that the above-styled and numbered adversary proceeding should be dismissed without prejudice to the refiling thereof.

IT IS SO ORDERED.

ENTERED and EXECUTED this 24 day of June, 1987.

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

0001004176-16

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

FLINT STEEL CORPORATION, Plaintiff, v. INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS, AFL-CIO and LOCAL LODGE 592 of the INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS, AFL-CIO, Defendants.	)	No. 85-C-879-B

FILED

JUN 24 1987

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

ADMINISTRATIVE CLOSING ORDER

The Court having remanded the above-entitled action to Arbitration, IT IS HEREBY ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to re-open the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final termination of the litigation.

IT IS SO ORDERED this 24 day of June, 1987.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

30

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

SHELL OIL COMPANY, Plaintiff,	)	
v.	)	87-C-134-C
CAROLYN J. CLARE, Defendant.	)	

FILED
JUN 24 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER AND JUDGMENT

The court has for consideration the Report and Recommendation of the Magistrate filed June 2, 1987, in which the Magistrate recommended that plaintiff's alternative motion for judgment on the pleadings be granted, and that judgment be entered in favor of plaintiff Shell Oil Company and against defendant Carolyn J. Clare. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that:

1. Pursuant to Rule 54(b), the court finds there is no reason for delay in the entry of final judgment and directs entry of this final judgment for Shell against defendant Carolyn J. Clare in an amount of $218,905.82, together with interest as allowed by law.

2. Shell Oil Company is awarded its costs of suit up and until the date of this judgment.

It is further Ordered that:

1. Defendant Clare shall give Shell a full accounting of all funds fraudulently obtained and/or wrongfully converted; and,

2. Defendant Clare shall cooperate fully with Shell in tracing all fraudulently obtained and/or wrongfully converted funds transferred to third parties or used to purchase property;

It is further Ordered that upon application by Shell Oil Company, a hearing shall be held to determine Shell Oil Company's entitlement to and amount of exemplary damages to be awarded Shell Oil Company, and to determine whether a constructive trust should be placed upon property possessed by defendant Carolyn J. Clare and/or other persons.

Dated this 24 day of June, 1987.

H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

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

FILED
JUN 24 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

SAMUEL MORGAN, et al., Plaintiffs,	)	
vs.	)	No. 86-C-1088-C
SEARS, ROEBUCK & CO., et al., Defendants.	)	

JOURNAL ENTRY OF JUDGMENT

This cause comes on to be heard this 19th day of June, 1987, before me, the undersigned Judge of the United States District Court for the Northern District of Oklahoma, and the plaintiffs being represented by their attorney, C. Clay Roberts III; and the defendant Kidde, Inc., being represented by its attorney, Jay B. White of the law firm of Jones, Givens, Gotcher, Bogan & Hilborne, P.C.; and all parties announce that an agreed settlement had been entered into, and a jury being waived the Court proceeds to hear evidence of witnesses, and the Court, being fully advised, in consideration finds that the Court has jurisdiction of the parties and subject matter herein involved.

The Court further finds that this action has been regularly and properly brought on behalf of the plaintiffs and that the allegations contained in the plaintiffs' Petition are true as to Kidde, Inc.; and that as a result thereof plaintiffs Samuel Morgan, a minor, and Monica Dee Morgan, parent and next friend of Samuel Morgan, are entitled to judgment in the amount

of $7,500.00, said amount to be given to Monica Dee Morgan to pay current medical bills, costs and expenses, and attorney's fees. There are currently medical bills in excess of $20,000.00 which have not been paid, and which shall be required to be paid to the effect that there is no amount to be distributed to the minor child, Samuel Morgan, at this time; and the Court finds that said apportionment is appropriate, reasonable and supported by the evidence.

IT IS THEREFORE ORDERED that there are no monies in excess of One Thousand Dollars ($1,000.00) over sums sufficient for paying costs and expenses, including medical bills and attorneys' fees to be deposited in a banking or saving institution approved by the Court until plaintiff Samuel Morgan is eighteen (18) years of age.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

C. Clay Roberts III
Marsh & Armstrong
100 West Fifth Street, Suite 808
Tulsa, Oklahoma 74103
Attorneys for Plaintiff

Jay B. White
Jones, Givens, Gotcher, Bogan & Hilborne, Inc.
3800 First National Tower
Tulsa, Oklahoma 74013
Attorneys for Defendant Kidde, Inc.

