

Entered

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

ROBIN DUBOIS LOFTON,

Petitioner,

vs.

TOM WHITE and the  
ATTORNEY GENERAL,

Respondents.

No. 87-C-334-C ✓

**FILED**

**JUL 29 1988**

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

O R D E R

Before the Court is the objection of petitioner Robin Dubois Lofton to the Report and Recommendation of the Magistrate. The Magistrate recommended that petitioner's motion for rehearing be denied.

On January 19, 1988 the Court entered an Order denying petitioner's application for Writ of Habeas Corpus, and subsequently petitioner requested rehearing concerning the matters contained in the Court's Order of January 19, 1988.

The Magistrate reported that petitioner did not allege the existence of any newly discovered evidence which could not have been presented to this Court in his original motion.

The Court, after careful consideration of the issues raised by the petitioner, finds and concludes that the Report and

Recommendations of the Magistrate should be and hereby are affirmed and adopted as the Findings and Conclusions of this Court.

It is therefore Ordered that petitioner's motion for rehearing is hereby DENIED.

IT IS SO ORDERED this <sup>25</sup>28 day of July, 1988.

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

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

FRANK H. MAHAN, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Defendant. )  
 )  
 v. )  
 )  
 W. E. ROWSEY, III, and WILLIAM )  
 G. PATTERSON, )  
 )  
 Additional )  
 Defendants on )  
 Counterclaim. )

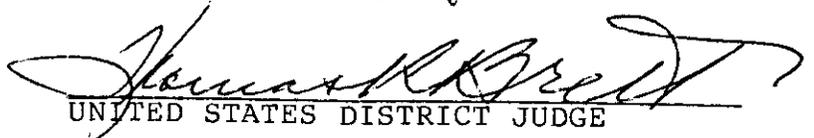
No. 87-C-629-B

**FILED**  
JUL 28 1988  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

On the representations from counsel for all parties that a settlement and compromise has been reached, it is ordered that the Clerk administratively terminate this action in his records without prejudice to the rights of the parties to reopen the proceeding for good cause shown, for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IT IS SO ORDERED this 28<sup>th</sup> day of July, 1988.

  
UNITED STATES DISTRICT JUDGE

Entered in the Judgment Docket on  
July 28, 1988

CHARLES N. WOODWARD, OBA #9871  
LISLE & WOODWARD  
6303 Waterford Blvd., #255  
Oklahoma City, OK 73118  
(405) 842-0876  
ATTORNEYS FOR DEFENDANT  
WILLIAM G. PATTERSON

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

MOTOR CARRIER AUDIT AND COLLECTION  
CO., A DIVISION OF DELTA TRAFFIC  
SERVICES, INC.,

Plaintiff,

vs.

JOHNSON MANUFACTURING COMPANY,

Defendant.

No. 88-C-539 C ✓

**FILED**

**JUL 28 1988** A

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

ORDER OF DISMISSAL

Now on this 28<sup>th</sup> day of July, 1988,  
Plaintiff's Stipulation of Dismissal coming on for consideration  
and counsel for Plaintiff herein representing and stating that  
all issues, controversier, debts and liabilities between the  
parties have been paid, settled and compromised;

IT IS THE ORDER OF THIS COURT that said action be, and  
the same is, hereby dismissed with prejudice to the bringing of  
another or future action by the Plaintiff herein.

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JUL 28 1988

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 TIMOTHY W. ATKINSON, )  
 )  
 Defendant. )

CLERK  
OF COURT

CIVIL ACTION NO. 88-C-455-C

NOTICE OF DISMISSAL

COMES NOW the United States of America by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Peter Bernhardt, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action with prejudice.

Dated this 28<sup>th</sup> day of July, 1988.

UNITED STATES OF AMERICA  
TONY M. GRAHAM  
United States Attorney  
~~PETER BERNHARDT~~  
Assistant United States Attorney  
3600 United States Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 28<sup>th</sup> day of July, 1988, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Timothy W. Atkinson, 237 South 101st East Avenue, Tulsa, Oklahoma 74128

~~Assistant United States Attorney~~

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

JUL 20 1988 *RM*

WICK C. CHAMBERLAIN  
U.S. DISTRICT COURT

FEDERAL DEPOSIT INSURANCE, )  
CORPORATION, in its corporate )  
capacity, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
FOURTH NATIONAL TOWER, LTD., an )  
Oklahoma limited partnership, )  
DION GANTT, an individual, )  
RAY F. BIERY, an individual, )  
and PAUL D. HINCH, )  
an individual, )  
 )  
Defendant. )

No. 87-C-728-C

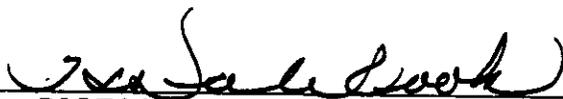
J U D G M E N T

This matter came on for consideration of the motion of the plaintiff for summary judgment. The issues having been duly considered and a decision having been duly rendered in accordance with the Order filed contemporaneously herewith,

IT IS THEREFORE ORDERED AND DECREED that judgment is hereby entered on behalf of the plaintiff Federal Deposit Insurance Corporation and against the defendants, Fourth National Tower, Ltd., Dion Gantt, Ray F. Biery, and Paul D. Hinch in the principal amount of \$2,051,380.00, plus accrued interest in the sum of \$268,522.50, plus interest accruing from and after September 1, 1987 to this date at the rate of \$898.99 per day, post judgment interest at the rate of 7.54 percent per annum until paid,

reasonable attorney fees, and plaintiff's costs of this action.

IT IS SO ORDERED this 27<sup>th</sup> day of July, 1988.

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

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

ROBERT H. SMITH, et al.,  
Plaintiffs,  
vs.  
JEFF W. ADAMS, et al.,  
Defendants.

Case No. 88-C-630-B

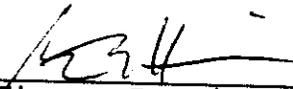
FILED  
JUL 29 1988

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

NOTICE OF PARTIAL DISMISSAL WITHOUT PREJUDICE

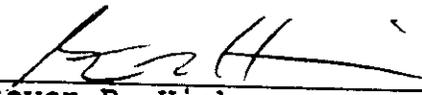
COME NOW Plaintiffs and dismiss their claims and causes of action against Defendant Valley Improvement Co., a foreign corporation, only, without prejudice. This dismissal does not affect the claims of Plaintiffs against Defendant Jeff W. Adams or Defendant David Freesen, d/b/a Valley Improvement Co.

FRASIER & FRASIER

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

CERTIFICATE OF MAILING

I hereby certify that on the 29<sup>th</sup> day of July, 1988, I mailed a true and correct copy of the above and foregoing instrument to: James K. Secrest, II, 1515 East 71st Street, Suite 200, Tulsa, Oklahoma 74136, with correct and proper postage fully prepaid.

  
Steven R. Hickman

GLH/LAL/lc  
07/06/88

FILED

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

1988  
Clark C. Silver, Clerk  
U.S. DISTRICT COURT

FLORA L. POWELL, individually, and as	)
surviving wife of HUBERT C. POWELL,	)
deceased,	)
	)
Plaintiff,	)
	)
vs.	)
	)
ANCHOR PACKING COMPANY, a corporation;	)
et al.,	)
	)
Defendants.	)

No. 88C-555-E

ORDER OF DISMISSAL

NOW on this 28<sup>th</sup> day of July, 1988, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by the Plaintiffs, and the Defendant American Chemet Corporation. Based upon the representations and request of these parties as set forth in the foregoing stipulation, it is

ORDERED that Plaintiffs' Complaint and claims for relief against the Defendant, American Chemet Corporation, be and the same are hereby dismissed without prejudice. It is further

ORDERED that each party shall bear its own costs.

*James O. Allison*  
U.S. DISTRICT JUDGE

GLH/LAL/lc  
07/06/88

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

FILED

JUL 29 1988

FLORA L. POWELL, individually, and as	)
surviving wife of HUBERT C. POWELL,	)
deceased,	)
	)
Plaintiff,	)
	)
vs.	)
	)
ANCHOR PACKING COMPANY, a corporation;	)
et al.,	)
	)
Defendants.	)

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

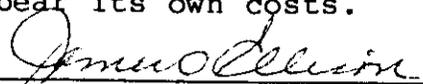
No. 88C-555-E

ORDER OF DISMISSAL

NOW on this 28<sup>TH</sup> day of July, 1988, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by the Plaintiffs, and the Defendant Crown Cork & Seal Company. Based upon the representations and request of these parties as set forth in the foregoing stipulation, it is

ORDERED that Plaintiffs' Complaint and claims for relief against the Defendant, Crown Cork & Seal Company, be and the same are hereby dismissed without prejudice. It is further

ORDERED that each party shall bear its own costs.

  
\_\_\_\_\_  
U.S. DISTRICT JUDGE



GLH/LAL/lc  
07/06/88

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

131  
1988  
U.S. DISTRICT COURT

FLORA L. POWELL, individually, and as )  
surviving wife of HUBERT C. POWELL, )  
deceased, )

Plaintiff, )

vs. )

No. 88C-555-E

ANCHOR PACKING COMPANY, a corporation; )  
et al., )

Defendants. )

ORDER OF DISMISSAL

NOW on this 20<sup>th</sup> day of July, 1988, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by the Plaintiffs, and the Defendant H. M. Royal, Inc.. Based upon the representations and request of these parties as set forth in the foregoing stipulation, it is

ORDERED that Plaintiffs' Complaint and claims for relief against the Defendant, H. M. Royal, Inc., be and the same are hereby dismissed without prejudice. It is further

ORDERED that each party shall bear its own costs.

James D. Ellison  
U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CHARLES PHILLIP CHILDRESS; )  
 PATRICIA ANN CHILDRESS; )  
 FEDERAL NATIONAL MORTGAGE )  
 ASSOCIATION; COUNTY TREASURER, )  
 Tulsa County, Oklahoma; and )  
 BOARD OF COUNTY COMMISSIONERS, )  
 Tulsa County, Oklahoma, )  
 )  
 Defendants. )

**FILED**

JUL 29 1988

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

CIVIL ACTION NO. 88-C-0003-B

ORDER

NOW, on this 28 day of July, 1988, there came on for consideration the Motion of the United States to amend the Judgment of Foreclosure previously entered herein on March 17, 1988. The Court finds said Motion is well taken.

NOW, IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Judgment of Foreclosure previously entered herein on March 17, 1988, be and the same is hereby amended by deleting the words, "with appraisalment," appearing in the fourth paragraph on page five of the Judgment and inserting in lieu thereof the words, "without appraisalment."

S/ THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

HAROLD W. BURLINGAME, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 EUROPEAN IMPORTS, INC., )  
 ALFRED GEBHARDT, UDO )  
 DREYSPRING, HAROLD WAYNE DAVEY, )  
 and KYRA STEPHENS GEBHARDT, )  
 )  
 Defendants. )

No. 86-C-538-B ✓

**FILED**

JUL 29 1988 m

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

ORDER

This matter comes before the Court on the Plaintiff's Objection to the Findings and Recommendations of the United States Magistrate filed June 14, 1988. For the reasons set forth below, the Plaintiff's Objection to the Findings and Recommendations of the United States Magistrate is overruled.

The Plaintiff filed suit to recover damages from all Defendants for their alleged violation of 18 U.S.C. §§ 1962(c) and (d). Defendant, Kyra Stephens Gebhardt, filed a motion for summary judgment (or in the alternative, a motion to dismiss Plaintiff's claim) on August 7, 1987. A hearing was held before United States Magistrate John Leo Wagner on December 21, 1987, which resulted in the Magistrate denying the Defendant's motion to dismiss while reserving the Defendant's right to renew the motion after further discovery had been completed.

Following discovery, Defendant Kyra Stephens Gephardt filed a renewed motion for summary judgment on May 6, 1988. The Magistrate, by the Findings and Recommendations filed June 14,

1988, sustained the motion for summary judgment on the basis that the Plaintiff had failed to prove the pattern element necessary to state a viable RICO claim. The Magistrate, in his ruling, relied upon Celotex Corporation v. Catrett, 477 U.S. 317, 106 S.Ct. 2548 (1986), which explains Rule 56(c). Celotex establishes the premise that after adequate time for discovery and upon motion, if the nonmoving party has not raised a genuine issue of fact, the motion is to be granted. Fed.R.Civ.P. 56(e) further requires the nonmoving party to produce evidence in rebuttal of the motion, instead of just resting on the pleadings.

The Magistrate also cited to Torwest DBC, Inc. v. Dick, 810 F.2d 925 (10th Cir. 1987), which held that 18 U.S.C. §1962(c) requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity which must involve continuous and related racketeering acts. Plaintiff has the burden of showing that there is a genuine issue of fact which remains regarding Defendant Kyra Stephens Gebhardt's "pattern of racketeering activity." The Plaintiff claims that a scheme existed between all Defendants to defraud him and others in the procurement and importation of certain foreign automobiles. Plaintiff by his complaint and further arguments has attempted to link Defendant Kyra Stephens Gebhardt to the other Defendants based upon facts which the Court finds insufficient to subject her to liability under 18 U.S.C. §1962(c). In finding that the Plaintiff had failed to establish the "pattern" element regarding Ms. Gebhardt, the Magistrate considered testimony from the deposition of the Defendant Gephardt,

the terms of a buy-out agreement, the terms of a comprehensive business insurance policy purchased by Defendant European Imports, the settlement of a lawsuit against the corporation BMI, Inc., and two cash loans from Kyra Stephens Gebhardt to Defendant European Imports, finding that such evidence was insufficient to show a pattern of activities by Ms. Gephardt in the Defendant dealership.

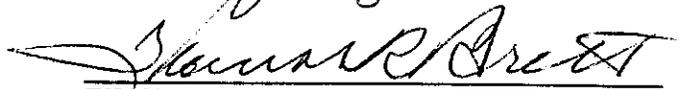
Plaintiff asserts in his objection that the Magistrate erroneously failed to consider the deposition of Harold Wayne Davey which contained testimony regarding Ms. Gephardt's dealings as the president of Bavarian Motors International, Inc. and its dealings with the Defendant European Imports, Inc. In addition, the Plaintiff urges the Magistrate failed to consider the underlying transactions which resulted in litigation against Ms. Gephardt's company, BMI and Alfred Gephardt, and the deposition of Delmar Lee Mashburn relating to transactions between BMI and the automobile purchaser Mashburn.

The Court has reviewed each deposition and piece of evidence urged by the Plaintiff in his objection and finds that such evidence does nothing to alter the Magistrate's finding that the Plaintiff had failed to provide evidence of a pattern of activities by Ms. Gephardt sufficient to satisfy the pattern requirement in a RICO claim. The Court finds after a review of all of the evidence de novo that Ms. Gephardt had no day-to-day "hands on" involvement in the operation of Defendant, European Imports, Inc., or with an association of the Defendants as urged by the Plaintiff. The Court agrees with the Magistrate's Findings and Recommendations

that the Plaintiff has failed to raise genuine issues of material fact for trial concerning the pattern element in a RICO claim. See, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 2514 (1986). Based upon the evidence before the Court, the Defendant Kyra Stephens Gephardt is entitled to summary judgment as the evidence submitted by the Plaintiff at best infers the commission of predicate acts which are unrelated to the enterprise or one's position within it and are therefore insufficient. See, United States v. Scotto, 641 F.2d 47, 54 (2nd Cir.), cert. denied, 452 U.S. 961 (1980).

The Court finds the Findings and Recommendations of the United States Magistrate granting the Defendant Kyra Stephens Gephardt's motion for summary judgment as proper and overrules the Plaintiff's objection.

IT IS SO ORDERED this 29<sup>th</sup> day of July, 1988.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

ROBIN DUBOIS LOFTON,

Petitioner,

vs.

TOM WHITE and the  
ATTORNEY GENERAL,

Respondents.

No. 87-C-334-C ✓

**FILED**

**JUL 29 1988**

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

O R D E R

Before the Court is the objection of petitioner Robin Dubois Lofton to the Report and Recommendation of the Magistrate. The Magistrate recommended that petitioner's motion for rehearing be denied.

On January 19, 1988 the Court entered an Order denying petitioner's application for Writ of Habeas Corpus, and subsequently petitioner requested rehearing concerning the matters contained in the Court's Order of January 19, 1988.

The Magistrate reported that petitioner did not allege the existence of any newly discovered evidence which could not have been presented to this Court in his original motion.

The Court, after careful consideration of the issues raised by the petitioner, finds and concludes that the Report and

Recommendations of the Magistrate should be and hereby are affirmed and adopted as the Findings and Conclusions of this Court.

It is therefore Ordered that petitioner's motion for rehearing is hereby DENIED.

IT IS SO ORDERED this <sup>26</sup>28 day of July, 1988.

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

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

**F I L E D**

**JUL 29 1988**

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

W. P. FRANCIS and SHIRLEY R.  
FRANCIS, individuals; and  
FRANCIS HOMES, INC., a Texas  
corporation,

Plaintiffs,

vs.

Case No. 87-C-961-C

FIRST NATIONAL BANK & TRUST  
CO. OF TULSA, a national  
banking corporation,

Defendant.

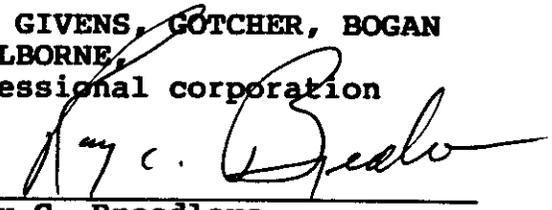
**STIPULATION OF DISMISSAL OF  
DEFENDANT'S CLAIMS WITH PREJUDICE**

COMES NOW the Defendant, The First National Bank and Trust Company of Tulsa, a national banking corporation, and the Plaintiffs and pursuant to the Agreement of Compromise, Settlement, Release and Confidentiality reached between said parties and Fed.R.Civ.P. 41(a)(1).

HEREBY STIPULATE that any and all claims, and causes of action filed by Defendant in the above referenced matter, are dismissed with prejudice.

**JONES, GIVENS, GOTCHER, BOGAN  
& HILBORNE,**  
a professional corporation

By:

  
Roy C. Breedlove  
Graydon Dean Luthey, Jr.  
3800 First National Tower  
Tulsa, Oklahoma 74103  
(918) 581-8200

**ATTORNEYS FOR DEFENDANT**

**DOYLE & HARRIS**

By: *Michael D. Davis*

**Steven M. Harris  
Michael D. Davis  
1414 South Galveston  
Tulsa, OK 74127  
(918) 582-0090**

**ATTORNEYS FOR PLAINTIFFS**

FILED

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

July 28, 1988  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CATHY A. REAVIS, )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Defendant )  
 )  
 v. )  
 )  
 GEORGE REAVIS and LARRY R. )  
 SAUNDERS, )  
 )  
 Additional Defendants )  
 on Counterclaim )

CIVIL NO. 87-C-250-E

ADMINISTRATIVE CLOSING ORDER

This cause is administratively closed for a period of 120 days to allow the parties to conclude settlement negotiations.

If the parties do not move to reopen this cause, it will be dismissed without prejudice.

SIGNED this 28 day of July, 1988.

James O. Ellison  
UNITED STATES DISTRICT JUDGE

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

FILED

JUL 27 1988

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

DOUGLAS E. ROBERTSON,

Plaintiff,

v.

BOARD OF REGENTS OF TULSA JUNIOR  
COLLEGE, a State Agency; WILLIAM  
HORTON, Director of Security for  
Tulsa Junior College, an individual;  
and CHARLES "CHUCK" HODGES, Assistant  
Director of Security, Tulsa Junior  
College, an individual,

Defendants.

Case No. 87-C-396-E

ORDER OF DISMISSAL

NOW ON THIS 28 day of July 1988, the Court has for its  
consideration the Stipulation of Dismissal filed in the above-styled and  
number action by the plaintiff and defendants. Based upon the representations  
and requests of the parties, as set forth in the foregoing stipulation, it is

ORDERED that plaintiff's Complaint against defendants be and the same is  
hereby dismissed with prejudice. It is further

ORDERED that each party shall bear its own costs and attorneys fees.

James C. Ellison  
JAMES C. ELLISON  
UNITED STATES DISTRICT JUDGE FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

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

Jul 28 1988

CENTRA, INC., ET AL, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 AIG RISK MANAGEMENT, ET AL, )  
 )  
 Defendants. )

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

88-179-E

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed July 12, 1988 in which the Magistrate recommended that Plaintiff's action be dismissed for lack of prosecution.

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 Plaintiff's action is dismissed for lack of prosecution.

Dated this 28<sup>th</sup> day of July, 1988.

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

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

**FILED**

JUL 29 1988

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

FEDERAL DEPOSIT INSURANCE )  
CORPORATION, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SETCO ENTERPRISES CORPORATION; )  
and NABIL F. SAHYLIYEH, )  
 )  
Defendants. )

Case No. 87-C-549-B

JUDGMENT

It is hereby ORDERED, ADJUDGED AND DECREED that the Federal Deposit Insurance Corporation shall have judgment against Defendants, Setco Enterprises Corporation and Nabil F. Sahyliyeh, jointly and severally, in the amount of \$352,503.48. Interest on this judgment shall accrue at the rate of 18.75% until paid.

SO ORDERED this 20th day of July, 1988.

S/ THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

CLYDE OIL & GAS, INC., a Delaware )  
corporation; CLYDE BUCKLES, INC., a )  
Texas corporation; CLYDE PETROLEUM, )  
INC., an Oklahoma corporation; CLYDE )  
PETROLEUM FINANCIAL LIMITED, a corpo- )  
ration organized under the laws of )  
Scotland; THIRD NORTH SEA OIL & GAS )  
COMPANY, LTD., a corporation organized )  
under the laws of England; and CLYDE )  
PRODUCTS COMPANY, a Texas corporation, )

Plaintiffs, )

v. )

TULSA COMMERCE BANCSHARES, INC.; )  
MBANK DALLAS, N.A.; and MCORP, )

Defendants. )

**FILED**

JUL 28 1988

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

No. 88-C-178-B

**ORDER**

This matter is brought before the Court by the Defendant, MBank Dallas, N.A. ("MBank"), on a Motion to Dismiss pursuant to Fed.R.Civ.P. 9(b), 12(b)(6) and 12(b)(1). The Court in ruling on the 12(b)(6) motion has not considered matters outside the pleadings.