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

CHARLES EDISON OVERSTREET, JR., Petitioner,	)	
v.	)	No. 87-C-343-B
THOMAS WHITE and THE ATTORNEY GENERAL OF THE STATE OF OKLAHOMA, Respondents.	)	

FILED
JUN 24 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

Petitioner Charles Edison Overstreet Jr.'s motion to reconsider an Order denying a writ of habeas corpus is now before the Court for consideration. Petitioner was convicted of Larceny of an Automobile After Former Conviction of Two or More Felonies, in Tulsa County District Court Case No. CRF-84-2565. His conviction was affirmed on appeal by the Oklahoma Court of Criminal Appeals, Case No. F-85-350. Petitioner's application for a writ of habeas corpus was denied by this Court for failure to exhaust state remedies available to him.

Petitioner contends that since the District Court of Tulsa County denied his motion for direct acquittal, and the Court of Criminal Appeals affirmed the trial court on direct appeal, that he has exhausted his available state remedies on the claim that he has presented this court. Petitioner requests that the Court reconsider its Order of Denial and reach the merits of the original application for writ of habeas corpus relief.

Petitioner has not sought relief under the Oklahoma Post-Conviction Procedure Act, 22 O.S. 1080-1088. Although an Oklahoma prisoner has pursued an unsuccessful direct appeal from the state judgment of conviction, he has not exhausted his state remedies prior to seeking federal habeas corpus relief where he has not pursued the state postconviction remedy. Karlin v. State of Oklahoma, 412 F.Supp. 635 (W.D.Okl. 1976).

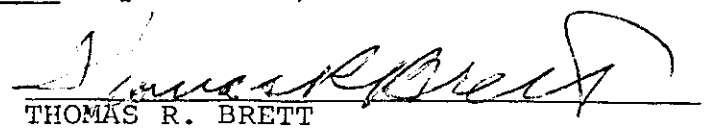
Title 28 U.S.C. §2254 provides in part:

> "(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.
>
> "(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented."

Because petitioner has not exhausted the state remedies available to him, this court will not entertain his application for federal habeas corpus relief. See, Rose v. Lundy, 455 U.S. 509, 102 S.Ct. 1198, 71 L.Ed.2d 379 (1982); Duckworth v. Serrano, 454 U.S. 1, 102 S.Ct. 18, 70 L.Ed.2d 1 (1981).

It is therefore ordered that Petitioner's application be denied and this case be dismissed.

IT IS SO ORDERED, this 24 day of June, 1987.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED
JUN 23 1987
Clerk
COURT

WILLIAM CRAIG BUIS,	)	
	)	
Petitioner,	)	
	)	
v.	)	87-C-405-E
	)	
SHERIFF FRANK THURMAN,	)	
	)	
Respondent.	)	

ORDER

The Court has for consideration the Findings and Recommendation of the Magistrate filed June 2, 1987, in which the Magistrate recommended that petitioner's application for a writ of habeas corpus be dismissed without prejudice. No exceptions or objections have been filed, and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is dismissed without prejudice.

Dated this 23d day of June, 1987.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

3

FILED

JUN 26 1987

Clerk
U.S. DISTRICT COURT

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

First National Bank of Fairland, Fairland, Oklahoma,	)	
Plaintiff,	)	
v.	)	Case No. 87-C-24E
Hartford Accident and Indemnity Company,	)	
Defendant.	)	

ORDER OF DISMISSAL WITH PREJUDICE

Now on this 23rd day of June, 1987, upon motion of the Plaintiff and for good cause shown, this case is dismissed with prejudice to the bringing of any other action for the same relief, at the cost of the Plaintiff, the parties having amicably settled their controversy.

S/ JAMES O. ELLISON
JAMES O. ELLISON
U. S. District Judge

O. K.

LOGAN, LOWRY, JOHNSTON,
SWITZER, WEST & McGEADY

By OB Johnston
O. B. Johnston, III, OBA #4740
101 South Wilson Street
P. O. Box 558
Vinita, Oklahoma 74301

Attorneys for Plaintiff

Byrne A. Bowman
BYRNE A. BOWMAN, OBA #1008
500 Fidelity Plaza
Oklahoma City, Oklahoma 73102
(405) 235-2321

Attorney for Defendant

JHL/jch

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

FILED

JUN 23 1987

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

MAXINE BRADLEY, Plaintiff, vs. GRAIN DEALERS MUTUAL INSURANCE COMPANY, Defendant.	)	No. 86-C-1142-E