The Motion to Dismiss the control person liability claim in the Complaint is now moot since the Plaintiffs dropped that claim against the Defendant MBank in the Amended Complaint. For reasons hereafter stated, Defendant's Motion to Dismiss the count against MBank for aiding and abetting Tulsa Commerce Bancshares, Inc.'s ("TCB") violations of §10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78j(a) (1982) and §408(a) of the Oklahoma Securities Act, 71 O.S. 1981 §408(a) is overruled, Defendant's Motion to Dismiss the equitable subordination count is sustained,

and Defendant's Motion to Dismiss claim that MBank aided and abetted TCB's common law fraud and conversion is sustained.

Plaintiffs allege an equitable subordination claim and an aiding and abetting claim against the Defendant, MBank. The aiding and abetting liability alleged against MBank is based on the following claims: (1) federal securities law violations; (2) Oklahoma's securities law violations; (3) common law fraud; and (4) conversion. The Court's jurisdiction is based upon the alleged federal securities laws, as diversity of citizenship is lacking.

**ALLEGATIONS OF FRAUD**

Plaintiffs allege that Defendant (MBank) aided and abetted TCB in the perpetration of fraud. Plaintiffs make the following allegations in their Amended Complaint:

Between 1983 and 1985 each Plaintiff entered into Short Term Borrowing Agreements, Master Notes and Renewal Notices ("Master Note Agreements") with TCB and Automated Cash Management Operating Agreements with The Bank of Commerce and Trust Company of Tulsa, Oklahoma ("the Bank") and TCB. Pursuant to these agreements the Bank monitored the Plaintiffs' demand deposit account on a daily basis. When the balance in each demand deposit account exceeded \$25,000, the Bank debited that demand deposit account and credited the corresponding master note account. Each transaction resulted in a purchase by the Plaintiffs of a security issued by TCB and these purchases continued through February 19, 1986. When the balance in a demand deposit account dropped below \$25,000, TCB and the Bank credited the demand deposit account and debited the master

note account, thus re-establishing a balance of \$25,000 in the demand deposit account. It is alleged the Bank, in effect, acted as an agent for the Plaintiffs by making the transfers between the demand deposit account and the master note account. TCB provided monthly "Statements of Investment" reflecting the balances in each Plaintiff's master note account. The Bank and TCB's incentive to each Plaintiff to enter into this arrangement was to offer an interest rate equivalent to that of United States Treasury bills. This rate being the highest offered on a liquid investment available through the Bank.

On February 19, 1986, the Bank either (1) transferred \$1,535,539.06 from Plaintiffs' demand deposit account to invest in the master note obligations, or (2) caused to be withdrawn from Plaintiffs' demand deposit accounts the amount of \$1,535,539.06.

On February 26, 1986, Plaintiffs', by letter, instructed the Bank to transfer the amount of \$2,850,000 from their demand deposit accounts to other accounts both within and outside the Bank.

On March 3, 1986, Plaintiffs presented to the Bank for payment, checks drawn on the Plaintiffs' demand deposit accounts in the amount of \$1,430,245.02. This amount included \$28,616.52 contained in a demand deposit account of Clyde Petroleum, Inc. at the Bank and \$1,401,628.50 in the Clyde Group's master note account with TCB. The Bank refused to pay these checks as required in the Automated Cash Management Operating Agreements.

As of February 15, 1985, which included the period of

Plaintiffs' investments, Commerce Bank and TCB, because of the Bank's undercapitalized condition, promised the Federal Reserve it would discontinue the issuance and sale of commercial paper without the prior written approval of the Federal Reserve or its commercial paper would have backup lines of credit of 100%. Commerce Bank and TCB promised to comply with all federal and state laws concerning commercial paper. A copy of the Federal Reserve Bank Agreement was provided to each director of the Bank and to TCB. MCorp and MBank have been aware of the Federal Reserve Bank agreement since the date of the agreement. Further, MCorp and MBank agreed to provide the backup financing of the master note obligations of TCB in order for the Federal Reserve Bank to approve the further issuance of debt obligations by TCB.

Plaintiffs' investment was not covered by backup financing nor did TCB have sufficient funds to repay amounts advanced by Plaintiffs under the master note agreements. Plaintiffs' funds were not ultimately invested as per the master note agreement. Defendants were obtaining money from investors such as Plaintiffs, to postpone the failure of Commerce Bank by inflating the value of Commerce Bank stock. This was done by using the proceeds from the sale of Bancshare notes to purchase substandard and classified loans of Commerce Bank. At no time prior to February 19, 1986 did the Bank or TCB inform or advise Plaintiffs of the above matters. Plaintiffs allege that both TCB and the Bank were aware that TCB had not received prior written approval of the Federal Reserve Bank in violation of both the Temporary Order to Cease and Desist issued

by the Federal Reserve on February 14, 1986 and the Federal Reserve Bank agreement.

Plaintiffs further allege the following relationships:

Defendant Tulsa Commerce Bancshares, Inc. substantially owns and therefore controls Commerce Bank.

Defendant MBank is the principal operating subsidiary of MCorp. MCorp owns substantially all of the issued and outstanding shares of MBank's capital stock. Defendant MCorp is a bank holding company which had outstanding loans to TCB in the amount of \$12,987,000 secured by a pledge of substantially all of the issued and outstanding Commerce Bank common stock.

MCorp and its principal subsidiary, MBank, as TCB's principal creditor both directly and indirectly exercised control over the activities of TCB and the Bank. No significant management decisions were made by officers or directors of TCB or the Bank without prior consultation with officers of MBank. MCorp and MBank were aware prior to February 19, 1986, that: (1) TCB was insolvent as a practical matter; and (2) TCB continued to issue commercial paper and master note obligations through the Bank to investors who were unaware of TCB's unsafe financial condition. Therefore, MBank aided and abetted Commerce Bank in a fraud against the Plaintiffs. Further, MCorp controlled or aided and abetted Commerce Bank in a fraud against the Plaintiffs.

Plaintiffs allege that the Defendant TCB failed to advise or inform the Plaintiffs of the fact (1) the financial condition of

Bancshares was extremely weak, (2) TCB had outstanding loans from MCorp and was being directed by MCorp and MBank, (3) Plaintiffs' funds were not being invested as per the master note agreement, (4) the proceeds from Plaintiffs' investment were being used to carry low quality loans, and (5) TCB was violating the agreement with the Federal Reserve in that none of Plaintiffs' investment was being provided a backup line of credit.

Defendant TCB is sued for fraud under §10-b of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b) (1982), and Rule 10b-5, 17 C.F.R. 240.10b-5. Defendant MCorp is charged with control person liability of the acts of the Bank and TCB under §20 of the Exchange Act. Defendants MCorp and MBank are sued as aider and abettors under §10-b.

Defendant TCB is sued for Oklahoma state securities fraud violations. MCorp is charged with control person liability under §408 of the Oklahoma Securities Act. MCorp and MBank are sued for aiding and abetting that fraud. TCB is sued for common law fraud and all others are sued for aiding and abetting that fraud.

TCB is charged with conversion of Plaintiffs' property and all others are sued for aiding and abetting that conversion. Further, the Plaintiffs ask the Court to do equity by subordinating the debt and security interests of MCorp and MBank in the assets of TCB to payment by TCB of the Plaintiffs' claims.

#### PLEADING WITH PARTICULARITY

Defendant MBank contends the aider and abettor cause of action should be dismissed for failure to allege fraud in conformity with

Fed.R.Civ.P. 9(b) which states:

"In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity."

Of primary importance in understanding the particularity requirements of Rule 9(b) is the recognition that it does not render the general principles set forth in Rule 8 entirely inapplicable to pleadings alleging fraud; rather, the two rules must be read in conjunction with each other. Rule 9(b) does not require detailed fact pleading of claims of fraud. See, In Re Longhorn Securities Litigation, 573 F.Supp. 255, 263 (1983). See also, Official Form 13; Fed.R.Civ.P. 84. See generally, Nolan Brothers, Inc. v. United States for the Use of Fox Brothers Construction Co., 266 F.2d 143, 145-46 (10th Cir. 1959). Rule 9(b) "merely requires that the circumstances constituting fraud shall be pleaded with particularity." Consequently, the claimant is not obligated to plead "evidentiary facts" to support his fraud claim. Id. Rather, Rule 9(b) must be read in conjunction with the simplified system of "notice pleading" generally contemplated by the federal rules. Conley v. Gibson, 355 U.S. 41, 47-48, 78 S.Ct. 99, 102-103, 2 L.Ed.2d 80 (1957), and specifically codified in Rule 8, Fed.R.Civ.P. 8(a), (b), (e) and (f). See, In Re Longhorn Securities Litigation, 573 F.Supp. 255, 263 (1983); In Re Homestake Production Co. Securities Litigation, 76 F.R.D. 337, 348-49 (N.D. Okla. 1975); 5 C. Wright & A. Miller, Federal Practice and Procedure §1298 at 406-407 and n. 66 (1969 and Supp. 1982). "Thus, the Court will not sustain an attack on a pleading of fraud unless

absolutely necessary to protect the purposes underlying Rule 9(b)'s particularity requirement. See, Longhorn at 263; 5 C. Wright & A. Miller, supra, §1300 at 425. Judge Eubanks stated in the context of securities fraud cases there are three purposes to Rule 9(b): (1) to enable defendants to prepare meaningful responses, (2) to preclude the use of a groundless fraud claim as a pretext to discover a wrong, and (3) to safeguard defendants from lightly made charges which might damage their reputations. Longhorn at 263-264 (referencing 5 C. Wright & A. Miller, Federal Practice and Procedure §1296 at 399-400 and nn. 48-50).

In Seattle-First National Bank v. Carlstedt, 101 F.R.D. 715 (W.D.Okla. 1984), several investors in a drilling program which was financed through Penn Square Bank loans of which Seattle-First was a participant, responded to Seattle-First's collection suit with counterclaims alleging fraud by the participant bank. Seattle-First moved to dismiss the counterclaims under Rule 9(b). The counterclaims did not allege that Seattle-First was an actor in the making of any of the alleged misrepresentations, nor did they allege any other facts or circumstances showing a connection between Seattle-First and the allegedly fraudulent sale of interests in the drilling program. Due to these shortcomings Judge Bohanon granted Seattle-First's motion to dismiss for failure to plead fraud with the requisite particularity under Rule 9(b).

The Tenth Circuit Court's opinion in Seattle-First National Bank v. Carlstedt, 800 F.2d 1008 (10th Cir. 1986) (per curiam) reversed Judge Bohanon's dismissal of the securities fraud

counterclaims, emphasizing the importance of reading Rule 9(b) in conjunction with the pleading requirements of Rule 8, as well as the Tenth Circuit's traditionally liberal approach to pleading securities fraud claims. The court quoted language from Trussell v. United Underwriters, Ltd., 228 F.Supp. 757, 774-75 (D.Colo. 1964), stating that a pleading alleging a securities fraud claim is sufficiently particular if it alleges:

- 1) The parties with whom the claimant dealt directly, and from whom the claimant bought stock;
- 2) The occasions on which affirmative misrepresentations were made to the claimant, and by whom; and
- 3) What misstatements or half-truths were directed to the claimant, and how. Seattle-First at 1011.

The Tenth Circuit found the investors' counterclaims to be sufficiently particular even though they did not strictly conform to the requirements stated above.

Seattle-First when read in conjunction with Eastwood v. National Bank of Commerce, Altus, Oklahoma, 673 F.Supp. 1068 (W.D. Okla. 1987), states that a Rule 9(b) motion should be considered appropriate whenever the pleading alleging a fraud claim fails to identify: (1) the misstatements that were made or the facts that were concealed or omitted; (2) the party who made the misstatements to, or concealed the facts from, the claimant; and (3) the occasions when the misstatements occurred or, in general, the context in which the concealments or omissions occurred.

Further, this Court acknowledged in Flynn Energy Corp. v. Tulsa Commerce Bancshares, No. 88-C-163-B (N.D.Okla. Order dated

Sept. 2, 1987), that detailed information concerning the alleged fraud is uniquely within corporate defendants' internal affairs. That at this stage of the litigation the Plaintiffs cannot be expected to possess information that is within the exclusive possession of corporate insiders.

The Court in Eastwood, supra at 1080, confirmed that allegations of aider and abettor liability must be plead with particularity pursuant to Rule 9(b). The essential elements of a claim for aider and abettor liability for violations of Rule 10b-5 are (1) a primary violation of Rule 10b-5 by another; (2) knowledge of the violation by the alleged aider and abettor; and (3) substantial assistance by the aider and abettor. Id. at 1081. See, Feldman v. Pioneer Petroleum, Inc., 606 F.Supp. 916, 925 (W.D. Okla. 1985), aff'd, 813 F.2d 296 (10th Cir. 1987). See also, Zabriskie v. Lewis, 507 F.2d 546, 554 (10th Cir. 1974). Therefore, a claim for secondary liability must depict the acts purported to have furthered the fraud in sufficient detail to inform the defendant of what he is supposed to have done in furtherance of the fraud so that he can frame a meaningful response. Eastwood at 1080.

The Court adopts the reasoning in Longhorn, 573 F.Supp. 255 (W.D.Okla. 1983), Eastwood, 673 F.Supp. 1068 (W.D.Okla. 1987), and Seattle-First, 800 F.2d 1008 (10th Cir. 1986). The Amended Complaint is specific enough to permit the Defendant to frame its responsive pleadings. In sum, the Plaintiffs' allegations not only give the Defendant ample notice, but they also state with

reasonable specificity the circumstances constituting the alleged fraud. Therefore, the Defendant's Motion to Dismiss this claim pursuant to Fed.R.Civ.P. 9(b) and 12(b)(6) is overruled.

**PLAINTIFFS' FEDERAL SECURITIES CLAIMS**

The first issue before the Court is whether the master note which is the focus of this lawsuit is a "security" for purposes of the Securities Exchange Act of 1934, 15 U.S.C. §78(a) et seq.<sup>1</sup>

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<sup>1</sup>Exhibit J to Plaintiff's Complaint, the Written Agreement between the Federal Reserve Bank of Kansas City, Missouri, and Tulsa Commerce Bancshares, Inc. indicates that the parties assumed the commercial paper at issue was a security. Paragraph 3(b)(ii) states:

"In the event that Tulsa Commerce decides to continue the issuance and sale of commercial paper in accordance with the provisions of paragraph 3(a) hereof, Tulsa Commerce shall . . . conform by June 30, 1985, all issues of commercial paper to the provisions of 15 U.S.C. 77c(a)(3) or otherwise comply with the registration requirements and any other applicable provisions of the Securities Act of 1933...."

Paragraph 3(b)(iii) provides that Tulsa Commerce will also:

"obtain, by March 31, 1985, a written advisory opinion of an independent outside counsel relative to the use of the proceeds from commercial paper issued by the holding company as such proceeds relate to the current transactions guidelines of applicable securities laws."

While these provisions are not determinative of the securities question before this Court, they do indicate that the parties believed that federal securities laws could be applicable to some degree, in this instance.

Exhibit K to Plaintiffs' Complaint, the Temporary Order issued to Tulsa Commerce Bancshares, Inc. by the Federal Reserve Bank of Kansas City, Missouri, states that Tulsa Commerce shall not issue, roll over, or review any commercial paper or master notes without the prior written approval of the Federal Reserve Bank.

The 1934 Act provides:

"The term 'security' means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit, for a security, or in general, any instrument commonly known as a 'security'; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited."

15 U.S.C. §78(c)(10) (1081). Although the maturity dates of the notes at issue would seem to place them within the statutory exclusion of §78c(a)(10), numerous courts have held that this exclusion is limited to:

". . . only . . . prime quality negotiable [commercial] paper of a type not ordinarily purchased by the general public, that is, paper used to facilitate well-recognized types of current operational business requirements and of a type eligible for discounting by Federal Reserve Banks."

Zabriskie v. Lewis, 507 F.2d 546, 550 (10th Cir. 1974). The Court concludes that the notes at issue herein were not prime quality negotiable commercial paper, and, thus, did not fall within the statutory exclusion of §78c(a)(10). In determining whether a particular interest is a security protected by the securities laws, form is disregarded over substance and emphasis is placed on

economic reality. In re Longhorn Securities Litigation, 573 F.Supp. 255, 266 (W.D.Okla. 1983). To state a claim under the 1934 Act, Plaintiff must allege that the notes at issue are "securities" within the terms of that Act. Fed.R.Civ.P. 12(b)(6) must be read in conjunction with Rule 8(a) which requires a short plain statement of a claim. The complaint must be viewed in the light most favorable to the plaintiff and its allegations taken as true. Scheuer v. Rhodes, 416 U.S. 232 (1974); Olphin v. Ideal Nat. Ins. Co., 419 F.2d 1250 (10th Cir. 1969), cert. denied, 397 U.S. 1074 (1970). A motion to dismiss for failure to state a claim should not be sustained unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Dewell v. Lawson, 489 F.2d 877 (10th Cir. 1974). The burden of proving the notes in question are securities is "a light one." Floyd v. First Penn Corporation, [1982-83 Transfer Binder], Fed.Sec.L.Rep. (CCH) ¶99,132 at 95,447 (W.D.Okla. 1983). The Longhorn court stated that the "plaintiffs here allege that the interests they purchased in the various Longhorn limited partnerships are 'securities.'" Further, that this alone is sufficient to withstand a motion to dismiss. Longhorn at 265. The courts in their concern for investors, emphasize that rather than focus on the terms of a particular note, an examination of the circumstances of a transaction is more appropriate to determine whether the transaction was entered into for investment purposes, or was primarily commercial in nature and thus beyond the securities laws.

United Housing Fdn., Inc. v. Forman, 421 U.S. at 852-853, 95 S.Ct. at 2060-2061; Frederiksen v. Poloway, 637 F.2d 1147, 1150 (7th Cir.), cert. den., \_\_\_ U.S. \_\_\_, 101 S.Ct. 3006, 69 L.Ed.2d 389 (1981); McClure v. First Nat'l Bank, 497 F.2d 490, 494-495 (5th Cir. 1974), cert. den., 420 U.S. 930, 95 S.Ct. 1132, 43 L.Ed.2d 402 (1975).

Defendant MBank contends that Plaintiffs have failed to allege facts showing the elements of a security as required by the United States Supreme Court in United Housing Foundation, Inc. v. Forman, 421 U.S. 837, reh'g denied 423 U.S. 884 (1975). However, in Forman the court applied the Howey [328 U.S. 293 (1946)] test in order to distinguish the transaction from other commercial dealings. The four-part Howey test only determines whether an instrument is an "investment contract." An instrument may still be a security if it falls under one of the other specific statutory references. Hunssinger v. Rockford Business Credits, Inc., 745 F.2d 484, 491 (10th Cir. 1984). Thus, this contention is without merit.

The Amended Complaint and Exhibits A-G of the Complaint describe the master note arrangement herein as: (1) the Plaintiffs entered into a written agreement that a demand deposit account with a floor of \$25,000 would be maintained; (2) when more than \$25,000 accrued in the demand deposit account, the bank transferred this money into the master note account; (3) in effect the Plaintiffs loaned the Bank from their demand deposit account, as evidenced by a note issued to Plaintiffs evidencing the debt; (4) these notes

evidenced the purchase of TCB's debt obligations; (5) each transaction constituted the purchase by Plaintiffs of a security issued by TCB; (6) the term of each note was 270 days (nine months) in accordance with the S.E.C. regulations; (7) the master note is an obligation of TCB, but is not a bank deposit; (8) the transaction was not covered by FDIC insurance; and (9) interest earned was subject to the rate per annum of the 13-week United States Treasury Bill rate and will change weekly based on the latest auction. These allegations, taken as true and construed in the light most favorable to the Plaintiffs, satisfy the burden of pleading a security for the purposes of the 1934 Act.

The Court has determined that Bancshares commercial paper falls within a judicially-created commercial purpose exception to the definition of notes as securities. See, McClure v. First Nat'l Bank, 497 F.2d 490 (5th Cir. 1974); Lino v. City Investing Co., 487 F.2d 689 (3rd Cir. 1973); Zeller v. Bogue Elec. Mfg. Co., 476 F.2d 795 (2d Cir. 1973), cert. denied, 414 U.S. 908 (1973).

Notes generated in consumer transactions are commercial in character and have been held to be outside the parameters of the Securities Act. Zabriskie at 546. However, when a person seeks to invest his money and receives a note for it, he has not purchased commercial paper, he has purchased a security investment. Clearly, the commercial paper purchased herein was purchased for investment, not commercial purposes. Thus, the Motion to Dismiss is overruled on this ground.

**PENDENT STATE CLAIMS**

The Court does not dismiss the Plaintiffs' pendent state claims against the Defendant based upon lack of subject matter jurisdiction (Fed.R.Civ.P. 12(b)(1). The three prerequisites stated in United Workers of America v. Gibbs, 383 U.S. 715, 725 (1966), has been satisfied for the federal court to exercise jurisdiction over state law claims.

- 1) The Court has jurisdiction of this lawsuit by virtue of the securities law violations, 15 U.S.C. 78(a) et seq.;
- 2) The state and federal claims derive from the same common law nucleus of operative fact; and
- 3) The state and federal claims are of such a nature that one would ordinarily expect them to be tried in one judicial proceeding.

Both the federal and state claims are based upon the same agreement, circumstances, parties, and the alleged fraud perpetrated. Judicial economy is best served in hearing the federal and state claims in one court; particularly, when convenience and fairness to the litigants are present in a case. Gibbs at 725.

The Court does dismiss the equitable subordination for failure to state a claim pursuant to Rule 12(b)(6), Fed.R.Civ.P. Plaintiffs concede in their Brief in Response to Defendant MBank's Motion to Dismiss Amended Complaint that the Amended Complaint does not state a claim for equitable subordination.

The Court dismisses the claim against MBank for aiding and abetting TCB's conversion pursuant to 12(b)(6) Fed.R.Civ.P. "Aiding and abetting" a conversion is not a separate cause of action under Oklahoma state law. Participants to a conversion case may be held jointly liable with and to the same extent as the converter. In George W. Brown & Sons State Bank, 270 P. 9 (Okla. 1928), the court found that every person participating in or knowingly benefiting by proceeds of the conversion in whole or in part is liable to the property owner.

The Court dismisses the claim against MBank for aiding and abetting TCB's common law fraud pursuant to Fed.R.Civ.P. 12(b)(6). Fraud is a tort. Bridges v. Youree, 436 F.Supp. 458 (W.D.Okla. 1977). In an action for fraud, all persons who participated in the alleged fraud may properly be joined as defendants. Young v. Smith, 41 P.2d 461 (Okla. 1935). Under tort law, defendants who participated in the fraud are joint-feasors and are jointly and severally liable. 37 C.J.S. §77. The Complaint has improperly plead the conversion and fraud claims as there is no tort of aiding and abetting under Oklahoma law.

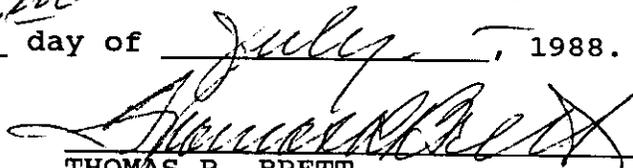
Defendant's Motion to Dismiss Plaintiffs' equitable subordination claim, the claim for aiding and abetting TCB's conversion, and the claim for aiding and abetting TCB's common law fraud are sustained. With respect to all other counts, Defendant MBank's motions are denied.

In summation, the aider and abettor liability claims against Defendant MBank for TCB's violations of §10(b) of the Securities

Exchange Act of 1934, 15 U.S.C. §78j(a) (1982) and §408(a) of the Oklahoma Securities Act, 71 O.S. 1981 §408(a) remain.

Defendant MBank is given fifteen (15) days from the date of this Order to file its answer in response to Plaintiffs' Complaint.

IT IS SO ORDERED this 28<sup>th</sup> day of July, 1988.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

*Entered*

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

JUL 20 1986 *rm*

JACK O. SPENCER, CLERK  
U.S. DISTRICT COURT

FEDERAL DEPOSIT INSURANCE,  
CORPORATION, in its corporate  
capacity,

Plaintiff,

vs.

No. 87-C-728-C

FOURTH NATIONAL TOWER, LTD., an  
Oklahoma limited partnership,  
DION GANTT, an individual,  
RAY F. BIERY, an individual,  
and PAUL D. HINCH,  
an individual,

Defendant.

O R D E R

Now before the Court for its consideration is the motion of the plaintiff for summary judgment. The facts in this case are virtually undisputed. On July 14, 1986, the First National Bank & Trust Company of Oklahoma City, N.A. (FNB) was declared insolvent. The FDIC was appointed Receiver for the Bank. At that time, FNB owned a participation interest in certain obligations owed by defendant Fourth National Tower, Ltd. (Fourth) to FNB, and guaranteed by the individual defendants. After FNB was closed and the Receiver appointed, the plaintiff succeeded to all right, title and interest of the Receiver in and to the participation interest.

On or about October 1, 1986, defendant Fourth made, executed and delivered unto the plaintiff a promissory note dated June 2, 1986, in the principal amount of \$2,051,380.00 plus interest accruing thereon from and after June 2, 1986, at the rate of two percent above FNB prime. On or about June 2, 1986, the individual defendants each executed guaranty agreements, wherein each unconditionally guaranteed payment to the FDIC of all indebtedness due and owing under the note.

While not disputing the facts above, the defendants assert that they advised the FDIC at the time of execution that they would be unable to pay the note according to its terms, and that the note and guaranties were entered into with the understanding that the FDIC would not call or accelerate the note and would renegotiate the terms of the note. Defendants also refer to prior negotiations between themselves and FNB in which the original loans in question were renegotiated and extended so that Fourth could secure long-term financing.

The defendants essentially argue that the prior negotiations between FNB and Fourth, and the extensions granted pursuant thereto, constitute a "course of dealing" as that phrase is defined in the Uniform Commercial Code. 12A O.S. §1-205 provides in pertinent part as follows:

A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(3) A course of dealing between parties and

any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

Defendants assert that the "course of dealing" between the parties explains and supplements the terms of the note. Specifically, that the FDIC was aware that the note would not be paid according to its terms but would be renegotiated.

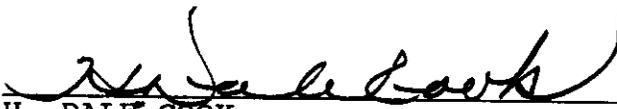
The Court rejects this argument. 12A O.S. §1-205(1) says that course of dealing is a sequence of previous conduct between the parties. The FDIC was not a party to the prior negotiations and extensions to which defendants refer, and therefore cannot be bound by them. Neither can any "understanding" between the defendants and FDIC serve as a course of dealing because a course of dealing must be a sequence of previous conduct. A single occasion is not a sequence. See, e.g., Rotuba Extruders, Inc. v. Ceppos, 385 N.E.2d 1068 (N.Y. 1978). Even when a sequence of previous conduct has been established between the parties of a promissory note, courts have enforced the express terms of the note. See Minor v. Citizens & S. Nat'l Bank, 338 S.E.2d 466 (Ga. 1985).

Additionally, even if such an understanding were proven, it would not bind the FDIC in its corporate capacity. Unwritten agreements which are not official records of the bank are not valid

as against the FDIC. 12 U.S.C. §1823(e).

It is the Order of the Court that the motion of the plaintiff for summary judgment is hereby GRANTED.

IT IS SO ORDERED this 27<sup>th</sup> day of July, 1988.

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

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

**F I L E D**

WILLIAM JORDAN, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SHEFFIELD STEEL CORPORATION, )  
 )  
 Defendant. )

**JUL 28 1988**

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

No. 86-C-408-C

JUDGMENT

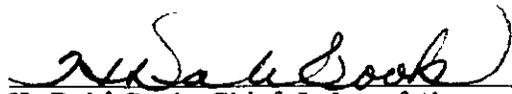
Came on for trial Monday, July 18, 1988 Plaintiff's claims of retaliatory discharge under the Oklahoma worker's compensation statutes, 85 Okla. Stat. §§5-7, and racial discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000(e) et seq.

After hearing all the evidence, as well as arguments of counsel for Plaintiff and Defendant, the jury was instructed as to Plaintiff's claim of retaliatory discharge. The jury then deliberated and reached their verdict in favor of the Defendant and against the Plaintiff. The Court hereby enters the jury's verdict and renders judgment in favor of the Defendant, Sheffield Steel Corporation, and against the Plaintiff, William J. Jordan, on Plaintiff's claim of retaliatory discharge.

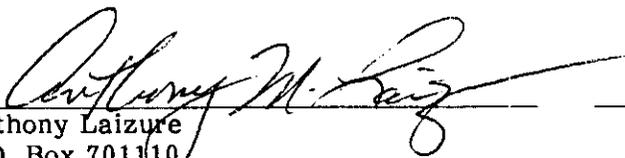
The Plaintiff's claim of racial discrimination under Title VII was tried to the Court. The Court entered its oral findings of fact and conclusions of law with respect to that claim on Wednesday, July 20, 1988. Based upon said findings of fact and conclusions of law, the Court further renders judgment in favor of the Defendant, Sheffield Steel Corporation, and against the Plaintiff, William J. Jordan, on Plaintiff's claim of racial discrimination.

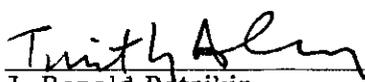
Defendant is to submit a bill of costs within ten days of the date of this judgment.

IT IS SO ORDERED this 28<sup>th</sup> day of July, 1988.

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

APPROVED AS TO FORM:

 7-25-88 DATE  
Anthony Laizure  
P.O. Box 701110  
Tulsa, Oklahoma 74170  
ATTORNEY FOR PLAINTIFF, WILLIAM  
JORDAN

 7-22-88 DATE  
J. Ronald Petrikin  
Timothy A. Carney  
GABLE & GOTWALS  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
ATTORNEYS FOR DEFENDANT, SHEFFIELD  
STEEL CORPORATION

FILED

JUL 27 1988

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

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

DONNIE KRAMER

PLAINTIFF

VS.

CASE NO. 88-C-384-B

INDEMNITY UNDERWRITERS INSURANCE COMPANY

DEFENDANT

ORDER OF DISMISSAL

Now on this 27 day of July, 1988, comes on for hearing the Motion of the Plaintiff to dismiss the above cause pursuant to Rule 41(a) of the F.R.C.P., the Court being well and sufficiently apprised in the premises doth find:

1. That the parties hereto agree to dismiss the above cause without prejudice by stipulation.

IT IS, BY THIS COURT, CONSIDERED, ORDERED AND ADJUDGED that the above cause be dismissed without prejudice.

S/ THOMAS R. BRETT  
\_\_\_\_\_  
DISTRICT JUDGE

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

W.T. SANDERS, SR., )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 J. SCOTT MCWILLIAMS, and D. )  
 BENHAM KIRK, )  
 )  
 Appellee. )

88-C-611-B

JACOB SILVER, CLERK  
U.S. DISTRICT COURT

JUL 27 1988

FILED

ORDER

This matter comes before the Court on Appellant W.T. Saunders, Sr.'s Motion for Leave to Appeal from an Order of the United States Bankruptcy Court for the Northern District of Oklahoma. For the reasons set forth below, the Motion for Leave to Appeal is denied.

In denying a "motion to quash and abandon" which the Bankruptcy Court treated as a motion to dismiss pursuant to 11 U.S.C. §707(a), the Bankruptcy Court found that "Sanders presents no evidence that raises even a material suspicion of misconduct on the part of either Freeman or Kirk". Order, filed June 21, 1988. From this finding, Sanders, Sr. seeks leave to appeal.

The Bankruptcy Court's order denying the motion to dismiss is an interlocutory order. Authority for the District Court to hear appeals from interlocutory orders is found at 28 U.S.C. §158, which provides in pertinent part:

(a) The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under §157 of this title. An appeal under this subsection shall be taken only to the

district court for the judicial district in which the bankruptcy judge is serving; and, ...

(c) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

Section 158 is silent as to what standard or considerations should be employed by the district court in determining whether leave to appeal should be granted.

Because bankruptcy appeals are to be taken in the same manner as appeals in civil matters generally, the court finds the statutory provision governing interlocutory appeals from district courts to appellate courts should be applied. 28 U.S.C. §1292(b). See, In re Johns-Manville Corp., 47 B.R. 957 (S.D.N.Y. 2985). In general, exceptional circumstances must be present to warrant an interlocutory appeal. Coopers & Lybrand v. Livesay, 437 U.S. 463 98 S.Ct. 2454, 57 L.Ed.2d 351 (1977).

Title 28 U.S.C. §1292(b) mandates three conditions requisite to an interlocutory appeal: (1) the existence of a controlling question of law; which (2) would entail substantial ground for differences of opinion; and (3) the resolution of which would materially advance the ultimate termination of the litigation.

Because the finding, which Appellant asserts is erroneous, is a finding of fact, none of the above-required conditions can be satisfied.

Nevertheless, the likelihood of Appellant's prevailing on appeal, should he be allowed to proceed, is a further significant factor to be considered before denying leave outright.

In the case, In re: Den-Col Cartage & Distribution, Inc., 20 B.R. 645 (D. Colo. 1982), the court outlined the standards to follow in determining whether "the circumstances are extraordinary enough to warrant an interlocutory appeal." Id. at 648. An interlocutory appeal should be allowed only when:

- (1) the Appellant has demonstrated a substantial likelihood that he will eventually prevail on his appeal;
- (2) the Appellant has demonstrated that the party he represents will suffer irreparable injury unless the interlocutory appeal is allowed;
- (3) the potential injury to the Appellant's client if the appeal is not allowed outweighs the potential injury to other parties if the appeal is allowed; and,
- (4) an interlocutory appeal is not adverse to either the public interest or the orderly administration of the Chapter 11 bankruptcy proceeding. Id.

Here, the Bankruptcy Court's finding of fact is presumed correct, and will not be set aside unless shown to be clearly erroneous. Bankruptcy Rule 8013. Although the Bankruptcy Court may have erred in its finding, Appellant has not demonstrated a substantial likelihood that he will be able to show that the finding was clearly erroneous. Furthermore, Appellant has not demonstrated that, should leave be denied, he will suffer irreparable injury; nor has he shown that his potential injury, if the appeal is not allowed, outweighs the potential injury to the Appellee if the appeal is allowed. Thus, Appellant has failed to meet the necessary standard sufficient to allow a grant

of leave to appeal. For this reason, Appellant's Motion for Leave to Appeal is hereby denied.

It is so ORDERED this 27 day of July, 1988.

  
THOMAS R. BRETT  
UNITED STATES MAGISTRATE

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

KEITH L. BELKNAP and CHAMPIONS )  
ORGANIZATION, INC., an Oklahoma )  
corporation, )

Plaintiffs, )

v. )

AMWAY CORPORATION, a Michigan )  
corporation; RICHARD M. DeVOS; )  
JAY VanANDEL; RICK SETZER, )

Defendants. )

No. 87-C-795-B

FILED

JUL 27 1988

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

O R D E R

This matter comes before the Court on (1) Defendant Amway Corporation's Motion to Dismiss for Failure to State a Claim in Counts I, II and III; (2) on Defendants Richard M. DeVos' and Jay VanAndel's<sup>1</sup> Motion to Dismiss Count III; and (3) on all Defendants' Motion for Summary Judgment concerning Plaintiffs' Racketeer Influenced and Corrupt Organizations Act (RICO) claim.

Plaintiff Keith L. Belknap became an Amway distributor in August 1977, and eventually reached the successful "pin level" of Triple Diamond Distributor. Basically, Plaintiff contends that through fraud and duress, Amway Corporation, DeVos and VanAndel conspired to influence Plaintiff to sell his Amway distributorship to Defendant Setzer on January 17, 1985. Count I alleges Plaintiff is entitled to a Triple Diamond distributor bonus from Amway which has not been paid. Count II alleges that his distributor contract

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<sup>1</sup>Richard DeVos is President and Jay VanAndel is Chairman of the Board of Amway.

was wrongfully not renewed. Count III alleges a tortious interference with contractual relations. Count IV alleges RICO violations.

Amway moves to dismiss Count I of the Complaint contending that from the face of the Complaint the statute of limitations has run on Plaintiff's claim.

Plaintiff alleges Amway has breached its agreement with Plaintiff to pay bonuses "for the fiscal year beginning September 1, 1977 and ending August 31, 1978 and each year thereafter.... The statute of limitations for breach of a contract in writing is five years. 12 Okl.St. Ann. §95. Bonuses due for years ending August 1978, 1979, 1980, 1981 and 1982 are barred by the statute. However, as to bonus due for years ending August 1983, 1984, 1985, 1986 and 1987, the statute has not run. To prevail on a motion to dismiss a complaint for failure to state a claim upon which relief can be granted, Defendant must establish that Plaintiff can prove no set of facts in support of his claim that would entitle Plaintiff to relief. Haines v. Kerner, 404 U.S. 519 (1972). All factual allegations should be construed to the benefit of the pleader. Gardner v. Toilet Goods Assn., 387 U.S. 167 (1967); Lee v. Derryberry, 466 F.Supp. 30 (W.D. Okl. 1978). In the present case Defendants have not established that Plaintiff can prove no set of facts entitling Plaintiff to the bonuses for years 1983-1987. Therefore, the motion on Count I is sustained in part and overruled in part.

Amway moves to dismiss Count II contending under Oklahoma law

there is no cause of action for failing to renew a distributorship agreement. Plaintiff's Complaint says Defendant Amway's actions in not renewing his contract were arbitrary, capricious and without justifiable cause." Because the Complaint is pro se, liberal construction will be applied to the Complaint.<sup>2</sup> Haines v. Kerner, 404 U.S. 519 (1972).

Plaintiff correctly points out that Hall v. Farmers Insurance Exchange, 713 P.2d 1027 (Okla. 1985), held if a principal acts with intent to wrongfully deprive an agent of the fruits of his contract by terminating an agency relationship, the principal stands in breach of an implied covenant of good faith. Plaintiff's Complaint, when construed very liberally and taken as a whole, does allege a cause of action under Hall v. Farmers, supra. Therefore, Defendant's Motion to Dismiss Count II is overruled.

Defendants also request that the Court dismiss Count III of Plaintiff's Complaint because it is barred by the statute of limitations. Count III of Plaintiff's Complaint basically alleges a tort cause of action for interference with contractual relations. The Court first notes that neither Defendant Amway nor its agents DeVos and Van Andel could "interfere" with a contract with Amway. However, even when construing the Complaint to refer to outside contracts, Plaintiff asserts the scheme to destroy his business culminated with the sale of his distributorship in January of 1985.

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<sup>2</sup>However, now that Plaintiff has an attorney, all other pleadings will not carry this construction.

Applying the Oklahoma statute of limitation<sup>3</sup> for torts, Plaintiff had two years to file his claim. 12 Okl.St. Ann. §95. This Complaint, filed September 28, 1987, was not timely filed for a tort cause of action.

Plaintiff argues, however, that because he had filed bankruptcy before the statute had run on his cause of action, he should be entitled to two more years to file suit under 11 U.S.C. §108(a) which provides:

"(a) If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of --

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) two years after the order for relief."

Defendants point out, Plaintiff voluntarily dismissed his bankruptcy proceeding, however, approximately two months prior to the original state statute running and almost a year prior to filing this suit. Defendant contends 11 U.S.C. §108(a) applies only to a trustee, not a debtor. Dickson v. Burroughs, 432 F.Supp. 752, 756 (W.D.N.C. 1977). Although a debtor in possession is entitled

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<sup>3</sup>Plaintiff attempts to argue that Hawaii or Michigan statute of limitations should apply because some acts of interference occurred there. However, this case concerns interference with an Oklahoma business and Oklahoma has the most significant relationship to the occurrence. Brickner v. Gooden, 525 P.2d 632 (Okla. 1974).

to the tolling, it is true a debtor is not. In re Flying S, 71 B.R. 183 (Bankr. Nev. 1987); Matter of Craig, 7 B.R. 864 (Bankr. Tenn. 1980). A debtor in possession is entitled to all rights of a trustee. 11 U.S.C. §1107(a). The Court is to look at the date of the filing of the cause of action (here September 1987) to determine if the Plaintiff is still a debtor in possession. Cunningham v. Heathco, Inc., 824 F.2d 1448, 1460 (5th Cir. 1987). Plaintiff herein was not even in bankruptcy at the time of the filing. It is clear §108(a) does not apply to Plaintiff, §108(a) was designed to protect creditors, not the debtor. In re Flying S, 71 B.R. 183 (Bankr. Nev. 1987). Plaintiff herein did not need the extra time provided under §108(a) because he was intimately familiar with the potential prepetition claim. Nothing in the Bankruptcy Act prevented or stayed Plaintiff from filing this claim against Defendants before or after the filing of the bankruptcy or before or after dismissing it. Engine Rebuilders, Inc. v. Seven Seas, 615 P.2d 871 (Mont. 1980).

Because the claims contained in Count III are time barred, the Court hereby dismisses them.

All Defendants move to dismiss and for summary judgment on Plaintiff's Racketeer Influenced and Corrupt Organizations Act (RICO) claim. 18 U.S.C. §1961 et seq. After a thorough review of Count IV of the Complaint, the RICO case statement filed by

Plaintiff<sup>4</sup> and all briefs, the Court is convinced this factual situation does not give rise to a RICO claim. Plaintiff has failed to plead fraud with particularity as required by Fed.R.Civ.P. 9(b) and has failed to plead sufficient facts establishing a pattern of racketeering activity as required under 18 U.S.C. §1962(c).

Section 1962 provides:

"It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt."

For purposes of §1962(c), a "pattern of racketeering activity" requires "at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity." 18 U.S.C. §1961(5).

A violation of §1962(c), as alleged herein, requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. Sedima, S.P.R.I. v. Imrex Co., 473 U.S. 479 496 (1985). A plaintiff must allege one of these elements to state a claim. Id. A plaintiff must also plead all averments of fraud and the circumstances constituting fraud with particularity.

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<sup>4</sup>The pleading is filed under the heading Plaintiffs' Responses to Court Interrogatories.

Fed.R.Civ.P. 9(b).

Count IV of Plaintiff's Complaint states the predicate acts which constitute a pattern of racketeering activity are (1) Defendants "encouraged and persuaded Plaintiff" to develop an Amway distributorship, and told Plaintiff he would "derive substantial profits as an Amway distributor;" (2) Defendants "defrauded" Plaintiff by degrading him to other distributors and discouraging other distributors from dealing with him; (3) Defendants' purposes were to destroy Plaintiff's business and secure financial gain; (4) Defendants prepared literature, correspondence and tape-recorded communications and distributed them through the mails.

Plaintiff contends he has \$500,000,000.00 damages in lost profits.<sup>5</sup>

Plaintiff's RICO case statement is equally as conclusory and lacking in particularity. In answering exactly who the alleged victims of the scheme were and how each victim was injured Plaintiff responds "there are many people who were enticed and lured" into becoming distributors based on false hopes of becoming wealthy through the sale of soap. Real wealth, Plaintiff claims, comes through the sale of motivational tools, not soap. Plaintiff fails to specify dates, times and victims and fails to bring forth supporting material showing there is a genuine issue

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<sup>5</sup>Plaintiff complains he was defrauded by Defendants in that he was told he could become wealthy by selling soap yet the real wealth comes from selling motivational tools. Plaintiff then requests \$500,000,000.00 for being defrauded out of lost profits.

for trial in compliance with Celotex Corporation v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Fed.R.Civ.P. 56 requires:

"When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial."

The Defendants urge that Plaintiff's allegations do not support the "pattern of racketeering activity" requirement of §1962(c). Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985) held that there is no requirement of proving racketeering injury nor are criminal convictions necessary concerning the predicate offenses to allege a RICO claim. In Sedima, the Plaintiff, Sedima, alleged that its joint venturer Imrex Company presented inflated bills, cheating Sedima out of a portion of its proceeds share by collecting for non-existent expenses. A RICO claim under §1964(c) against Imrex and two of its officers and violations of §1962(c) based on predicate acts of mail and wire fraud were alleged.

The Supreme Court stated in footnote 14 about "pattern of racketeering activity":

"As many commentators have pointed out, the definition of a 'pattern of racketeering activity' differs from the other provisions in §1961 in that it states that a pattern 'requires at least two acts of racketeering activity,' §1961(5) (emphasis added), not that it 'means' two such acts. The implication is that while two acts are necessary, they may not be sufficient. Indeed, in common parlance two

of anything do not generally form a 'pattern.' The legislative history supports the view that two isolated acts of racketeering activity do not constitute a pattern. As the Senate Report explained: 'The target of [RICO] is thus not sporadic activity. 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.' S.Rep.No. 91-617, p. 158 (1969) (emphasis added). Similarly, the sponsor of the Senate bill, after quoting this portion of the Report, pointed out to his colleagues that '[t]he term 'pattern' itself requires the showing of a relationship .... So, therefore, proof of two acts of racketeering activity, without more, does not establish a pattern....' 116 Cong.Rec. 18940 (1970) (statement of Sen. McClellan). See also id., at 35193 (statement of Rep. Poff) (RICO 'not aimed at the isolated offender'); House Hearings, at 665. Significantly, in defining 'pattern' in a later provision of the same bill, Congress was more enlightening; 'criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.' 18 USC §3575(e) [18 USCS §3575(e)]. This language may be useful in interpreting other sections of the Act. Cf. Iannelli v. United States, 420 U.S. 770, 789, 43 L.Ed.2d 616, 95 S.Ct. 1284 (1975)."

Thus, the question presented is, does the single alleged general episode to defraud the Plaintiff of his successful business, with multiple mail or wire communications sent incident thereto, constitute a "pattern of racketeering activity?"

Post-Sedima numerous courts have addressed the "pattern of racketeering activity" issue. Some hold that a single alleged fraudulent transaction accompanied by numerous predicate acts

incident thereto, i.e., mail or wire communications, satisfy the "pattern of racketeering activity" requirement. R.A.G.S. Couture, Inc. v. Hyatt, 774 F.2d 1350, 1355 (5th Cir. 1985); Conan Properties, Inc. v. Mattel, Inc., 619 F.Supp. 1167, 1170 (S.D.N.Y. 1985); Systems Research, Inc. v. Random, Inc., 614 F.Supp. 494, 497 (N.D.Ill. 1985). Post-Sedima other cases have held that a single fraudulent transaction or episode, although accompanied by numerous mail or wire communications to carry it out, do not satisfy the "pattern of racketeering activity" requirement. Fleet Management Systems, Inc., d/b/a Logistic Systems v. Archer-Daniels-Midland Co., Inc., and Nims Associates, Inc., 627 F.Supp. 550 (Cent.Dist.Ill. 1986); Northern Trust Bank/O'Hare, N.A., v. Inryco, Inc., 615 F.Supp. 828 (N.D.Ill. 1982).

In Fleet Management, the plaintiff's RICO claim centered in the allegation that defendant had wrongfully appropriated plaintiff's property interest in a computer program. Wire and mail communications were employed incident to the defendants' alleged fraudulent acquisition. Selected statements of the court in Fleet Management are pertinent in the instant analysis. Therein the court stated:

"It is this Court's view that Sedima, the language of the statute, and its legislative history not only allows, but indeed compels the conclusion that a 'pattern' requires at least two criminal episodes by a racketeering enterprise that are somehow related by 'the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.' Sedima, 105 S.Ct. at 3285 n. 14 (quoting 18 U.S.C. §3575(e)). More is

clearly required than a relationship between predicate acts themselves: there must be two or more criminal episodes through which the enterprise achieves its illegal goal....

The obvious purpose of the continuity plus relationship formulation is to narrow the 'pattern' concept to reach RICO's intended goal--enterprises which utilize similar methods of operation and participants and whose victims are harmed in similar manners by the operation of the particular racket. It is this kind of a continuous, ongoing enterprise that poses the 'threat of continuing criminal activity' and it is the kind of enterprise that civil RICO has as its primary target.

\* \* \*

In the case sub judice, plaintiff alleges that Defendants have committed a number of mail and wire fraud violations in furtherance of a scheme to obtain Plaintiff's 'CompuMap' computer information and market it under a different name. These specified acts alone, however, fail to establish the required 'pattern of racketeering activity' because only one criminal episode is involved--the alleged scheme to illegally market Plaintiff's computer program under a different name. It can be seen that Plaintiff's allegations do not give rise to any inference that a criminal enterprise is involved in the fraud. Similarly, a threat of ongoing criminal activity is not apparent from the allegation of this one scheme. Therefore, even assuming the truth of Plaintiff's allegations, as we must for the purposes of this motion, the allegations cannot establish the required 'pattern of racketeering activity.' (This, of course, does not mean that Plaintiff's are without a remedy. Plaintiffs are free to pursue a variety of remedies under state law.)

The Fleet Management court made clear a pattern presumes repeated criminal activity, not merely repeated acts to carry out the same criminal activity and that a single fraudulent effort implemented by several fraudulent acts to carry it out cannot be characterized as a "pattern of racketeering activity." Moreover,

Plaintiff must demonstrate the "threat of continuing activity." Torwest DBC, Inc. v. Dick, 810 F.2d 925 (10th Cir. 1987); Garbade v. Great Divide Mining, 831 F.2d 212 (10th Cir. 1987).

Each factual situation must be examined to determine whether or not there is a sufficient number of independent criminal acts to satisfy the "continuity" factor of Sedima. In the case before the court there is but a single alleged criminal activity which is the acquisition of the Plaintiff's business. The wire and mail communications were each sent incident to carrying out the acquisition.

Viewing the allegations contained in the Complaint and the RICO case statement in the light most favorable to the Plaintiff, the Court concludes no pattern of racketeering activity can be established. Plaintiff has also failed to state in detail and with specificity facts with respect to the RICO claim. Furthermore, Plaintiff has failed to establish an issue of material fact. Therefore, summary judgment is granted on Count IV.

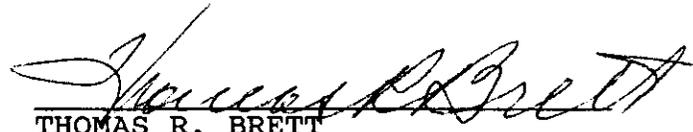
Since only Count III and Count IV concern Defendants Richard DeVos and Jay VanAndel, and those counts have been dismissed, DeVos and VanAndel are hereby dismissed.<sup>6</sup>

This case will proceed on Count 1 in part against Amway Corporation for bonuses allegedly not paid and on Count II under Hall v. Farmers, supra.

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<sup>6</sup>The Court further notes personal jurisdiction was at best questionable concerning these two Defendants.

IT IS SO ORDERED this 27 day of July, 1988.

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

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

ROBBIE LEE STITES and IRENE STITES, )

Plaintiffs, )

v. )

CLARY CORPORATION, )

Defendant, )

v. )

AMERICAN MUTUAL INSURANCE COMPANY, )

Intervenor, )

No. 87-C-448-E

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 26<sup>th</sup> day of July, 1988, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.

/s/ JAMES O. ELLISON

United States District Judge

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

FILED

JUL 26 1988

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

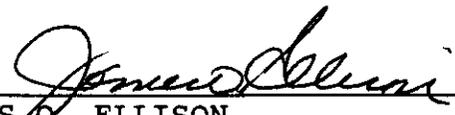
CAMPBELL ENTERPRISES,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 86-C-484-E
	)	
DON E. GASAWAY, et al.,	)	
	)	
Defendants.	)	

JUDGMENT

This action came on for jury trial before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly tried and the Court having directed verdict for Defendant Gasaway, Green and Harris, P.A.,

IT IS THEREFORE ORDERED that the Plaintiff Campbell Enterprises take nothing from the Defendant Gasaway, Green and Harris, P.A., that the action be dismissed on the merits, and that the Defendant Gasaway, Green and Harris, P.A. recover of the Plaintiff Campbell Enterprises its costs of action.

ORDERED this 26<sup>th</sup> day of July, 1988.

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

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

**FILED**

**JUL 26 1988**

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

JOHN CAMPION,

Plaintiff,

VS.

CITY OF TULSA,

Defendant and  
Third Party Plaintiff,

VS.

NO. 87-C-188-B

CELLAR DOOR CONCERTS OF  
THE CAROLINAS, INC.,

Third Party Defendant,

VS.

HOME INDEMNITY INSURANCE CO.,

Intervenor.

STIPULATION OF DISMISSAL WITH PREJUDICE

Comes now the plaintiffs and the intervenor by their respective counsel and hereby stipulate and agree that the above captioned caused be dismissed to an agreed settlement entered into between the parties relative to the plaintiff's, John Campion, Bill of Costs.

Dated this 20th day of July, 1988.

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GLASS, POTTERY, PLASTICS : CIVIL ACTION 84-C-147-E  
AND ALLIED WORKERS, :  
INTERNATIONAL UNION, AFL-CIO, :  
CLC; GLASS, POTTERY, PLASTICS :  
AND ALLIED WORKERS INTERNATIONAL :  
UNION, AFL-CIO, CLC, LOCAL UNION :  
NO. 128; GLASS, POTTERY, : THE HONORABLE JAMES ELLISON  
PLASTICS AND ALLIED WORKERS :  
INTERNATIONAL UNION, AFL-CIO :  
CLC, LOCAL UNION NO. 185; FERN :  
BLANKENSHIP, Administratrix of :  
the Estate of Toy Blankenship, :  
Deceased; ERNEST R. WALTRIP; :  
J.W. HARP; LESTER LEE DAVIS; :  
MARY ELLA DAVIS, individually, : ORDER  
on behalf of themselves and :  
others similarly situated, :  
 :  
Plaintiffs, :  
 :  
v. :  
 :  
LIBERTY GLASS COMPANY, :  
 :  
Defendants. :

This matter having come before the Court upon joint motion by plaintiffs and defendant for final approval of class settlement and disbursement of proceeds of settlement fund to all eligible class members, and Notice of Class Action for Settlement Purposes and Proposed Settlement having been sent to all eligible class members, and this Court having heard arguments of all counsel, and having considered any objections to the proposed settlement, and having reviewed the papers submitted and for good cause having been shown, it is on this \_\_\_\_ day of \_\_\_\_, 1988  
ORDERED:

1. The proposed settlement is, after hearing, determined to be fair, reasonable, and in the best interest of the class. It is, therefore, approved.

2. Subject to the conditions of paragraph four, a fund of \$150,000.00 to be paid by Liberty Glass Company shall be used for settlement purposes and shall be paid out within 31 days of the filing of this Order to eligible members of the class of Liberty Glass Company spouses and retirees, in accordance with the formula set forth below. The parties have agreed that as of the date of this Order, there have been identified and located 230 members of the eligible class of Liberty Glass Company retirees and spouses, consisting of 130 retirees and 100 spouses.

3. Unless a notice of appeal from this Order is timely filed by an individual claiming to be a member of the class, within 31 days of the filing of this Order by the Court, defendant Liberty Glass Company, shall send by certified mail, return receipt requested, a check for \$833.33 to each eligible retiree or in the event of death, designated heir or personal representative, as set forth in the list attached as Exhibit A hereto, and a check for \$416.67 to each eligible spouse, or in the event of death, designated heir or personal representative, as set forth in the list attached as Exhibit B hereto, together with a copy of this Order.

4. In the event a notice of appeal from this Order is timely filed by an individual claiming to be member of the class, then on the 31st day following the filing of this Order, in lieu

of sending checks to class members as set forth in the preceding paragraph, defendant Liberty Glass Company shall deposit the sum of \$150,000.00 with the Clerk of this Court who shall thereafter hold such funds in an interest bearing account in a manner consistent with 28 U.S.C. §2041. In that event, IT IS ORDERED that counsel for Liberty Glass Company serve a copy of this Order on the Clerk of this Court or the chief deputy personally. Absent the aforesaid service, the Clerk is hereby relieved of any personal liability relative to compliance with this Order. In the event that this Order is affirmed, then upon final disposition of any appeal taken, within 31 days of the issuance of the mandate finally disposing of such appeal, defendant Liberty Glass Company shall apply for an order pursuant to 28 U.S.C. §2042 authorizing withdrawal of the amount then held on deposit by the Clerk of this Court. Thereafter, and in no event more than 31 days after issuance of the mandate, defendant Liberty Glass Company shall cause the total amount withdrawn to be paid out in a manner consistent with paragraph 3 above, the amount of each check being increased by the pro rata amount of earnings on such sum during the period the funds were held by the Clerk of the Court. In the event that any appeal from this Order is successful and the approval of this settlement is reversed, then at any time after issuance of the mandate reversing this Order, defendant Liberty Glass Company may apply to the Court for an order pursuant to 28 U.S.C. §2042 allowing withdrawal of all sums held by the Clerk. In that event, upon withdrawal, title to all sums

held by the Clerk shall revert to defendant Liberty Glass Company free and clear of any claims by class members.

5. Within 7 days of the disbursement of this settlement fund, counsel for the defendant shall file with this Court an affidavit identifying names and addresses of all persons to whom disbursement has been made, and proof of disbursement.

6. The parties have agreed that for one year from the date of this Order, if any of the six individuals identified in Exhibit C hereto, who are believed to be eligible for participation in this settlement, are located and it is determined that they are eligible for class participation, within 30 days of a demonstration of eligibility, defendant Liberty Glass Company will disburse nunc pro tunc, payment in the amount of \$833.33 per retiree and \$416.67 per spouse. Further, in the event that any other individual during this time claims eligibility for participation in this settlement, the parties will endeavor to resolve such claims.

7. With the entry of this Order, plaintiffs' Complaint and any and all claims which were brought or could be brought against Liberty Glass Company for retiree medical benefits by any Liberty Glass Company retiree or spouse who was alive on January 25, 1984, and who on that date was eligible to receive medical or death benefits from the G.P.A.W.-Employers Retiree Trust, shall be dismissed with prejudice, subject to reinstatement only in the event that any appeal from this Order is successful and the approval of this settlement is reversed.

8. The Court retains jurisdiction over the settlement of this case and reserves the power to enter additional orders to effectuate the fair and orderly administration of this settlement as from time to time may be appropriate, including the determination of persons to whom payments should be made in the event of late claims or of death or disillusion.

**BY JAMES O. ELLISON**

James O. Ellison, U.S.D.J.

LIST OF RETIREES

Billy Anderson  
1537 E. Maple  
Cushing, Oklahoma 74023

William Anderson  
620 N. 1st Street  
Sapulpa, OK 74066

Virgil Anglin  
613 N. Hodge Street  
Sapulpa, Oklahoma 74066

Pauline Arnold  
712 S. Hickory  
Sapulpa, Oklahoma 74066

The Estate of Patsy Atkins  
for A.J. Atkins  
Route 05, Box 249  
Sapulpa, Oklahoma 74066

Juanita Baker  
2341 S. Poplar Street  
Sapulpa, Oklahoma 84066

Lewis Baker  
2341 S. Poplar Street  
Sapulpa, Oklahoma 74066

Vera Barrett  
Rt. 2, Box 151A  
Sapulpa, Oklahoma 74066

Robert Basinger  
1216 E. Fairview  
Sapulpa, Oklahoma 74066

Charles Bean  
922 N. Elizabeth Street  
Sapulpa, Oklahoma 74066

William Beaver  
Box 270  
Sapulpa, Oklahoma 74066

Eddie Beckham  
1501 N. 9th Street # 27  
Sapulpa, Oklahoma 74066

Leonard Bell  
Box 6  
Kiefer, Oklahoma 74041

Charles Beveal  
R.R. 2, Box 63  
Sapulpa, Oklahoma 74066

Alfred Berg  
1100 S. Hickory Street  
Sapulpa, Oklahoma 74066

The Estate of Margaret Berg  
Address to be supplied

Lorene Berryhill  
613 S. Water Street  
Sapulpa, Oklahoma 74066

Estate of Toy Blankenship  
for Fern M. Blankenship  
1230 Terrace Drive  
Sapulpa, Oklahoma 74066

Chloie Boaz  
86 W. Mary Lynn Drive  
Sapulpa, Oklahoma 74066

Ione Boss  
71 W. Mockingbird Lane  
Sapulpa, Oklahoma 74066

Fred Bradley  
801 S. Hickory Street  
Sapulpa, OK 74066

James Brock  
922 N. Elizabeth Street  
Sapulpa, OK 74066

Dorrrence Brooks  
644 E. Jackson N. Avenue  
Sapulpa, OK 74066

Jewel Brookshier  
1910 S. Ridgway Street  
Sapulpa, OK 74066

Eddie Brown  
Rt. 4, Box 410  
Sapulpa, OK 74066

Betty Bruner  
207 S.W. 3rd, Apt. A  
Wilburton, OK 74578

Barbara Clark  
2222 S. Phoenion, Apt. 120  
Tulsa, OK 74107

Grace Clay  
1133 E. Denton Avenue  
Sapulpa, OK 74066

Vernie Coy  
24 W. Goodykoontz Avenue  
Sapulpa, OK 74066

Walton Crumley  
R.R. 2, Box 141  
Sapulpa, OK 74066

Pauline Davidson  
Box 314  
Sapulpa, OK 74066

Lester Davis  
413 E. Fern Avenue  
Sapulpa, OK 74066

Mary Davis  
413 E. Fern Avenue  
Sapulpa, OK 74066

Orval Dobson  
2813 S. Poplar Street  
Sapulpa, OK 74066

Ewanda Dunback  
3728 S. 65th W. Avenue  
Tulsa, OK 74107

Dorothy Dunn  
C 1, Box 5003  
Coweta, OK 74429

Christine Durbin  
1930 W. Teel  
Sapulpa, OK 74066

Estate of Charlie V. Edwards  
for Carolyn Peeks  
R #4, Box 414A  
Sapulpa, OK 74066

Harvey Ellis  
318 Donna Street  
Sapulpa, OK 74066

Hazel Feedback  
Box 1571  
Sapulpa, OK 74066

John Fousel  
Box 638  
Sapulpa, OK 74066

Clara Frazier  
601 1/2 S. Maple Street  
Sapulpa, OK 74066

J. Frazier  
R.R. 1, Box 400  
Sapulpa, OK 74066

Wanda Frazier  
Box 52308  
Layfayette, LA 70505

Troy Gaasch  
109 Cape Drive  
Bristow, OK 74010

Cecil Gale  
Box 189  
Oakhurst, OK 74050

Bobby Gaston  
611 E. Jackson North  
Sapulpa, OK 74066

Forrest Gee  
2807 S. Cedar Street  
Sapulpa, OK 74066

Plas Gibbs, Jr.  
422 N. 3rd Street  
Sapulpa, OK 74066

Chester Gibson  
c/o Fannie Gibson  
Rt. 6, Box 250  
Sapulpa, OK 74066

Ruth Gibson  
Box 541  
Sapulpa, OK 74067

Jack Glasby  
8816 S. 81st W Avenue  
Tulsa, OK 74131

Truman Goen  
1012 E. Jackson N. Avenue  
Sapulpa, OK 74066

Estate of Vesta Graham  
for Beryl Jean Morrow Upshaw  
Box 111  
Sapulpa, OK 74067

Estate of Vesta Graham  
for Beverly Jane Tait Simpkins  
1855 Scott Avenue  
Canon City, CO 81212

Estate of Meredith Hankins  
for Katherine A. Hankins  
209 E. Wells Blvd.  
Sapulpa, OK 74066

Estate of Joseph Hargrove  
for Barbara Pate  
6726 E 27th Street  
Tulsa, Oklahoma 74107

Estate of Joseph Hargrove  
for Carolyn Williams  
23636 King Street  
Broken Arrow, OK 74014

The Estate of Frank Harjo  
for Mode Harjo  
1984 Oxford Way  
Stockton, CA 95204

J.W. Harp  
805 N. Ridgway  
Sapulpa, OK 74066

Elbert Hart  
Ranch Terrace Nursing Home  
1310 E. Cleveland  
Sapulpa, OK 74066

Betty Hayden  
2324 S.E. 50 #165  
Oklahoma City, OK 73129

Pauline Hite  
R.R. 1, Box 375  
Sapulpa, OK 74066

Wanda Horn  
626 N. Hodge Street  
Sapulpa, OK 74066

Ruby Howard  
Route 1, Box 229  
Mounds, OK 74047

Orvil Hughes  
R.R. 1, Box 506  
Sapulpa, OK 74066

Marvin James  
3505 Everett Street  
Sand Springs, OK 74063

Hershell Johnson  
1301 S. Oak Street  
Bristow, OK 74010

Margaret Jones  
904 N. 9th Street  
Sapulpa, OK 74066

Robert Jones  
8 W. Monterey Avenue  
Sapulpa, OK 74066

Woodrow Lair  
304 E. C Street  
Jenks, OK 74037

Luther Lay  
922 N. Hodge Street  
Sapulpa, OK 74066

Sam Lewis  
1310 E. Cleveland  
Sapulpa, OK 74066

Thurman Love  
R.R. 1, Box 227  
Schulenburg, TX 78955

Patterson Lowe  
810 S. Independence Street  
Sapulpa, OK 74066

Jack Magee  
807 N. 15th Street  
Sapulpa, OK 74066

Floyd Marshall  
Box 921  
Sand Springs, OK 74063

Berta Martin  
311 W. Lee Avenue  
Sapulpa, OK 74066

Opal Martindale  
613 N. Ross Street  
Sapulpa, OK 74066

Paul McCain  
Box 70  
Sapulpa, OK 74066

Josephine McCann  
1701 S. Water Street  
Sapulpa, OK 74066

Robert McCarthy  
R.R. 1, Box 179  
Bristow, OK 74010

The Estate of Ronnie McCarthy  
for Karen E. McCarthy Murphy  
3374 S. 126 E. Avenue  
Tulsa, OK 74146

The Estate of Ronnie McCarthy  
for Jamie McCarthy  
P.O. Box 99  
Bristow, OK 74010

Eugene McClain  
R.R. 3, Box 202  
Sapulpa, OK 74066

Johnny McClain  
Apt. 2, 406 W. Fairlane  
Sapulpa, OK 74066

Linnie McClure  
703 S. Poplar Street  
Sapulpa, OK 74066

Laura McCullough  
R.R. 1, Box 404 W.  
Sapulpa, OK 74066

Aretha McGinley  
215 W. Ross Avenue  
Sapulpa, OK 74066

The Estate of George McIntosh  
for Clara P. McIntosh  
2598 S. Hickory Street  
Sapulpa, OK 74066

Johnny Miller  
817 N. Ridgeway Street  
Sapulpa, OK 74066

Vennic Miller  
817 N. Ridgeway Street  
Sapulpa, OK 74066

Winston Mizer  
c/o Wesley Mizer  
R.R. 4, Box 146  
Sapulpa, OK 74066

Nattie Murr  
Rt. 1, Box 318  
Mannford, OK 74044

Kenneth Nelson  
1125 E. McLeod Avenue  
Sapulpa, OK 74066

Vernon Nichols  
513 S. Mission Street  
Sapulpa, OK 74066

Charley Patterson  
705 S. Walnut  
Sapulpa, OK 74066

Charles Pendergrass  
550 Quail Run Lane  
Sapulpa, OK 74066

Wanda Pendergrass  
550 Quail Run Lane  
Sapulpa, OK 74066

Allie Plum  
1229 E. Cleveland Street  
Sapulpa, OK 74066

Christine Potter  
1909 W. 49th Place  
Tulsa, OK 74107

Earl Ragland  
1220 W. Teel Road  
Sapulpa, OK 74066

Edna Ramsey  
15880 S. Peoria Avenue  
Bixby, OK 74008

Mary Riley  
Box 551  
Sapulpa, OK 74067

Margaret Robinson  
1113 E. McLeod Avenue  
Sapulpa, OK 74066

Vera Robinson  
Box 175  
Bristow, OK 74010

William Rochester  
801 N. 10th Street  
Sapulpa, OK 74066

James Rogers  
Box 134  
Oakhurst, OK 74050

Harvey Simmons  
917 N. Hodge Street  
Sapulpa, OK 74066

Alma Smith  
Box 631  
Henryetta, OK 74437

Arvil Smith  
819 N. Ridgeway Street  
Sapulpa, OK 74066

Robert Smith  
R.R. 1, Box 55  
Kellyville, OK 74039

Othella Spencer  
Box 733  
Kellyville, OK 74039

William Stevens  
807 S. Lowry Street #101  
Stillwater, OK 74074

Claud Taber  
214 N. Division Street  
Sapulpa, OK 74066

James Thompson  
521 S. Maple Street  
Sapulpa, OK 74066

Hazel Tollison  
Box 1033  
Sapulpa, OK 74067

Ollie Tunnell  
636 S. Hiawatha Street  
Sapulpa, OK 74066

Martha Turner  
1315 E. Lincoln Avenue  
Sapulpa, OK 74066

Charles Upton  
R.R. 1, Box 4600  
Sapulpa, OK 74066

John Wallace  
Rt. 5, Box 173  
Sapulpa, OK 74066

Leonard Wallace  
1957 S. Scott Street  
Sapulpa, OK 74066

Ottis Wallace  
Box 217  
Mounds, OK 74047

Ernest Waltrip  
Box 38  
Kellyville, OK 74039

Estate of James Ward  
Bobbie Ward  
802 N. Moccasin Street  
Sapulpa, OK 74066

Mary Wasson  
1326 E. Hobson Avenue  
Sapulpa, OK 74066

James Weaver  
606 S. Cedar Street  
Sapulpa, OK 74066

Toby Williams  
1329 S. Main  
Sapulpa, OK 74066

Esther Wilson  
Box 105  
Sapulpa, OK 74067

Raymond Wilson  
1015 E. Lincoln Avenue  
Sapulpa, OK 74066

Dale Worthman  
R.R. 1, Box 340  
Sapulpa, OK 74066

Leroy Young  
Box 149  
Skiatook, OK 74070

Buford Zinn  
916 N. Ridgeway Street, # 971  
Sapulpa, OK 74066

\* As indicated in the above list, for the Estates of Vesta Graham, Joseph Hargrove and Ronnie McCarty, the check should be divided amongst the individuals listed for each Estate.

LIST OF SPOUSES

Helen Anderson  
620 N. 1st Street  
Sapulpa, OK 74066

Patricia Anderson  
1537 E. Maple  
Cushing, OK 74023

Opal Anglin  
613 N. Hodge Street  
Sapulpa, OK 74066

William Barrett  
Rt. 2, Box 151A  
Sapulpa, OK 74066

Chloe Basinger  
1216 E. Fairview  
Sapulpa, OK 74066

Doris Bean  
922 N. Elizabeth Street  
Sapulpa, OK 74066

Donna Bell  
Box 6  
Kiefer, OK 74041

Melvin Berg  
505 N. 2nd Street  
Sapulpa, OK 74066

Viola Berg  
1100 S. Hickory Street  
Sapulpa, OK 74066

Fern Blankenship  
1230 Terrace Drive  
Sapulpa, OK 74066

George Boaz  
86 W. Mary Lynn Drive  
Sapulpa, OK 74066

Ilan Boss  
71 W. Mockingbird Lane  
Sapulpa, OK 74066

Dessie Bradley  
801 S. Hickory Street  
Sapulpa, OK 74066

Cleo Brock  
922 N. Elizabeth Street  
Sapulpa, OK 74066

Leatrice Brooks  
644 E. Jackson N. Avenue  
Sapulpa, OK 74066

Patsy Brookshier  
1910 S. Ridgeway Street  
Sapulpa, OK 74066

Virginia Burgess  
709 S. Oak Street  
Sapulpa, OK 74066

Versa Conley  
201 W. Anderson Avenue  
Sapulpa, OK 74066

Mary Coy  
24 W. Goodykoontz Avenue  
Sapulpa, OK 74066

Wanda Crumley  
R.R. 2, Box 141  
Sapulpa, OK 74066

Mary Dobson  
2813 S. Poplar Street  
Sapulpa, OK 74066

Alma Duemler  
512 W. Teel Road  
Sapulpa, OK 74066

Fred Dunback  
3728 S. 65th W. Avenue  
Tulsa, OK 74107

Letha Ellis  
318 Donna Street  
Sapulpa, OK 74066

Willard Feedback  
Box 1571  
Sapulpa, OK 74066

Sylvia Gale  
Box 189  
Oakhurst, OK 74050

Judith Gaston  
611 E. Jackson North  
Sapulpa, OK 74066

Joann Gee  
2807 S. Cedar Street  
Sapulpa, OK 74066

Estate of Marion J. Gibbs  
for Plas Gibbs  
422 N. 3rd Street  
Sapulpa, OK 74066

James Gibson  
Box 541  
Sapulpa, OK 74066

1. Estate of Margie Gibson  
for Willard Stidman  
3505 S. Lakeside Drive  
Sapulpa, Oklahoma 74066

Betty Glasby  
8816 S. 81st W. Avenue  
Tulsa, OK 74131

Alice Goen  
1012 E. Jackson N. Avenue  
Sapulpa, OK 74066

Joyce Gooding  
121 E. Wells Blvd.  
Sapulpa, OK 74066

Opal Groover  
110 E. Lincoln Avenue  
Sapulpa, OK 74066

Marie Hancock  
1322 E. 13th Street  
Okmulgee, OK 74447

2. Estate of Margie Gibson  
for Doyle Stidman  
180 North Avenue "L"  
Freeport, TX 77541

3. Estate of Margie Gibson  
for Velma Hicks  
1000 N. LaMar 2067  
Austin, TX 78753

Katherine Hankins  
209 E. Wells Blvd.  
Sapulpa, OK 74066

Estate of Helen Hargrove  
for Marjie Thompson  
1225 South Cedar  
Sapulpa, Oklahoma 74066

Mode Harjo  
1984 Oxford Way  
Stockton, CA 95204

Lovertia Harp  
805 N. Ridgeway Street  
Sapulpa, OK 74066

Helen Hart  
Ranch Terrace Nursing Home  
1310 E. Cleveland  
Sapulpa, OK 74066

Elmer Horn  
626 N. Hodge Street  
Sapulpa, OK 74066

Omer Howard  
Route 1, Box 229  
Mounds, OK 74047

Nadine Hughes  
R.R. 1, Box 506  
Sapulpa, OK 74066

Maxine Hunt  
512 S. Walnut Street  
Sapulpa, OK 74066

Daisy James  
3505 Everett Street  
Sand Springs, OK 74065

Helen Jimboy  
R.R. 1, Box 1981  
Clearview, OK 74835

Luda Johns  
1013 S. Taft Avenue  
Okmulgee, OK 74447

Dottie Johnson  
1301 S. Oak Street  
Bristow, OK 74010

Eugenia Jones  
8 W. Monterey Avenue  
Sapulpa, OK 74066

Jemima Kinsey  
626 N. Elizabeth Street  
Sapulpa, OK 74066

Ruby Lair  
304 E. C. Street  
Jenks, OK 74037

Ellen Lay  
922 N. Hodge Street  
Sapulpa, OK 74066

Rena Lister  
1009 E. Line Avenue  
Sapulpa, OK 74066

Mildred Love  
R.R. 1, Box 227  
Schulenburg, TX 78956

Betty Magee  
807 N., 13th Street  
Sapulpa, OK 74066

John Martin, Sr.  
311 W. Lee Avenue  
Sapulpa, OK 74066

1. Estate of Anna L. Matney  
for Billy R. Matney  
Rt. 4, Box 189  
Sapulpa, OK 74066

Bessie McCain  
Box 70  
Sapulpa, OK 74066

2. Estate of Anna L. Matney  
for Bob Matney  
1020 E 64th Street, Apt. 1  
Tulsa, OK 74136

3. Estate of Anna L. Matney  
for Tommy Matney  
1142 E 142  
Glenpole, OK 74033

Mary McCarthy  
R.R. 1, Box 179  
Bristow, OK 74010

Betty McClain  
Apt. 2,  
406 W. Fairlane  
Sapulpa, OK 74066

Margarete McClain  
R.R. 3, Box 202  
Sapulpa, OK 74066

Sadie McClure  
703 S. Poplar Street  
Sapulpa, OK 74066

Tressie McGuire  
R.R. 3, Box 468  
Bristow, OK 74010

Clara McIntosh  
2598 S. Hickory Street  
Sapulpa, OK 74066

George Murr  
Rt. 1, Box 318  
Mannford, OK 74044

Norma Nelson  
1125 E. McLeod Avenue  
Sapulpa, OK 74066

Ada Patterson  
705 S. Walnut  
Sapulpa, OK 74066

Tommy Potter  
1909 W. 49th Place  
Tulsa, OK 74107

Martha Ragland  
1220 W. Teel  
Sapulpa, OK 74066

Snyder Ramsey  
15880 S. Peoria Avenue  
Bixby, OK 74008

4. Estate of Anna L. Matney  
for Buddy Matney  
816 N. 10th  
Sapulpa, OK 74066

5. Estate of Anna L. Matney  
for Jerry Matney  
sent to Buddy Matney  
816 N. 10th  
Sapulpa, OK 74066

Lawrence Riley  
Box 551  
Sapulpa, OK 74067

Edna Riser  
842 N. Ross Street  
Sapulpa, OK 74066

Anita Robinson  
520 S. Elm Street  
Sapulpa, OK 74066

Nancy Rochester  
801 N. 10th Street  
Sapulpa, OK 74066

Ethel Rogers  
Box 134  
Oakhurst, OK 74050

Ollie Ruhl  
1209 E. Dewey Avenue  
Sapulpa, OK 74066

Mildred Sample  
5 E. Teel Road  
Sapulpa, OK 74066

Bertha Scott  
Route 3, Box 366  
Tahlequah, OK 74464

Fern Simmons  
917 N. Hodge Street  
Sapulpa, OK 74066

Dorothy Smith  
R.R. 1, Box 55  
Kellyville, OK 74039

Lavina Smith  
819 N. Ridgeway Street  
Sapulpa, OK 74066

Hazel Snodgrass  
702 E. Lincoln  
Box 257  
Sapulpa, OK 74066

Acie Snow  
c/o Linda Harjo  
1514 Northhaven Avenue  
Sapulpa, OK 74066

Fannie Spencer  
1217 S. Poplar  
Bristow, OK 74010

Ruth Taber  
214 N. Division Street  
Sapulpa, OK 74066

Alma Thompson  
521 S. Maple Street  
Sapulpa, OK 74066

Flora Tunnell  
636 S. Hiawatha Street  
Sapulpa, OK 74066

Mary Upton  
R.R. 1, Box 460D  
Sapulpa, OK 74066

Esther Walker  
620 S. Hiawatha Street  
Sapulpa, OK 74066

Arlene Wallace  
Box 217  
Mounds, OK 74047

Mary Wallace  
1957 S. Scott Street  
Sapulpa, OK 74066

Sellena Wallace  
Rt. 5, Box 173  
Sapulpa, OK 74066

Ann Waltrip  
Rt. 2, Box 139E  
Sapulpa, OK 74066

Freda Waltrip  
Box 38  
Kellyville, OK 74039

Bobbie Ward  
802 N. Moccasin Street  
Sapulpa, OK 74066

Eunice Weaver  
606 S. Cedar Street  
Sapulpa, OK 74066

Helen Wilson  
R.R. 6, Box 207  
Sapulpa, OK 74066

Irene Wilson  
1015 E. Lincoln Avenue  
Sapulpa, OK 74066

Norma Zinn  
916 N. Ridgeway Street  
Sapulpa, OK 74066

\* As the attached list indicates, checks to the Estate of Margie Gibson should be divided equally amongst three (3) individuals listed on the above list. Similarly, checks to the Estate of Anna L. Matney should be divided equally amongst five (5) individuals listed on the above list.

UNFOUND RETIREES AND SPOUSES

Estate of Lloyd Houck - Retiree  
Box 1031  
Sapulpa, Oklahoma 74066

Marie Houck - Spouse  
Box 1031  
Sapulpa, Oklahoma 74066

Ethel Howard - Spouse  
1020 E. Jackson  
Sapulpa, Oklahoma 74066

Linda L. Robertson - Spouse  
828 S. Wheeling #323  
Tulsa, Oklahoma 74104

Ransce J. Robinson - Spouse

Tommy B. Robertson - Retiree  
828 S. Wheeling  
Tulsa, Oklahoma 74104

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 TROY LEE COOK; SHIRLEY PATRICIA )  
 COOK; THELMA L. BROWN a/k/a )  
 THELMA LOUISE BROWN; JAMES )  
 BROWN a/k/a JAMES A. BROWN; )  
 ROBERT G. FRY, JR.; COUNTY )  
 TREASURER, Tulsa County, )  
 Oklahoma; and BOARD OF COUNTY )  
 COMMISSIONERS, Tulsa County, )  
 Oklahoma, )  
 )  
 Defendants. )

**FILED**

JUL 25 1988

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

CIVIL ACTION NO. 88-C-576-B

ORDER

Upon the Motion of the United States of America acting on behalf of the Administrator of Veterans Affairs by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, to which no objections have been filed, it is hereby ORDERED that this action shall be dismissed without prejudice.

Dated this 25 day of July, 1988.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM  
United States Attorney

PETER BERNHARDT  
Assistant United States Attorney  
3600 United States Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
vs. )  
)  
ARCHIE V. LANG, JR. a/k/a )  
ARCHIE V. LANG a/k/a ARCHIE )  
VALCO LANG; DOROTHY M. LANG )  
a/k/a DOROTHENA MAE LANG a/k/a )  
DOROTHENA M. LANG a/k/a )  
DOROTHENA LANG a/k/a DORTHENA )  
LANG a/k/a DOROTHENA M. LONG )  
a/k/a DOROTHENA M. PENNY; )  
MONROE O. WOOD; GREGORY PENNY; )  
SOUTH TULSA PATHOLOGY LAB, )  
INC.; COUNTY TREASURER, Tulsa )  
County, Oklahoma; and BOARD OF )  
COUNTY COMMISSIONERS, Tulsa )  
County, Oklahoma, )  
)  
Defendants. )

CIVIL ACTION NO. 88-C-476-B

FILED

JUL 25 1988

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

ORDER

Upon the Motion of the United States of America acting on behalf of the Administrator of Veterans Affairs by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, to which no objections have been filed, it is hereby ORDERED that this action shall be dismissed without prejudice.

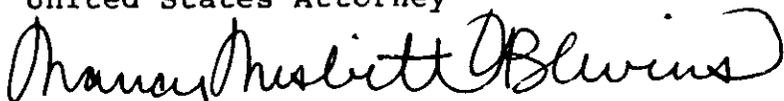
Dated this 25 day of July, 1988.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM  
United States Attorney



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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PATRICIA ANN BENTLEY; COUNTY  
TREASURER, Osage County,  
Oklahoma; and BOARD OF COUNTY  
COMMISSIONERS, Osage County,  
Oklahoma,

Defendants.

FILED

JUL 25 1988

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

CIVIL ACTION NO. 88-C-454-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 25 day  
of July, 1988. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendants, County Treasurer, Osage County,  
Oklahoma, and Board of County Commissioners, Osage County,  
Oklahoma, appear by John S. Boggs, Jr., Assistant District  
Attorney, Osage County, Oklahoma; and the Defendant, Patricia Ann  
Bentley, appears not, but makes default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, Patricia Ann Bentley,  
acknowledged receipt of Summons and Complaint on June 2, 1988;  
that Defendant, County Treasurer, Osage County, Oklahoma,  
acknowledged receipt of Summons and Complaint on May 26, 1988;  
and that Defendant, Board of County Commissioners, Osage County,  
Oklahoma, acknowledged receipt of Summons and Complaint on  
June 1, 1988.

It appears that the Defendants, County Treasurer, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, filed their Answer herein on May 31, 1988; and that the Defendant, Patricia Ann Bentley, has failed to answer and her default has therefore been entered by the Clerk of this Court.

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

The North Half of Lot Seven (7), Block One (1), OSAGE HEIGHTS SUBDIVISION, Osage County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on August 9, 1984, the Defendant, Patricia Ann Bentley, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, her mortgage note in the amount of \$49,500.00, payable in monthly installments, with interest thereon at the rate of fourteen percent (14%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Patricia Ann Bentley, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated August 9, 1984, covering the above-described property. Said mortgage was recorded on August 10, 1984, in Book 0660, Page 892, in the records of Osage County, Oklahoma.

The Court further finds that Defendant, Patricia Ann Bentley, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Patricia Ann Bentley, is indebted to the Plaintiff in the principal sum of \$48,481.78, plus interest at the rate of 14 percent per annum from March 1, 1987 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, Osage 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 \$25.63 for the year 1986 and \$32.50 for the year 1987. Said lien is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Patricia Ann Bentley, in the principal sum of \$48,481.78, plus interest at the rate of 14 percent per annum from March 1, 1987 until judgment, plus interest thereafter at the current legal rate of 7.54 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, Osage County, Oklahoma, have and recover judgment in the amount of \$25.63 for personal property taxes for the year 1986 and \$32.50 for personal property taxes for the year 1987, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Patricia Ann Bentley, 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 Defendant, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, in the amount of \$58.13, 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.

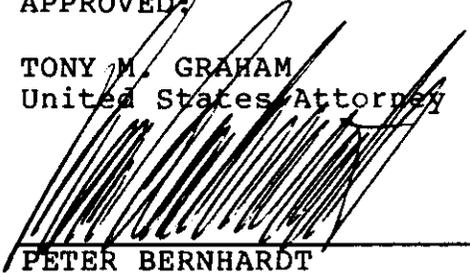
S/ THOMAS R. BRETT  

---

UNITED STATES DISTRICT JUDGE

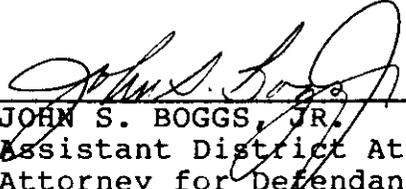
APPROVED:

TONY M. GRAHAM  
United States Attorney



---

PETER BERNHARDT  
Assistant United States Attorney



---

JOHN S. BOGGS, JR.  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Osage County, Oklahoma

PB/css

FILED

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

JUL 25 1988

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

BELPORT OIL, INC.; SOUTH )  
ST. PAUL, LTD.; and ROBERT HALF )  
OF DALLAS, INC., )

Plaintiffs, )

-vs-

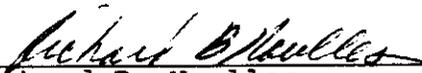
No. 88-C-401-C

CHARLEY W. COLLINS; FRANK )  
COLLINS; CLYDE J. SHAFER; ENERGY )  
LEASE SERVICE, INC.; CHC, a )  
partnership composed of Charley )  
Collins, Harman Franks and )  
Clyde Shafer; PAYNE COUNTY )  
BANK; KOCH OIL COMPANY; )  
PHILLIPS 66 NATURAL GAS )  
COMPANY; and BROOKS OIL & GAS, )  
INC. )

Defendants. )

STIPULATION <sup>of</sup> FOR DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, all Plaintiffs and Defendants, Charley W. Collins, Frank Collins, Energy Lease Service, Inc., Payne County Bank, Koch Oil Company and Phillips 66 Natural Gas Company (which are all Defendants who have appeared in the action), hereby stipulate that this action may be and hereby is dismissed, with prejudice to the refiling thereof.

  
Richard B. Noulles  
ATTORNEY FOR PLAINTIFFS

Jesse D. Swift  
Jesse D. Swift  
ATTORNEY FOR DEFENDANTS,  
CHARLEY W. COLLINS, FRANK COLLINS  
and ENERGY LEASE SERVICE, INC.

Winfrey D. Houston  
Winfrey D. Houston  
ATTORNEY FOR DEFENDANT, PAYNE  
COUNTY BANK

Stephen R. Clark, for  
Debra Haifleigh  
ATTORNEY FOR DEFENDANT, KOCH OIL  
COMPANY

Shelley Hipel  
Shelley Hipel  
ATTORNEY FOR DEFENDANT, PHILLIPS  
66 NATURAL GAS COMPANY

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

RUTH EVELYN SPARKS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 FREDRICK DALE SPARKS, )  
 )  
 Defendant. )

FILED  
JUL 25 1988  
88-C-12-E  
Mark C. Silver, Clerk  
DISTRICT COURT

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed June 16, 1988 in which the Magistrate recommended that Appellant's appeal be dismissed pursuant to Bankruptcy Rule 8001 and Rule 41(b) Fed.R. Civ.P.

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 Appellant's appeal is dismissed pursuant to Bankruptcy Rule 8001 and Rule 41(b) Fed.R.Civ.P.

Dated this 25<sup>th</sup> day of July, 1988.

*James O. Ellison*  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

7-11-79

25

CLERK OF COURT  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

FACET ENTERPRISES, INC.,  
a Delaware corporation,

Plaintiff,

vs.

INTERNATIONAL PATENT DEVELOP-  
MENT CORPORATION, a Nevada  
corporation, and LAWRENCE G.  
BROWN, an individual,

Defendants.

No. 79-C-613-E

STIPULATION OF DISMISSAL

The parties in the above-captioned case would inform the court that a settlement of this matter has been reached. Therefore, pursuant to Federal Rule of Civil Procedure, 41(a)(1)(ii), the parties stipulate and agree that all claims of Plaintiff, Facet Enterprises, Inc., against Defendants Lawrence G. Brown and International Patent Development Corp., be and are hereby dismissed with prejudice. The parties further stipulate that all counterclaims of Defendants Lawrence G. Brown and International Patent Development Corp. against Plaintiff Facet Enterprises be and are hereby dismissed with prejudice.

Dated: July 18, 1988.

CHAPEL, WILKINSON, RIGGS & ABNEY

By: Charles S. Chapel  
Bill V. Wilkinson, OBA #9621  
Charles S. Chapel, OBA #1608

502 West Sixth Street  
Tulsa, OK 74119-1010  
(918) 587-3161

ATTORNEYS FOR PLAINTIFF

Stephanie M. Brown  
Stephanie M. Brown

2090 Green Street, Suite 36  
San Francisco, California 94123  
(415) 922-8239

TAYLOR & STANLEY

By: John F. Taylor  
John F. Taylor

655 Montgomery Street, Suite 1700  
San Francisco, California 94111  
(415) 421-4474

ATTORNEYS FOR DEFENDANT  
INTERNATIONAL PATENT  
DEVELOPMENT CORPORATION

Lawrence G. Brown  
Lawrence G. Brown

IN PROPRIA PERSONA

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

**F I L E D**

JUL 27 1988

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

87-C-1080-E

GENERAL ELECTRIC COMPANY, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 SUPERIOR WELDING, INC., )  
 )  
 Defendant. )

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed June 20, 1988 in which the Magistrate recommended that Plaintiff's Motion to Dismiss Defendant's Counterclaim be granted and that Defendant's Application to Amend Counterclaim be denied as moot.

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 Plaintiff's Motion to Dismiss Defendant's Counterclaim is granted and that Defendant's Application to Amend Counterclaim is denied as moot.

Dated this 25<sup>th</sup> day of July, 1988.

*James O. Ellison*  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

**FILED**

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

JUL 25 1988

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

HOMART DEVELOPMENT CO., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 JOE ARRINGTON, )  
 )  
 Defendant. )

No. 88-C-256-B

J U D G M E N T

In keeping with the Entry of Default filed June 20, 1988 in this matter, Judgment is hereby entered in favor of Homart Development Co., and against Joe Arrington, in the amount of Seventy-Two Thousand Five Hundred Dollars (\$72,500.00), with postjudgment interest at the rate of 7.54% from this date until paid. Attorney fees will be considered upon proper application under Local Rule 6(G).

DATED this 25 day of July, 1988.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

SURAG M. PATEL, a minor )  
by and through MAHESH M. )  
PATEL as natural father and )  
next friend; MAHESH M. PATEL )  
as surviving spouse of )  
SOHINI PATEL, deceased, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
RAWLEY JUDD DENT as )  
personal representative of )  
the ESTATE OF DORA WHITNEY, )  
deceased, and FARMERS INSURANCE )  
COMPANY, )  
 )  
Defendants. )

**FILED**

JUL 25 1988

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

No. 88-C-94-B

JOURNAL ENTRY OF JUDGMENT

NOW on this 25<sup>th</sup> day of July, 1988,

this matter comes on for Trial before the undersigned Judge of the United States District for the Northern District of Oklahoma. Plaintiffs, Surag M. Patel, a minor by and through Mahesh M. Patel as natural father and next friend; Mahesh M. Patel as surviving spouse of Sohini Patel, deceased, appearing in person and through their attorney, Jerry E. Bryan and the defendants, Rawley Judd Dent, as person representative of the Estate of Dora Whitney, deceased and Farmers Insurance Company, appearing through their attorney, Steven E. Holden. Upon reviewing the sworn testimony of the witnesses and being full advised in the premises, the court finds as follows:

That the plaintiff, Surag Patel, is a minor born on the 24th day of January of 1985. That Mahesh M. Patel is the

natural father of Surag M. Patel and the surviving spouse of Sohini Patel, deceased. Plaintiffs are California citizens.

That the Estate of Dora Whitney is located in the State of Kansas and is therefore a citizen of the State of Kansas for purposes of diversity jurisdiction pursuant to Title 28 U.S.C. §1332.

That defendant, Farmers Insurance Company, Incorporated is a corporation organized under the laws of the State of Kansas and has its place of business in the State of Kansas.

That this cause of action arose in Washington County, State of Oklahoma and therefore, this court has jurisdiction in this matter based upon diversity of citizenship under the provisions of Title 28 U.S.C. §1332. The amount of controversy exceeds, exclusive of interests and costs, the sum of TEN THOUSAND AND NO/100 (\$10,000.00). The venue in this matter is therefore, proper pursuant to Title 28 U.S.C. §1391 in that this particular cause of action arose in the Northern District of Oklahoma.

On the second day of February, 1986, Sohini Patel, deceased was involved in an automobile collision when the 1980 Chevrolet Citation she was operating was struck by a 1982 Mazda 626, driven by the defendant, Dora Whitney, deceased. Surag M. Patel was a passenger in the vehicle being driven by his deceased mother, Sohini Patel. Dora Whitney's negligence was the sole and proximate cause of the said collision and as to Sohini Patel, deceased, the collision was unavoidable.

The court further finds that defendant, Dora Whitney was at all times pertinent hereto an uninsured/underinsured motorist. That Farmers Insurance Company, Incorporated was at all times pertinent hereto the uninsured/underinsured motorist carrier for the plaintiffs. That defendant, Farmers Insurance Company, Incorporated had issued a policy of automobile insurance bearing policy number 08 11465 9709 to Nagar Patel, covering the 1980 Chevrolet Citation involved in the automobile accident. That at the time of the accident of February 2, 1986, this particular policy of insurance was in full force and effect. The particular policy of uninsured/underinsured motorists coverage was in the amount of TEN THOUSAND AND NO/100 DOLLARS (10,000.00) per person, TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00) per occurrence.

That as a result of the negligence of the deceased defendant, Dora Whitney, and the fact that the deceased defendant was a uninsured/underinsured motorists, plaintiffs, Mahesh M. Patel, individually and as natural father and next friend of Surag Patel, minor child are entitled to the sum of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) from the defendants, Dora Whitney and Farmers Insurance Company, Incorporated.

The court further finds that as a result of the said actions of the defendant, Dora Whitney, that the minor plaintiff, Surag M. Patel suffered minor abrasions and contusions about his body. That these particular injuries have presently healed and are not permanent in nature. The minor plaintiff, Surag Patel is entitled to the sum of TWO THOUSAND AND NO/100 DOLLARS

(\$2,000.00) for the personal injuries he received as a result of the automobile accident of February 2, 1986.

The court further finds that the minor child, Surag Patel is entitled to the sum of EIGHT THOUSAND AND NO/100 DOLLARS (\$8,000.00) due to the wrongful death of his mother, Sohini Patel, as a result of the automobile accident of February 2, 1986.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff, Mahesh M. Patel individually and as natural father and next friend of Surag Patel, minor child have and recover a judgment against the defendants, Dora Whitney and Farmers Insurance Company, Incorporated in the sum of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) to be distributed as follows:

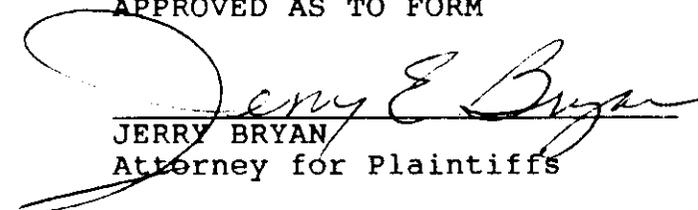
A. TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00) for the personal injuries of minor child, Surag Patel, which he received in the automobile accident of February 2, 1986.

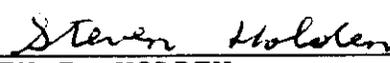
B. EIGHT THOUSAND AND NO/100 DOLLARS (\$8,000.00) for the wrongful death of his mother, Sohini Patel, as a result of the automobile accident of February 2, 1986.

S/ THOMAS R. BRETT

JUDGE BRETT  
Judge of the District Court

APPROVED AS TO FORM

  
JERRY BRYAN  
Attorney for Plaintiffs

  
STEVEN E. HOLDEN  
Attorney for Defendants

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

EUSTICE EQUIPMENT COMPANY, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 RAY DARBY d/b/a Fire Fox )  
 Fire Suppression Equipment, )  
 )  
 Defendant . )

No. 88-C-033-B

**FILED**

JUL 25 1988

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

J U D G M E N T

In keeping with the Entry of Default filed June 21, 1988 in this matter, Judgment is hereby entered in favor of Eustice Equipment Company, and against Ray Darby, d/b/a Fire Fox Fire Suppression Equipment, in the amount of One Hundred Thousand Six Hundred Fifteen and 49/100 Dollars (\$100,615.49), with postjudgment interest at the rate of 7.54% from this date until paid. Attorney fees will be considered upon proper application under Local Rule 6(G).

DATED this 25 day of July, 1988.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

ERVIN ELECTRIC, INC., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MIDWEST ENERGY MANAGEMENT, INC., )  
 SEARS, ROEBUCK AND COMPANY, and )  
 PEPPER SOUTHERN, INC., )  
 )  
 Defendants. )

No. 87-1023-B

**FILED**

JUL 25 1988

ORDER OF DISMISSAL  
WITH PREJUDICE

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

WHEREAS, the Plaintiff, Ervin Electric, Inc. and the Defendants, Midwest Energy Management, Inc. and Sears, Roebuck and Company, have stipulated that all questions and issues existing between the said parties have been fully settled and have requested the Court to enter an Order of Dismissal with Prejudice of Plaintiff's Complaint, which order shall dispose of this matter fully, finally and completely.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff's Complaint is hereby dismissed with prejudice and that all matters are fully, finally and completely disposed of.

Dated this 25th day of July, 1988.

S/ THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



FILED

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

JUL 25 1988

MEADOW GOLD DAIRIES, INC., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 ROGER E. MIDDAUGH, )  
 )  
 Defendant . )

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

No. 87-C-948-B

J U D G M E N T

In keeping with the Entry of Default filed January 7, 1988 in this matter, Judgment is hereby entered in favor of Meadow Gold Dairies, Inc., and against Roger E. Middaugh, in the amount of Thirty-Seven Thousand Nine Hundred Eighty-Nine and 87/100 Dollars (\$37,989.87), with postjudgment interest at the rate of 7.54% from this date until paid. Attorney fees will be considered upon proper application under Local Rule 6(G).

DATED this 25 day of July, 1988.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

LARRY GREGG, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 THOMAS F. WHITE, Warden, )  
 and ATTORNEY GENERAL OF )  
 THE STATE OF OKLAHOMA, )  
 )  
 Respondents. )

87-C-613-B

FILED

JUL 25 1988

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

ORDER

Now before the court is respondents' Motion to Dismiss petitioner's application for a writ of habeas corpus. Although petitioner failed to respond to respondents' motion in a timely manner as required by the Federal Rules of Civil Procedure and the Local Rules of the Northern District of Oklahoma, on May 9, 1988, the court, sua sponte, gave petitioner an extension of time in which to respond to this motion. However, no such response was ever filed by petitioner.

As the court previously advised petitioner, all litigants, including those appearing pro se, are obligated to follow the procedural rules of court. See, Joplin v. Southwestern Bell Telephone Co., 671 F.2d 1274 (10th Cir. 1982). Petitioner having been given every opportunity to comply with the pleading requirements of this court, the court concludes that petitioner's failure to respond to the pending motion constitutes a waiver of objection to the motion. Rule 15A of the Local Rules for the Northern District of Oklahoma.

It is, therefore, ordered that respondents' Motion to Dismiss is granted, and petitioner's application for a writ of habeas corpus is hereby dismissed.

Dated this 25 day of July, 1988.

A handwritten signature in black ink, appearing to read "Thomas R. Brett", is written over a horizontal line.

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE **E I L E D**  
NORTHERN DISTRICT OF OKLAHOMA

JUL 26 1988

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

JAMES K. KELLY and )  
MELINDA SUE KELLY, )  
 )  
Plaintiffs, )  
 )  
vs. ) No. 87-C-612-B  
 )  
THE HYSTER COMPANY, )  
an Oregon corporation, )  
 )  
Defendant. )

ORDER OF DISMISSAL

This matter comes on for hearing on the Joint Stipulation of the plaintiffs, James K. Kelly and Melinda Sue Kelly, and the defendant, Hyster Company, for a dismissal with prejudice of the above-captioned case. The Court, being fully advised, having reviewed said Stipulation, finds that the parties herein have entered into a compromise settlement covering all claims involved in this action, which this Court hereby approves, and that the above-entitled cause should be dismissed with prejudice to the filing of a future action pursuant to said Stipulation.

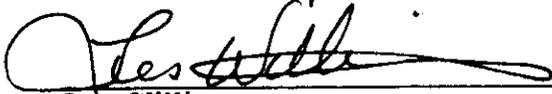
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above-entitled cause be and is hereby dismissed with prejudice to the filing of a future action, the parties to bear their own respective costs.

Dated this 25 day of July, 1988.

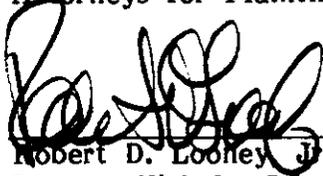
S/ THOMAS R. BRETT

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



Les Williams  
Pat Malloy  
Malloy & Malloy  
1924 S. Utica, Suite 810  
Tulsa, OK 74104  
Attorneys for Plaintiffs



Robert D. Looney, Jr.  
Looney, Nichols, Johnson & Hayes  
P.O. Box 468  
Oklahoma City, OK 73118  
Attorney for Defendant

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

WILLIAM BUXTON, Executor of the )  
Estate of LINDA M. WILSON; and )  
UTICA NATIONAL BANK & TRUST )  
COMPANY, a corporation, Trustee )  
of the Estate of Linda M. Wilson, )  
 )  
Plaintiffs, )  
 )  
-vs- )  
 )  
UNITED STATES FIDELITY AND )  
GUARANTY COMPANY, a corporation, )  
 )  
Defendant. )

**FILED**

JUL 25 1988

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

NO. 87-C-528-B

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties hereby stipulate that the captioned cause has been settled and that the plaintiffs dismiss the cause with prejudice to refileing.



LEE ENDICOTT - OBA #10795  
of Green, James, Williams & Elliott  
P.O. Box 2248  
Oklahoma City, Oklahoma 73101  
405/525-0033  
ATTORNEYS FOR DEFENDANT



GLEN MULLINS - OBA #6503  
Abel, Musser, Sokolosky & Clark  
One Leadership Square  
211 North Robinson, Suite 600  
Oklahoma City, Oklahoma 73102  
405/239-7046  
ATTORNEY FOR PLAINTIFFS

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

**FILED**

JUL 25 1988

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

STEVEN SCOTT, by and through )  
Patricia Hall, his mother and )  
legal guardian, as next friend, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
OKLAHOMA DEPARTMENT OF HUMAN )  
SERVICES; HOMELIFE ASSOCIATION )  
FOR THE HANDICAPPED, INC., )  
 )  
Defendants. )

No. 87-C-1068-B

O R D E R

Before the Court for decision are Defendant Homelife Association for the Handicapped, Inc.'s ("Homelife") and Defendant Oklahoma Department of Human Services' ("DHS") motions for summary judgment. Both motions were originally filed as motions to dismiss and were converted by the Court to Rule 56 motions as matters outside the pleadings are being relied upon by the parties.

HOMELIFE'S CONTENTIONS

Defendant Homelife seeks summary judgment and urges that the Plaintiff has failed to invoke the Court's federal question jurisdiction for the reasons that Plaintiff's complaint for violation for §504 of the Rehabilitation Act, 29 U.S.C. §794 and the Due Process Clause of the Fourteenth Amendment do not apply to Defendant Homelife. Homelife, through the affidavit of Bob Norton of the Oklahoma Department of Human Services, denies it is a financial recipient of federal monies and therefore is not subject to the provisions of §504 of the Rehabilitation Act. Nowhere in the Plaintiff's response to the motion for summary judgment does

the Plaintiff take issue with the Defendant's assertion that it is not a recipient of federal funds and therefore not subject to the provisions of §504 of the Rehabilitation Act. In light of the Plaintiff's failure to present any evidence that Homelife is a federal financial recipient, the Court finds that Plaintiff's claim against the Defendant Homelife under §504 of the Rehabilitation Act should be dismissed. This failure is particularly telling given the Plaintiff's obvious familiarity with the requirements of §504 of the Rehabilitation Act of 1973 and the recently enacted Civil Rights Restoration Act of 1987 cited in the Plaintiff's brief in opposition to Defendant DHS' motion for summary judgment. Plaintiff's §504 claim against the Defendant Homelife is dismissed.

Defendant Homelife also urges that the Plaintiff cannot state a claim for violation of the Due Process Clause of the Fourteenth Amendment for the reasons that Homelife's activities in providing group home services do not constitute a "state action" as required to implicate the Fourteenth Amendment right to due process. Defendant Homelife also urges that the complaint does not allege that Homelife violated his right to due process but rather that any alleged due process violation was caused by the Defendant DHS. The Court agrees. While the Plaintiff spends considerable time and argument on activities of Defendant Homelife that should be considered "state action" for purposes of a Fourteenth Amendment claim, the Court does not read the Plaintiff's complaint as alleging a claim for violation of the due process clause of the Fourteenth Amendment against Defendant Homelife. The pertinent

part of the Plaintiff's complaint provides as follows:

22. Plaintiff is entitled to an Order from this Court granting service re-instatement by Homelife, an Order from this Court granting an administrative hearing before DHS, and an Order from this Court requiring DHS to establish hearing procedures ..."

\* \* \*

C). DHS' refused (sic) to grant Plaintiff an administrative hearing results in Plaintiff being arbitrarily denied participation in a federal financially assisted program, said denial being based on Plaintiff's handicapping condition.

D). DHS' refusal to grant Plaintiff an administrative hearing is a violation of the Due Process requirements of the Fourteenth Amendment to the Constitution of the United States as a state-action resulting in Plaintiff being denied his place of residence, Alpha House.

E). DHS' failure to establish hearing procedures concerning applicants, residents, and terminated residents of community-based group homes results in Plaintiff being kept out of a federal financially assisted program because of his handicapping condition of mental retardation, and is thus a violation of 29 U.S.C. 794. DHS' failure to establish hearing procedures is further a violation of the Fourteenth Amendment as a state action resulting in Plaintiff having available no due process procedures prior to termination of his residence in a federal financially assisted program." Complaint, pp. 5-6

The Court does not interpret the Plaintiff's complaint as alleging a Fourteenth Amendment Due Process claim against the Defendant Homelife Association for the Handicapped, Inc., and therefore dismisses the Fourteenth Amendment claim insofar as it attempts to assert a claim against Homelife.

**DEFENDANT DHS' CONTENTIONS**

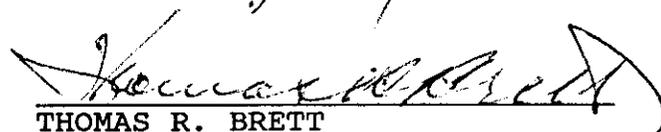
Defendant Oklahoma Department of Human Services has also moved for summary judgment on the Plaintiff's complaint contending that it is not subject to the requirements of §504 as the monies paid by DHS to Homelife are solely state monies and include no federal funds, citing Martin v. Delaware Law School of Widener University, 625 F.Supp. 1288 (D.Del. 1986). As correctly pointed out by the Plaintiff in his response brief, the recently enacted Civil Rights Restoration Act of 1987, Public Law 100-259 (March 22, 1988), specifically includes all of the operation of a state agency which receives federal funds as being subject to §504 of the Rehabilitation Act of 1973. The Court therefore concludes that even though the monies paid by Defendant DHS to Homelife constituted only state monies, the Defendant DHS is still subject to the requirements of §504 of the Rehabilitation Act. Defendant DHS argues that while they are now subject to §504 by virtue of the recently enacted law, the Plaintiff's claims arose before such legislation and therefore the new act should not apply. However, the legislative history of Public Law 100-259 indicates that the recent act was passed to overturn the Supreme Court's 1984 decision in Grove City College v. Bell, 465 U.S. 555 (1984), which had severely narrowed the application of §504 of the Rehabilitation Act of 1973. As stated in the legislative history, "the purpose of the Civil Rights Restoration Act of 1987 is to re-affirm pre-Grove City College judicial and executive branch interpretations and enforcement practices which provide for broad coverage of the anti-

discrimination provisions of the civil rights statutes." Given this clear legislative intent the Court finds that the DHS is subject to §504 of the Rehabilitation Act of 1973 as asserted by the Plaintiff. Defendant DHS' motion to dismiss the §504 claim is overruled.

Defendant DHS also moves for summary judgment on the Plaintiff's Fourteenth Amendment claim asserting that the DHS neither discharged Plaintiff from his residence nor made the decision to discharge Plaintiff, essentially arguing that no state action is involved which would implicate the Fourteenth Amendment protection. The Court finds that considerable issues of fact remain as to the state's interaction with Homelife Association for the Handicapped, Inc.'s group home and the availability of a hearing upon termination of services in a group home. Illustrative of the facts in dispute are the numerous requests for hearings submitted by the Plaintiff to the DHS and responses of the DHS which indicated that action by the DHS regarding Homelife's compliance with its contract was forthcoming. (See Plaintiff's Exhibit No. 9 to the Complaint.) In addition, the Plaintiff has filed an affidavit of Dr. Bob VanOsdol which asserts that Mr. Raymond Ashworth, Project Director of Mental Retardation/Developmental Disabilities Program of DHS, stated that the Defendant DHS was working on guidelines for hearing procedures concerning persons aggrieved by community-based group homes. The Court finds that the Plaintiff has raised genuine issues of material fact on its Fourteenth Amendment claim on whether or not he failed to seek

administrative review of the termination of services at the Alpha group home. When genuine issues of material fact are present, summary judgment is not proper. Lockett v. Bethlehem Steel Corp., 618 F.2d 1373 (10th Cir. 1980); Mustang Fuel Corp. v. Youngstown Sheet & Tube Co., 536 F.2d 336 (10th Cir. 1976). For the reasons articulated above, the Defendant Homelife's motion for summary judgment is granted for the reasons that the Plaintiff has not stated a claim on either the §504 claim or the Fourteenth Amendment claim. Defendant DHS' motion for summary judgment is overruled.

IT IS SO ORDERED, this 25 day of July, 1988.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

MARK ANTHONY THORNTON, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Respondent. )

88-C-626-B

**E I L E D**

JUL 25 1983

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

ORDER

Now before the court is the application of petitioner, Mark Anthony Thornton, for a Writ of Mandamus ordering the respondent, State of Oklahoma, to provide the original transcripts, records, and photographic pictures pertaining to Case Nos. CRF-84-4085 and 4879 so that he may perfect his appeal in state court.

Petitioner alleges that on December 7, 1984 he pled guilty to Grand Larceny in Case No. CRF-84-4085 and was sentenced to three years imprisonment. Petitioner also alleges that on May 15, 1985 he pled nolo contendere to Larceny of an Automobile in Case No. CRF-84-4879 and was sentenced to an indeterminate sentence to run concurrently with his sentence in Case No. CRF-84-4085. He also alleges that his present sentence for Larceny of an Automobile in Case No. CRF-86-4293 was enhanced to twenty years imprisonment because of his sentences in CRF-84-4085 and CRF-84-4879. The convictions were not appealed to the Oklahoma Court of Criminal Appeals.

Petitioner has not filed an application for relief under the Oklahoma Post Conviction Procedure Act, 22 O.S. §1080 et seq.

Petitioner moved for transcripts at public expense from the district court and the court denied his motions on October 2, 1987, saying that under the Post-Conviction Procedure Act petitioner could challenge his sentences and the state would file with its answer the record or portions thereof that were material to the case. Without an application for relief, no documents could be requested. On November 6, 1987 petitioner filed a writ of mandamus with the Court of Criminal Appeals requesting an order be directed to the district court to provide the records and trial transcripts. The Court of Criminal Appeals on November 24, 1987 refused to assume jurisdiction after reviewing the district court's decision declining to provide the transcripts.

Federal district courts are empowered by the All Writs Act, 28 U.S.C. §1651(a) (1982), to issue a writ of mandamus when "necessary and appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law".

However, the writ of mandamus is a drastic remedy which rarely is authorized. Kerr v. United States Dist. Court for the Northern Dist. of Cal., 426 U.S. 394, 402, 96 S.Ct. 2119, 48 L.Ed.2d 725 (1976). As a means of ensuring that the writ will be used only in extraordinary circumstances, the United States Supreme Court requires that a party seeking a writ of mandamus demonstrate that no other adequate remedy is available, and that the right to the writ is "clear and indisputable". John E. Burns Drilling v. Central Bank of Denver, 739 F.2d 1489, 1493 (10th Cir. 1984); Allied Chemical Corp. v. Daiflon, Inc., 449 U.S. 33, 35, 101 S.Ct. 188, 190, 66 L.Ed.2d 193 (1980) (per curiam).

Generally, mandamus may not be used as a substitute for appeals. Burns, 739 F.2d at 1493, citing Will v. United States, 389 U.S. 90, 97, 88 S.Ct. 269, 19 L.Ed.2d 305 (1967).

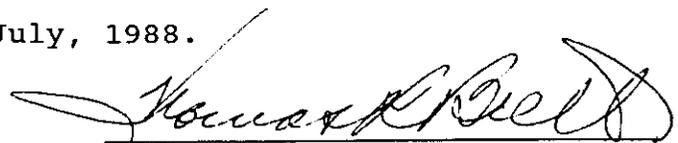
"The authorities are clear the United States Courts have no authority to issue writs of mandamus to direct state courts or their judicial officers in the performance of their duties." McMahan v. State of Oklahoma, 412 F.Supp. 639, 641 (W.D.Okla. 1975), citing Lamar v. 118th Judicial District Court of Texas, 440 F.2d 383 (5th Cir. 1971); Haggard v. State of Tennessee, 421 F.2d 1384 (6th Cir. 1970); Clark v. State of Washington, 366 F.2d 678 (9th Cir. 1966).

This principle was emphasized by the United States Supreme Court in Younger v. Harris, 401 U.S. 37, 43, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), which stated: "Since the beginning of this country's history Congress has, subject to few exceptions, manifested a desire to permit state courts to try state cases free from interference by federal courts." The instant application is clearly a request for this court to interfere with proceedings in the state court.

The court finds that in this situation the state courts should be free from federal interference and that petitioner has available state remedies which he has not exhausted.

It is therefore Ordered that petitioner Thornton's application for writ of mandamus is denied.

Dated this 25 day of July, 1988.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

JUL 25 1988  
U.S. DISTRICT COURT

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

KELLY JO BEARD, ET AL.,

Plaintiffs,

v.

THE HISSOM MEMORIAL CENTER,  
ET AL.,

Defendants.

Case No. 87-C-704-E

STIPULATION <sup>OF</sup> FOR DISMISSAL OF CROSS-CLAIM

In light of the Settlement Agreement filed simultaneously herewith, Dr. John Folks and the Oklahoma State Department of Education hereby stipulate to the dismissal of the Cross-Claim filed herein against the Defendant Independent School District No. 2 of Tulsa County. The parties to this Stipulation agree that the Cross-Claim which is dismissed hereby is now moot as a result of certain negotiations between the parties hereto which have resulted in the settlement agreement which is filed herewith. The parties to this Stipulation further agree that each side shall bear its own costs with respect to the Cross-Claim and its dismissal.

Respectfully submitted,

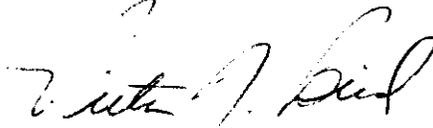
ROBERT H. HENRY  
ATTORNEY GENERAL OF OKLAHOMA



ROBERT A. NANCE  
ASSISTANT ATTORNEY GENERAL  
DEPUTY CHIEF, FEDERAL DIVISION

112 State Capitol Building  
Oklahoma City, OK 73105  
(405) 521-3921

ATTORNEYS FOR DEFENDANTS  
OKLAHOMA DEPARTMENT OF EDUCATION  
AND JOHN FOLKS



DAVID RIGGS  
VICTOR N. BIRD  
CHAPPEL, WILKINSON, RIGGS  
& ABNEY, INC.  
502 W. 6th Street  
Tulsa, OK 74119

ATTORNEYS FOR INDEPENDENT SCHOOL  
DISTRICT NO. 2

CERTIFICATE OF MAILING

On the 25th day of July, 1988, I mailed a true and correct copy of the foregoing, postage prepaid, to:

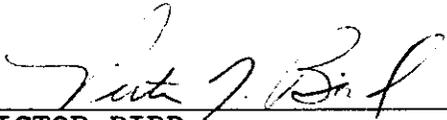
Louis W. Bullock  
Patricia Bullock  
320 South Boston, Suite 718  
Tulsa, OK 74103

Judith Finn  
Guardian Ad Litem and  
Associate Professor of Law  
3120 East Fourth Place  
Tulsa, OK 74014

Timothy Cook  
Judith A. Gran  
Frank A. Laski  
Holly Catania  
Public Interest Law Cntr. of Philadelphia  
125 South 9th St., Suite 700  
Philadelphia, PA 19107

Richard Freeman  
Roger Stuart  
Dept. of Human Services  
P.O. Box 53026  
Oklahoma City, OK 73512

Victor Bird  
Chapel, Wilkinson, Riggs, Abney & Henson  
502 W. 6th St.  
Tulsa, OK 74119

  
VICTOR BIRD

:jc  
ran®beard.dis

09901/JLW  
No. 2730

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

FILED  
JUL 25 1988

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

THE CITIZENS BANK, Drumright, )  
Oklahoma, )

Plaintiff, )

vs. )

Case No. 87-C-972-E

CHARLES D. WATSON, JR.; )  
SHARON L. WATSON, and )  
STILLWATER SAVINGS AND LOAN )  
ASSOCIATION, )

Defendants. )

*Stipulation Db*  
DISMISSAL WITH PREJUDICE

COMES NOW, Barry K. Beasley, attorney for the Plaintiff, Federal Deposit Insurance Corporation, in its corporate capacity, pursuant to Rule 41 of the Rules of the Federal Rules of Civil Procedure and hereby dismisses with prejudice its causes of action against the Defendants Stillwater Savings and Loan Association and Sharon L. Watson.

Pursuant to Rule 41 of the Federal Rules of Civil Procedure this Dismissal is signed by all parties who have appeared in this cause of action.



Barry K. Beasley (OBA #11220)  
Attorney for Federal Deposit  
Insurance Corporation  
Post Office Box 2269  
Tulsa, Oklahoma 74101-2269  
(918) 627-9000

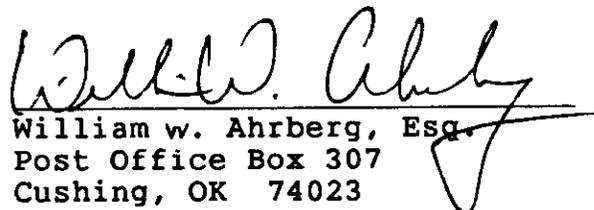
CONCURRED:

---

Charles D. Watson  
141 East Broadway  
Drumright, Oklahoma 74030

---

Doyle Watson, Esq.  
Watson and Watson  
Attorneys for Sharon Watson  
Post Office Box 647  
Drumright, OK 74030



---

William w. Ahrberg, Esq.  
Post Office Box 307  
Cushing, OK 74023

CERTIFICATE OF MAILING

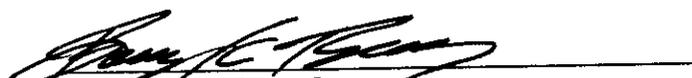
I hereby certify that on the 25 day of July, 1988, I mailed a true and correct copy of the foregoing Dismissal Without Prejudice to the following with postage fully prepaid thereon:

Doyle Watson, Esq.  
Watson & Watson  
Post Office Box 647  
Drumright, OK 74030

William W. Ahrberg, Esq.  
Post Office Box 307  
Cushing, OK 74023

\* Sharon L. Watson  
12517 E. 39th Place  
Tulsa, OK 74146

Charles D. Watson, Jr.  
141 East Broadway  
Drumright, Oklahoma 74030



---

Barry K. Beasley

FILED

JUL 1 1988

88

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

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Mark Eric Ooto,

CASE NO. 77-CR-103-C

(To be supplied by  
the Clerk)

v.

United States of America, §,

MOTION FOR LEAVE TO PROCEED  
IN FORMA PAUPERIS AND SUP-  
PORTING DECLARATION (PUR-  
SUANT TO 28 U.S.C. 1915 AND  
28 U.S.C. 1746)

Sheriff of Tulsa County.

FILED

JUL 22 1988

I hereby apply for leave to: (check one)

Commence this action for habeas corpus/civil rights relief  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Pursue this action under 28 U.S.C. § 2255 or Rule  
35, F.R.Crim.P.

without prepayment of fees and costs or giving security therefor.

In support of my application, I state that the following facts  
are true:

- 1) I am the party initiating said action and I believe that I am entitled to relief. TRUE
- 2) The nature of this action is: Application for A Original Writ of Habeas Corpus, Pursuant to Rules of Appellate Procedure 22(a); Due Process Clause of the United States Constitutional Amendments

3) I am unable to prepay the costs of this action or give security therefor because of my poverty. TRUE

4) I have no assets or funds which could be used to prepay the fees or costs, except: NONE

*(Write "none" above if you have nothing; otherwise list your assets.)*

5) Are you presently employed? Yes  No

(a) If the answer is "Yes", state the amount of your salary or wages per month, and give the name and address of your employer Year 1981

N/A

(b) If the answer is "No", state the date of last employment and the amount of the salary and wages per month which you received \_\_\_\_\_

6) Have you received within the past twelve months any money from any of the following sources?

(a) Business, profession or form of self-employment? Yes  No

(b) Rent payments, interest or dividends? Yes  No

(c) Pensions, annuities or life insurance payments? Yes  No

(d) Social Security, Veterans Administration, disability pensions, workmen's compensation or unemployment benefits? Yes  No

(e) Gifts or inheritances? Yes  No

(f) Any other sources? Yes  No

If the answer to any of the above is "Yes", describe each source of money and state the amount received from each during the past twelve months \_\_\_\_\_

- 7) Do you own any cash, or do you have money in a checking or savings account? Yes  No  (Include any funds in prison accounts)

If the answer is "Yes", state the total value of the items owned \_\_\_\_\_

Discharge Check of 300.62

- 8) Do you own real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)? Yes  No

If the answer is "Yes", describe the property and state its approximate value \_\_\_\_\_

- 9) You may state briefly any additional financial or other information regarding your ability to pay the costs of this action (for example, persons who are dependent on you for support) NONE

I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury.

I DECLARE (OR CERTIFY, VERIFY, OR STATE) UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. 28 U.S.C § 1746. 18 U.S.C. § 1621.

Executed at Tulsa County Jail on July 12<sup>th</sup> 1988  
(Location) (Date)

Mark Col  
(Signature)

CERTIFICATE (If Applicable)

I hereby certify that on \_\_\_\_\_ the movant herein had cash and securities in the amount of \$ \_\_\_\_\_ on account to his credit at the penal institution where he is confined. I further certify that movant likewise has the following securities to his credit according to the records of said \_\_\_\_\_ institution:

Discharge Check from Dept of Corrections  
in personal property.

NA  
Authorized Officer of Penal Institution

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Title)

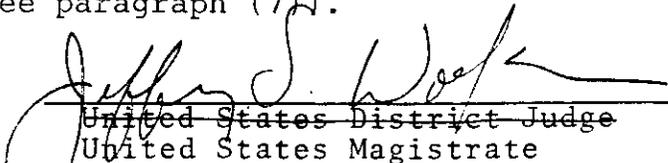
ORDER

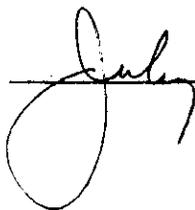
In reliance upon the representations and information set forth in the above motion, declaration and certificate, it is ordered that:

The movant herein is permitted to file and maintain this action to conclusion without prepayment of fees or costs.

The movant herein is permitted to file this action without prepayment of fees or costs, however any further proceedings in this matter must be specifically authorized in advance by the court.

This motion for leave to proceed *in forma pauperis* is denied. Petitioner indicates he has funds of \$300.62 available (see paragraph (7)).

  
United States District Judge  
United States Magistrate

, 19 88

**FILED**

JUL 25 1988

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

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

RICHARD D. WAGNER and  
JERRY ANN WAGNER,

Plaintiffs,

v.

THE BANK OF NEW YORK, a  
New York corporation,  
individually and in its  
capacity as trustee of the  
MULTIPLE MATURITY FIRST  
SERIES TRUST "B" TAX EXEMPT  
BOND TRUST, an investment  
trust created pursuant to  
the laws of New York,

Defendant.

No. 88-C-263 B

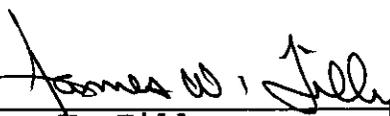
**FILED**

JUL 22 1988

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

STIPULATION OF DISMISSAL

The Plaintiffs and Defendant represent to the Court that they have entered into a settlement of all matters at issue in this suit and that the Plaintiffs and Defendant hereby stipulate that this cause of action be dismissed with prejudice to refiling of same.

  
James W. Tilly  
Keith Ward  
Attorneys for Plaintiffs

  
Ronda L. Davis  
Attorney for Defendant

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

FILED

SHELTER AMERICA CORPORATION, )  
(now succeeded by HOMEOWNER'S )  
FUNDING CORPORATION), )

Plaintiff, )

vs. )

SUVILLA F. McINTOSH, formerly )  
SUVILLA F. JACKSON, and )  
KENNETH W. JACKSON, )

Defendants.)

1988  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Case No. 85-C-414-E

JOURNAL ENTRY OF JUDGMENT

Now on this 20<sup>th</sup> day of July, 1988, this matter comes before the Court upon Plaintiff's Application for Judgment In Personam Against the Defendants and Brief in Support and Plaintiff's Application for Attorney's Fees and Affidvit in Support. The Plaintiff appeared by and through its counsel, Anthony P. Sutton of Feldman, Hall, Franden, Woodard & Farris, and the Defendants not opposing said Applications and having not filed any response to said Applications within the time set forth in Local Rule 15, and after otherwise being fully advised in the premises, finds that a Journal Entry of Judgment be entered against the Defendants, and each of them, in personam, jointly and severally, as set forth in Plaintiff's Application.

IT IS THEREFORE ORDERED that Plaintiff be granted Judgment against the Defendants, Suvilla F. McIntosh a.k.a. Suvilla F. Jackson and Kenneth W. Jackson, jointly and severally, in the principal sum of \$34,166.32, plus late charges of \$4.93, plus

interest accrued to February 26, 1985 of \$3,233.93 and interest to June 6, 1988 of \$16,016.64 and interest accruing thereafter at the rate of \$13.76 per day until said Judgment is paid in full (less a credit of \$878.79) plus attorney's fees in the sum of \$1,643.25 which this Court determines is reasonable and supported by the evidence presented and received.

**H<sup>c</sup> DALE COOK**

**JUDGE OF THE DISTRICT COURT**

*for* **JAMES O. ELISON**

7/homeown.jej t/lj

MLN:mwc  
7/18/88

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

MCI TELECOMMUNICATIONS )  
CORPORATION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
UNITED METRO MARKETING )  
SURVEYS, INC. and METRO )  
MARKETING, INC. )  
 )  
Defendants. )

Case No. 88-C-395C

FILED

JUL 21 1988

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

ORDER

NOW, on this 21<sup>st</sup> day of July, 1988, the above captioned matter comes on for hearing upon the plaintiff's Request for Default Judgment. The Court, having reviewed the file, affidavit of counsel and being fully advised in the premises, finds and orders as follows:

The court file reflects that proper service was obtained on each of the defendants and that each have failed to file an answer or otherwise respond to service of said summons.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that default judgment be granted in favor of the plaintiff and against the defendants, and each of them, in the sum of \$12,610.01 with interest at the rate of 1.5% per annum and costs in the sum of \$ 509.<sup>29</sup>.

151 H. Dale Cook

GLH/LAL/lc  
07/06/88

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

FILED

1988

FLORA L. POWELL, individually, and as	)
surviving wife of HUBERT C. POWELL,	)
deceased,	)
	)
Plaintiff,	)
	)
vs.	)
	)
ANCHOR PACKING COMPANY, a corporation;	)
et al.,	)
	)
Defendants.	)

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

No. 88C-555-E

ORDER OF DISMISSAL

NOW on this 20<sup>th</sup> day of July, 1988, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by the Plaintiffs, and the Defendant Cyprus Minerals Company. Based upon the representations and request of these parties as set forth in the foregoing stipulation, it is

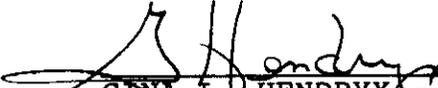
ORDERED that Plaintiffs' Complaint and claims for relief against the Defendant, Cyprus Minerals Company, be and the same are hereby dismissed without prejudice. It is further

ORDERED that each party shall bear its own costs.

H. DALE COOK  
U.S. DISTRICT JUDGE  
*JOR* JAMES O. ELLISON

APPROVED:

LAW OFFICES OF  
JOHN W. NORMAN INCORPORATED  
ATTORNEYS FOR PLAINTIFF

  
GINA L. HENDRYX - OBA #10330  
JOHN W. NORMAN - OBA #6699  
Renaissance Centre East  
127 N.W. 10th  
Oklahoma City, OK 73103-4903  
405/272-0200

MONNETT, HAYES, BULLIS, THOMPSON & EDWARDS  
ATTORNEYS FOR CYPRUS MINERALS COMPANY

  
JOHN T. EDWARDS-OBA #2642  
RANDALL A. BRESHEARS-OBA #1101  
1719 First National Center West  
Oklahoma City, OK 73102  
405/232-5481

GLH/LAL/lc  
07/06/88

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

FILED

1988

FLORA L. POWELL, individually, and as )  
surviving wife of HUBERT C. POWELL, )  
deceased, )

er, Clerk  
T COURT

Plaintiff, )

vs. )

No. 88C-555-E

ANCHOR PACKING COMPANY, a corporation; )  
et al., )

Defendants. )

ORDER OF DISMISSAL

NOW on this 20<sup>th</sup> day of July, 1988, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by the Plaintiffs, and the Defendant Cyprus Industrial Minerals Company. Based upon the representations and request of these parties as set forth in the foregoing stipulation, it is

ORDERED that Plaintiffs' Complaint and claims for relief against the Defendant, Cyprus Industrial Minerals Company, be and the same are hereby dismissed without prejudice. It is further

ORDERED that each party shall bear its own costs.

D. DALE COOK

U.S. DISTRICT JUDGE

*JCC* JAMES C. FULTON

APPROVED:

LAW OFFICES OF  
JOHN W. NORMAN INCORPORATED  
ATTORNEYS FOR PLAINTIFF

  
GINA L. HENDRYX - OBA #10330  
JOHN W. NORMAN - OBA #6699  
Renaissance Centre East  
127 N.W. 10th  
Oklahoma City, OK 73103-4903  
405/272-0200

MONNETT, HAYES, BULLIS, THOMPSON & EDWARDS  
ATTORNEYS FOR CYPRUS INDUSTRIAL MINERALS COMPANY

  
JOHN T. EDWARDS-OBA #2642  
RANDALL A. BRESHEARS-OBA #1101  
1719 First National Center West  
Oklahoma City, OK 73102  
405/232-5481

GLH/LAL/lc  
07/06/88

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

FLORA L. POWELL, individually, and as  
surviving wife of HUBERT C. POWELL,  
deceased,

Plaintiff,

vs.

ANCHOR PACKING COMPANY, a corporation;  
et al.,

Defendants.

No. 88C-555-E

ORDER OF DISMISSAL

NOW on this 20<sup>th</sup> day of July, 1988, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by the Plaintiffs, and the Defendant Pioneer Talc Company. Based upon the representations and request of these parties as set forth in the foregoing stipulation, it is

ORDERED that Plaintiffs' Complaint and claims for relief against the Defendant, Pioneer Talc Company, be and the same are hereby dismissed without prejudice. It is further

ORDERED that each party shall bear its own costs.

H. DALE COOK

U.S. DISTRICT JUDGE

*for* JAMES O. FULSON

APPROVED:

LAW OFFICES OF  
JOHN W. NORMAN INCORPORATED  
ATTORNEYS FOR PLAINTIFF



GINA L. HENDRYX - OBA #10330  
JOHN W. NORMAN - OBA #5699  
Renaissance Centre East  
127 N.W. 10th  
Oklahoma City, OK 73103-4903  
405/272-0200

THOMAS, GLASS, ATKINSON, HASKINS,  
NELLIS & BOUDREASUX  
ATTORNEYS FOR PIONEER TALC COMPANY



WALTER D. HASKINS - OBA #3964  
MARTHA J. PHILLIPS - OBA #11958  
525 S. Main, Suite 1500  
Tulsa, OK 74103  
918/582-8877

GLH/LAL/ta  
07/05/88

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

CHARLES L. ROLLINS, Plaintiff, and )  
SALLY DORIS ROLLINS, Plaintiff's Spouse, )  
 )  
 ) Plaintiffs, )  
 )  
vs. )  
 )  
ANCHOR PACKING COMPANY, a corporation; )  
et al., )  
 )  
 ) Defendants. )

No. 88-C-354-E

ORDER OF DISMISSAL

NOW on this 20<sup>th</sup> day of July, 1988, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by the Plaintiffs, and the Defendant H. M. Royal, Inc.. Based upon the representations and request of these parties as set forth in the foregoing stipulation, it is

ORDERED that Plaintiffs' Complaint and claims for relief against the Defendant, H. M. Royal, Inc., be and the same are hereby dismissed without prejudice. It is further

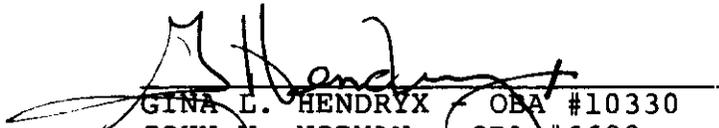
ORDERED that each party shall bear its own costs.

H. DALE COOK  
U.S. DISTRICT JUDGE

*J. O. Ellison*  
JAMES O. ELLISON

APPROVED:

LAW OFFICES OF  
JOHN W. NORMAN INCORPORATED  
ATTORNEYS FOR PLAINTIFFS

  
GINA L. HENDRYX - OBA #10330  
JOHN W. NORMAN - OBA #6699  
Renaissance Centre East  
127 N.W. 10th  
Oklahoma City, OK 73103-4903  
405/272-0200

HALL, ESTILL, HARDWICK, GABLE,  
GOLDEN & NELSON  
ATTORNEYS FOR H. M. ROYAL, INC.

  
MARK K. BLONGEWICZ - OBA #6889  
4100 Bank of Oklahoma Tower  
One William Center  
Tulsa, OK 74172  
918/588-3087

GLH/LAL/ta  
07/05/88

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

CHARLES L. ROLLINS, Plaintiff, and )  
SALLY DORIS ROLLINS, Plaintiff's Spouse, )  
 )  
 ) Plaintiffs, )  
 )  
vs. ) No. 88-C-354-E  
 )  
ANCHOR PACKING COMPANY, a corporation; )  
et al., )  
 )  
 ) Defendants. )

ORDER OF DISMISSAL

NOW on this 20<sup>th</sup> day of July, 1988, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by the Plaintiffs, and the Defendant Pioneer Talc Company. Based upon the representations and request of these parties as set forth in the foregoing stipulation, it is

ORDERED that Plaintiffs' Complaint and claims for relief against the Defendant, Pioneer Talc Company, be and the same are hereby dismissed without prejudice. It is further

ORDERED that each party shall bear its own costs.

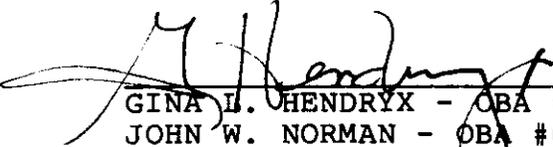
**H. DALE COOK**

U.S. DISTRICT JUDGE

*for* JAMES O. ELISON

APPROVED:

LAW OFFICES OF  
JOHN W. NORMAN INCORPORATED  
ATTORNEYS FOR PLAINTIFFS

  
GINA H. HENDRYX - OBA #10330  
JOHN W. NORMAN - OBA #6699  
Renaissance Centre East  
127 N.W. 10th  
Oklahoma City, OK 73103-4903  
405/272-0200

THOMAS, GLASS, ATKINSON, HASKINS,  
NELLIS & BOUDREASUX  
ATTORNEYS FOR PIONEER TALC COMPANY

  
WALTER D. HASKINS - OBA #3964  
MARTHA J. PHILLIPS - OBA #11958  
525 S. Main, Suite 1500  
Tulsa, OK 74103  
918/582-8877

GLH/LAL/ta  
07/05/88

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

CHARLES L. ROLLINS, Plaintiff, and )  
SALLY DORIS ROLLINS, Plaintiff's Spouse, )  
 )  
 ) Plaintiffs, )  
 )  
vs. )  
 )  
ANCHOR PACKING COMPANY, a corporation; )  
et al., )  
 )  
 ) Defendants. )

No. 88-C-354-E

ORDER OF DISMISSAL

NOW on this 20<sup>th</sup> day of July, 1988, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by the Plaintiffs, and the Defendant Crown Cork & Seal Company. Based upon the representations and request of these parties as set forth in the foregoing stipulation, it is

ORDERED that Plaintiffs' Complaint and claims for relief against the Defendant, Crown Cork & Seal Company, be and the same are hereby dismissed without prejudice. It is further

ORDERED that each party shall bear its own costs.

H. DALE COOK  
\_\_\_\_\_  
U.S. DISTRICT JUDGE  
JAMES O. ELLISON

APPROVED:

LAW OFFICES OF  
JOHN W. NORMAN INCORPORATED  
ATTORNEYS FOR PLAINTIFFS



GINA T. HENDRYX - OBA #10330  
JOHN W. NORMAN - OBA #6699  
Renaissance Centre East  
127 N.W. 10th  
Oklahoma City, OK 73103-4903  
405/272-0200

SHORT, BARNES, WIGGINS, MARGO, & ADLER  
ATTORNEYS FOR CROWN CORK & SEAL COMPANY



JOHN WIGGINS - OBA #9594  
BENJAMIN J. BUTTS - OBA #10228  
1400 American First Tower  
Oklahoma City, OK 73102  
405/232-1211

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

KHROSROW BABAK, an individual, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 EUROPEAN MOTORS, a Texas )  
 corporation; DAVID'S AUTO )  
 SALES, a sole proprietorship; )  
 LAWYER'S SURETY CORPORATION, )  
 a Texas corporation; and )  
 UNIVERSAL SURETY OF AMERICA, )  
 )  
 Defendants. )

No. 88-C-96-E

FILED  
JUL 19 1988

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

ORDER

On this 20th day of July, 1988, the Defendant, David's Auto Sales, Motion to Dismiss came to be heard before the undersigned. Having reviewed motions filed and upon agreement of the parties, the Court finds that the Defendant's Motion to Dismiss should be denied. The Court further finds that, pursuant to 28 U.S.C., §1404(a), this matter should be transferred to the United States District Court for the Northern District of Texas. The Court further finds that a transfer under §1404(a) lies within the discretion of the trial court.

The Court finds that the convenience of witnesses and the interest of justice dictates transfer of the instant case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this case be transferred to the United States District Court for the Northern District of Texas.

H. DALE COOK

~~MAGISTRATE JOHN L. WAGNER~~

*for*

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 RONALD CLYDE BROWN; RHANDA S. )  
 BROWN; ARROW SPRINGS THIRD )  
 DEVELOPMENT CO., LTD., an )  
 Oklahoma limited partnership; )  
 THE FIRST NATIONAL BANK & TRUST )  
 CO. OF BROKEN ARROW, OKLAHOMA; )  
 COUNTY TREASURER, Tulsa County, )  
 Oklahoma; and BOARD OF COUNTY )  
 COMMISSIONERS, Tulsa County, )  
 Oklahoma, )  
 )  
 Defendants. )

FILED

JUL 19 1988

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

CIVIL ACTION NO. 87-C-945-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 20 day  
of July, 1988. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by Doris L. Fransein, Assistant District  
Attorney, Tulsa County, Oklahoma; and the Defendants, Ronald  
Clyde Brown; Rhanda S. Brown; Arrow Springs Third Development  
Co., Ltd., an Oklahoma limited partnership; and The First  
National Bank & Trust Co. of Broken Arrow, Oklahoma, appear not,  
but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, Ronald Clyde Brown,  
was served with Summons and Complaint on May 10, 1988; that

Defendant, Rhanda S. Brown, was served with Summons and Complaint on February 11, 1988; that Defendant, Arrow Springs Third Development Co., Ltd., an Oklahoma limited partnership, acknowledged receipt of Summons and Complaint on December 6, 1987; that Defendant, The First National Bank & Trust Co. of Broken Arrow, Oklahoma, acknowledged receipt of Summons and Complaint on November 27, 1987; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on November 16, 1987; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on November 16, 1987.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on December 4, 1987; and that the Defendants, Ronald Clyde Brown, Rhanda S. Brown, Arrow Springs Third Development Co., Ltd., an Oklahoma limited partnership, and The First National Bank & Trust Co. of Broken Arrow, 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 a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

LOT TWO (2), BLOCK THREE (3), ARROW SPRINGS  
THIRD, AN ADDITION TO THE CITY OF BROKEN  
ARROW, TULSA COUNTY, STATE OF OKLAHOMA,  
ACCORDING TO THE RECORDED PLAT THEREOF.

The Court further finds that on July 21, 1978, the Defendants, Ronald Clyde Brown and Rhanda S. Brown, executed and delivered to First Continental Mortgage Co., a corporation, their mortgage note in the amount of \$36,800.00, payable in monthly installments, with interest thereon at the rate of nine and one-half percent (9.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Ronald Clyde Brown and Rhanda S. Brown, executed and delivered to First Continental Mortgage Co., a corporation, a mortgage dated July 21, 1978, covering the above-described property. Said mortgage was recorded on July 25, 1978, in Book 4342, Page 1169, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 27, 1985, First Continental Mortgage Co. assigned unto the Administrator of Veterans Affairs the above-described note and mortgage. This Assignment was filed of record on October 22, 1985, in Book 4900, Page 1978 in the records of Tulsa County, Oklahoma. On December 16, 1985, a Corrective Assignment was filed of record in Book 4912, Page 1907 in the records of Tulsa County, Oklahoma. This Corrective Assignment was again filed on February 12, 1986, in Book 4924, Page 174 in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Ronald Clyde Brown and Rhanda S. Brown, 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, Ronald

Clyde Brown and Rhanda S. Brown, are indebted to the Plaintiff in the principal sum of \$37,500.31, plus interest at the rate of 9.5 percent per annum from December 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has no lien on the property which is the subject matter of this action by virtue of ad valorem taxes. All taxes, including taxes for the year 1987, have been paid.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title, or interest in the subject real property.

The Court further finds that the Defendants, Arrow Springs Third Development Co., Ltd., an Oklahoma limited partnership, and The First National Bank & Trust Co. of Broken Arrow, 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, Ronald Clyde Brown and Rhanda S. Brown, in the principal sum of \$37,500.31, plus interest at the rate of 9.5 percent per annum from December 1, 1986 until judgment, plus interest thereafter at the current legal rate of 7.54 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, Arrow Springs Third Development Co., Ltd., an Oklahoma limited partnership; The First National Bank & Trust Co. of Broken Arrow, Oklahoma; and County Treasurer and Board of County Commissioners, Tulsa, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under

and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

H. DALE COOK

UNITED STATES DISTRICT JUDGE

APPROVED:

*J.O.E.* JAMES O. ELLISON

TONY M. GRAHAM  
United States Attorney

*Nancy Nesbitt Blevins*  
NANCY NESBITT BLEVINS  
Assistant United States Attorney

*Doris L. Fransein*  
DORIS L. FRANSEIN  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

NNB/css

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

HART INDUSTRIAL SUPPLY  
COMPANY,

Plaintiff,

vs.

TRI-STATE MOTOR TRANSIT  
COMPANY,

Defendant.

FILED

JUL 21 1988

U.S. DISTRICT COURT

No. 87-C-737-B

STIPULATION OF  
DISMISSAL

COMES NOW Plaintiff Hart Industrial Supply Company and dismisses its Complaint and all of its claims against Defendant including those for fees, costs, and litigation expenses in this case, with prejudice.

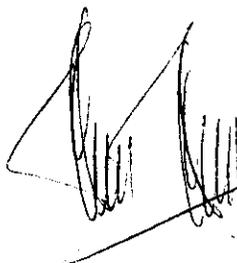
GREEN, JAMES, WILLIAM & ELLIOTT

By



LEE ENDICOTT - OBA #10795  
P. O. Box 2248  
Oklahoma City, OK 73101-2248  
(405) 525-0033

Attorneys for Plaintiff



LOUIS LEVY  
ATTORNEY FOR DEFENDANT  
7-20-88

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

**FILED**

JUL 21 1988

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

DOUGLAS R. EMBREY and AUDRIC SMITH )  
d/b/a SMITH-EMBREY COMPANY, )

Plaintiffs )

-vs-

THE UNITED STATES OF AMERICA, )  
et. al., )

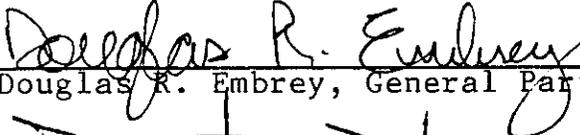
Defendants )

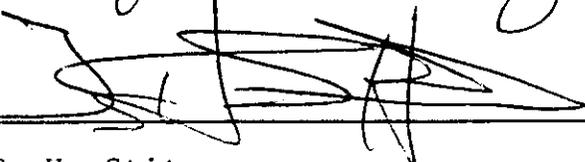
Civil Action No. 87-C-621-B

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

COME NOW Plaintiffs and all Defendants, by and through their respective attorneys whose names appear hereinbelow, and pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii) stipulate that the above captioned action is hereby dismissed WITHOUT PREJUDICE to the right and/or privilege of Plaintiffs to file a new action based on the same claim or claims in an appropriate court of competent jurisdiction, including, but not limited to, the United States Claims Court. Each side to bear its own costs and attorney fees.

DOUGLAS R. EMBREY and AUDRIC SMITH d/b/a  
SMITH-EMBREY COMPANY, Plaintiffs

by:   
Douglas R. Embrey, General Partner

by: 

Ty H. Stites  
Attorney for Plaintiffs  
P.O. Box 700243  
Tulsa, OK 74170-0243  
(918) 747-3100

STIPULATION OF DISMISSAL  
Civil Action No. 87-C-621-B  
page 2 of 2

UNITED STATES OF AMERICA,  
UNITED STATES DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT, THE SECRETARY  
OF HOUSING AND URBAN DEVELOPMENT and  
MELVIN T. GAINES, Defendants  
by Tony M. Graham,  
United States Attorney

by:  \_\_\_\_\_

Phil Pinnell  
Assistant United States Attorney  
3600 Federal Courthouse  
Tulsa, OK 74103  
(918) 581-7463

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

FILED

1988

FRANK BRADEN, et al., )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 COMMERCIAL UNION INSURANCE )  
 COMPANY, et al., )  
 )  
 Defendants. )

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

No. 86-C-511-E

JUDGMENT

This action came on for hearing before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly resolved by ruling on motion for summary judgment,

IT IS THEREFORE ORDERED that the Plaintiffs Frank Braden, Carol Braden and Cowboy Supply House take nothing from the Defendants Commercial Union Insurance Company and American Employer Insurance Company, that the action be dismissed on the merits, and that the Defendants Commercial Union Insurance Company and American Employer Insurance Company recover of the Plaintiffs Frank Braden, Carol Braden and Cowboy Supply House their costs of action.

ORDERED this 20 day of July, 1988.

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

GLH/LAL/ta  
07/05/88

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

CHARLES L. ROLLINS, Plaintiff, and )  
SALLY DORIS ROLLINS, Plaintiff's Spouse, )  
 )  
 ) Plaintiffs, )  
 )  
vs. ) No. 88-C-354-E  
 )  
ANCHOR PACKING COMPANY, a corporation; )  
et al., )  
 )  
 ) Defendants. )

ORDER OF DISMISSAL

NOW on this 20<sup>th</sup> day of July, 1988, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by the Plaintiffs, and the Defendant American Chemet Corporation. Based upon the representations and request of these parties as set forth in the foregoing stipulation, it is

ORDERED that Plaintiffs' Complaint and claims for relief against the Defendant, American Chemet Corporation, be and the same are hereby dismissed without prejudice. It is further

ORDERED that each party shall bear its own costs.

H. DALE COOK

U.S. DISTRICT JUDGE

*for* JAMES O. FULMER

APPROVED:

LAW OFFICES OF  
JOHN W. NORMAN INCORPORATED  
ATTORNEYS FOR PLAINTIFFS

  
GINA L. HENDRYX - OBA #10330  
JOHN W. NORMAN - OBA #6699  
Renaissance Centre East  
127 N.W. 10th  
Oklahoma City, OK 73103-4903  
405/272-0200

KNIGHT, WAGNER, STUART & LIEBER  
ATTORNEYS FOR AMERICAN CHEMET CORP.

  
RICHARD D. WAGNER - OBA #009269  
P.O. Box 1560  
Tulsa, OK 74101-1560  
918/584-6457

GLH/LAL/lc  
07/14/88

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

FILED

CHARLES L. ROLLINS, Plaintiff, and )  
SALLY DORIS ROLLINS, Plaintiff's Spouse, )  
 )  
 ) Plaintiffs, )  
 )  
vs. )  
 )  
ANCHOR PACKING COMPANY, a corporation; )  
et al., )  
 )  
 ) Defendants. )

U.S. District Court  
Northern District of Oklahoma

No. 88-C-354-E

ORDER OF DISMISSAL

NOW on this \_\_\_\_ day of July, 1988, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by the Plaintiffs, and the Defendant FMC. Based upon the representations and request of these parties as set forth in the foregoing stipulation, it is

ORDERED that Plaintiffs' Complaint and claims for relief against the Defendant FMC, be and the same are hereby dismissed without prejudice. It is further

ORDERED that each party shall bear its own costs.

H. DALE COOK

U.S. DISTRICT JUDGE

*for* JAMES O. FLEMING

GLH/LAL/ta  
07/05/88

**FILED**

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

JUL 11 1988

CHARLES L. ROLLINS, Plaintiff, and )  
SALLY DORIS ROLLINS, Plaintiff's Spouse, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
ANCHOR PACKING COMPANY, a corporation; )  
et al., )  
 )  
Defendants. )

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

No. 88-C-354-E

ORDER OF DISMISSAL

NOW on this 20<sup>th</sup> day of July, 1988, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by the Plaintiffs, and the Defendant Cyprus Minerals Company. Based upon the representations and request of these parties as set forth in the foregoing stipulation, it is

ORDERED that Plaintiffs' Complaint and claims for relief against the Defendant, Cyprus Minerals Company, be and the same are hereby dismissed without prejudice. It is further

ORDERED that each party shall bear its own costs.

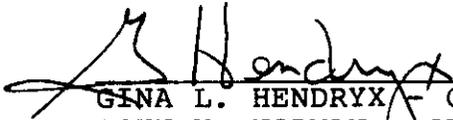
H. DALE COOK

U.S. DISTRICT JUDGE

*JOC* JAMES O. FLEMING

APPROVED:

LAW OFFICES OF  
JOHN W. NORMAN INCORPORATED  
ATTORNEYS FOR PLAINTIFFS

  
GINA L. HENDRYX - OBA #10330  
JOHN W. NORMAN - OBA #6699  
Renaissance Centre East  
127 N.W. 10th  
Oklahoma City, OK 73103-4903  
405/272-0200

MONNETT, HAYES, BULLIS, THOMPSON & EDWARDS  
ATTORNEYS FOR CYPRUS MINERALS COMPANY

  
JOHN T. EDWARDS-OBA #2642  
RANDALL A. BRESHEARS-OBA #1101  
1719 First National Center West  
Oklahoma City, OK 73102  
405/232-5481

GLH/LAL/ta  
07/05/88

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

FILED  
JUL 13 1988

CHARLES L. ROLLINS, Plaintiff, and )  
SALLY DORIS ROLLINS, Plaintiff's Spouse, )  
 )  
 ) Plaintiffs, )  
 )  
vs. )  
 )  
ANCHOR PACKING COMPANY, a corporation; )  
et al., )  
 )  
 ) Defendants. )

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

No. 88-C-354-E

ORDER OF DISMISSAL

NOW on this 26<sup>th</sup> day of July, 1988, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by the Plaintiffs, and the Defendant Cyprus Industrial Minerals Company. Based upon the representations and request of these parties as set forth in the foregoing stipulation, it is

ORDERED that Plaintiffs' Complaint and claims for relief against the Defendant, Cyprus Industrial Minerals Company, be and the same are hereby dismissed without prejudice. It is further

ORDERED that each party shall bear its own costs.

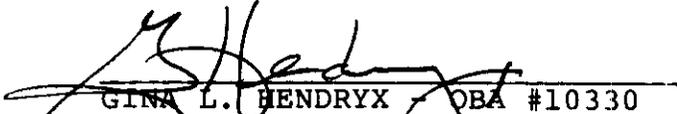
H. DALE COOK

U.S. DISTRICT JUDGE

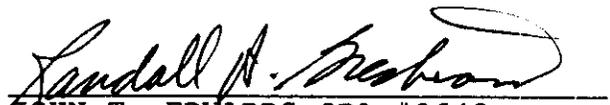
*for* JAMES O. ELISON

APPROVED:

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FILED

HAP:bj

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

1988

NATIONAL UNION FIRE INSURANCE  
COMPANY,

Plaintiff,

vs.

BRUMBAUGH & FULTON COMPANY,  
DANIEL LOUIS KOTTHOFF, GERALDINE  
KOTTHOFF, and BILL GIBSON d/b/a  
GIBSON PUBLIC ADJUSTING COMPANY,  
now an Oklahoma corporation,

Defendants.

C. Silver, Clerk  
U.S. DISTRICT COURT

Case No.: 88-C-226-E

ORDER

Now on this 20 day of July, 1988 there came on for hearing the joint motion of the parties herein for an order dismissing Plaintiff and releasing Plaintiff from any and all further liability or obligations to any and all Claimants/Defendants herein. Being fully advised in the premises, the Court finds that Plaintiff has previously deposited the sum of SIXTY FOUR THOUSAND ONE HUNDRED SIXTY AND 62/100 DOLLARS (\$64,160.62) with this Court, and finds that this represents a fair and adequate settlement for the damage caused by the fire of July 8, 1987. The Court further finds that Plaintiff has met and satisfied all of its duties and obligations under the subject policy and further finds that Plaintiff should therefore be discharged and dismissed from this case and released from any and all further liability or obligations to any and all of the Claimants/Defendants herein.

IT IS THEREFORE ORDERED, ADJUGED AND DECREED that Plaintiff National Union Fire Insurance Company, is hereby dismissed, and further is released from any and all further liability or obligation herein or to any or all of the Claimants/Defendants herein.

H. DALE COOK  
JUDGE, UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

*JH* JAMES O. ELISON