ORDER OF DISMISSAL

NOW on this 23rd day of June, 1987, upon the written application of the Plaintiff, Maxine Bradley, and the Defendant, Grain Dealers Mutual Insurance Company, for a Dismissal with Prejudice of all matters, causes of action and issues, involved in the Complaint of Bradley v. Grain Dealers Mutual Insurance Company, and the Court having examined said Application, finds that said parties have entered into a compromise settlement covering all claims against the Defendant involved in the Complaint and have requested the Court to Dismiss said Complaint against said Defendant, with prejudice to any future action. The Court being fully advised in the premises finds said settlement is to the best interest of said Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff, Maxine Bradley, against the Defendant Grain Dealers Mutual Insurance Company, be and the same are hereby dismissed with prejudice to any future action.

S/ JAMES O. ELLISON

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

APPROVALS:

DAN WEBB

Dan Webb

Attorney for the Plaintiff

JOHN HOWARD LIEBER

John Lieber

Attorney for the Defendant

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

GLENFED FINANCIAL CORPORATION, Plaintiff, vs. TEXAS ROSE PETROLEUM, INC., and DAVID ELLIS, Defendant.	))))))))))	Case No. 86-C-428E

FILED
JUN 23 1987
Jack C. Silver
U. S. DISTRICT C

JOINT STIPULATION OF DISMISSAL

Plaintiff, Glenfed Financial Corporation, by and through its attorneys, Doerner, Stuart, Saunders, Daniel & Anderson, and the Defendants, Texas Rose Petroleum, Inc., and David Ellis, by and through their attorneys, Levinson & Smith, hereby jointly stipulate that this case shall be and is hereby dismissed without prejudice of any kind whatsoever. Each party to pay his or its own costs and attorneys fees.

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By _____
Lewis N. Carter
(OBA No. 1524)
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211
Attorneys for Plaintiff,
Glenfed Financial Corporation

LEVINSON & SMITH

By _____
Dwight L. Smith
35 East 18th Street
Tulsa, Oklahoma 74119
(918) 599-7214
Attorneys for Defendants,
Texas Rose Petroleum, Inc.
and David Ellis

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

FILED
JUN 23 1987
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

JOE WESTON ARY, Plaintiff,	)	
vs.	)	Case No. 85-C-853-E
WAYNE McCLAIN, d/b/a M & M CORNER STORE, Defendant.	)	

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

COME NOW Plaintiff and Defendant and stipulate to the dismissal of the above styled and numbered cause without prejudice.

FRASIER & FRASIER

By: _____
Steven R. Hickman OBA#4172
1700 Southwest Boulevard
Suite 100
P. O. Box 799
Tulsa, Oklahoma 74101
(918)584-4724
Attorneys for Plaintiff

DOWNING & STEINMETZ

By: _____
Dennis J. Downing
2121 South Columbia
Suite 550
Tulsa, Oklahoma 74114
(918)748-8484
Attorneys for Defendant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE CORPORATION,	)	
Plaintiff,	)	
vs.	)	
CARTLEDGE AND CARTLEDGE OIL COMPANY,	)	
Defendant.	)	No. 87-C-335-E

JUN 22 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

Notice of DISMISSAL WITH PREJUDICE

Comes now the plaintiff, Federal Deposit Insurance Corporation, and dismisses its action herein with prejudice to a future action with each party paying their own attorney fees and costs.

FEDERAL DEPOSIT INSURANCE CORPORATION

By: Theodore Q. Eliot

Theodore Q. Eliot
Gable & Gotwals, Inc.
Attorney for Plaintiff
2000 Fourth National Bank Bldg.
Tulsa, Oklahoma 74119

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 12th day of June, 1987 he mailed a true and correct copy of the above and foregoing instrument to:

Wesley R. Thompson
15 S. Park
Sapulpa, Oklahoma 74066

Theodore Q. Eliot

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

F I L E D

JUN 22 1987

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

BARTY ROGERS, Plaintiff,	)	
vs.	)	Case No. 85-C-730-E
ORKIN EXTERMINATING COMPANY, INC., Defendant.	)	

ORDER OF DISMISSAL
WITH PREJUDICE

Pursuant to the Stipulation of Dismissal With Prejudice signed by all parties who have appeared in this action,

IT IS HEREBY ORDERED that the above captioned action be dismissed with prejudice. Each party shall bear their own costs and attorney fees.

S/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE