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

THOMAS PATRICK JACKSON,	)	
Petitioner,	)	
v.	)	88-C-172-C
TED WALLMAN, et al,	)	
Respondents.	)	

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed September 2, 1988 in which the Magistrate recommended that the Petitioner's Application for a Writ of Habeas Corpus be denied.

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 the Petitioner's Application for a Writ of Habeas Corpus is denied.

Dated this 30 day of Sept, 1988.

H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

C-22
5/84

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

FILED
9-30 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

THE CITIZENS BANK, Drumright, Ok Plaintiff(s), vs. CHARLES D. WATSON, JR. Defendant(s).	)	No. 87-C-972-E

ADMINISTRATIVE CLOSING ORDER

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

IF, within 45 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 30th day of Sept, 19____.

James O. Ellison
UNITED STATES DISTRICT JUDGE

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

9-30-88

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,	)	
Plaintiff,	)	
v.	)	No. 88-C-1013E
GAYLE E. WALKER and FIRST INTERSTATE BANK OF UTAH, N.A.,	)	
Defendants.	)	

O R D E R

Upon Application of the Plaintiff, The Equitable Life Assurance Society of the United States, and Defendant, Gayle E. Walker, and for good cause shown, the Court makes the following findings and Orders:

1. Prior to filing the Complaint for Interpleader, there was a dispute as to the beneficiary of a policy of insurance issued to Skaggs Alpha Beta, a subsidiary of American Stores, insuring Vernon Michael Walker under a life insurance policy No. 56570 with Plaintiff. The benefits in question at the time of the interpleader action totaled $94,000.00 with interest in the sum of $1,298.10, for a total of $95,298.10.

2. The Court further finds that subsequent to the filing of the Complaint for Interpleader, one of the Defendants, First Interstate Bank of Utah, N.A., has disclaimed all direct claims or interest in and to the funds which are the subject matter of this litigation and have requested that it be dismissed as a Defendant.

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3. The Court further finds that the Plaintiff is entitled to have its attorney's fees and costs reimbursed out of the proceeds of the Complaint for Interpleader in the sum of $1,000.00, representing fees and costs.

4. The Court further finds that the Defendant, Gayle W. Walker is entitled to the balance of the proceeds, and accrued interest.

5. The Court further finds that the funds are presently on deposit at an interest bearing account and will be available for distribution on September 26, 1988.

6. The Court further finds that it is in the best interests of all parties to have the matter held in interest until said date.

7. The Court further finds that upon payout of the proceeds as set forth herein, the Plaintiff, The Equitable Life Assurance Society of the United States, will have satisfied all of its obligations to the parties hereto and should be released from any and all liability to Gayle E. Walker and First Interstate Bank of Utah, N.A., and that the above-styled and numbered cause of action should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That, based on the Answer and Disclaimer of First Interstate Bank of Utah, N.A., that the Defendant, First Interstate Bank of Utah, N.A., be dismissed as a Defendant herein.

2. That the United States District Court Clerk for the Northern District of Oklahoma be and he is hereby directed to issue checks as follows:

A. Feldman, Hall, Franden, Woodard & Farris in the sum of $1,000.00, as and for interest and costs for prosecution of the Interpleader action which is the subject matter hereof.

10-11-88 ✓ JC

B. Gayle E. Walker and James E. Frasier, her attorney, in the sum of $94,298.10, plus accrued interest, representing the net proceeds after payment of the fees and costs to Feldman, Hall, Franden, Woodard & Farris, as set forth hereinabove.

10-1-88 ✓ JC $94,827.53

3. That The Equitable Life Assurance Society of the United States be released from any and all liability to Gayle E. Walker and the First Interstate Bank of Utah, N.A., arising out of that certain policy of insurance issued by Equitable to Skaggs Alpha Beta, a subsidiary of American Stores, insuring Vernon Michael Walker under a life insurance policy No. 56570.

4. That the above-styled and numbered cause of action be dismissed with prejudice.

AND IT IS SO ORDERED.

JAMES O. ELLISON, UNITED STATES DISTRICT JUDGE

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

9-22-88

IN RE: GEORGE SHANER and RUBY SHANER, Debtors.	)	
ROBERT KIPP and CHRISTINE KIPP, Plaintiffs/ Appellants,	)	
v.	)	87-C-940-E
GEORGE SHANER and RUBY SHANER, Defendants/Appellees.	)	

ORDER

Now before the Court is an appeal from an Order of the Bankruptcy Court finally disposing of an Adversary Proceeding (86-838) in Bankruptcy Court Case No. 86-02121. Appellants appeal the Court's discharge of a debt owed them by Debtor/ Appellee George Shaner (Notice of Appeal, 11/10/87).

Briefly, in the early 1980's Appellants invested in certain drilling programs operated by Debtor/Appellee Shaner. The investment was unsuccessful. In 1983, Appellants obtained a state court judgment (for $51,325.17) against the Debtors/ Appellees for securities fraud, pursuant to the Oklahoma Securities Act. (R. 5). Upon Debtors'/Appellees' filing for bankruptcy protection, Appellants filed an Adversary Proceeding, seeking a determination that the debt be excepted from discharge under §523(a)(4)[1] of the Bankruptcy Code. (R. 3).

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[1] Although Appellant's Complaint in the Adversary Proceeding cites §523(a)(4), the Bankruptcy Court considered the issue as one under §523(a)(2)(A). (R. 14). Both sections relate to debts

After trial, the Bankruptcy Court held that Appellants did not prove that the debt was of the type entitled to exception under §523(a)(2)(A) and ordered the adversary proceeding dismissed. (R. 14).

Appellants now raise two issues on appeal:

(1) whether or not the Bankruptcy Court erred in finding that Appellants failed to sustain their burden of proof; and

(2) whether or not the Bankruptcy Court erred in failing to recognize the res judicata effect of the state court judgment.

First, the Court finds that the Order of the Bankruptcy Court, dismissing Appellants' adversary proceeding, is a final appealable order under 28 U.S.C. §158(a). In re Saco Local Development Corp., 711 F.2d 441 (1st Cir. 1983).

Second, this Court, sitting in review of the Bankruptcy Court, employs two independently applicable standards. In re Ruti-Sweetwater, Inc., 836 F.2d 1263, 1266 (10th Cir. 1988). In reviewing factual findings, the Bankruptcy Court will not be reversed unless clearly erroneous. Id. Questions of law, however, are entitled to review de novo. Id.

I.

Res Judicata

The question of whether the res judicata effect of Appellants' state court judgment operates to preclude the

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incurred by fraudulent acts. Appellants do not raise the issue in their Brief, but nevertheless adopt the language from §523(a)(2)(A) in their Brief (at 9).

Bankruptcy Court from making a new finding under §523(a)(2)(A) is a question of law to be considered de novo by this Court.

Section 523(a)(2)(A) provides that debts for the following are not discharged in bankruptcy: "for money ... to the extent obtained, by false pretenses, a false representation, or actual fraud...." Appellants' argument is that the state court judgment was based on a finding of securities fraud. Said judgment being entitled to be given res judicata effect in federal courts, it is argued, the Bankruptcy Court erred when it did not automatically except the debt from discharge as a debt "for money ... obtained by ... fraud."

As noted by the Tenth Circuit, "a bankruptcy court is not barred by res judicata from determining, independent of a state-court judgment against the debtor, the nature of a debt to determine its dischargability." In re Wallace, 840 F.2d 762, 764 (10th Cir. 1988) (citing Brown v. Felsen, 442 U.S. 127 (1979)) (emphasis added).

The key to the "applicability" question lies in an understanding of the technical differences between the res judicata and collateral estoppel doctrines. As noted by the United States Supreme Court, collateral estoppel is a narrower principal than res judicata. As described by the Supreme Court:

> Whereas res judicata forecloses all that which might have been litigated previously, collateral estoppel treats as final only those questions actually and necessarily decided in a prior suit. If in the course of adjudicating a state-law question, a state court should determine factual issues using standards identical to those of §17 [of the former Bankruptcy Act; similar to §523 of

> the present Bankruptcy Code], then collateral estoppel, in the absence of countervailing statutory policy, would bar relitigation of those issues in the bankruptcy court." Brown v. Felsen, 442 U.S. at n.10 (quoted in In re Wallace, 840 F.2d at 764) (emphasis added).

Based upon the lesson taught in Brown, the Tenth Circuit has held that collateral estoppel is binding on the Bankruptcy Court and precludes relitigation of factual issues if the following tripartite test is met:

> (1) the issue to be precluded is the same as that in the state action;
>
> (2) the issue was actually litigated by the parties in the prior action; and
>
> (3) the state court's determination of the issue was necessary to the resulting final and valid judgment.

In re Wallace, 840 F.2d at 765.

In the action below, the Bankruptcy Court apparently anticipated the Wallace decision and applied the correct standard (as evidenced by the Court's statement at R. 14, pp. 8-9). The Bankruptcy Court observed:

> In the event the particular elements of this action ... are in fact the same elements in State Court and a State Court so determines those upon hearing, and let me say, not upon default, then this Court may or might be precluded from going into the same provided that the burden of proof and the standard of proof required of that particular forum is the same burden and the same standard required of this forum.

The Bankruptcy Court went on to hold that the difference in evidentiary burdens in the two courts[2] was enough to preclude

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[2] The Bankruptcy Court correctly observed that the standard of proof placed upon Appellants under §523(a)(2) is one of "clear and convincing evidence" (In re Black, 787 F.2d 503, 506 (10th Cir. 1986)), a higher standard than the state court burden of

application of collateral estoppel.

Furthermore, each action (as between the state and U. S. Bankruptcy Courts) is fundamentally different. Liability for "securities fraud" under the Oklahoma Act does not require showing of an intentional wrong or moral turpitude. Specifically, the state court found that (a) the Shaners' oil drilling sales literature consisted of "securities", which were required, by 71 O.S. §402, to be registered, but, in fact, were not; (b) George Shaner lost his claim to a registration exemption under 71 O.S. §401(b)(9) because he paid commissions in connection with the securities sales; and (c) finally, that the Kipps, by virtue of 71 O.S. §408(2)(i), were entitled to rescind the contract. On this basis the Kipps were granted judgment against Shaner. Where there is no exemption from registration, "the seller's civil liability to the purchasers flows from the mere failure to register as required by law." Lambrecht v. Bartlett, 656 P.2d 269, 273 (Okla. 1982).

Liability predicated upon a "mere failure to register securities", the basis of the state court judgment, is a far cry from the wrong to be proven under §523. Section 523(a)(2)(A) applies to a debt for money obtained by false pretenses, a false representation, or actual fraud. In re Black, 787 F.2d 503, 505 (10th Cir. 1986).

> This section includes only those frauds involving moral turpitude or intentional wrong, and does not extend to fraud implied in law which may arise in

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proof by a preponderance of the evidence.

the absence of bad faith or immorality. Id. (Emphasis added.)

A comparison of the elements necessary to prove each type of case[3] makes clear that the Wallace tripartite test has not been met. Therefore, the Bankruptcy Court did not err by not applying the collateral estoppel doctrine to preclude litigation of the §523(a)(2) issues. This basis for appeal is without merit.

II.

Actual Fraud

Appellants' remaining ground for appeal is that the Bankruptcy Court erred in its finding that Appellants failed to meet their burden of proof. This Court is bound to accept as true the factual findings of the Bankruptcy Court, unless clearly erroneous. Bky. Rule 8013; In re Ruti-Sweetwater, Inc., 836 F.2d 1263, 1266 (10th Cir. 1988).

In reaching its findings, the Bankruptcy Court correctly applied the case of In re Mullet, 817 F.2d 677, 680 (10th Cir. 1987). In Mullet, the Tenth Circuit explained the five elements necessary "to prevent discharge [of a debt] pursuant to §523(a)(2)(A)". Id. Appellants had to prove:

(1) Shaner made a false representation or willful misrepresentation;

(2) the representation was made with the intent to deceive the Appellants;

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[3] In re Lowther, 32 B.R. 638, 641 (W.D.Okla. 1983) (elements necessary to prove §523 case); Lambrecht v. Bartlett, 656 P.2d 269 (Okla. 1982) (elements necessary to prove 71 O.S. §408 liability).

(3) the Appellants did rely on the representation;

(4) the reliance was reasonable; and

(5) the Appellants sustained a loss as a result of Shaner's representation. Id.

Appellant's task was to prove each of these five elements by "clear and convincing evidence". In re Black, 787 F.2d at 505. Appellants contend they have met their burden and that the Bankruptcy Court erred in finding to the contrary.

Notwithstanding Appellants' failure to cite to the record, the Court has reviewed the entire transcript (R. 15) to determine whether Appellants proved the required five elements.

The Bankruptcy Court found that it did not "even know clearly and convincingly what representations are alleged to be false and [it was] not clearly convinced as to the falsity of the same...." (R. 14, at p. 10).

Upon review, the Court finds that the Bankruptcy Court's finding of fact was not clearly erroneous. Appellants simply failed to prove the five elements necessary to except the judgment debt, under §523(a)(2)(A), from discharge. Appellant's evidence was neither clear nor convincing as to the §523 issue.

Lastly, Appellants argue that Shaner should not be allowed to escape his dishonest acts through the vehicle of "discharge", relief only available to the "honest" debtor. This argument was addressed in Mullet and the Tenth Circuit's observations apply equally here. The Court warned:

> While we certainly do not wish to encourage the type of behavior attributed to [Shaner] by [the Kipps], we must reiterate that a showing of the

> debtor's dishonesty is simply not sufficient to prevent discharge under §523(a)(2). (817 F.2d at 682) (Emphasis added.)

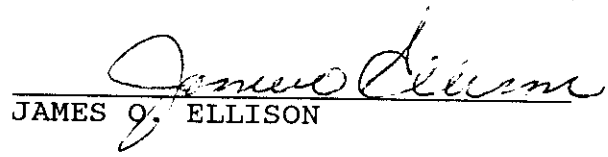
Having failed to meet the requisite burden at trial, Appellants cannot sustain their burden here.

III.

Conclusion

Accordingly, the Court finds that the Bankruptcy Court did not err in dismissing Appellants' §523 Adversary Case. Therefore, the decision of the Bankruptcy Court should be and hereby is affirmed.

Dated this 30th day of Sept, 1988.



JAMES O. ELLISON

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. WILLIAM E. MILLER, JR. a/k/a WILLIAM E. MILLER; REBECCA LEA MILLER; TRANSAMERICA FINANCIAL SERVICES; OKLAHOMA MEDICAL COLLECTION SERVICES, INC.; COUNTY TREASURER, Washington County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Washington County, Oklahoma, Defendants.	)	CIVIL ACTION NO. 88-C-78-E

9-30-88

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 30th day of Sept, 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, William E. Miller, Jr. a/k/a William E. Miller and Rebecca Lea Miller, appear pro se; the Defendant, Transamerica Financial Services, appears by its attorney Robert J. Bartz; and the Defendants, Oklahoma Medical Collection Services, Inc., County Treasurer, Washington County, Oklahoma, and Board of County Commissioners, Washington County, Oklahoma, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendants, William E. Miller, Jr. a/k/a William E. Miller and Rebecca Lea Miller, acknowledged

receipt of Summons and Complaint on February 10, 1988; that Defendant, Oklahoma Medical Collection Services, Inc., was served with Summons and Complaint on April 22, 1988; that Defendant, County Treasurer, Washington County, Oklahoma, acknowledged receipt of Summons and Complaint on or about February 10, 1988; and that Defendant, Board of County Commissioners, Washington County, Oklahoma, acknowledged receipt of Summons and Complaint on February 2, 1988.

It appears that the Defendants, William E. Miller, Jr. a/k/a William E. Miller and Rebecca Lea Miller, filed their Answer herein on March 7, 1988 and that Defendant, Transamerica Financial Services, filed its Entry of Appearance on March 10, 1988 and its Answer and Cross Petition on March 21, 1988 and that these Defendants agree to the entry of judgment as follows. It further appears that the Defendants, Oklahoma Medical Collection Services, Inc., County Treasurer, Washington County, Oklahoma, and Board of County Commissioners, Washington County, Oklahoma, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

> The North 100 feet of the East 150 feet of Block 6, Tidal Subdivision of the Southwest Quarter of the Northeast Quarter (SW/4 NE/4) of Section 21, Township 28 North, Range 13 East, Washington County, Oklahoma.

The Court further finds that William Edward Miller and Rebecca Lea Miller filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 88-00924-C. On July 5, 1988, the United States Bankruptcy Court in the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtors by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described above.

The Court further finds that on April 10, 1974, William E. Miller, Jr. and Rebecca Lea Miller executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of $7,500.00, payable in monthly installments, with interest thereon at the rate of 8.25 percent per annum.

The Court further finds that as security for the payment of the above-described note, William E. Miller, Jr. and Rebecca Lea Miller executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated April 10, 1974, covering the above-described property. Said mortgage was recorded on April 15, 1974, in Book 622, Page 134, in the records of Washington County, Oklahoma.

The Court further finds that Defendants, William E. Miller, Jr. a/k/a William E. Miller and Rebecca Lea Miller, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due

thereon, which default has continued, and that by reason thereof the Defendants, William E. Miller, Jr. a/k/a/ William E. Miller and Rebecca Lea Miller, are indebted to the Plaintiff in the principal sum of $6,777.32, plus interest at the rate of 8.25 percent per annum from May 1, 1987, plus interest thereafter at the legal rate until fully paid.

The Court further finds that Defendant, Transamerica Financial Services, has a lien on the property which is the subject matter of this action by virtue of a real estate mortgage dated July 13, 1982, and recorded on July 14, 1982, in Book 781, Page 766, in the records of Washington County, Oklahoma, in the current principal amount of $8,624.48, plus accrued interest in the amount of $248.81 as of February 21, 1988, together with interest thereafter at the rate of 21 percent per annum, until paid.

The Court further finds that Defendants, Oklahoma Medical Collection Services, Inc. and County Treasurer and Board of County Commissioners, Washington County, Oklahoma, are in default and have no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, William E. Miller, Jr. a/k/a William E. Miller and Rebecca Lea Miller, in the principal sum of $6,777.32, plus interest at the rate of 8.25 percent per annum from May 1, 1987, until judgment, plus interest thereafter at the current legal rate of 8.04 percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED by the Defendant, Transamerica Financial Services, have and recover in rem in the current principal amount of $8,624.48, plus accrued interest in the amount of $248.81 as of February 21, 1988, together with interest thereafter at the rate of 21 percent per annum, until paid, the costs of maintaining and preserving the property, together with abstracting costs of $100.00, and all costs of this action.

IT IS FURTHER ORDERED that the Defendants, Oklahoma Medical Collection Services, Inc. and County Treasurer and Board of County Commissioners, Washington County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED that an Order of Sale shall be issued to the United States Marshall 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, Transamerica Financial Services, $8,624.48 plus accrued interest in the amount of $248.81 as of February 21, 1988, together with interest thereafter at the rate of 21 percent per annum, until paid, the costs of maintaining and

preserving the property, together with abstracting costs of $100.00.

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 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.

IT IS FURTHER ORDERED that the parties are to make proper application to this Court for any requested attorney fees and to the Court Clerk for all costs attributable to this matter.

ORDERED this 30th day of September, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

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

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, in its corporate capacity,	)	
Plaintiff,	)	
vs.	)	Case No. 88-C-230-E
THEODORE WILLIAM THOMAS, a/k/a TED THOMAS,	)	9-30-88
Defendant.	)	

ADMINISTRATIVE CLOSING ORDER

The Plaintiff Federal Savings and Loan Insurance Corporation having filed its notice of mootness of this action due to settlement of the underlying adversary action, and these proceedings being mooted thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown, for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within 45 days of a final adjudication of the underlying adversary action, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

It is so ORDERED this 30th day of September, 1988.

James O. Ellison

JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. LARRY WICKHAM a/k/a LARRY WICKMAN a/k/a LARRY WICKAMN; SANDRA H. WICKHAM a/k/a SANDRA H. WICKMAN; COUNTY TREASURER, Creek County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Creek County, Oklahoma, Defendants.	)	CIVIL ACTION NO. 88-C-439-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28th day of Sept, 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, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, appear by Wesley R. Thompson, Assistant District Attorney, Creek County, Oklahoma; and the Defendants, Larry Wickham a/k/a Larry Wickman a/k/a Larry Wickamn and Sandra H. Wickham a/k/a Sandra H. Wickman, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, County Treasurer, Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on May 19, 1988; and that Defendant, Board of County Commissioners, Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on May 19, 1988.

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The Court further finds that the Defendants, Larry Wickham a/k/a Larry Wickman a/k/a Larry Wickamn and Sandra H. Wickham a/k/a Sandra H. Wickman, were served by publishing notice of this action in the Sapulpa Legal News, a newspaper of general circulation in Creek County, Oklahoma, once a week for six (6) consecutive weeks beginning June 30, 1988, and continuing to August 4, 1988, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Larry Wickham a/k/a Larry Wickman a/k/a Larry Wickamn and Sandra H. Wickham a/k/a Sandra H. Wickman, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Larry Wickham a/k/a Larry Wickman a/k/a Larry Wickamn and Sandra H. Wickham a/k/a Sandra H. Wickman. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the

Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, filed their Disclaimer herein on May 23, 1988; and that the Defendants, Larry Wickham a/k/a Larry Wickman a/k/a Larry Wickamn and Sandra H. Wickham a/k/a Sandra H. Wickman, 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 Creek County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Two (2) in Block Ten (10), FRANK AND ROOT ADDITION to the city of Sapulpa, in Creek County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on August 8, 1986, Larry Wickham and Sandra H. Wickham executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of

$25,000.00, payable in monthly installments, with interest thereon at the rate of ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, Larry Wickham and Sandra H. Wickham executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated August 8, 1986, covering the above-described property. Said mortgage was recorded on August 11, 1986, in Book 208, Page 1574, in the records of Creek County, Oklahoma.

The Court further finds that the Defendants, Larry Wickham a/k/a Larry Wickman a/k/a Larry Wickamn and Sandra H. Wickham a/k/a Sandra H. Wickman, 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, Larry Wickham a/k/a Larry Wickman a/k/a Larry Wickamn and Sandra H. Wickham a/k/a Sandra H. Wickman, are indebted to the Plaintiff in the principal sum of $28,367.00, plus interest at the rate of 10 percent per annum from February 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, Creek County, Oklahoma, disclaim any right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment <u>in rem</u> against Defendants,

Larry Wickham a/k/a Larry Wickman a/k/a Larry Wickamn and Sandra H. Wickham a/k/a Sandra H. Wickman, in the principal sum of $28,367.00, plus interest at the rate of 10 percent per annum from February 1, 1987 until judgment, plus interest thereafter at the current legal rate of 8.04 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

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

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

NANCY NESBITT BLEVINS
Assistant United States Attorney

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

NNB/css

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

UNITED STATES OF AMERICA Plaintiff, vs. GARRY E. ANDERSON, Defendant.	)))))))))	No. 88-C-609-E

AMENDED JUDGMENT

This matter comes on for consideration this 30th day of September, 1988, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Garry E. Anderson, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Garry E. Anderson, acknowledged receipt of Summons and Complaint on July 1, 1988. The Defendant has not filed an Answer but in lieu thereof has agreed that he is indebted to the Plaintiff in the amount alleged in the Complaint and that judgment may accordingly be entered against him in the amount of $104,512.75 as of March 31, 1988, (Principal $96,044.64, interest $3,731.47, and late charges $4,736.64) plus interest and late charges accruing thereafter at the approximate rates of $25.59 and $13.12 per day respectively, until judgment, plus interest thereafter at the legal rate until paid, and for such other and further relief to which Plaintiff may be entitled at law or in

equity.

IT IS THEREFORE ORDERED that the Plaintiff have and recover judgment against the Defendant, Garry E. Anderson, in the amount of $104,512.75 (Principal $96,044.64, interest $4,731.47, and late charges $4,736.64) plus interest and late charges accruing thereafter at the approximate rates of $25.59 and $13.12 per day respectively, until judgment, plus interest thereafter at the current legal rate of 8.04 percent per annum until paid.

ORDERED this 30th day of September, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

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

DEAN STROER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 86-C-284-E
	)	
TEXACO, INC., et al.,	)	
	)	
Defendants.	)	

9-30-88

ADMINISTRATIVE CLOSING ORDER

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

If, within thirty (30) days of a final adjudication of the bankruptcy proceedings the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

ORDERED this 30th day of September, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

43

FILED

SEP 30 1988

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

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

SPENCE RESEARCH INSTITUTE, INC., Plaintiff,	)	
vs.	)	Case No. 88-C-566-E
BOB E. SURRETT, COLLEEN V.SURRETT, NEVER M. FAIL, JR., MARILYN K. FAIL, JOHN W. SUBLETT, LORENA P. SUBLETT, RUSSELL N. FAIL, PATSY FAIL, PETER L. BUTZ, SR., JANICE BUTZ, INSILCO CORPORATION, JIM WALTER HOMES, INC., JEANNE SPERLING, MARIE DAVIS, DAVID JOE DAVIS, JAMES L. WEBB, MARY G. WEBB, BURTON KERR, JUDY C. KERR, SECURITY NATIONAL BANK, SAPULPA RANCH, INC., BOYD G. MCKAY, PAULA MCKAY, JOSEPH WEIDER, PHYLLIS A. WEIDER, and NICHOL ANN DAVIS, Defendants.	)	

STIPULATION OF DISMISSAL WITH PREJUDICE PURSUANT TO RULE 41(a)(1) AS TO THE DEFENDANTS, PETER L. BUTZ, SR., AND JANICE BUTZ, ONLY

COMES NOW the plaintiff and the defendants, Peter L. Butz, Sr., and Janice Butz, and hereby stipulate pursuant to Fed.R.Civ.P. 41(a)(1) to dismiss the above captioned action with prejudice as to said defendants only. The plaintiff reserves all of its rights as to all other defendants in said action.

Respectfully submitted,

DOYLE & HARRIS

Steven M. Harris
Michael D. Daivs
1414 South Galveston
Tulsa, OK 74127
(918) 582-0090
Attorneys for Plaintiff

FILED

SEP 3 0 1988

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

B48/10

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

KING ASSOCIATES, INC., an Oklahoma corporation,	)	
Plaintiff,	)	
vs.	)	No. 87-C-21-E
MABRY FOUNDRY, INC., OF BEAUMONT a Txas corporation,	)	
Defendant.	)	

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Fed.R.Civ.P. 41, each party hereby dismisses with prejudice the above captioned action, including all claims and counterclaims, with each party to bear his own costs and attorney fees.

BLACKSTOCK JOYCE POLLARD & MONTGOMERY

By Stephen M. Grayless

Stephen M. Grayless, OBA 11849
515 S. Main
Tulsa, OK 74103
(918) 585-2751
ATTORNEYS FOR PLAINTIFF

BRUNE, PEZOLD, RICHEY & LEWIS

By D. E. Dismukes

D. E. Dismukes, OBA 11813
700 Sinclair Bldg.
Six E. 5th
Tulsa, OK 74103
(918) 584-0506

OF COUNSEL

ATTORNEYS FOR DEFENDANT AND COUNTERCLAIMANT

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

B. DARLENE DODD, Plaintiff, v. DEAN WITTER REYNOLDS, INC., a foreign corporation, Defendant.	)	Case No. 88-C-1146E

NOTICE OF DISMISSAL WITH PREJUDICE

COMES NOW Plaintiff and gives notice that she dismisses the above-styled and numbered cause with prejudice to any future action.

FRASIER & FRASIER

By _____
Steven R. Hickman, OBA#4172
1700 Soutwest Boulevard
Tulsa, OK 74127
918/584-4724

CERTIFICATE OF MAILING

I hereby certify that on this 30th day of September, 1988 I did mail a true and correct copy of the above and foregoing Notice Of Dismissal With Prejudice to Wendy R. Robinson, Attorney Law Department, Dean Witter Reynolds, Inc., 101 California Street, San Francisco, CA 94111 with proper postage thereon fully prepaid.

_____
Steven R. Hickman

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

B. DARLENE DODD,	)	
Plaintiff,	)	
v.	)	Case No. 88-C-1146E
DEAN WITTER REYNOLDS, INC., a foreign corporation,	)	
Defendant.	)	

NOTICE OF DISMISSAL WITH PREJUDICE

COMES NOW Plaintiff and gives notice that she dismisses the above-styled and numbered cause with prejudice to any future action.

FRASIER & FRASIER

By _____
Steven R. Hickman, OBA#4172
1700 Soutwest Boulevard
Tulsa, OK 74127
918/584-4724

CERTIFICATE OF MAILING

I hereby certify that on this 30th day of September, 1988 I did mail a true and correct copy of the above and foregoing Notice Of Dismissal With Prejudice to Wendy R. Robinson, Attorney Law Department, Dean Witter Reynolds, Inc., 101 California Street, San Francisco, CA 94111 with proper postage thereon fully prepaid.

_____
Steven R. Hickman

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED
SEP 30 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

CLARENCE P. WATSON and DELORIS A. WATSON, Plaintiffs,	)	
vs.	)	Case No. 88-C-761-E
WAUSAU UNDERWRITERS INSURANCE COMPANY, EMPLOYERS INSURANCE OF WAUSAU A MUTUAL COMPANY, EMPLOYERS LIFE INSURANCE COMPANY OF WAUSAU, foreign corporations, Defendants.	)	

ORDER

NOW on this 30th day of September, 1988, this matter comes on for hearing pursuant to the plaintiff's Application For Dismissal Without Prejudice against defendants WAUSAU UNDERWRITERS INSURANCE COMPANY, EMPLOYERS INSURANCE OF WAUSAU A MUTUAL COMPANY and EMPLOYERS LIFE INSURANCE COMPANY OF WAUSAU, and the Court finds justifiable cause therefor.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that said Application be granted and that the above-entitled matter be dismissed against these defendants WAUSAU UNDERWRITERS INSURANCE COMPANY, EMPLOYERS INSURANCE OF WAUSAU A MUTUAL COMPANY and EMPLOYERS LIFE INSURANCE COMPANY OF WAUSAU, without prejudice to re-filing.

JAMES O. ELLISON

JUDGE

WATSON.OAD:CC

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 30 1988

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

DENNIS R. SEIZ, Plaintiff, vs. TULSA TRUCK MANUFACTURING CO., an Oklahoma corporation and DANA CORPORATION, a Virginia corporation, Defendants.	)	Case No. 87-C-361-E

ORDER

NOW on this 30th day of September, 1988, this matter comes on for hearing pursuant to the plaintiff's Application For Dismissal Without Prejudice, and the Court finds justifiable cause therefor.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that said Application be granted and that the above-entitled matter be dismissed as to both defendants without prejudice to re-filing.

S/ JAMES O. ELLISON

JUDGE

BI6:SEIZ.OAD:cc

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. ONE HUNDRED FIFTY THOUSAND DOLLARS ($150,000.00) IN UNITED STATES CURRENCY, Defendant-in-Rem.	)	CIVIL ACTION NO. 87-C-213-E

JUDGMENT OF FORFEITURE

The cause having come before this Court upon Plaintiff's Application and being otherwise fully apprised in the premises, it is hereby

ORDERED, ADJUDGED, AND DECREED that judgment be entered against the Defendant, One Hundred Fifty Thousand Dollars, ($150,000.00) in United States Currency, and against all persons interested in such property, and that the said property be and the same is hereby forfeited to the United States of America for disposition according to law.

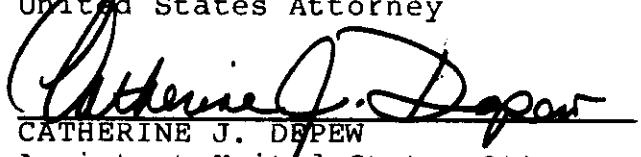
S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney



CATHERINE J. DEPEW
Assistant United States Attorney

B48/10

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

FILED
SEP 3
U.S. DISTRICT COURT

KING ASSOCIATES, INC., an Oklahoma corporation,	)	
Plaintiff,	)	
vs.	)	No. 87-C-21-E
MABRY FOUNDRY, INC., OF BEAUMONT a Txas corporation,	)	
Defendant.	)	

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Fed.R.Civ.P. 41, each party hereby dismisses with prejudice the above captioned action, including all claims and counterclaims, with each party to bear his own costs and attorney fees.

BLACKSTOCK JOYCE POLLARD & MONTGOMERY

By Stephen M. Grayless
Stephen M. Grayless, OBA 11849
515 S. Main
Tulsa, OK 74103
(918) 585-2751
ATTORNEYS FOR PLAINTIFF

BRUNE, PEZOLD, RICHEY & LEWIS

By D. E. Dismukes
D. E. Dismukes, OBA 11813
700 Sinclair Bldg.
Six E. 5th
Tulsa, OK 74103
(918) 584-0506

OF COUNSEL

ATTORNEYS FOR DEFENDANT AND COUNTERCLAIMANT

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

ARTHUR MCELWEE (JR.)	)	
Plaintiff,	)	
v.	)	88-C-155-C
WARDEN JACK COWLEY, et al	)	
Defendant.	)	

FILED
SEP 30 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed September 14, 1988, in which the Magistrate recommended that the Petition be dismissed, without prejudice, and that Petitioner be given the choice of resubmitting his habeas petition based on only exhausted grounds (grounds 1 and 2) with its attendant risks, or, filing a new application after his third ground for relief has been presented to the state court.

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 the recommendations of the Magistrate are hereby adopted as set forth above.

Dated this 30 day of Sept., 1988.

H. Dale Cook
H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

10

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

9-19-88

RICHARD L. HALL and CYNTHIA S. HALL, Plaintiffs,	)	
vs.	)	Case No. 87-C-884-B
INA UNDERWRITERS INSURANCE COMPANY, a foreign corporation, Defendant.	)	

JUDGMENT

INA Underwriters Insurance Company, defendant, having appeared after personal service of summons upon it, and having offered, by notice in writing served on plaintiffs, to permit judgment against it pursuant to Rule 68 of the Federal Rules of Civil Procedure for:

1. Repair of the home which is the subject of the present case as provided on attached Exhibits "A," "B," and "C," but subject to the provisions and limitations of Policy B-459599; and

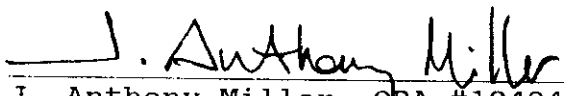
2. Cash payment of $2,000.00, inclusive of all costs, and the plaintiffs having duly accepted defendant's offer by notice in writing served upon defendant within 10 days thereafter; and the offer and notice of acceptance having been filed;

IT IS ORDERED AND ADJUDGED that Richard L. Hall and Cynthia S. Hall, plaintiffs, recover of INA Underwriter Insurance Company, defendant, repair of the subject home, regardless of the

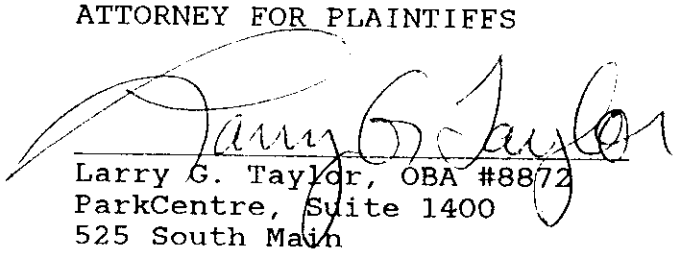
cost, as provided on attached Exhibits "A," "B," and "C", plus cash payment of $2,000.00, inclusive of all costs.

JUDGE OF THE UNITED STATES
DISTRICT COURT

APPROVED:



J. Anthony Miller, OBA #10404
1924 South Utica, Suite 1200
Tulsa, OK 74104
(918) 747-3611
ATTORNEY FOR PLAINTIFFS



Larry G. Taylor, OBA #8872
ParkCentre, Suite 1400
525 South Main
Tulsa, OK 74103-4409
(918) 583-7129
ATTORNEY FOR DEFENDANT

ATKINSON ENGINEERING

STRUCTURAL CONSULTANTS
5200 SOUTH HARVARD
TULSA, OKLAHOMA 74135

1-918/749-2028

March 22nd, 1988

Mr. Larry Taylor
Feldman, Hall, Franden, Woodard & Farris
5225 South Main, Suite 1400
Tulsa, Oklahoma 74103-4409

RE: Richard C. Hall, Residence
305 North Indianwood
Broken Arrow, Oklahoma
AE Job #83106H

Dear Mr. Taylor:

I have received and reviewed both the soils investigations and plumbing pressure test reports as had been recommended in my earlier January 8th, 1988 report of this residence.

In regards to the plumbing pressure tests which were made on February 24th, 1988 the plumbing contractor determined there to be no signs of leaks either in the potable water or sewage drain lines under the home. The positive tests are, therefore, indicative that the drain lines have remained tight and have not been the source of moisture infiltration under the interior floor slab. The positive tests are also indicative that the interior slab settlement has not caused in itself any plumbing line leakage problems.

I have enclosed a small summary sketch of the soils log borings as furnished by the Terracon Co. The sketch interfaces all four boring holes. As can be seen in the sketch the conclusions as derived from the soils investigation are as follows:

1. No voids were encountered beneath the floor slab in any of the core holes. It can, therefore, be assumed that it is most probable that as no voids were found at these select holes that no other voids exist either.

2. Soils engineer indicated the fill sand located directly below the slab in the upper 2 to 3 feet had low moisture content.

3. Soils engineer indicated the silt fill material from 3 feet and lower below the slab had high moisture content with moderate densities.

4. The soils engineer indicated that settlement has been the result of consolidation of fill material possibly precipated by moisture percolation under the structure.

5. The soils engineer indicated that assuming no excess future water is added that additional consolidation should be of a very minor nature.

6. The soils engineer indicated that additional consolidation could occur if:

   a) Further moisture is introduced.
   b) Additional load is applied.

It can, therefore, be seen that the soils engineer indicate that he does not expect further consolidation of the underslab fill materials to occur and thereby, does not expect any further interior slab settlement actions unless excess moisture is introduced or additional load is applied to the slab. It is, therefore, reasonable to assume that no additional load will be applied to the slab unless a second story or similar extensive additional restructuring of the present residence is made. In regards to extra moisture I contacted the engineer, Mr. Phil Wood, by telephone on March 21st, 1988 in regards to this potential problem. Mr. Wood indicated the silt clay fill material located below the upper sand fill was fairly wet, and had good, decent density. He indicated that the soil appeared to be as wet as it would ever be and, therefore, is in as saturated state as he would ever expect. He, also, indicated that had these fill soils had loose density then he might expect further settlement, but due to the decent densities that were found he does not expect there to be any further consolidation of this material. He, also, indicated that although the upper layer sand fill material through the upper 2 feet was not wet he would not expect more water infiltration into these upper layer soils especially in light of the French drain installation that has already been installed.

To summarize, therefore, the soils engineer in his report and telephone conversations has indicated that the underlying soils are in a dense stable condition at the present time and the fill material sands below the 2 feet level have been saturated enough that there is little or no reason to expect any further consolidation tc occur. The upper 2 feet of fill material although dry will most likely stay in a dry state and, therefore, will not be susceptible to further consolidation. The interior slab can be considered to have settled out and to be presently in a stable condition. There is little or no likelyhood for further settlement actions to occur.

The consolidation of fill material which has resulted in the settlement of the interior floor slab condition does meet a few of the perimeters required for "major structural defect", but does not meet all of these

major structural defect requirements as follows:

A. Load Bearing Portion - The interior floor slab does represent a load bearing portion in so much as it supports interior bearing wall framing.

B. Damage - The settlement of the interior floor slab does represent damage to the load bearing structure.

C. Load Bearing Function - Although the load bearing function was disturbed during the settlement process the consolidation of the fill material has allowed for the restablization of the interior floor slab to occur. The fact that little or no potential for further settlement actions exist can be taken to mean the settlement condition has self-stablized. The load bearing function has been restored to its original bearing capacity of the fill soil under the slab elements and, therefore, the slab can continue to support its imposed loads

D. Residential Purposes - The interior floor slab settlements have affected the use of the home for residential purposes. It is questionable as to whether the limited amount of settlement action could be considered to have vitally affected the use.

Although the interior slab, in the opinion of this engineer, does not meet the "major structural defect" criteria the interior hall bearing walls have been left suspended from the ceiling structure and, therefore, a potential for their further settlement could occur. These bearing walls in the opinion of this engineer do meet the "major structural defect" criteria as follows:

A. Load Bearing Element - The interior hall walls are load bearing elements of the structure.

B. Damage - The settlement condition has represented actual damage to these load bearing elements.

C. Load Bearing Function - The separation of the slab from underneath these walls does vitally effect the load bearing function. The walls have been left suspended and may continue to settle until they eventually bear directly upon the interior slab.

D. Residential Purposes - The settlement condition could vitally effect the use of the home for residential purposes.

Recommendations

It is, therefore, the recommendation of this engineer that no corrective action be taken in regards to repairs or stablization of the interior floor slab elements. I would, however, recommend that the interior

walls be repaired by installing shim plates under the wall plates at approximate 24 inches on center. The solid shim plates could be of either wood or steel construction and would allow for proper bearing support between the top of the existing slab and the underside of the existing interior hall walls.

At the owner's option he could consider an additional repair to the include the low-pressure grouting injection under the floor slab. In lieu of installing shim plates under the walls the owner wanted to re-raise the interior floor slab a slurry mix grout could be pumped through holes in the floor slab to re-raise the slab to its more original level position. Qualified contractor such as Atlas Concrete Piers and Pressure Grouting System can install this type grout system. There is, however, no need for interior piers to be installed.

The conclusions and recommendations presented in this report are based upon data obtained from a visual inspection of the property. Variations in material properties and other unknown conditions may exist which differ from those observed or assumed encountered at the time of inspection which cannot be accounted for in this report. Descriptions, recommendations and conclusions contained herein should, therefore, be understood to be generalized since no excavations or destructive testing have been made at the above referenced property.

This report has been prepared for the exclusive use of our client and has been prepared in accordance with generally accepted engineering practices.

I appreciate the opportunity of being able to make this inspection and if I may be of any further service to you, please feel free to call.

Sincerely,

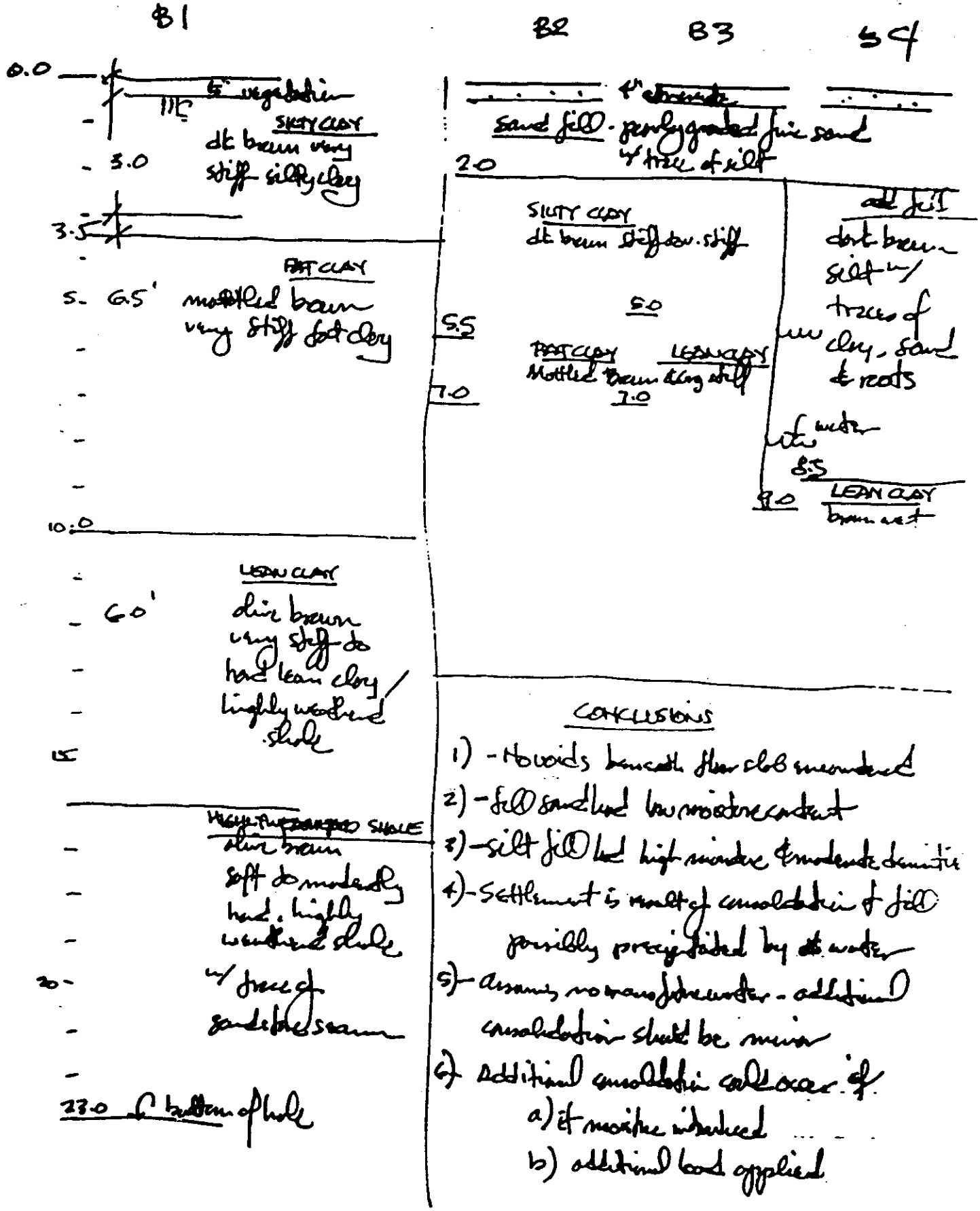
REGISTERED PROFESSIONAL ENGINEER
JAMES M. ATKINSON
9598
OKLAHOMA

James M. Atkinson, P. E.
Atkinson Engineering

JMA/kmb
Enclosures

SUMMARY SKETCH of SOILS LOG BORINGS

3/21/88



CONCLUSIONS

1) - No voids beneath floor slab encountered
2) - fill sand had low moisture content
3) - silt fill had high moisture & moderate density
4) - Settlement is result of consolidation of fill possibly precipitated by dk water
5) - assuming no transformer water - additional consolidation should be minor
6) - additional consolidation could occur if
   a) if moisture introduced
   b) additional load applied

EXHIBIT "A"

Terracon
CONSULTANTS SC, INC.
5865 S Garnett Road
Tulsa, Oklahoma 74146
(918) 250-0461

Gerald R. Olson PE
James A. Cunningham PE
C. Fred Scholl PE
David L. Bevington PE
[illegible] PE
[illegible] PE
[illegible] PE

March 11, 1988

Feldman, Hall, Franden, Woodard & Farris
5225 South Main, Suite 1400
Tulsa, OK 74103-4409

Attention: Mr. Larry G. Taylor

Re: Subsurface Exploration
Existing Richard Hall Residence
305 North Indianwood
Broken Arrow, Oklahoma
Job No. 04885016

Gentlemen:

We have completed the subsurface exploration requested at the above residence. Three (3) soil borings were drilled inside the residence and one on the exterior as part of the subsurface exploration program. The borings were drilled at the locations determined by Atkinson Engineering. A location diagram showing these approximate boring locations is attached to this letter.

Based on visual observations made by Atkinson Engineering, it appears that floor slab settlements have occurred in the area of borings B-2 and B-3. Terracon Consultants have not examined the house to confirm these observations. We are not aware of any monitoring to determine if settlements are still occurring and we have not been asked to make an engineering evaluation of the structure.

The purpose of this report is to describe the subsurface conditions encountered in the borings, analyze the data obtained and provide general comments relative to potential for future floor movement as related to subsurface conditions.

Offices of Terracon Companies:
Colorado: Ft. Collins ■ Iowa: Cedar Falls, Cedar Rapids, Davenport, Des Moines, Storm Lake ■ Illinois: Bloomington
Kansas: Lenexa, (Greater Kansas City), Topeka, Wichita ■ Missouri: Kansas City ■ Nebraska: Omaha ■ Oklahoma: Oklahoma City, Tulsa

SUBSURFACE EXPLORATION PROCEDURES

The concrete floor slab in the interior of the residence was cored using a diamond tipped core barrel. The interior borings were advanced using a hand auger and soil samples were obtained by driving 2 inch diameter seamless steel tubes into the soil to obtain relatively undisturbed soil samples.

The exterior boring was performed with a truck-mounted drill rig and extended using continuous flight augers. Soil samples were obtained using the split-barrel and thin-wall sampling procedures in accordance with ASTM Specifications D-1586 and D-1587, respectively. In the split-barrel sampling procedure, a standard 2 inch O.D. split-barrel sampler is driven into the soil with a 140 pound hammer free falling a distance of 30 inches. The number of blows required to advance the sampler is indicative of the relative density, in-place, of cohesionless soils and to a lesser degree of accuracy indicates the consistency of cohesive soils and the hardness of weathered bedrock. In the thin-wall tube sampling procedure, a seamless steel tube with a sharpened cutting edge is hydraulically pushed into the soil to obtain a relatively undisturbed soil sample. All samples obtained in the field were sealed and returned to our laboratory for further examination, classification and testing.

TESTING PROGRAM

The testing program consisted of performing moisture content, unit dry weight and calibrated penetrometer tests on representative soil samples. The calibrated penetrometer is used to approximate the unconfined compressive strength of a cohesive soil sample. The results of all tests performed are shown on the attached boring logs.

As part of the testing program, each of the soil samples was examined by an experienced soil engineer and classified in accordance with the attached General Notes and the Unified Soil Classification System based on the

soil's texture and plasticity. The estimated group symbol for the Unified System is shown in the appropriate column on the boring logs. A brief description of the Unified System is attached to this letter.

SUBSURFACE CONDITIONS

Boring B-1 was performed on the exterior of the residence at the northwestern corner of the garage. This boring encountered approximately 5 inches of vegetation which was underlain by dark brown, very stiff silty clay to a depth of approximately 3.5 feet. Mottled brown, very stiff, fat clay was encountered beneath the silty clay and extended to a depth of approximately 10 feet. At this depth, olive brown, very stiff to hard lean clay/highly weathered shale was encountered. Olive brown, soft to moderately hard, highly weathered shale with a trace of sandstone seams was encountered at a depth of approximately 16 feet and extended to the maximum depth drilled, 22.3 feet.

Borings B-2, B-3 and B-4 were performed in the interior of the residence and encountered from 3-1/4 to 4-1/4 inches of concrete. Underlying the concrete floor slab was fill material which consisted of poorly graded fine sand with a trace of silt. The sand fill extended to depths of approximately 1.5 to 2 feet below the floor slab. In boring B-4, the sand fill was underlain by additional fill consisting of dark brown silt with traces of clay, sand and roots which extended to 8.5 feet. In borings B-2 and B-3, the fine sand fill was underlain by dark brown, stiff to very stiff silty clay. Brown, medium to stiff, lean to fat clay was encountered in the borings at depths ranging from 5 to 8.5 feet. The borings were terminated at depths ranging from 7 to 9 feet below the floor slab.

The stratification lines shown on the boring logs represent the approximate boundary between soil and rock types; in-situ, the transition between materials may be gradual. Rock classifications are based on disturbed samples recovered from auger cuttings and the split-barrel sampler. Core samples and petrographic analysis may reveal other rock types.

Ground water observations made while drilling and after completion of the borings are shown in the lower left corner of the boring logs. No ground water was encountered in any of the borings except for boring B-4. Ground water was encountered at a depth of approximately 5.2 feet while this boring was being drilled. The water was at a depth of approximately 8.3 feet after completion of the boring. Longer term monitoring would be required to accurately determine ground water levels. Perched water could be present in more pervious materials at some periods of the year. Fluctuations in the long term ground water levels should be anticipated throughout the years depending on variations in hydrological conditions and other factors not apparent at the time the borings were performed.

CONCLUSIONS

No voids were encountered beneath the floor slab. The fill material encountered beneath the floor slab consisted of a poorly graded fine sand which ranged in thickness from 1.5 to 2 feet. The sand had low moisture content. The underlying silt fill or silty clay materials had relatively high moisture content and moderate densities for the material type. It appears that the observed settlement is a result of the consolidation of the sand fill and to a lesser degree, consolidation of the silt and silty clay materials. This settlement could have been precipitated by the introduction of water.

Assuming that no excess water is introduced into the sand fill, additional consolidation under light loads should be minor. However, if moisture is introduced into the sand fill or if additional load is applied to these materials, significant additional consolidation could occur.

GENERAL COMMENTS

The comments provided in this report are based on the data obtained from the soil borings performed at the described locations and from any other information discussed in this report. This report does not reflect any variations which may occur away from or between the borings.

This report has been prepared for the exclusive use of our client for the exclusive application to the project discussed and has been prepared in accordance with the generally accepted geotechnical practices. No other warranty, expressed or implied, is made.

If you have any questions regarding the contents of this letter or if we can be of further service, please do not hesitate to contact us.

Very truly yours,

TERRACON CONSULTANTS SC, INC.

Philip D. Wood

Philip D. Wood
Registered Professional Engineer
Oklahoma No. 14434

David L. Belongia

David L. Belongia
Registered Professional Engineer
Oklahoma No. 12908

PDW/DLB/cw

Enclosures

cc: Atkinson Engineering

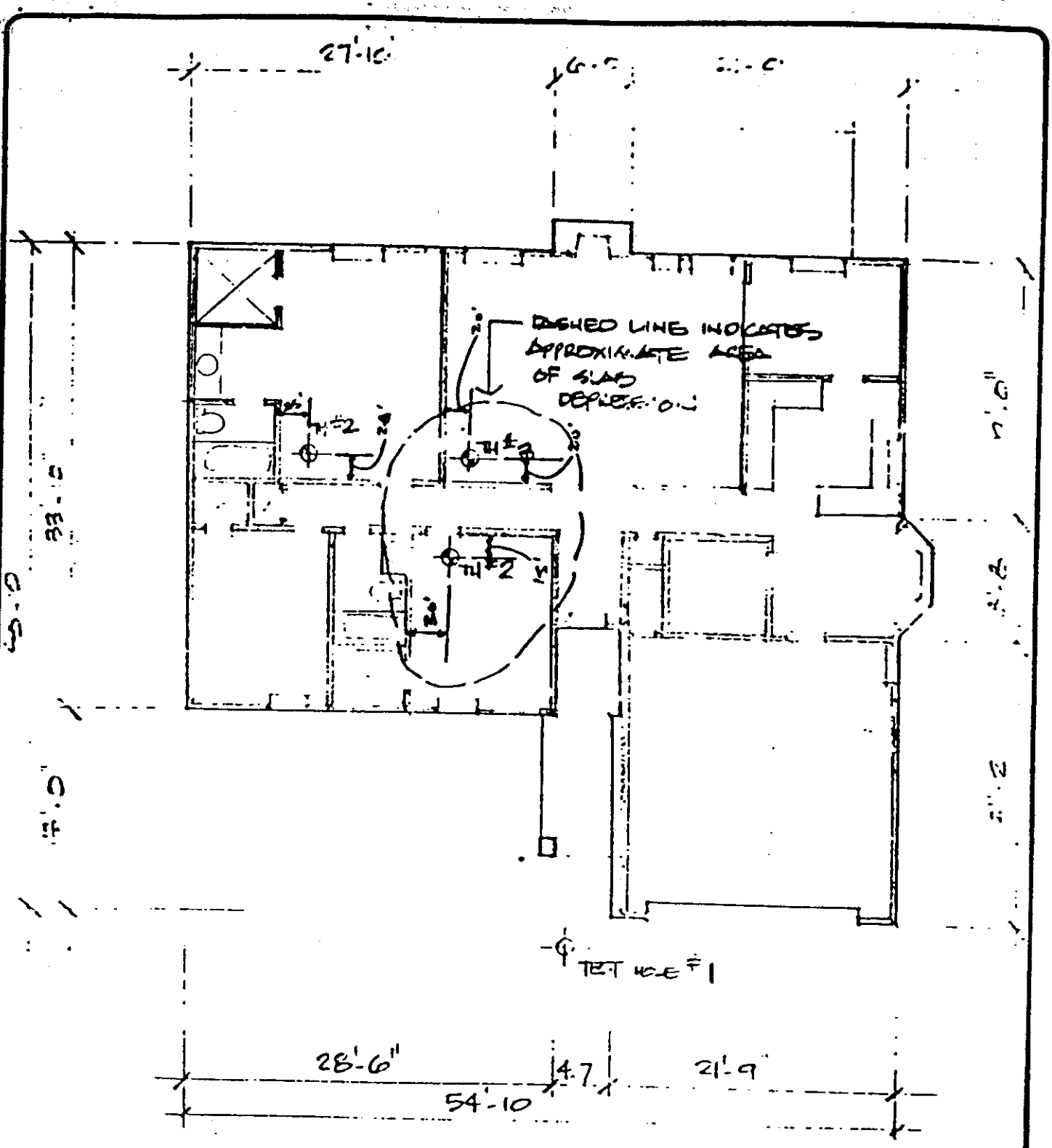


EXHIBIT "A"

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SOILS BORING TEST HOLE LOCATION PLAN

3/32"=1'-0"

NORTH

SOIL BORING LOCATION DIAGRAM
RICHARD HALL RESIDENCE
305 N. Indianwood
Broken Arrow, OK

Job # 04885016	Date March 1988	Drawn PDW	Terracon

GENERAL NOTES

DRILLING & SAMPLING SYMBOLS:

SS : Split Spoon - 1⅜" I.D., 2" O.D., unless otherwise noted
ST : Thin-Walled Tube - 2" O.D., Unless otherwise noted
PA : Power Auger
HA : Hand Auger
DB : Diamond Bit - 4", N, B
AS : Auger Sample
HS : Hollow Stem Auger
PS : Piston Sample
WS : Wash Sample
FT : Fish Tail Bit
RB : Rock Bit
BS : Bulk Sample
PM : Pressuremeter
DC : Dutch Cone
WB : Wash Bore

Standard "N" Penetration: Blows per foot of a 140 pound hammer falling 30 inches on a 2 inch OD split spoon, except where noted.

WATER LEVEL MEASUREMENT SYMBOLS:

WL : Water Level
WCI : Wet Cave In
DCI : Dry Cave In
AB : After Boring
WS : While Sampling
WD : While Drilling
BCR : Before Casing Removal
ACR : After Casing Removal

Water levels indicated on the boring logs are the levels measured in the borings at the times indicated. In pervious soils, the indicated levels may reflect the location of groundwater. In low permeability soils, the accurate determination of ground water levels is not possible with only short term observations.

DESCRIPTIVE SOIL CLASSIFICATION:

Soil Classification is based on the Unified Soil Classification System and ASTM Designations D-2487 and D-2488. Coarse Grained Soils have more than 50% of their dry weight retained on a #200 sieve; they are described as: boulders, cobbles, gravel or sand. Fine Grained Soils have less than 50% of their dry weight retained on a #200 sieve; they are described as: clays, if they are plastic, and silts if they are slightly plastic or non-plastic. Major constituents may be added as modifiers and minor constituents may be added according to the relative proportions based on grain size. In addition to gradation, coarse grained soils are defined on the basis of their relative in-place density and fine grained soils on the basis of their consistency. Example: Lean clay with sand, trace gravel, stiff (CL); silty sand, trace gravel, medium dense (SM).

CONSISTENCY OF FINE-GRAINED SOILS:

Unconfined Compressive Strength, Qu, psf	Consistency
< 500	Very Soft
500 - 1,000	Soft
1,001 - 2,000	Medium
2,001 - 4,000	Stiff
4,001 - 8,000	Very Stiff
8,001 -16,000	Hard
> -16,000	Very Hard

RELATIVE DENSITY OF COARSE-GRAINED SOILS:

N-Blows/ft.	Relative Density
0-3	Very Loose
4-9	Loose
10-29	Medium Dense
30-49	Dense
50-80	Very Dense
80 +	Extremely Dense

RELATIVE PROPORTIONS OF SAND AND GRAVEL

Descriptive Term(s) (of Components Also Present In Sample)	Percent of Dry Weight
Trace	< 15
With	15 - 29
Modifier	> 30

GRAIN SIZE TERMINOLOGY

Major Component Of Sample	Size Range
Boulders	Over 12 in. (300mm)
Cobbles	12 in. to 3 in. (300mm to 75mm)
Gravel	3 in. to #4 sieve (75mm to 4.75mm)
Sand	#4 to #200 sieve (4.75mm to 0.075mm)
Silt or Clay	Passing #200 sieve (0.075mm)

RELATIVE PROPORTIONS OF FINES

Descriptive Term(s) (of Components Also Present In Sample)	Percent of Dry Weight
Trace	< 5
With	5 - 12
Modifier	> 12

EXHIBIT "A"

Terracon

GENERAL NOTES

Sedimentary Rock Classification

DESCRIPTIVE ROCK CLASSIFICATION:

Sedimentary rocks are composed of cemented clay, silt and sand sized particles. The most common minerals are clay, quartz and calcite. Rock composed primarily of calcite is called limestone; rock of sand size grains is called sandstone, and rock of clay and silt size grains is called mudstone or claystone, siltstone, or shale. Modifiers such as shaly, sandy, dolomitic, calcareous, carbonaceous, etc. are used to describe various constituents. Examples: sandy shale; calcareous sandstone.

LIMESTONE	Light to dark colored, crystalline to fine-grained texture, composed of $CaCo_3$, reacts readily with HCl.
DOLOMITE	Light to dark colored, crystalline to fine-grained texture, composed of $CaMg(CO_3)_2$, harder than limestone, reacts with HCl when powdered.
CHERT	Light to dark colored, very fine-grained texture, composed of micro-crystalline quartz (SiO_2), brittle, breaks into angular fragments, will scratch glass.
SHALE	Very fine-grained texture, composed of consolidated silt or clay, bedded in thin layers. The unlaminated equivalent is frequently referred to as siltstone, claystone or mudstone.
SANDSTONE	Usually light colored, coarse to fine texture, composed of cemented sand size grains of quartz, feldspar, etc. Cement usually is silica but may be such minerals as calcite, iron-oxide, or some other carbonate.
CONGLOMERATE	Rounded rock fragments of variable mineralogy varying in size from near sand to boulder size but usually pebble to cobble size (½ inch to 6 inches). Cemented together with various cementing agents. Breccia is similar but composed of angular, fractured rock particles cemented together.

DEGREE OF WEATHERING:

SLIGHT	Slight decomposition of parent material on joints. May be color change.
MODERATE	Some decomposition and color change throughout.
HIGH	Rock highly decomposed, may be extremely broken.

EXHIBIT "A"

Classification of rock materials has been estimated from disturbed samples. Core samples and petrographic analysis may reveal other rock types.

Terracon

LOG OF BORING NO. B-1

OWNER: Richard Hall

ARCHITECT: Atkinson Engineering

SITE: 305 N. Indianwood, Broken Arrow, Oklahoma

PROJECT NAME: Hall Residence

Sample No.	Type Sample	Sampling Distance	Recovery	Blows/ft.	Unconfined Compressive Strength-lbs/ft.²	Water Content - %	Dry Density - lbs/ft.³	Unified Classification Symbol	Depth	Elevation	Description
	PA										5" Vegetation
1	ST	12	12		*7000	16.8	84	CL ML			SILTY CLAY Dark Brown-Very Stiff (3.5')
	PA										
2	ST	12	12		*4500	20.2	104	CH	5		FAT CLAY Mottled Brown Very Stiff
	PA										
3	ST	12	12		*5500	21.8	100	CH			
	PA								10		(10.0')
4	SS	18	18	50	*9000+	20.0					LEAN CLAY/HIGHLY WEATHERED SHALE Olive Brown Very Stiff to Hard
	PA								15		(16.0')
5	SS	12	12	50/6"	*9000+	17.6					HIGHLY WEATHERED SHALE+, TRACE SANDSTONE SEAMS Olive Brown Soft to Moderately Hard
	PA								20		
6	SS	4	4	50/4"	*9000+	17.1					(22.3')
	*Calibrated Penetrometer								25		BOTTOM OF BORING

+Classification estimated from disturbed samples. Core samples and petrographic analysis may reveal other rock types.

EXHIBIT "A"
14 of 30

THE STRATIFICATION LINES REPRESENT THE APPROXIMATE BOUNDARY LINES BETWEEN SOIL AND ROCK TYPES; IN-SITU, THE TRANSITION MAY BE GRADUAL.

WATER LEVEL OBSERVATIONS			
W.L.	None	W.S. OR W.D.	None A.B.
W.L.		B.C.R.	A.C.R.
W.L.			

Terracon

BORING STARTED	3-7-88
BORING COMPLETED	3-7-88
RIG CME 75	FOREMAN LP
APPROVED PDW	JOB # 04885016

LOG OF BORING NO. B-2

OWNER: Richard Hall

ARCHITECT: Atkinson Engineering

SITE: 305 N. Indianwood, Broken Arrow, Oklahoma

PROJECT NAME: Hall Residence

Sample No.	Type Sample	Sampling Distance	Recovery	Blows/ft.	Unconfined Compressive Strength-lbs./ft.²	Water Content - %	Dry Density - lbs./ft.³	Unified Classification Symbol	Depth	Elevation	Description
	DB										3-3/4" Concrete
1	ST	8	8			7.4	96		1		Fill-POORLY GRADED FINE SAND, TRACE SILT Brown
	HA										(2.0')
2	ST	12	12		*8000	23.6	102	CL ML	2		SILTY CLAY Dark Brown Stiff to Very Stiff
	HA								3		
3	ST	12	8		*9000	16.9	103	CL ML	4		
	HA								5		(5.5')
4	ST	12	6		*3500	23.2	99	CH	6		FAT CLAY Mottled Brown and Gray Stiff (7.0')
	*Calibrated Penetrometer								7		BOTTOM OF BORING
									8		

EXHIBIT "A"
15 of 30

THE STRATIFICATION LINES REPRESENT THE APPROXIMATE BOUNDARY LINES BETWEEN SOIL AND ROCK TYPES: IN-SITU, THE TRANSITION MAY BE GRADUAL.

WATER LEVEL OBSERVATIONS

W.L.	None	W.S. OR W.D.	None A.B.
W.L.		B.C.R.	A.C.R.

Terracon

BORING STARTED	3-4-88
BORING COMPLETED	3-4-88
RIG Hand Auger	FOREMAN EJ
APPROVED DPU	JOB # 40881016

LOG OF BORING NO. B-3

OWNER Richard Hall

ARCHITECT Atkinson Engineering

SITE 305 N. Indianwood, Broken Arrow, Oklahoma

PROJECT NAME Hall Residence

Sample No.	Type Sample	Sampling Distance	Recovery	Blows/ft.	Unconfined Compressive Strength-lbs/ft.²	Water Content - %	Dry Density - lbs/ft.³	Unified Classification Symbol	Depth	Elevation	Description
	DB										3-1/4" Concrete
1	BS	17				9.9		CL ML	1		Fill-POORLY GRADED FINE SAND Brown (1.5')
2	ST	12	12		*8000	26.8	99	CL ML	2		SILTY CLAY Dark Brown Stiff to Very Stiff
	HA								3		
3	BS	12				24.1		CL ML	4		(5.0')
	HA								5		LEAN CLAY Brown Soft to Medium
4	ST	12	8		*1000	25.3	93	CL	6		(7.0')
	*Calibrated Penetrometer								7		BOTTOM OF BORING
									8		

EXHIBIT "A"
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THE STRATIFICATION LINES REPRESENT THE APPROXIMATE BOUNDARY LINES BETWEEN SOIL AND ROCK TYPES; IN-SITU, THE TRANSITION MAY BE GRADUAL.

WATER LEVEL OBSERVATIONS

W.L.	None	W.S. OR W.D.	None A.B.
W.L.		B.C.R.	A.C.R.

Terracon

BORING STARTED	3-4-88
BORING COMPLETED	3-4-88
RIG Hand Auger	FOREMAN EJ
APPROVED RDW	JOB # 0488C016

LOG OF BORING NO. B-4

OWNER: Richard Hall

ARCHITECT: Atkinson Engineering

SITE: 305 N. Indianwood, Broken Arrow, Oklahoma

PROJECT NAME: Hall Residence

Sample No.	Type Sample	Sampling Distance	Recovery	Blows/ft.	Unconfined Compressive Strength-lbs./ft.²	Water Content - %	Dry Density - lbs./ft.³	Unified Classification Symbol	Depth	Elevation	Description
	DB										4-1/4" Concrete
1	ST	7	7			5.4			1		Fill-POORLY GRADED FINE SAND Brown (1.5')
	HA										
2	ST	12	8		*5000	24.1	97		2		Fill-SILT, TRACE CLAY, SAND & ROOTS Dark Brown
	HA								3		
3	ST	12	8		*7000	16.8	105		4		
	HA								5		
4	ST	12	12		*1500	24.2	95		6		
	HA								7		
									8		(8.5')
5	BS	7				29.4		CL			(9.0') LEAN CLAY - Brown - Wet
									9		BOTTOM OF BORING
	*Calibrated Penetrometer								10		

EXHIBIT "A"

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THE STRATIFICATION LINES REPRESENT THE APPROXIMATE BOUNDARY LINES BETWEEN SOIL AND ROCK TYPES. IN-SITU THE TRANSITION MAY BE GRADUAL.

WATER LEVEL OBSERVATIONS			
W.L.	5.2' W.S. OR W.D.	8.3' A.B.	
W.L.	B.C.R.	A.C.R.	
W.L.			

Terracon

BORING STARTED	3-4-88
BORING COMPLETED	3-4-88
RIG Hand Auger	FOREMAN EJ
APPROVED PDW	JOB # 04885D16

UNIFIED SOIL CLASSIFICATION SYSTEM

Criteria for Assigning Group Symbols and Group Names Using Laboratory Tests[A]				Soil Classification	
				Group Symbol	Group Name[B]
Coarse-Grained Soils More than 50% retained on No. 200 sieve	Gravels More than 50% of coarse fraction retained on No. 4 sieve	Clean Gravels Less than 5% fines[C]	Cu ≥ 4 and 1 ≤ Cc ≤ 3[E]	GW	Well-graded gravel[F]
			Cu < 4 and/or 1 > Cc > 3[E]	GP	Poorly graded gravel[F]
		Gravels with Fines More than 12% fines[C]	Fines classify as ML or MH	GM	Silty gravel[F, G, H]
			Fines classify as CL or CH	GC	Clayey gravel[F, G, H]
	Sands 50% or more of coarse fraction passes No. 4 sieve	Clean Sands Less than 5% fines[E]	Cu ≥ 6 and 1 ≤ Cc ≤ 3[E]	SW	Well-graded sand[I]
			Cu < 6 and/or 1> Cc > 3[E]	SP	Poorly graded sand[I]
		Sands with Fines More than 12% fines[D]	Fines classify as ML or MH	SM	Silty sand[G, H, I]
			Fines classify as CL or CH	SC	Clayey sand[G, H, I]
Fine-Grained Soils 50% or more passes the No. 200 sieve	Silts and Clays Liquid limit less than 50	Inorganic	PI > 7 and plots on or above "A" line[J]	CL	Lean clay[K, L, M]
			PI < 4 or plots below "A" line[J]	ML	Silt[K, L, M]
		Organic	Liquid limit — oven dried / Liquid limit — not dried < 0.75	OL	Organic clay[K, L, M, N]
					Organic silt[K, L, M, O]
	Silts and Clays Liquid limit 50 or more	Inorganic	PI plots on or above "A" line	CH	Fat clay[K, L, M]
			PI plots below "A" line	MH	Elastic silt[K, L, M]
		Organic	Liquid limit — oven dried / Liquid limit — not dried < 0.75	OH	Organic clay[K, L, M, P]
					Organic silt[K, L, M, Q]
Highly organic soils	Primarily organic matter, dark in color, and organic odor			PT	Peat

[A]Based on the material passing the 3-in. (75-mm) sieve.

[B]If field sample contained cobbles or boulders, or both, add "with cobbles or boulders, or both" to group name.

[C]Gravels with 5 to 12% fines require dual symbols:
GW-GM well-graded gravel with silt
GW-GC well-graded gravel with clay
GP-GM poorly graded gravel with silt
GP-GC poorly graded gravel with clay

[D]Sands with 5 to 12% fines require dual symbols:
SW-SM well-graded sand with silt
SW-SC well-graded sand with clay
SP-SM poorly graded sand with silt
SP-SC poorly graded sand with clay

[E]$Cu = D_{60}/D_{10}$ $\quad Cc = \frac{(D_{30})^2}{D_{10} \times D_{60}}$

[F]If soil contains ≥ 15% sand, add "with sand" to group name.

[G]If fines classify as CL-ML, use dual symbol GC-GM, or SC-SM.

[H]If fines are organic, add "with organic fines" to group name.

[I]If soil contains ≥ 15% gravel, add "with gravel" to group name.

[J]If Atterberg limits plot in shaded area, soil is a CL-ML, silty clay.

[K]If soil contains 15 to 29% plus No. 200, add "with sand" or "with gravel", whichever is predominant.

[L]If soil contains ≥ 30% plus No. 200 predominantly sand, add "sandy" to group name.

[M]If soil contains ≥ 30% plus No. 200, predominantly gravel, add "gravelly" to group name.

[N]PI ≥ 4 and plots on or above "A" line.

[O]PI < 4 or plots below "A" line.

[P]PI plots on or above "A" line.

[Q]PI plots below "A" line.

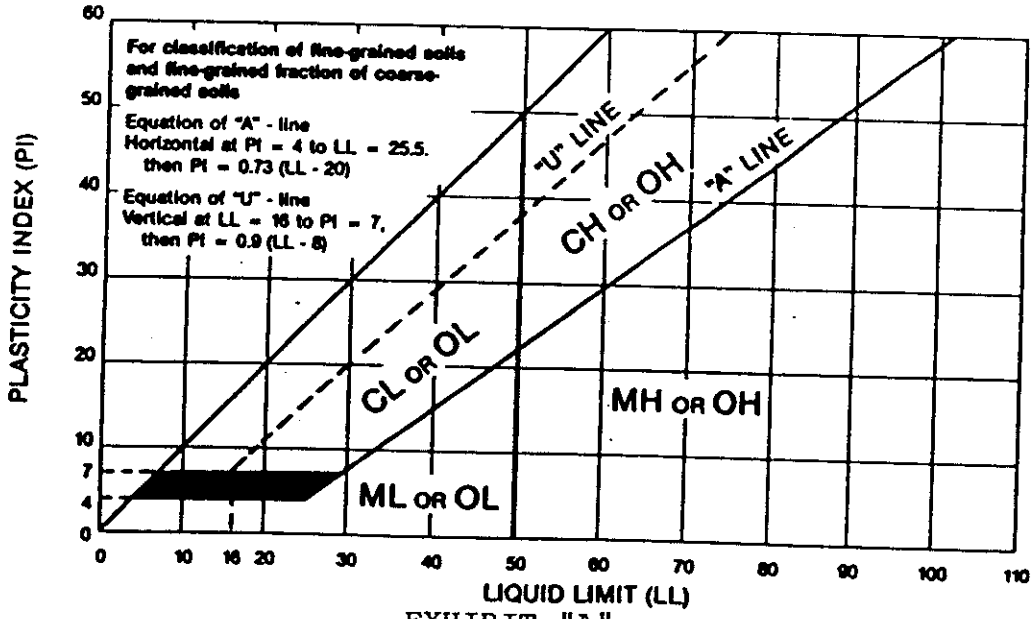


EXHIBIT "A"

Terracon

ATKINSON ENGINEERING

STRUCTURAL CONSULTANTS
5200 SOUTH HARVARD
TULSA, OKLAHOMA 74135

1-918/749-2028

January 8th, 1988

Feldman, Hall, Franden, Woodard & Farris
Attn: Mr. Larry G. Taylor
525 South Main, Suite 1400
Tulsa, Oklahoma 74103-4409

RE: Structural Inspection of the
Richard C. Hall, Residence
305 North Indianwood
Broken Arrow, Oklahoma
AE Job #83106H

Dear Mr. Taylor:

At your request I made an engineering inspection of the Richard Hall, residence at the above address on Monday, December 21st, 1987. The purpose of the inspection was to investigate items of homeowner concern pertaining to their H.O.W. warranty policy for the purposes of rendering an opinion as to qualification of defect items as a "major structural defect" as defined in the policy. This report does not express or imply any warranty or guarantee of the structure but only addresses of the condition of such portions as were readily accessible and observable during the inspection. Determinations enclosed in the report are based on visual observations in keeping with guidelines established for interpretation of policy and language by the Insurance Company of North America.

Structure Description

The house is a one story wood framed Colonial style dwelling which faces west for the purposes of this report and is situated on a standard city lot which slopes down from the southeast to the northwest at an approximate two to three percent grade. The house has brick veneer siding, composition shingle roof and an attached two-car garage on the southwest corner. The foundation system is assumed to consist of a concrete slab floor with continuous perimeter concrete spread footing foundations.

A previous inspection for H.O.W. was made by myself in November of 1983. Defect items at that time were not deemed to meet the "major structural defect" criteria and, therefore, no repairs were made subsequent to my earlier report.

Homeowner Concern

The homeowner is concerned about potential foundation settlement conditions at the following four areas of the home:

1. Garage - The homeowner is concerned that foundations along the south garage wall have shifted and settled causing stem wall rotational displacements from the interior floor slab, wallboard cracks over south wall hall door headers, and similar rotational displacements and base board separations through the adjacent breakfast room area to the east. The homeowner is concerned about potential damage to the garage floor slab which has possibly heaved slightly preventing the overhead garage door from resting or bearing flush to the slab.

2. South Kitchen Wall - The homeowner is concerned about foundation settlements occurring through the south kitchen and dining room wall which may have caused the cracking of Formica splash under the kitchen window and seam joint separation of wallboard vertical joints at the southwest corner of the dining room.

3. Interior Bedroom Hall - The homeowner is concerned about interior slab settlements occurring to the bedroom hall area which has caused cracking of wallboard over hall door headers and the displacement of the southwest bedroom hall and closet door frames. The east wall of the southwest bedroom has come loose from the floor slab presently and is suspended. The homeowner is concerned about cracks that have developed through the entry floor tile adjacent to the bedroom hall.

4. Northeast Corner - The homeowner is concerned that foundations have settled through the east wall of the northeast master bedroom causing an inward displacement of the exterior rock veneer. The homeowner is concerned the veneer has compressed the window frame causing the mullion to bow inwards and crack the window glass.

Determinations

The four areas of homeowner concerned are individually addressed below as they pertain to both the "structural" and "livability" definitions of the policy as follows:

1. Garage - The inspection revealed the south garage wall has continued to shift and settle since the time of the prior inspection in 1983. Stem walls have rotated outwards displacing from the interior floor slab along the south garage wall 3/4 inch with displacements continuing eastwards through the breakfast room bay area, however, appear to dissipate near the kitchen counters. Southwest garage corner veneer has shifted, cracked and displaced up to 3/4 inch from adjacent wood trim. Stem walls have cracked at several locations. Although the garage floor slab does show signs of cracking and limited amount of heaving conditions the slab is non-structural element and not covered under the policy limits. The garage floor slab will,

therefore, not be addressed. In the opinion of the engineer the continued foundation settlements along the south garage wall from the southwest corner eastwards through the breakfast bay meet the criteria for a "major structural defect" as follows:

a) Load Bearing Portion - Perimeter foundations under the exterior south walls constitute load bearing structural elements of the residence.

b) Actual Damage - Cracks and separations of stem walls are indicative of actual damage having been incurred to the foundation elements.

c) Load Bearing Function - The load bearing function of the foundations has been adversely affected by the continued settlement actions and foundations are considered in an unstable state.

d) Residential Purposes - The amount of foundation settlement action and present incurred damage is excessive and, therefore, in the opinion of this engineer "vitally" effects the use of the home for residential purposes.

2. South Kitchen Wall - The inspection revealed that a limited amount of foundation settlement action has occurred along the kitchen and south dining room wall. The amount of settlement action is not excessive and only a limited amount of cosmetic damage has been incurred. Base board joints remain tight through the dining room and what separations were observed were only slightly more than what can be attributable to natural materials shrinkage and light foundation seating conditions. Settlements at this location do not appear to meet all of the criteria for a "major structural defect" as follows:

a) Load Bearing Portion - Perimeter foundations along the south kitchen and dining room walls do constitute load bearing structural elements.

b) Actual Damage - Settlement actions do not appear to be excessive enough to have caused major damage to the foundation elements.

c) Load Bearing Function - Foundation settlements along the east end of the south wall appear to have self-stablized and, therefore, the load bearing function does not appear to have been affected to any adverse degree.

d) Residential Purposes - Incurred damage to date as a result of the limited settlement action is basically cosmetic in nature and, therefore, does not appear to have "vitally" affected the use of the home for residential purposes.

3. Interior Bedroom Hall - The inspection revealed the interior floor slab through the entry and bedroom hall areas has settled

defect" as follows:

a) Load Bearing Portion - Perimeter foundations along the east wall do constitute load bearing portions of the structure.

b) Actual Damage - There were no indications of any excessive foundation settlement actions occurring at this location and, therefore, no verification that any actual damage has been incurred to the foundation elements only to the window frame itself.

c) Load Bearing Function - There was no real evidence to be found to confirm a foundation settlement condition occurring at this location. The defect related to the window frame compression can be attributable to either normal expansion contraction conditions of the exterior rock veneer considered a non-structural material, or to a very limited minor amount of foundation seating conditions. If in deed related to a foundation seating condition it can be considered to fall within acceptable range for normal foundation settlement actions. There are no indications that the foundations are in any undue stable condition at the present time and that the load bearing function has not been adversely affected.

d) Residential Purposes - The defect does not "vitally" affect the use of the home for residential purposes.

Recommendations

Recommendations can at this time be made for the stablization of perimeter foundations along the center south and southwest corners of the home in regards to defect item #1. In regards to defect item #3, however, the interior floor slab settlement, repair recommendations cannot be made until further investigations are complete in order to better ascertain the cause of the settlement condition. It is, therefore, my recommendation the following action be taken:

1. Soils Investigation - Soils borings should be made by a registered soils testing / engineering company such as Stewart White, Terracon or Hemphill. One exterior hole should be made by a truck mounted drill rig to a proper depth to establish a shale or bedrock bearing stratum. Interior test holes should be made after core boring the concrete slab to a depth of 6 to 10 feet with a hand auger. Selected samples from all test holes should be taken to the laboratory for analysis. The soils engineer should determine the type of material, moisture content, density, the existence of any fill material, potential for future expansion or compaction and note any existing voids. Standard penetration tests and Atterburg limits test should be performed as applicable to the type of soils encountered. Shrink/swell tests should be performed if plasticity indexes are found to be particularly high. The company should provide a written report detailing findings and giving an engineering analysis as to the

potential cause of sub-soil failure conditions. All existing underslab voids should be noted in the written report.

2. Plumbing Pressure Tests - All underslab plumbing supply and drain lines should be pressure tested by an experienced qualified plumbing contractor. The contractor should determine the existence of any line leaks through the systems and furnish a written report of his findings. If any line leaks do exist they should be located and proper repairs made at that time.

3. Piers - Underpin the exterior south wall per the enclosed pier location plan and section sketches.

4. Slab Repairs - After the written reports for the soils test and plumbing pressure investigations have been reviewed by this engineer we will submit final repair recommendations for the restoration repair of the interior floor slab.

The conclusions and recommendations presented in this report are based upon data obtained from a visual inspection of the property. Variations in material properties and other unknown conditions may exist which differ from those observed or assumed encountered at the time of inspection which cannot be accounted for in this report. Descriptions, recommendations and conclusions contained herein should, therefore, be understood to be generalized since no soils borings, excavations, or destructive testing have been made at the above referenced property.

This report has been prepared for the exclusive use of our client and has been prepared in accordance with generally accepted engineering practices.

I appreciate the opportunity of being able to make this inspection and if I may be of any further service to you, please feel free to call.

Sincerely,

REGISTERED PROFESSIONAL ENGINEER
JAMES M. ATKINSON
9598
OKLAHOMA

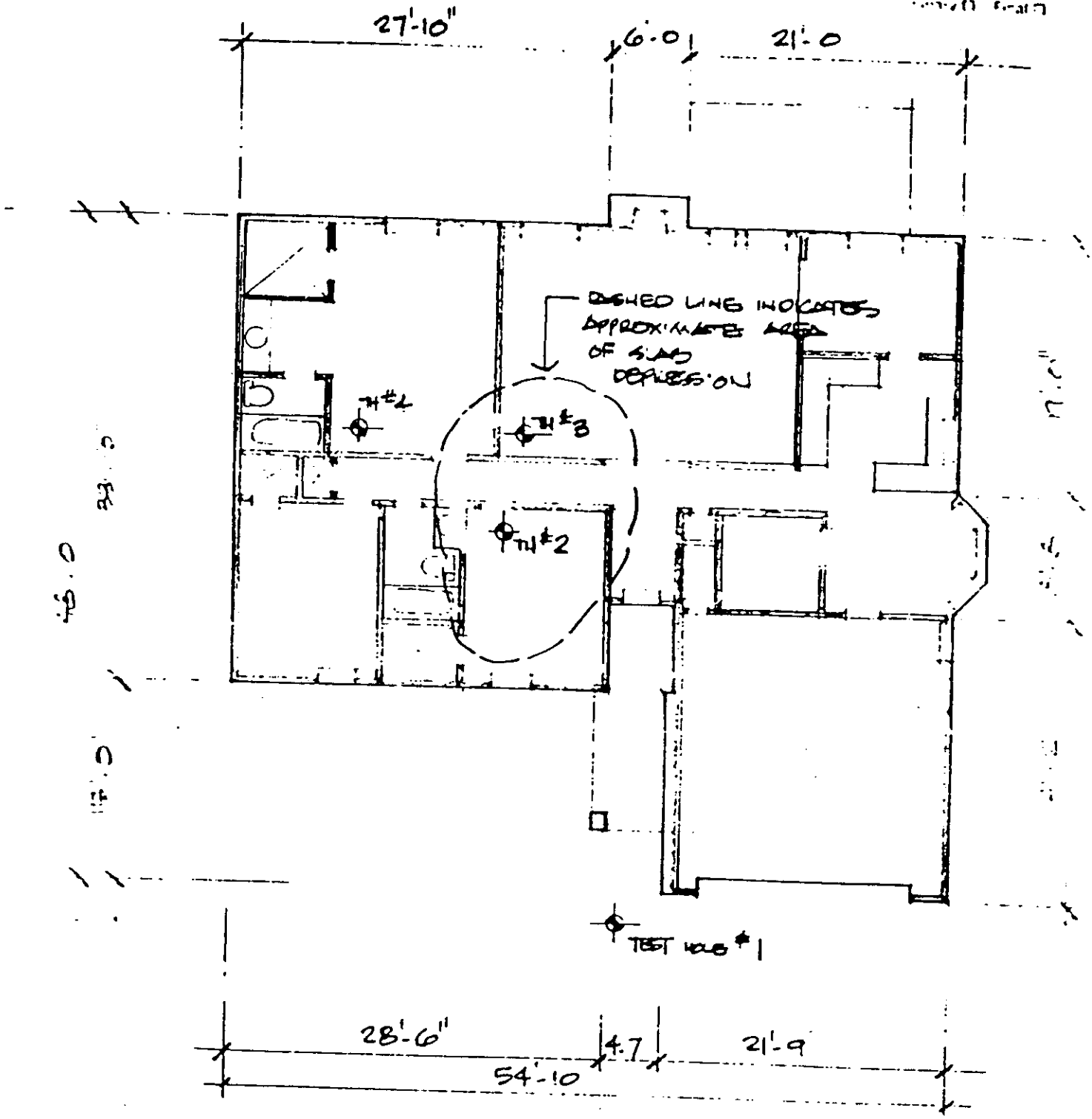
James M. Atkinson, P.E.
Atkinson Engineering

JMA/kmb
Enclosures

ATKINSON ENGINEERING **CALCULATIONS** Sheet of

Subject HALL RES., 305 N. INDIANWOOD, BLOOM. By JWC Date 1-7-88 Job No 831064

Client HOW/INA - LARRY TAYLOR Checked



SOILS BORING TEST HOLE LOCATION PLAN

3/32" = 1'-0"

NORTH

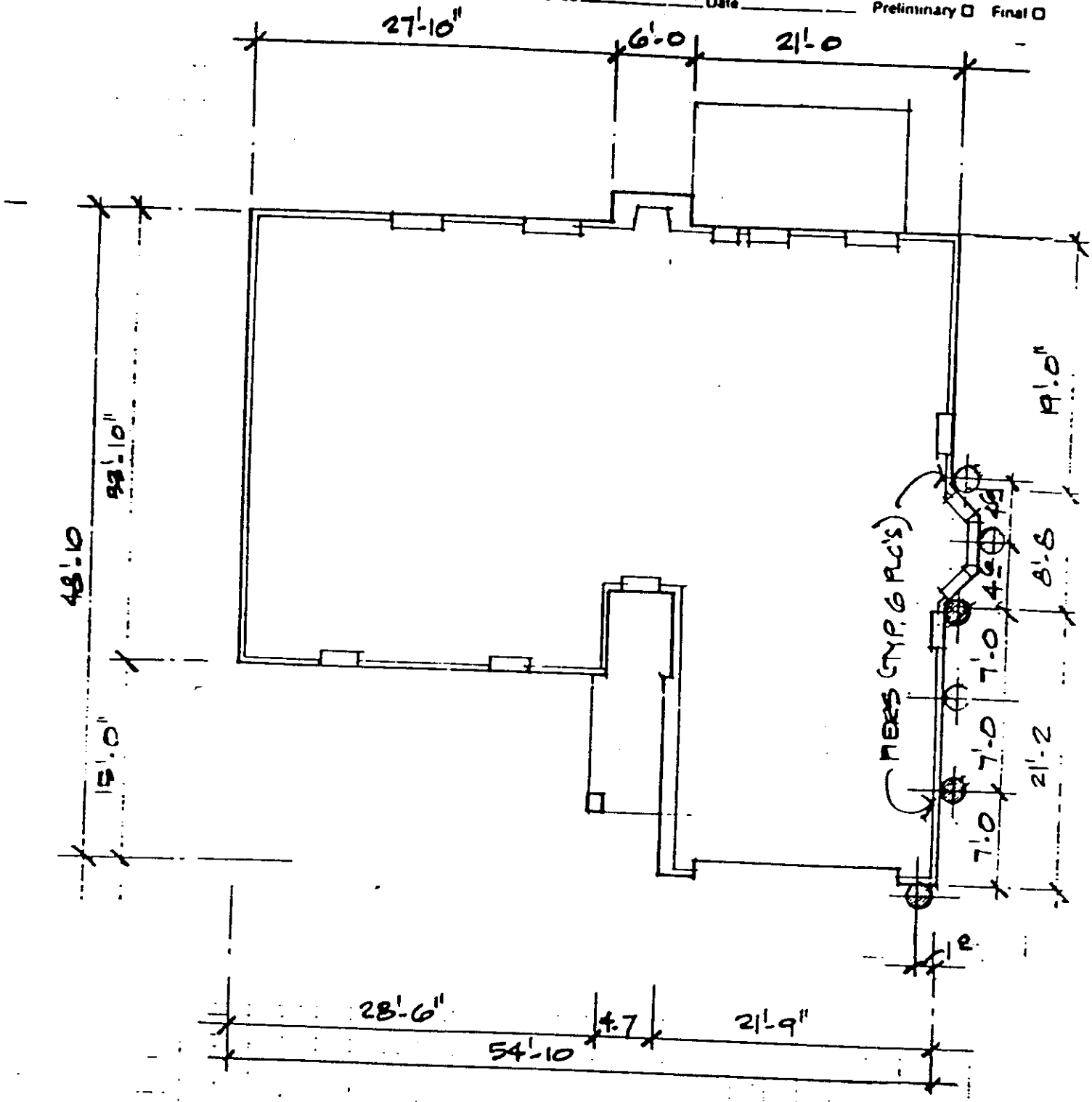
EXHIBIT "A"

ATKINSON ENGINEERING CALCULATIONS

Subject HOLT RES. - 305 N. HOLLYWOOD, ELA. By JWS Date _____ Sheet 1 of _____

Client HOLT/INA - LARRY TAYLOR Checked _____ Date _____ Job No. 821064

Preliminary ☐ Final ☐



PIER LOCATION PLAN

3/32=1'-0"

EXHIBIT "A"

GENERAL PIER RECOMMENDATIONS

Underpinning an existing spread footing foundation changes the manner in which the loads from the structure are transmitted to the earth, by creating a pier and grade beam system. This foundation system by-passes the overlaying soils of clay, uncompacted fill or weak soils and transmits the loads directly to an immovable bedrock stratum for final structural support. The original footing becomes the structural grade beam and the newly installed piers act as columns to support this beam.

Atkinson Engineering's basic recommendation, therefore, is that all piers should bear upon a proper bedrock type stratum such as blue shale, gray shale, limestone, or dense unweathered sandstone. Unless otherwise noted in the report, no soils borings or tests have been made at this site of which Atkinson Engineering is aware. The piering method used therefore should be one that will meet this criteria in all cases, unless other information is available.

The following systems are acceptable under most circumstances:

A. Drilled concrete piers
B. Steel piers

The following system is only acceptable where depth to bedrock is within limits of excavation:

C. Shallow hand dug piers or footings

Enclosed you will find sketches of these systems. Actual pier locations may vary slightly if so required by the contractor for installation purposes.

After the piers have been properly installed the footings should be jacked up if at all possible. Jacking should be done in a manner that will assure roll-back of the footings. It should be noted jacking is not always possible but if successful will provide a possible void space or cavity between the bottom of the footing and the existing soil that will allow expansion in the future of the soil should it ever swell again due to increases in the moisture content.

ATHINSON ENGINEERING **CALCULATIONS** Sheet ____ of ____

Subject ____ By ____ Date ____ Job No. ____

Client STEEL PIER Checked ____ Date ____ Preliminary ☐ Final ☐

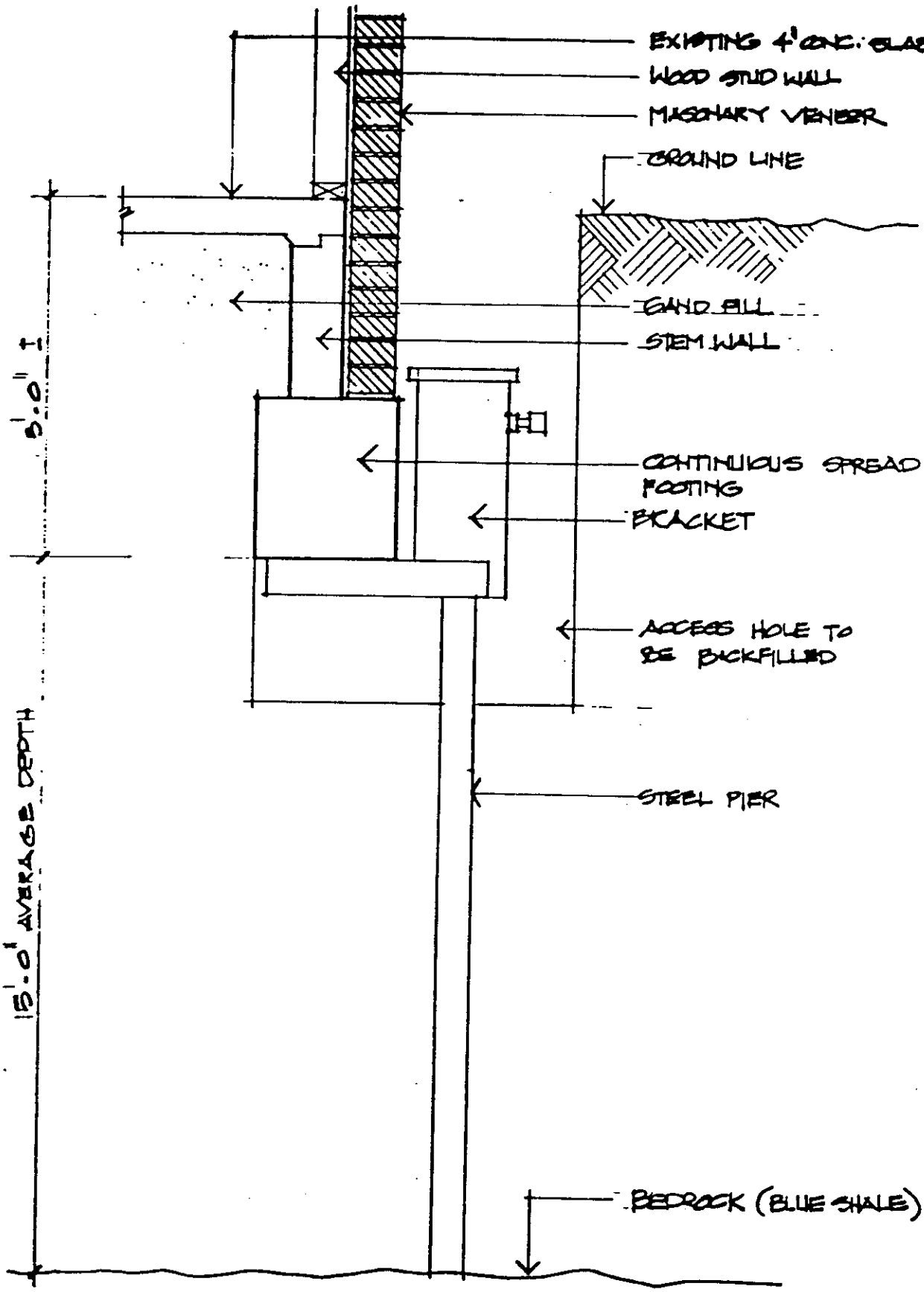


EXHIBIT "A"

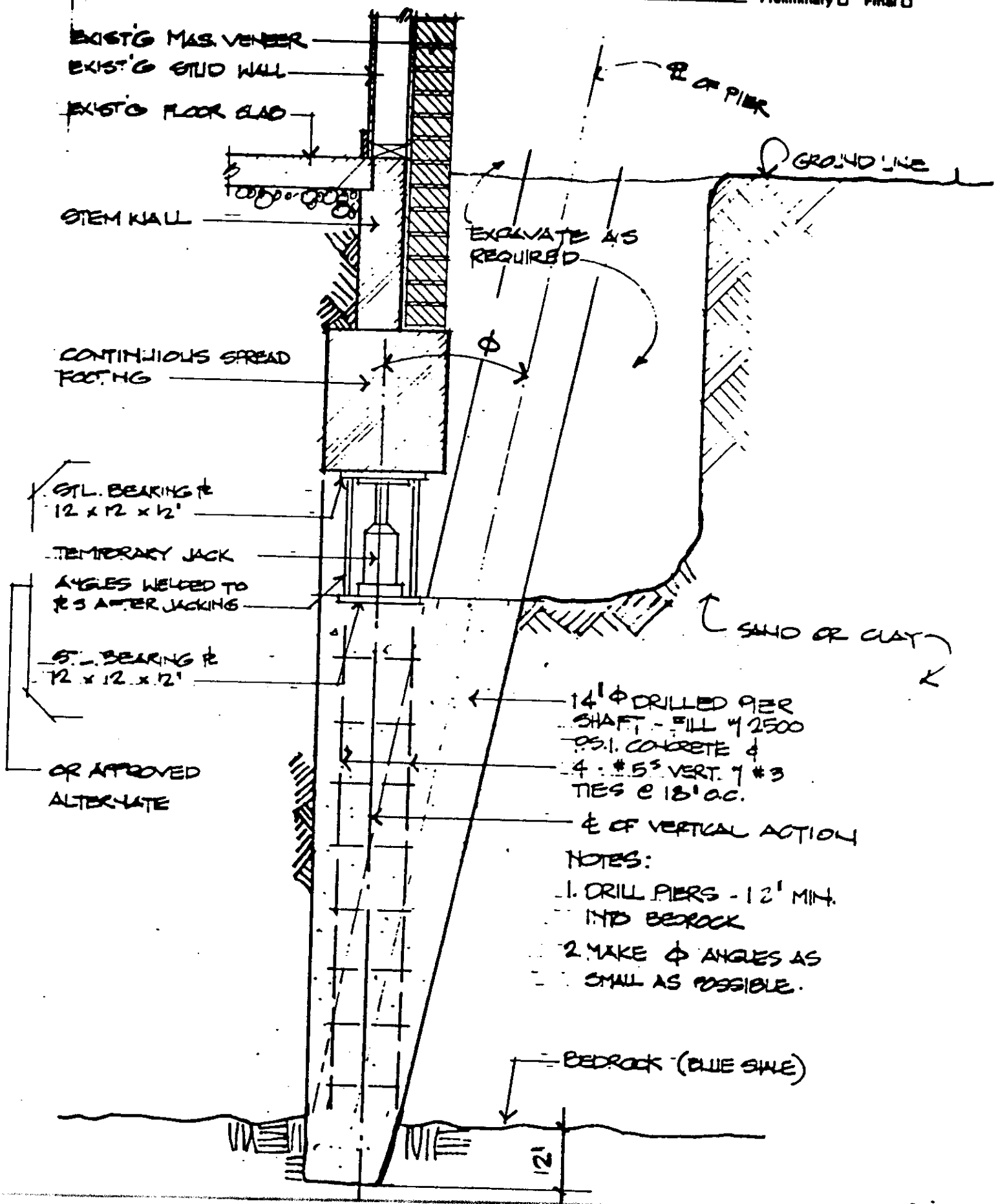
A. Drilled Concrete Piers

1. Pier shafts should be a minimum 14 inches in diameter(24 inches is more acceptable) and drilled with a truck mounted rotary auger to a proper bearing depth 6 to 12 inches into a substantial bedrock bearing stratum.
2. The bottom of the pier shaft or bearing area should lie under, or nearly under, the bottom of the footing.
3. If water is encountered during drilling operations, it should be pumped out.
4. If water infiltration into the hole is too great or the sides of the hole tend to cave-in, then the holes may have to be cased with a steel casing left in place until after the placement of the concrete.
5. If water infiltrates the bottom few feet of the hole only and/or the bottom of the hole is more than 17 feet deep, then concrete should be placed using a tremie.
6. The pier shaft should be excavated beneath the footing to provide a vertical line of action from the footing base to the pier base.
7. Clean the bottom of the pier shaft of all loose material and debris.
8. Install 4 - #5 reinforcing bars(5/8 inch diameter) with #3 ties at 18 inches on center into the pier shaft and align vertically under the footing. Spacers should be installed to allow 2 inches clearance between reinforcing and wall sides.
9. Fill the pier shaft with 2500 P.S.I. concrete(at end of 28 days) to within 2 to 3 feet of the bottom of the footing. Concrete should have a maximum 5 inch slump.
10. At the owner's discretion a set of 3 test cylinders should be taken for every 30 yards of concrete or each day's pour(whichever is minimum) and tested by an independent testing laboratory.
11. Concrete should be left to cure a minimum 7 days before proceeding.
12. Steel jacks should be installed between the top of the pier and base of the original footing with proper bearing plates.
13. After jacking or raising the footing a more permanent steel or masonry support can be installed, however if possible the design should be such as to allow for future adjustment. The contractor may therefore wish to consider leaving the original adjustable jacks in place and sealing the jack system with some type of easily removable sealant.

ATKINSON ENGINEERING CALCULATIONS

Subject DRILLED PIER SYSTEM By _____ Date 8-1-85 Sheet ____ of ____ Job No. _____

Client _____ Checked _____ Date _____ Preliminary ☐ Final ☐



NOTES:

1. DRILL PIERS - 12' MIN. INTO BEDROCK
2. MAKE φ ANGLES AS SMALL AS POSSIBLE.

ATKINSON ENGINEERING

STRUCTURAL CONSULTANTS
5200 SOUTH HARVARD
TULSA, OKLAHOMA 74135

1-918/749-2028

ENGINEERING INSPECTION OF RECOMMENDED REPAIRS

At your request repair inspections will be made of construction in progress to ensure the client that the work is performed in a satisfactory manner in compliance with the recommendations given in this report. Upon completion we will issue a letter of "acceptable compliance", however, we do not assume the responsibility for supervision nor guarantee the contractor's work. Inspections of repairs are not included within the scope of this report and are an extra cost item based on our prevailing hourly rate which we will be happy to provide.

Inspections need to be made in a timely manner while the work is in progress and before it is covered. The number of inspections will vary depending upon the amount and type of repairs required, however, the following can be used as a guideline:

A. Concrete pier installation - One inspection is required of the completed shaft. It should be clean and free of debris. Also, one inspection is required after concrete has been placed and jacks installed, but before the hole is backfilled.
B. Steel Piers - One inspection is required during piering installation preferably just before any jacking operations.
C. Framing - Normally one inspection is required of framing repairs after the work is completed but before it is enclosed.
D. French Drain - Inspections are required of the completed trench with the perforated pipe in place, after gravel backfill, and at completion of the drain installation. (approx. 3 inspections)

Should you so desire to retain **Atkinson Engineering** for these repair inspections, you should contact both Atkinson Engineering and the contractor prior to commencement of construction. The contractor should be advised the work will not be accepted without the inspections and will be responsible for proper scheduling of inspections with **Atkinson Engineering** as follows:

- **Atkinson Engineering** should be notified 24 to 48 hours in advance of any required inspections.
- The client will be responsible for any additional inspections called for by the contractor.

Detach and Mail to **Atkinson Engineering**

. . . . . .

I UNDERSTAND AND ACCEPT THE CONDITIONS OF REPAIR INSPECTIONS AS OUTLINED ABOVE. AUTHORIZATION IS HEREBY GIVEN TO PROCEED WITH THE INSPECTIONS AND I WILL BE RESPONSIBLE FOR EXPENSES INCURRED FOR THE INSPECTIONS.

SIGNED BY: _____

DATE: _____

EXHIBIT "A"

THE Hydra-Lift™ SYSTEM
5031 EAST ADMIRAL PLACE–TULSA, OKLAHOMA 74115–(918) 835-2369

March 28, 1988

Mr. Larry Taylor
Feldman, Hall, Franden, Woodard, Farris
5225 S. Main, Suite 1400
Tulsa, OK 74103-4409

RE: Richard C. Hall
305 Indianwood
Broken Arrow, OK

REPAIR PROPOSAL

I. INTERIOR

A. Hydra-Lift slab as per attached work order:
(Atkinson Engineering Layout)
1. Install Hydra-Lift brackets as necessary in order to support slab.
2. Raise slab utilizing the Hydra-Lift method.
3. Drive steel piers utilizing the Hydra-Lift method to refusal.
4. Apply grout under low pressure to create piers under slab.

B. Prep room before slab work and cosmetically reprair cracks and holes after operation.

C. Clean up and haul away all debris. $1,750.00 ~~$~~ 185

D. Plumbing:
1. Pressure test plumbing before repairs started. 150.00
2. Pressure test plumbing after repairs completed. 150.00

E. Remove and replace carpet and pad in area to be Hydra-Lifted. 75.00

II. EXTERIOR

A. South Side
1. Dig down to the bottom of the footing (approximately 3'X4'X30") install steel piers to stabilize the vertical settlement in the areas indicated. The piers shall be driven hydraulically to make contact with rock or other suitable support. Backfill and compact all removed dirt. 5 piers @ $440.00 2,200.00

B. West Side
1. Dig down to the bottom of the footing (approximately 3'X4'X30") install steel piers to stabilize the vertical settlement in the areas indicated. The piers shall be driven hydraulically to make contact with rock or other suitable support. Backfill and compact all removed dirt. 1 piers @ $440.00 440.00

2750

TOTAL $4,765.00

+ 140 concrete patch

$4,905

WARRANTY: Five (5) year warranty to apply to exterior piers and three (3) year warranty to apply to interior piers. (See attached) Warranties to apply to areas shaded in red on attached Atkinson Engineering diagram.

Respectfully submitted,

Larry V. Sanders

Larry V. Sanders
Hydra-Lift, Inc.

LVS/bm
Encls.
cc: file
Jerry Gaige

BRIGHT
CONSTRUCTION
CORPORATION

18501 East Admiral Place
P.O. Box 690120
Tulsa, OK 74169-0120
(918) 266-6677

March 29, 1988

Mr. Larry Taylor
525 S. Main, Suite 1400
Tulsa, Oklahoma 74103

RE: Richard Hall
305 N. Indianwood
Broken Arrow, Okla.

REPAIR ESTIMATE

EXTERIOR

South Side

Clean out and tuck point 32 LF mortar joint	
Clean out and tuck point underneath kitchen window - match mortar as closely as possible - minimum	250.00
Adjust overhead door and track	85.00
Install 30 LF molding around overhead door jamb to cover separation @ 1.26	37.80
Paint overhead door jamb	18.00

INTERIOR

Breakfast Nook - 7'x14'x8' = 98 SF

Remove and replace 32 SF wainscot @ 1.22	39.04
Stain 32 SF wainscot to match @ .56	17.92
Remove and replace 20 LF base and crown mold @ 1.26	25.20
Stain 20 LF base and crown mold @ .56	11.20
Repair sheetrock	72.50
Steam off 5 rolls wall covering @ 12.00	60.00
Prep 106 SF walls @ .22	23.32
Install 5 rolls wall covering @ 30.00	150.00
Scrape back 12 SF acoustic ceiling and spray acoustic ceiling	36.00
Scrape up 98 SF vinyl floor tile @ .65	63.70
Prep 98 SF floor @ .22	21.56
Install 98 SF vinyl floor covering @ 2.05	200.90

Kitchen - 9'x12'x8' = 108 SF

Install 4 LF corner mold to cover separation between cabinets and wall	18.00
Stain 4 LF corner mold to match	12.00

EXHIBIT "C"

continued

Kitchen - continued	
Remove and replace 7 LF formica top and splash @ 27.00	189.00
Steam off 2 rolls wall covering @ 12.00	24.00
Prep 29 SF walls @ .22	6.38
Install 2 rolls wall covering @ 30.00	60.00
Scrape up 108 SF vinyl floor covering @ .65	70.20
Prep 108 SF floor @ .22	23.76
Install 108 SF vinyl floor covering @ 2.05	221.40
Utility Room - 6'x6'x8' = 36 SF	
Remove and reset washer and dryer	36.00
Scrape up 36 SF vinyl floor covering @ .65	23.40
Prep 36 SF floor @ .22	7.92
Install 36 SF vinyl floor covering @ 2.05	73.80
Entry Hall - 6'x5'x8' = 30 SF	
Scrape up 30 SF ceramic floor tile @ 2.50	75.00
Prep and install vinyl sheet on floor	26.40
Install 30 SF ceramic floor tile @ 7.50	225.00
Paint 30 SF ceiling @ .30	9.00
Hall - 3'x34'x8' = 102 SF	
Repair sheetrock	72.50
Spray and feather in acoustic ceiling	75.00
Retexture walls to match	75.00
Paint 536 SF ceiling and walls @ .30	160.80
Southwest Bedroom - 10'x12'x8' = 120 SF	
Repair sheetrock	72.50
Retexture walls to match	75.00
Paint 352 SF walls @ .30	105.60
Adjust and reset two doors and jambs @ 75.00	150.00
Finish two doors @ 18.00	36.00
General cleanup and haul away debris	126.00
	3,161.80
Contractor's taxes, insurance and social security	316.18
	3,477.98
Contractor's overhead, supervision and profit 10%	347.80
	$3,825.78

Thank you,

Chuck Wise

Chuck Wise
Bright Construction Corporation

CW/ebb

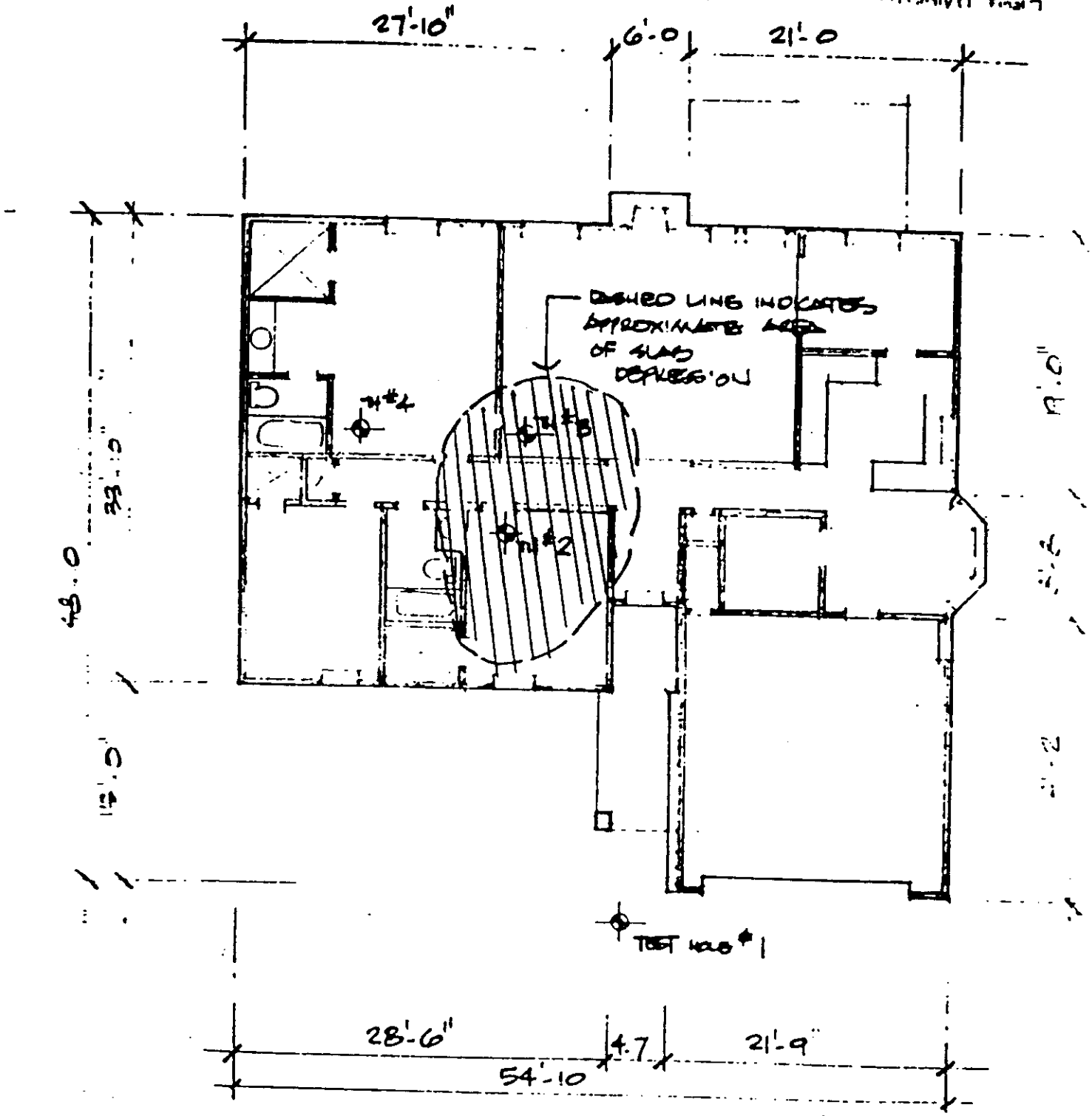
cc: Jerry Gaige, Western Claims, Inc.
file

EXHIBIT "C"

ATKINSON ENGINEERING CALCULATIONS

Subject HOLL. PES. : 305 N. INDIANWOOD, BR. By MW Date 1-7-88 Job No 8710GH

Client HOW/INA - LARRY TAYLOR Checked



SOILS BORING TEST HOLE LOCATION PLAN

1/32"=1'-0"

NORTH

EXHIBIT "B"

ATHINSON ENGINEERING CALCULATIONS

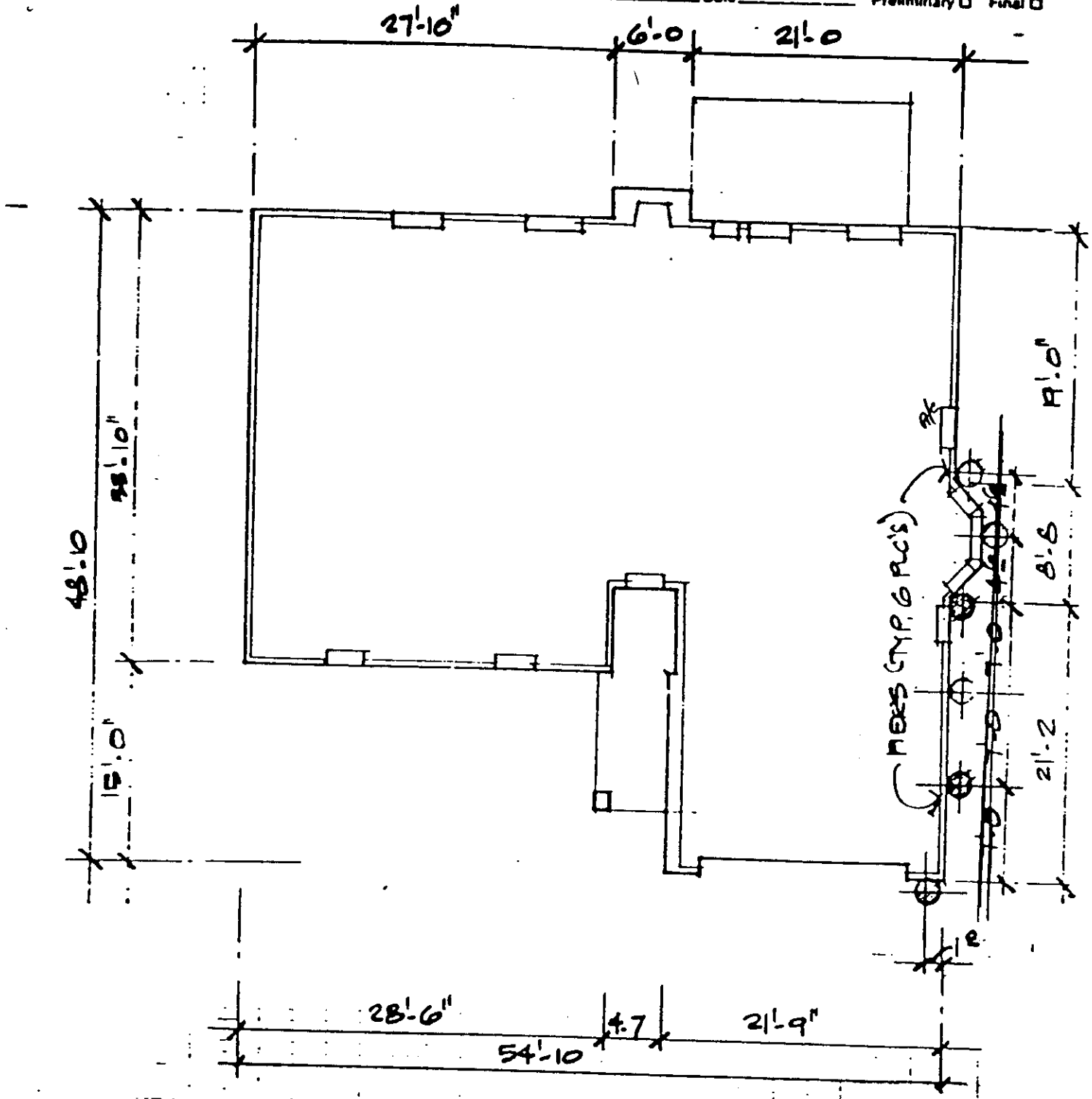
Subject HALL RES. - 305 H. HOWARD, GA. By HAS Date

Client HAS/HA - LARRY TAYLOR Checked Date

Sheet of

Job No. 89064

Preliminary ☐ Final ☐



PIER LOCATION PLAN

SCALE 1'-0"

EXHIBIT "B"

THE Hydra-Lift™ SYSTEM
1124 NORTH MINGO ROAD TULSA, OKLAHOMA 74116 (918) 835 2369

WARRANTY

The interior piering performed at your residence is guaranteed against further settlement for a period of three (3) years from the date of completion. If within that three year period, the slab in the area indicated on the enclosed diagram should settle, Hydra-Lift will, at no cost to you, correct any defect in workmanship or material in order to stabilize such area. If Hydra-Lift, during the preparation phase, should penetrate, damage or cause to be damaged any pipes, vents, electrical lines or other fixtures, Hydra-Lift will promptly repair such damage. However, due to the unnatural action of slab settlement and subsequent raising by slab piering, Hydra-Lift cannot be responsible for any damage to interior of ceiling, walls, woodwork, heating and/or air ducts, or water and/or sewer pipe in floor caused by a direct result of the slab lifting. Hydra-Lift does not warrant the slab against upheaval or swelling. THE FOREGOING IS OUR SOLE WARRANTY. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTY OR MERCHANTABILITY AND WARRANTY OF FITNESS FOR PURPOSE, ARE EXCLUDED. Your exclusive remedy shall be for correction of any defect in workmanship and materials, as set forth above. In no event shall you be entitled to cosmetic or other damages, resulting from an installation failure.

C. Lee Murray
C. Lee Murray
Hydra-Lift System

Residence located at: 305 Indianwood
Broken Arrow, OK

EXHIBIT "B"

THE Hydra-Lift™ SYSTEM
1124 NORTH MINGO ROAD - TULSA, OKLAHOMA 74116 - (918) 835-2369

WARRANTY

The exterior piering performed at your residence is guaranteed for a period of five years from date of completion against all defects in material and workmanship. If any vertical settlement occurs in the exterior area piered within five years of completion of the work, other than settlement or movement caused by earthquake, severe wind, flood, change in the water table, other Act of God, or any similar man-made condition, then Hydra-Lift will, at no cost or expense to you, correct any defect in workmanship or material that may have occurred in order to stabilize such area. THE FOREGOING IS OUR SOLE WARRANTY. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTY OR MERCHANTABILITY AND WARRANTY OF FITNESS FOR PURPOSE, ARE EXCLUDED. Your exclusive remedy shall be for correction of any defect in workmanship to consequential damages, regardless of whether the claim is based on warranty, contract, tort, or otherwise.

C. Lee Murray
C. Lee Murray
Hydra-Lift System

Residence of: 305 Indianwood
Broken Arrow, Ok

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

9-29 K

Clerk
COURT

FEDERAL DEPOSIT INSURANCE CORPORATION Plaintiff, vs. JODY L. SWEETIN and DEBORAH A. SWEETIN d/b/a SWEETIN PROPERTIES Defendant.	)	Case No. 87-C-389-E

JOURNAL ENTRY OF JUDGMENT
AND DECREE OF FORECLOSURE

This cause came on for hearing before the undersigned Judge on the 19th day of August, 1988 upon the Motion for Summary Judgment filed by the Plaintiff. Plaintiff, Federal Deposit Insurance Corporation ("FDIC"), appeared by its attorneys of record, Gable & Gotwals, by James W. Rusher, and the Defendants, Jody L. Sweetin and Deborah A. Sweetin, d/b/a Sweetin Properties ("Sweetins"), appeared by and through their attorney of record, Richard A. Borg.

This Court has jurisdiction over the subject matter and all the parties hereto. The Court, having examined the pleadings, and in consideration thereof, finds as follows:

1. The FDIC's Motion for Summary Judgment is granted as there is no genuine issue as to any material fact and the FDIC is entitled to judgment as a matter of law.

2. The FDIC is entitled to judgment against the Sweetins on a promissory note executed on or about October 11, 1984, in the principal amount of $940,000 ("Note 1"), in the principal sum of $362,465, plus interest in the amount of $83,374.61 to November 16, 1987, plus interest accruing thereafter at the Bank of Commerce and Trust Company's prime lending rate plus 2%, as provided in Note 1, from November 16, 1987 to and including August 19th, 1988, the date of judgment, together with interest thereafter at

37

ZPZ/08-88372/al

the rate of 7.95% per annum, plus a reasonable attorneys fee, which shall constitute a lien on the subject property until paid in full, plus court costs accrued and accruing (collectively referred to as "Indebtedness-1").

3. The FDIC has a first and prior lien on the real estate and improvements described in the Complaint by virtue of the Real Estate Mortgage ("Mortgage") granted by the Sweetins to the Bank of Commerce and Trust Company on October 11, 1984. The Mortgage described in the Complaint secures payment of the Indebtedness-1, consisting of principal, interest, late charges, collection costs, attorneys fees, escrow deficiency, court costs to date and abstracting costs. Said real estate is described as follows:

> Lots One (1) through Ten (10), Block Two (2), Lots Nineteen (19) through Twenty-Eight (28), Block Two (2), EDENSOUTH, an addition to the City of Glenpool, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

4. The Mortgage has been partially released as to the following-described lots and blocks:

> Lots 4, 10, 19, 20, 21, 22, and 28,Block 2, EDENSOUTH, an Addition of the City of Glenpool, Tulsa County, State of Oklahoma.

5. FDIC is entitled to judgment against Sweetins on a promissory note executed on or about May 21, 1986, in the principal sum of $75,000 ("Note 2"), in the principal sum of $69,539.20, plus interest in the amount of $15,357.69 as of November 16, 1987, plus interest accruing thereafter at the Bank of Commerce's prime lending rate plus 2% as provided in Note 2 from November 16, 1987 to and including August 19, 1988, the date of judgment, together with interest thereafter at the rate of 7.95% per annum, plus a reasonable attorney's fee which shall constitute a lien on the subject property until paid in full, plus court costs accrued and accruing (collectively referred to as "Indebtedness-2").

5. FDIC has a lien on the real estate and improvements described in the Complaint by virtue of the Mortgage therein described to secure payment of Indebtedness-2, consisting of principal, interest, late charges, collection costs, attorneys fees, escrow deficiency, court costs and abstracting costs.

6. FDIC does hereby elect to have the property hereinabove described sold with appraisal, and such election is hereby approved and said sale shall be with appraisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court as follows:

A. FDIC shall have and recover of and from the Defendants, Jody L. Sweetin and Deborah A. Sweetin, a judgment in the amount of Indebtedness-1, hereinabove more fully set forth, plus interest accruing thereafter, and accruing costs of collection, including a reasonable attorneys fee, for all of which let execution issue.

B. FDIC shall have and recover from the Defendants, Jody L. Sweetin and Deborah A. Sweetin, a judgment in the amount of Indebtedness-2, hereinabove more fully set forth, plus interest accruing thereafter until the indebtedness is paid in full, and accruing costs of collection, including a reasonable attorneys fee, for all of which let execution issue.

C. FDIC has a first and prior mortgage on the real estate and improvements, the legal description of which is:

> Lots One (1) through Ten (10), Block Two (2), Lots Nineteen (19) through Twenty-Eight (28), Block Two (2), EDENSOUTH, an addition to the City of Glenpool, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

less:

> Lots 4, 10, 19, 20, 21, 22, and 28,Block 2, EDENSOUTH, an Addition of the City of Glenpool, Tulsa County, State of Oklahoma.

The mortgage lien of FDIC is hereby adjudged and established to be a good and valid lien upon the property and its judgment indebtedness is secured by said lien.

D. Upon failure of Sweetins to satisfy the FDIC's judgment as described above, the Sheriff of Tulsa County, Oklahoma, shall levy upon the property and after having the same appraised as provided by law, shall proceed to advertise and sell same according to law, and shall immediately turn over the proceeds thereof to the Court Clerk for the Northern District of Oklahoma, who shall apply the proceeds derived from said sale as follows:

i. The payment of the costs of this action, plus costs of sale;

ii. The payment to FDIC of its Judgment on Indebtedness-1 as hereinabove set forth;

iii. In payment to the FDIC of its judgment on Indebtedness-2 as hereinabove set forth; and

iv. The residue, if any, shall be deposited with the Clerk of this Court to await further order of this Court.

E. From and after the sale of the property, all the parties to this action, and each of them, and all persons claiming under any of them, shall be and they are hereby forever barred and foreclosed from any and every lien upon right, title, interest, estate, and equity of redemption in and to the property, or any portion thereof.

F. Upon confirmation of the above sale, the Sheriff shall execute and deliver a good and sufficient deed to the property to the purchaser, which shall convey all the right, title, interest, estate and equity of redemption of all the parties herein, and all persons claiming under all the parties herein, and each of them, since the filing of this action, and upon application of the purchaser, the Court Clerk shall issue a Writ of Assistance to the Sheriff, who shall thereupon and forthwith place said purchaser in full and complete possession of said real property and improvements.

DATED this 28th day of ~~August~~ Sept, 1988.

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

Larry D. Thomas
James W. Rusher
Gable & Gotwals
20th Floor, Fourth National Bldg.
Tulsa, OK 74119
ATTORNEYS FOR FDIC

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. SHELLY M. JOHNSON; CREOLA M. JOHNSON; COUNTY TREASURER, Tulsa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, Defendants.	)	FILED SEP 29 1988 Jack C. Silver, Clerk U. S. DISTRICT COURT CIVIL ACTION NO. 88-C-629-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28 day of Sept., 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, Shelly M. Johnson and Creola M. Johnson, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Shelly M. Johnson, acknowledged receipt of Summons and Complaint on July 22, 1988; that the Defendant, Creola M. Johnson, was served with Summons and Complaint on August 26, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on July 22, 1988; and that Defendant, Board

of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on July 7, 1988.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on July 26, 1988; and that the Defendants, Shelly M. Johnson and Creola M. Johnson, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

> Lot Twenty-two (22), Block Four (4), VACATION CENTER ADDITION, a Subdivision in Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on November 12, 1986, the Defendants, Shelly M. Johnson and Creola M. Johnson, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of $49,500.00, 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, Shelly M. Johnson and Creola M. Johnson, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated November 12, 1986, covering

the above-described property. Said mortgage was recorded on November 13, 1986, in Book 4982, Page 1201, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Shelly M. Johnson and Creola M. Johnson, 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, Shelly M. Johnson and Creola M. Johnson, are indebted to the Plaintiff in the principal sum of $49,890.83, plus interest at the rate of 9.5 percent per annum from December 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, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Shelly M. Johnson and Creola M. Johnson, in the principal sum of $49,890.83, plus interest at the rate of 9.5 percent per annum from December 1, 1987 until judgment, plus interest thereafter at the current legal rate of 8.04 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, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

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

> First:
> In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;
>
> Second:
> In payment of the judgment rendered herein in favor of the Plaintiff.

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

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

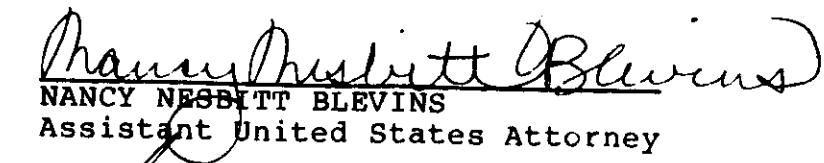
(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

For Judge Thomas R. Brett

APPROVED:

TONY M. GRAHAM
United States Attorney



NANCY NESBITT BLEVINS
Assistant United States Attorney

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

NNB/css

Fisher
MRC/cel

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

HINTON L. FISHER, Plaintiff, vs. CITY OF TULSA, OKLAHOMA a municipal corporation; ROBERT DICK, Chief of Police for the City of Tulsa; and DAN ALLEN, a police officer employed by the City of Tulsa) Defendants.	)	No. 85-C-245-E

STIPULATED JOURNAL ENTRY OF JUDGMENT

The parties herein enter into this stipulated journal entry of judgment and stipulate and agree that the damages to be awarded against Defendant Dan Allen are in the total sum of $7,332.00 and further stipulate and agree that Defendant has the right to appeal concerning issues of fact and law previously adjudicated in Plaintiff's favor.

IT IS ORDERED AND ADJUDGED that the Plaintiff Hinton L. Fisher recover of the Defendant Dan Allen the sum of $7,332.00 and that Defendant may appeal herefrom concerning issues of fact and law previously adjudicated in Plaintiff's favor.

Dated this 28 day of September, 1988.

James O. Ellison
James O. Ellison
United States District Judge

APPROVED AS TO FORM AND CONTENT:

Ken Ray Underwood
Attorney for Plaintiff

Martha Rupp Carter
Martha Rupp Carter
Assistant City Attorney
Attorney for Defendant

DSF/SB

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

BRANDY CHASE CONDOMINIUMS ASSOCIATION, INC.; TOM PRUSATOR and TERRY PRUSATOR, husband and wife,	)	
Plaintiffs,	)	
vs.	)	
U. S. HOME CORPORATION,	)	
Defendant,	)	
vs.	)	
RICHARD HORN, individually; and CIRCLE H ELECTRIC, INC., an Oklahoma corporation,	)	
Third Party Defendants,	)	
and	)	
GULF INSURANCE COMPANY,	)	
Garnishee.	)	Case No. 87-C-146 E

ORDER OF DISMISSAL

NOW on this 27 day of September, 1988, upon the written application of the plaintiffs, Brandy Chase Condominiums Association, Inc., Tom Prusator and Terry Prusator, husband and wife, for dismissal without prejudice against U. S. Home Corporation, the Court hereby enters its Order dismissing U. S. Home Corporation from this lawsuit.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that any and all claims against U. S. Home Corporation be dismissed without prejudice to any future action.

s/ James O. Ellison
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED
9-28-88
Jack C. Silver, Clerk

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

CANAL REFINING COMPANY Plaintiff, vs. UNITED STATES DEPARTMENT OF ENERGY, JOHN S. HARRINGTON SECRETARY OF ENERGY Defendants.	)	Case No. 87-C-294-E

ADMINISTRATIVE CLOSING ORDER

It appearing to the court that the parties have reached tentative grounds for settlement, this case is hereby administratively closed for a period of ninety days. If the parties have not filed written papers reflecting settlement by that date, the case will be set for immediate pretrial conference and trial on the next non-jury trial docket.

IT IS SO ORDERED this 27th day of September, 1988

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

10

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

ROY E. EAST and PAMELA S. EAST, husband and wife, Plaintiffs,	)	
vs.	)	No. 87-C-6-E
STATE FARM FIRE & CASUALTY COMPANY, CLYDE E. HARRIS and MARILYN HARRIS, husband and wife; MERLE D. McGUIRE and JANET R. McGUIRE, husband and wife, Defendants.	)	

JOURNAL ENTRY OF JUDGMENT

NOW on this 27th day of September, 1988, the above entitled cause comes on before me, the undersigned Judge, for continuation of trial on the merits, trial havng commenced on the 26th day of September, 1988. Plaintiffs are present in person with their attorney of record, Stanley D. Monroe, and the Defendant, State Farm Fire & Casualty Company, only, is present through its company representative, and represented by Roger R. Williams of Williams, Clark, Baker & Earl. There are no appearances for the remaining Defendants, as said Defendants are nominal Defendants, only.

Whereupon, a jury of seven citizens was duly impaneled to try this cause, and the Plaintiffs presented evidence and rested. Defendant's Motion for Directed Verdict was overruled.

Defendant presented evidence and rested. Defendant renewed its Motion for Directed Verdict, which was overruled.

Whereupon, following the arguments of counsel and instructions by the Court, the jury retired to deliberate. Following deliberations, the Court read the verdict of the jury in open Court which was as follows, to-wit:

> "We, the jury, find in favor of the Plaintiffs, Roy E. East and Pamela S. East, and against the Defendant, State Farm Fire & Casualty Company, on the claim for breach of policy obligations, and find that the Plaintiffs are entitled to recover from the Defendant actual damages in the amount of $50,820.00."

Date: September 27, 1988 /s/ James O'Field
Fore-person

Whereupon, each juror announcing his concurrence in said verdict, the Court proceeded to deduct offsets against said verdict representing advances made to the Plaintiffs in the amount of $1,000.00 and the balance of the mortgage indebtedness paid to the mortgagees on the subject property in the total amount of $19,314.48.

And the Court, being fully advised in the premises, finds that Plaintiffs, Roy E. East and Pamela S. East, husband and wife, should have and recover judgment against the Defendant, State Farm Fire & Casualty Company, in the total amount of $30,505.52, plus prejudgment interest thereon in the amount of $8,351.64.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that by agreement of the parties, the Plaintiffs shall further have and recover judgment against the Defendant, State Farm Fire

& Casualty Company, in the amount of $8,000.00 as and for a reasonable attorney fee and the costs of this action, for a total judgment, including interest, costs, attorney fees, less offsets, in the aggregate amount of $46,857.16, for which, let execution issue.

s/ Layn Phillips
LAYN R. PHILLIPS
United States District Judge

APPROVED AS TO FORM:

STANLEY D. MONROE
Attorney for Plaintiffs

ROGER R. WILLIAMS
Attorney for Defendant
State Farm Fire & Casualty Company

FILED

SEP 28 1988

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

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

WOLVERINE TECHNOLOGIES, INC., a Michigan corporation, Plaintiff,	)	
vs.	)	Case No. 87-C-143-E
RONALD G. ROBINSON d/b/a AMERICAN WHOLESALE SIDING SUPPLY, Defendant.	)	

AGREED JOURNAL ENTRY OF JUDGMENT

This cause comes on for consideration before me, the undersigned Judge, this 28th day of September, 1988, the Plaintiff, Wolverine Technologies, Inc. appearing by and through its attorney, Mark H. Iola and the Defendant, Ronald G. Robinson appearing by and through its attorney, John K. Harlin, Jr.

The Court proceeded to examine the pleadings in this matter, and being fully advised by counsel for both parties, finds that the Defendant, Ronald G. Robinson has confessed judgment on behalf of the Plaintiff in the amount of $85,000.00.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff, Wolverine Technologies, Inc., have and recover on its Complaint herein judgment in the sum of $85,000.00 as against the Defendant, Ronald G. Robinson, with interest thereon at the pre-judgment and post-judgment rates of interest, until paid, together with all the costs of this action.

For all of which let execution issue.

James O. Ellison
UNITED STATES DISTRICT JUDGE

LAW OFFICES
UNGERMAN CONNER & LITTLE

RIVERBRIDGE OFFICE PARK
1323 EAST 71ST
SUITE 300

P. O. BOX 2099
TULSA, OKLAHOMA
74101

APPROVED AS TO FORM AND CONTENT:

Mark H. Iola, Attorney for Plaintiff,
Wolverine Technologies, Inc.

John K. Harlin, Jr., Attorney for Defendant,
Ronald G. Robinson

LAW OFFICES

UNGERMAN
CONNER &
LITTLE

RIVERBRIDGE OFFICE PARK
1323 EAST 71ST
SUITE 300

P. O. BOX 2099
TULSA, OKLAHOMA
74101

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

PATRICK H. PAYTON, et al Plaintiffs,	)	
vs.	)	No. 87-C-982-E
DANIEL HOWARD VERSHAY, et al, Defendants.	)	

ORDER OF DISMISSAL

Upon stipulation of the parties and by reason of compromise settlement the above styled and numbered cause is hereby dismissed with prejudice to refiling.

Dated the 27th day of Sept, 1988.

/s/ JAMES O. ELLISON

U.S. DISTRICT JUDGE

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

FILED
28 K

SAMSON RESOURCES COMPANY,	)	
Plaintiff,	)	
	)	
vs.	)	No. 85-C-911-E
	)	87-C-807-E
NORTHERN NATURAL GAS COMPANY,	)	87-C-808-E
now INTERNORTH, INC., et al.,	)	(Consolidated)
	)	
Defendants.	)	

O R D E R

This matter comes on before the Court on the Plaintiff's Motion for Order Clarifying Effect of Consolidation, Defendant Northern Natural Gas Company's (Northern) Motion for Partial Summary Judgment, and Defendants' Motion to Dismiss individual Defendants. After reviewing the pleadings, the Court finds as follows:

1. Effect of Consolidation

The intent of the Court in consolidating this case was not to dismiss defenses or claims summarily without review of particular defenses and claims. Thus, if after consolidation a party feels a defense or claim should be dealt with as a matter of law an individual motion is appropriate.

2. Defendant Northern's Motion for Partial Summary Judgment

This motion is denied in part and granted in part.

Granted is that part of the motion which dealt with the tort claim. Samson has dismissed this and thus Northern's motion as to these should be granted.

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12A O.S. §2-710 allows a seller incidental damages. This Court may, in its equitable powers, award attorney's fees as damages. Reed v. AACON Auto, 637 F.2d 1302, 1308 (10th Cir. 1981) citing Alyeska Pipeline v. Wilderness Society, 421 U.S. 240, 95 S.Ct. 1612, 44 L.Ed.2d 141 (1975). Whether Plaintiff may recover employee and other expenses relating to this suit is a question of fact to be determined at the time of trial. Thus, Defendant's Motion for Partial Summary Judgment is denied as to the incidental damages of employees' salaries, attorney's fees and costs.

3. Defendants' Motion to Dismiss Individual Defendants

This motion is unopposed and granted.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Order Clarifying effect of Consolidation is granted to the extent this order clarifies the effect of the consolidation; Defendant's Motion for Partial Summary Judgment is granted in part and denied in parts; Defendants' Motion to Dismiss Individual Defendants is granted.

ORDERED this 26th day of September, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 28 1988

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

SPENCER O. AMUNDSEN and BARBARA F. AMUNDSEN, husband and wife,	)	
Plaintiffs	)	CIVIL NO. 87-C-924-E
v.	)	
UNITED STATES OF AMERICA,	)	
Defendant	)	

STIPULATION ~~FOR~~ OF DISMISSAL

It is hereby stipulated and agreed that the complaint in the above-entitled case be dismissed with prejudice, the parties to bear their respective costs, including any possible attorneys' fees or other expenses of litigation.

Kenneth C. Ellison

KENNETH C. ELLISON
4815 South Harvard
Tulsa, Oklahoma 74135
(918) 749-1673

ATTORNEY FOR PLAINTIFFS

LOUISE P. HYTKEN
Attorney in Charge
Dallas Field Office
Department of Justice/Tax Div.
5B31, 1100 Commerce St.
Dallas, Texas 75242
(214) 767-0293

ATTORNEY FOR UNITED STATES

RLM/jch

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

GLADYS M. WAGER, Plaintiff, vs. ABLE MARKETING, INC., a Kansas corporation, Defendant.	)	No. ~~88-C-17-C~~ 88-C-174-C

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

ORDER OF DISMISSAL

NOW on this 28th day of Sept, 1988, upon the written application of the Plaintiff, Gladys M. Wagner, and the Defendant, Able Marketing, Inc., for a Dismissal With Prejudice of the Complaint of Wager v. Able, and all causes of action therein, the court having examined said Application finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the court to dismiss said Complaint with prejudice to any future action. The court being fully advised in the premises finds that said settlement is in the best interest of the Plaintiff, and that said Complaint should be dismissed pursuant to said Application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that the Complaint and all causes of action of the Plaintiff, Gladys M. Wager, against the Defendant, Able Marketing, Inc., be and the same hereby are dismissed with prejudice to any future action.

(Signed) H. Dale Cook

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

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

DAYNA SPURGEON and KEN SPURGEON, Plaintiffs,	)	
VS.	)	No. 88-C-203-C
SERVICE MERCHANDISE, a Tennessee Corporation, Defendant.	)	

FILED

SEP 27 1988

Jack C. Silver Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

Upon Application by the parties, and for good cause shown, the Court finds that the above styled and numbered cause of action should be dismissed with prejudice to refiling in the future.

IT IS SO ORDERED this 27th day of September, 1988.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

Entered on docket

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

BURKHART PETROLEUM CORPORATION, a Nevada corporation, Plaintiff,	)	
vs.	)	Case No. 87-C-257-C
ANR PIPELINE COMPANY, a Delaware corporation, Defendant.	)	

FILED
SEP 27 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

The motion of Plaintiff Burkhart Petroleum Corporation ("Burkhart") to dismiss the above-captioned action pursuant to Fed R. Civ. P. 41(a)(2) having been submitted and argued to the Court, and the Court having duly considered the arguments and briefs of the parties, therefore,

IT IS ORDERED:

1. That this action is dismissed with prejudice, except for Burkhart's claim for take-or-pay deficiencies which arose before June 1, 1985, which is reserved unto Burkhart and dismissed without prejudice on the following conditions which have been accepted and stipulated by the parties:

(a) Any discovery in this action may be used in any subsequent action between the parties involving such reserved claim;

(b) The Court's Order of June 30, 1988, shall be binding upon the parties in any subsequent action;

(c) Burkhart is prevented pursuant to its Stipulation and by this Order of Dismissal from filing any subsequent action to collect any take-or-pay deficiency which allegedly has accrued, or which may acrue under the contract at issue, from and after June 1, 1985, through the remaining term of such contract; and

B/ZBA/09-88454/pjp

37.

(d) Burkhart is prevented pursuant to its Stipulation and by this Order of Dismissal from filing any subsequent action arising out of ANR's performance or nonperformance of such contract as a result of the force majeure asserted by ANR herein.

2. By reason of the above Stipulation each party shall bear its own attorney fees and costs incurred in this action.

IT IS SO ORDERED this 26th day of Sept, 1988.

H. DALE COOK, Chief Judge
United States District Court

STIPULATED AND APPROVED
AS TO CONTENT AND FORM:

J. David Jorgenson
Wade A. Hoefling
CONNER & WINTERS
2400 First National Tower
Tulsa, Oklahoma 74103

ATTORNEYS FOR PLAINTIFF,
BURKHART PETROLEUM CORPORATION

James M. Sturdivant
Teresa B. Adwan
M. Benjamin Singletary
GABLE & GOTWALS
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119-1217

ATTORNEYS FOR DEFENDANT,
ANR PIPELINE COMPANY

FILED

SEP 27 1988

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

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

GEORGE W. PEASE, JR., TRUSTEE OF THE TRUST NO. II FOR GEORGE W. PEASE, JR.,	)	
Plaintiff,	)	
vs.	)	Case No. 87-C-740 C
JAMES W. DEVINNEY, JAMES A. BUTLER, JIMMY D. CARPENTER, HARLAN R. COLLIER, WILLIAM G. HUGHES, CLINT B. LAMBERT and DALE W. YOUNG,	)	
Defendants.	)	

NOTICE DISMISSAL WITH PREJUDICE

The defendants, James A. Butler, Harlan R. Collier and William G. Hughes, dismiss the claims set forth in their Cross-Claim against the defendant, James W. Devinney, with prejudice to any refiling.

ROSENSTEIN, FIST & RINGOLD

By: Gene L. Mortensen
Gene L. Mortensen OBA #6452

525 S. Main, Suite 300
Tulsa, Oklahoma 74103
(918) 585-9211

Attorneys for James A. Butler, Harlan R. Collier, and William G. Hughes

GLM/HughesDism

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. ROBERT MICHAEL COX; LEANNA ROSE COX; COUNTY TREASURER, Tulsa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, Defendants.	)	FILED SEP 2? 1988 ck C. Silver, Clerk S. DISTRICT COURT CIVIL ACTION NO. 88-C-583-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 26th day of Sept, 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, 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, Robert Michael Cox and Leanna Rose Cox, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendants, Robert Michael Cox and Leanna Rose Cox, were served Summons and Complaint on August 17, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 29, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 23, 1988.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on July 15, 1988; and that the Defendants, Robert Michael Cox and Leanna Rose Cox, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

> Lot Twenty-one (21), Block Seven (7), ROLLING MEADOWS II, an Addition to the City of Glenpool, Tulsa County, State of Oklahoma, according to the recorded plat thereof, a/k/a 593 W. 147th St., Glenpool, Oklahoma 74033.

The Court further finds that on December 20, 1985, the Defendants, Robert Michael Cox and Leanna Rose Cox, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of $38,500.00, payable in monthly installments, with interest thereon at the rate of eleven percent (11%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Robert Michael Cox and Leanna Rose Cox, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated December 20, 1985, covering the above-described property. Said mortgage was recorded on December 20, 1985, in Book 4914, Page 347, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Robert Michael Cox and Leanna Rose Cox, 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, Robert Michael Cox and Leanna Rose Cox, are indebted to the Plaintiff in the principal sum of $38,264.68, plus interest at the rate of 11 percent per annum from August 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, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Robert Michael Cox and Leanna Rose Cox, in the principal sum of $38,264.68, plus interest at the rate of 11 percent per annum from August 1, 1987 until judgment, plus interest thereafter at the current legal rate of 8.04 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, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

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

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

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT
Assistant United States Attorney

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

PB/css

Filed

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

ROBERT W. BERRY, INC., an Oklahoma corporation, ROBERT W. BERRY, an individual, THE FIRST NATIONAL BANK AND TRUST COMPANY OF TULSA, and JUDITH BERRY INGRAHAM, an individual,	)	
Plaintiffs,	)	
v.	)	No. 87-C-443-E
ARKLA, INC., a Delaware corporation,	)	
Defendant.	)	

JOINT STIPULATION ~~FOR~~ OF DISMISSAL WITH PREJUDICE

The Plaintiffs, Robert W. Berry, Robert W. Berry, Inc., Judith Berry Ingraham, and the First National Bank And Trust Company of Tulsa, and each of them, and the Defendant Arkla, Inc., pursuant to Fed.R.Civ.P. 41(a)(1), stipulate to the dismissal of the above-captioned action with prejudice, each party to bear its own costs and attorneys' fees.

J. DAVID JORGENSON
WADE A. HOEFLING

By _____
J. David Jorgenson

2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

Attorneys for Plaintiffs

OF COUNSEL:

CONNER & WINTERS
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

0455036P

Thomas M. Ladner, Esq.
Hall, Estill, Hardwick, Gable,
Golden & Nelson
4100 Bank of Oklahoma Tower
Tulsa, Oklahoma 74172

and

Edward L. Edwards, Esq.
W.L. West, Esq.
Lemle, Kelleher, Kohlmeyer,
Dennery, Hunley, Moss &
Frilot
2100 Pan American Life Center
601 Poydras Street
New Orleans, Louisiana 70130

Attorneys for Defendant
ARKLA, INC.

D

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

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

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.	)	Case No. 88-C-226-E

ORDER OF DISMISSAL AND DISBURSEMENT OF FUNDS

ON this 26th day of Sept, 1988, upon the written application of the defendants for an Order of Dismissal With Prejudice of all claims asserted by each of the above-named defendants and an Order For Disbursement Of Funds, the Court, having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in this interpleader action and the disbursement of the funds now held by the Clerk of this Court and the Court, having been fully advised, finds that all claims asserted by the defendants within this action should be dismissed with prejudice and the funds now held by the Clerk be disbursed in accordance with the defendants' settlement.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that all claims of the defendants filed herein be and the same are hereby dismissed with prejudice to any further action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Clerk of the Court disburse the sum of Sixty-Four Thousand One Hundred Sixty Dollars & 62/100 ($64,160.62), plus the earned interest now on deposit, as follows:

1. To defendant Brumbaugh & Fulton Company, the sum of Fifty-Nine Thousand One Hundred Sixty Dollars & 62/100 ($59,160.62), plus 92% of the earned interest;

2. To defendants Daniel Louis Kotthoff and Geraldine Kotthoff, the sum of One Thousand Dollars & no/100 ($1,000.00), plus 1.5% of the earned interest; and

3. To defendant Bill Gibson, d/b/a Gibson Public Adjusting Company, the sum of Four Thousand Dollars & no/100 ($4,000.00), plus 6.5% of the earned interest.

S/ JAMES O. ELLISON

James O. Ellison
UNITED STATES DISTRICT JUDGE

APPROVED:

R. Scott Savage, OBA #7926
MOYERS, MARTIN, SANTEE,
IMEL & TETRICK

ATTORNEYS FOR DEFENDANT
Brumbaugh & Fulton Company

Stephen B. Riley

Stephen B. Riley, OBA #7589
CHAPEL, WILKINSON, RIGGS &
ABNEY

ATTORNEYS FOR DEFENDANTS
Daniel Louise Kotthoff and
Geraldine Kotthoff

Ronald E. Hignight, OBA #10334
RICHARDSON, MEIER, McKENZIE &
ASSOCIATES, P.C.

ATTORNEYS FOR DEFENDANT
Bill Gibson, d/b/a
Gibson Public Adjusting Company

?FP.29

IN THE UNITED STATES DISTRICT COURT FOR

THE NORTHERN DISTRICT OF OKLAHOMA

DAYNA SPURGEON and KEN SPURGEON, Plaintiffs,	)	
v.	)	No. 88-C-203-C
SERVICE MERCHANDISE, a Tennessee corporation, Defendant.	)	

FILED

SEP 26 1988

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

ORDER

Upon the Plaintiffs' application for an order dismissing this case with prejudice, the Court so finds the case should be dismissed.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that this case is dismissed with prejudice to its refiling.

Done this 26 day of Sept, 1988.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

JAD/sw/11

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

FILED

LINK CARNIVAL, INC. Plaintiff, vs. BURLINGTON NORTHERN RAILROAD COMPANY, and AFFILIATED VAN LINES, INC., Defendants.	)	Case No. 87-C-15-E

ORDER OF DISMISSAL WITH PREJUDICE

NOW on this 23rd day of Sept., 1988, the above-captioned cause comes on before the undersigned Judge of the District Court on the parties' Application to Dismiss the action with prejudice. The Court, being advised that all issues or law and fact have been fully compromised and settled between the parties, hereby orders that the action be dismissed with prejudice.

IT IS SO ORDERED this 23rd day of Sept., 1988.

JAMES O. ELLISON

HONORABLE JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

G. STEVEN STIDHAM
Attorney for Plaintiff

JOHN A. DUNNERY
Attorney for Defendants

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

CHAMPLIN REFINING COMPANY, a Delaware Partnership, Plaintiff, vs. W. E. ALLFORD, INC., an Oklahoma corporation; V. LARRY ALLFORD, an individual; and GAYLE E. ALLFORD, an individual, Defendants.	)	Case No. 88-C-633 E

JUDGMENT

The Defendants, W. E. Allford, Inc., V. Larry Allford, and Gayle E. Allford (collectively referred to as the "Defendants"), having failed to plead or otherwise defend in this action and their default having been entered,

Now, upon application of the Plaintiff and upon affidavit that Defendants, W. E. Allford, Inc., V. Larry Allford, and Gayle E. Allford, are indebted to Plaintiff in the sum of $269,947.39 plus interest at the lawful rate, that Defendants, W. E. Allford, Inc., V. Larry Allford, and Gayle E. Allford, have been defaulted for failure to answer or otherwise move and that Defendants, W. E. Allford, Inc., V. Larry Allford, and Gayle E. Allford, are not infants or incompetent persons, it is hereby

ORDERED, ADJUDGED AND DECREED that Plaintiff have judgment, jointly and severally, against the Defendants, W. E. Allford, Inc., V. Larry Allford, and Gayle E. Allford, the sum of $269,947.39, with interest ~~of~~ from judgment at rate of 8.04% and costs of this action. Attorney's fees will be awarded if properly applied for under the local rules.

IT IS SO ORDERED this 23 day of September, 1988.

/s/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

ZSZ/JRH/09-88445E/ja

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

FILED
9-26-1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

AUDIE CRIGER,	)	
Plaintiff,	)	
vs.	)	No. 85-C-1117-E
RED CARPET INN, INC.,	)	
Defendant.	)	

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

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

IT IS THEREFORE ORDERED that the action be dismissed without prejudice. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within twenty (20) days that settlement has not been completed and further litigations is necessary.

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

ORDERED this 23d day of September, 1988.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

42

FILED
9-26-88
Jack C. Silver, Clerk
U.S. District Court

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

DAVID H. JOHNS,	)	
Petitioner,	)	
v.	)	87-C-964-E
RON CHAMPION, et al,	)	
Respondents.	)	

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed September 2, 1988 in which the Magistrate recommended that the Petitioner's Motion to Dismiss Without Prejudice his Petition for Writ of Habeas Corpus be granted and the case be dismissed without prejudice to refiling.

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 the Petitioner's Motion to Dismiss Without Prejudice his Petition for Writ of Habeas Corpus is granted and the case is dismissed without prejudice to refiling.

Dated this 23rd day of Sept, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

13

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. FLOYD WOODROW ELLIS, JR.; DEBORAH S. ELLIS; CHARLES A. ARTHUR a/k/a CHARLES A. ARTHUR, SR.; GRACE ARTHUR a/k/a GRACIE ARTHUR; ASSOCIATES FINANCIAL SERVICES COMPANY OF OKLAHOMA, INC.; OSTEOPATHIC HOSPITAL FOUNDERS ASSOCIATION, a corporation d/b/a OKLAHOMA OSTEOPATHIC HOSPITAL; COUNTY TREASURER, Tulsa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, Defendants.	)	FILED Jack C. Silver, Clerk U.S. DISTRICT COURT CIVIL ACTION NO. 88-C-0029-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 23 day of Sept, 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, 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, Floyd Woodrow Ellis, Jr.; Deborah S. Ellis; Charles A. Arthur a/k/a Charles A. Arthur, Sr.; Grace Arthur a/k/a Gracie Arthur; Associates Financial Services Company of Oklahoma, Inc.; and Osteopathic Hospital Founders Association, a corporation d/b/a Oklahoma Osteopathic Hospital, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendants, Charles A. Arthur a/k/a Charles A. Arthur, Sr. and Grace Arthur a/k/a Gracie Arthur, acknowledged receipt of Summons and Complaint on February 17, 1988; that the Defendant, Associates Financial Services Company of Oklahoma, Inc., acknowledged receipt of Summons and Complaint on February 17, 1988; that the Defendant, Osteopathic Hospital Founders Association, a corporation d/b/a Oklahoma Osteopathic Hospital, was served with Summons and Complaint on April 11, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 19, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 15, 1988.

The Court further finds that the Defendants, Floyd Woodrow Ellis, Jr. and Deborah S. Ellis, were served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning June 16, 1988, and continuing to July 21, 1988, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Floyd Woodrow Ellis, Jr. and Deborah S. Ellis, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of

Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Floyd Woodrow Ellis, Jr. and Deborah S. Ellis. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as the subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on February 8, 1988; and that the Defendants, Floyd Woodrow Ellis, Jr.; Deborah S. Ellis; Charles A. Arthur a/k/a Charles A. Arthur, Sr.; Grace Arthur a/k/a Gracie Arthur; Associates Financial Services Company of Oklahoma, Inc.; and Osteopathic Hospital Founders Association,

a corporation d/b/a Oklahoma Osteopathic Hospital, 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 Fourteen (14), Block One (1), POE ACREAGE, to the County of Tulsa, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on May 17, 1979, the Defendants, Floyd Woodrow Ellis, Jr. and Deborah S. Ellis, executed and delivered to Mager Mortgage Company their mortgage note in the amount of $32,500.00, payable in monthly installments, with interest thereon at the rate of ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Floyd Woodrow Ellis, Jr. and Deborah S. Ellis, executed and delivered to Mager Mortgage Company a mortgage dated May 17, 1979, covering the above-described property. Said mortgage was recorded on May 22, 1979, in Book 4401, Page 26, in the records of Tulsa County, Oklahoma.

The Court further finds that on March 18, 1981, Mager Mortgage Company assigned to the Administrator of Veterans Affairs the above-described mortgage. This Assignment of Mortgage was recorded on April 3, 1981, in Book 4536, Page 747, in the records of Tulsa County, Oklahoma.

The Court further finds that pursuant to a General Warranty Deed dated September 15, 1981, and filed of record on September 21, 1981, in Book 4570, Page 2, in the records of Tulsa County, Oklahoma, Floyd Woodrow Ellis, Jr. and Deborah S. Ellis conveyed the above-described real property to Charles A. Arthur and Grace Arthur.

The Court further finds that the Defendants, Floyd Woodrow Ellis, Jr. and Deborah S. Ellis, 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, Floyd Woodrow Ellis, Jr. and Deborah S. Ellis, are indebted to the Plaintiff in the principal sum of $33,203.92, plus interest at the rate of 10 percent per annum from November 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 Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

The Court further finds that the Defendants, Charles A. Arthur a/k/a Charles A. Arthur, Sr.; Grace Arthur a/k/a Gracie Arthur; Associates Financial Services Company of Oklahoma, Inc.; and Osteopathic Hospital Founders Association, a corporation d/b/a Oklahoma Osteopathic Hospital, 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 in rem against the Defendants, Floyd Woodrow Ellis, Jr. and Deborah S. Ellis, in the principal sum of $33,203.92, plus interest at the rate of 10 percent per annum from November 1, 1986 until judgment, plus interest thereafter at the current legal rate of 8.04 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, Charles A. Arthur a/k/a Charles A. Arthur, Sr.; Grace Arthur a/k/a Gracie Arthur; Associates Financial Services Company of Oklahoma, Inc.; Osteopathic Hospital Founders Association, a corporation d/b/a Oklahoma Osteopathic Hospital; and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

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

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

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

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

JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT
Assistant United States Attorney

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

PB/css

FILED

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

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

GREG EDWARDS and DONNA EDWARDS,	)	
Plaintiffs,	)	
vs.	)	No. 87-C-300-E
PHARMACIA INC.,	)	
Defendant.	)	

ORDER OF DISMISSAL WITH PREJUDICE
AND ORDER OF CONFIDENTIALITY

This matter comes on before the Court this 23rd day of Sept, 1988, upon the stipulation and request of the parties herein for an Order of Dismissal and Order of Confidentiality.

Upon the review of the Stipulation executed by counsel of record for the respective parties herein and it having been represented to the Court that this matter has been amicably settled and resolved;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the above entitled cause be and the same hereby is dismissed with prejudice, without costs to any party.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs, their attoreys and experts shall not directly or indirectly, communicate any information whatsoever relating to the terms of the settlement agreement, including but not limited to, the sum of money received in consideration for the agreement, and all settlement negotiations, and trial preparation and strategy.

IT IS SO ORDERED.

/S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

Lance Stockwell, OBA No. 8650
R. Kevin Layton, OBA No. 11900
800 Oneok Plaza, 100 W. 5th St.
Tulsa, OK 74103

ATTORNEYS FOR PHARMACIA INC.

Thomas Whalen,
1722 S. Carson, Suite 2410
Tulsa, OK 74119

ATTORNEY FOR PLAINTIFFS

FILED

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

SEP 23 1988

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

JOSH J. EVANS, Appellant, vs. JAMES R. ADELMAN, Trustee.	)))))))))	No. 88-C-271-B (Bankruptcy No. 83-00757)

O R D E R

This appeal came before this Court on 23rd of September, 1988, on Josh J. Evans' Appeal of Interlocutory Order from the United States Bankruptcy Court for the Northern District of Oklahoma, Case No. 83-757 (Chapter 11). The Appellant filed this action on March 18, 1988, but as of September 22, 1988, has failed to pay the required filing fee of $105.00 pursuant to local court Rule 6(B). Appellant has been given notice and opportunity to pay the required filing fees but has neglected to do so.

It is therefore **ORDERED** this action be dismissed for failure to pay the required filing fees.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

SEP 23 1988

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

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

TRW INC., Plaintiff,	)	
vs.	)	Case No. 88-C-530B
TRICO INDUSTRIES, INC., MICHAEL SACKASH, and JUAN AMBROSI, Defendants.	)	

FINAL JUDGMENT ON CONSENT

Plaintiff, TRW Inc. ("TRW"), having commenced this action on June 8, 1988, on behalf of its Reda Pump Division and Reda companies worldwide, alleging misappropriation of trade secrets, breach of confidentiality agreements and various acts of unfair competition by defendants Trico Industries, Inc. ("Trico"), Michael Sackash ("Sackash"), and Juan Ambrosi ("Ambrosi"), and the defendants having been duly served and having appeared in the action, and the defendants having denied the material allegations of the complaint and the parties, in order to avoid the expense of further litigation, having reached a settlement of this dispute and having consented to entry of a final judgment which shall not be construed as an admission of any liability or wrong doing on the part of the defendants,

IT IS HEREBY ORDERED, ADJUDGED AND AGREED:

1. That this Court has jurisdiction over the subject matter and the parties hereto.

2. That Trico and defendants Sackash and Ambrosi are restrained and enjoined from encouraging Reda employees or agents to breach their obligations to Reda or soliciting them to misappropriate confidential materials from Reda. If Trico should recruit any Reda employee, Trico shall require as a condition of employment that the Reda employee acknowledge and affirm in writing his or her obligation under the current confidentiality agreement, attached as Exhibit A, or under any other confidentiality agreement executed by said Reda employee to the extent its provisions are legally enforceable. Trico shall communicate such affirmation to Reda in writing within ten (10) business days of said affirmation.

3. That defendants, within ten (10) business days after the entry of this Final Judgment on Consent, shall turn over to the attorney for plaintiff any and all files and documents, if any, taken or removed from Reda by Sackash, Ambrosi, Paul Jay and William Hill, and copies thereof, if any. Within thirty (30) days after the entry of this Final Judgment on Consent, Trico will also make a good faith effort to determine whether former Reda employees Jimmy Green, Wayne Kemp, Jimmie Kilgore and Earl Phillips have any Reda files and documents which they may have removed at the time of their departure from Reda and, if any, Trico will turn these over to the attorney for plaintiff, and any copies thereof, if any. This obligation shall

be continuing. Attorney for plaintiff shall file with the Court an acknowledgement of receipt of said files and documents.

4. That within ten (10) business days after the signing of this Final Judgment on Consent, Trico shall certify in writing to Reda that it has conducted or caused to be conducted a diligent search and investigation throughout the offices of Trico, its branch offices, and the offices of its agents and that all Reda files and documents as described in paragraph 3 above have been recovered and returned to Reda. Within said period, defendants Sackash and Ambrosi shall certify in writing to Reda that they have no such files, including copies thereof, in their personal possession.

5. That Trico, its officers and employees, are restrained and enjoined from seeking or receiving from Sackash, Ambrosi, William Hill ("Hill"), Paul Jay ("Jay") or persons employed by Reda disclosure of the following: (a) the specific content of any bids made by Reda prior to the departure of Hill; (b) specific information on discounts to specific customers in Reda credit pools known by Sackash, Ambrosi, Jay, or Hill prior to their departure from Reda; and (c) COMPSEL to the extent the actual software program is known by Sackash, Ambrosi, Hill, or Jay; and from utilizing, making, or permitting to be made any use or application or disclosure of said specific information from the date hereof. Notwithstanding the foregoing in this paragraph, no party shall be in violation of this paragraph if knowledge of the

information came from a source other than directly from within Reda, or if the information is generally known.

6. That for a period of eighteen (18) months from October 1, 1987, Trico will provide to TRW's designated agent a statement showing the names of the customers of the contracts exceeding $10,000 entered into by Trico, its agents or distributors in Peru, Venezuela, Ecuador, Chile and Brazil. Trico shall provide such information for any such contracts entered into prior to September 30, 1988 within thirty (30) days of the execution of this Judgment and, thereafter, no later than thirty (30) days after the end of each calendar month.

7. That affirmation made pursuant to this Judgment by defendants Sackash and Ambrosi of their written confidentiality agreements with plaintiff shall be valid only while said defendants are employed by Trico. Defendants Sackash and Ambrosi will continue to be bound by the provisions of the written confidentiality agreements between them and plaintiff, copies of which are attached as Exhibits to the Complaint to the extent such agreements are valid and enforceable.

8. That Trico shall not infringe on TRW's copyright for its COMPSEL software. If Trico develops any software which is designed to perform tasks similar to those performed by the Compsel program, it shall certify in writing to TRW that said software is developed independently from TRW's COMPSEL software and, if plaintiff requests, defendant Trico shall submit said software

to an independent expert of its choosing who upon receiving a copy of plaintiff's COMPSEL software from plaintiff shall certify in writing that the software does not infringe any valid copyright of Reda.

9. That defendant Trico, its officers, employees or any of them, are restrained and enjoined from representing to customers or potential customers that Trico can furnish Reda submersible pumps or Reda parts for said pumps or from otherwise representing that the pumps or parts that Trico can supply to said customers or prospective customers emanate from or are otherwise made by Reda, except in instances in which said pump or part is in fact from Reda. Additionally, Trico shall remove Reda's identifying name plates from any Reda submersible components which Trico repairs, reworks and/or resells, unless requested otherwise by customer who owns equipment; in which case Trico will place a label on such equipment stating it has been repaired by Trico.

10. That Trico, is further restrained and enjoined from representing that Trico pumps or parts for submersible pumps are the same as, or equivalent to, Reda pumps and/or parts, unless Trico has first established through accepted test procedures that these representations are reasonably correct.

11. That, in those instances in which suppliers of parts or components to Trico have possession of, or access to, drawings or specifications of Reda, Trico will not request that said suppliers use said Reda drawings or specifications when producing Trico

parts and that Trico shall make a good faith effort to avoid purchasing from Reda suppliers parts or components for Trico equipment which are based on Reda valid intellectual property rights and drawings.

12. That Trico shall, within twenty (20) working days of the entry of this Final Judgment on Consent, submit to TRW an employee code of conduct. Said code of conduct shall contain direction and rules which Trico shall require all Trico employees to follow in order to implement and give full force and effect to this Final Judgment on Consent. Trico shall, at the same time, distribute the code of conduct with appropriate explanation to all Trico employees and agents and distributors, and shall notify TRW's attorney that it has done so.

13. That Trico, within ten (10) business days of the entry of this Final Judgment on Consent, shall send to all branch offices of Trico where submersible pumps and parts are sold and/or serviced a copy of the Final Judgment on Consent with a cover letter directing that said offices comply with its terms and requiring that they confirm in writing receipt of the letter and Judgment. Copies of said letters and acknowledgement of their receipt shall be provided to the attorney for plaintiff.

14. That this agreement shall apply worldwide.

15. That each party shall bear its own costs in the action.

16. That this Final Judgment on Consent shall expire five (5) years from the date of its entry.

17. That, in the event TRW believes that Trico is violating the terms of this judgment, TRW shall be required to provide written notification to Trico and its parent company, PACCAR, Inc., of the violation and of the facts supporting the violation. Within ten (10) business days of such notification an executive officer and legal representative of each party to this Judgment shall meet, discuss and reasonably attempt to resolve the alleged violation. If the parties to this Judgment are unable to resolve the dispute within ten (10) business days after the conclusion of the meeting, Trico and TRW agree to submit the fact of the alleged violation to a three person mediation panel comprised of one person selected by TRW and one person selected by Trico and a third person selected by the two persons appointed by TRW and Trico. Both appointed mediators shall agree to the appointment of the third mediator not later than twenty (20) business days from the original notification of violation by TRW. This mediation panel shall meet with the representatives of TRW and Trico within ten (10) business days of the appointment of the third mediator and shall render a decision within ten (10) business days of such meeting. The decision of the mediation panel shall be advisory only and shall not be binding on TRW and Trico. However, TRW and Trico stipulate that should TRW seek enforcement of this Agreement by the Court following the decisions of the mediation panel the decision of the panel shall be disclosed to the Court. If within five (5) business days of the mediation decision, the parties are unable to resolve the dispute, TRW shall have the right to pursue

any available legal or equitable means to enforce the terms of this Judgment.

18. That plaintiff waives its rights to damages, an accounting of profits and attorneys fees.

19. That the parties will exchange general releases, and defendant Trico will dismiss any pending counterclaims with prejudice and defendant Ambrosi will dismiss his counterclaim without prejudice.

20. That this Judgment shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

21. That the Court shall retain jurisdiction over the parties to enforce the terms of this Final Judgment on Consent.

Dated: Tulsa, Oklahoma
9-23-88, 1988

S/ THOMAS R. BRETT
United States District Judge

Plaintiff hereby consents to the issuance and entry of a Final Judgment on Consent as set forth above without further notice.

Dated: Tulsa, Oklahoma
Sept 22, 1988

TRW INC.

By: Fred C. Cornish

Fred C. Cornish
917 Kennedy Building
321 South Boston
Tulsa, Oklahoma 74103
(918) 583-2284

ATTORNEY FOR THE PLAINTIFF

Defendants hereby consent to the issuance and entry of a Final Judgment on Consent as set forth above without further notice.

Dated: Sept 22 Tulsa, Ok.
Sept 22, 1988

TRICO INDUSTRIES, INC.
MICHAEL SACKASH
JUAN AMBROSI

By: Laurence L. Pinkerton

Laurence L. Pinkerton
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

ATTORNEY FOR DEFENDANTS

TRW *REDA PUMPS*

EMPLOYEE INVENT ' AND CONFIDENTIAL INFORM. ION AGREEMENT

In consideration of my employment by TRW Inc., an Ohio corporation, and/o. y any other company which it owns or controls or their successors in business (any one or more of which companies so employing me shall be herein referred to as the Employer') during such time as may be mutually agreeable to the Employer and myself, and in consideration of the compensation paid to me for working for the Employer, I hereby assign and agree to assign to TRW Inc. the following described inventions whether patentable or not:

1. All my rights to inventions, which during the period of my employment by the Employer, I have made or conceived, or may hereafter make or conceive, either solely or jointly with others, within the existing or contemplated scope of the Employer's business or relating to any subject matter with which my work for the Employer is or may be concerned.

2. All my rights to inventions which, during the period of my employment by the Employer, I have made or may hereafter make or conceive, either solely or jointly with others, with the use of the Employer's time, material or facilities.

3. All my rights to inventions which, during the period of my employment by the Employer, I have made or may hereafter make or conceive, either solely or jointly with others, relating to machines, processes, devices, compositions of matter, or ornamental designs for articles of manufacture, now made, used or sold by the Employer, or which the Employer may hereafter, during the period of my employment, make, use or sell.

4. All my rights to inventions which have been incorporated or utilized, or which may hereafter be incorporated or utilized, by the Employer in the manufacture, use or sale of machines, devices, compositions of matter, processes, or ornamental designs for articles of manufacture, during the period of my employment by the Employer.

5. All my rights to unpatented inventions which I now own, except those listed below and those formally disclosed to my prior employer as not being included in this Agreement.

I further agree that I will promptly disclose in writing to the Employer, through the Employer's offices or their designees, each and every invention made or conceived by me either as an individual or jointly with others, during the period of my employment.

I further agree, either during or after my employment and without charge to Employer, to execute, acknowledge, and deliver all such further documents, including applications for Letters Patent, as may be necessary or in the opinion of the Employer advisable to obtain Letters Patent for said inventions in the United States and in any other country, and to vest title thereto in TRW Inc. and its successors, assigns, and/or designees.

I further agree that any invention which I may disclose to any one within six (6) months after the termination of my employment, or for which I may file application for Letters Patent within six (6) months after the termination of my employment, shall be presumed to have been made during my period of employment hereunder; except that if I in fact conceive and make any such invention after the termination of my employment with the Employer, then such invention shall belong to me and shall be my sole property or the property of my assignee. I assume the responsibility of proving that I conceived and made any such invention after the termination of my employment.

I also agree not to disclose to any outside party either during or after my employment nor to use after my employment, without the Employer's written consent, any information, knowledge or data of Employer's or of third parties' obtained by me during my employment relating to formulas, methods, machines, compositions, inventions, developments, improvements or otherwise which is or is treated as Employer or third party private, trade secret, or proprietary, and I agree to hold all such information, knowledge and data in strict confidence.

I also agree upon leaving the employment of the Employer not to take with me any of Employer's property including but not limited to blueprints, drawings, sketches, notebooks, formulas and documents.

I also agree that after my employment, Employer may notify any one thereafter employing me of the existance and provisions of this Agreement.

I agree to employ and do all things necessary for Employer to comply with provisions of contracts between agencies of the U.S.A. Government or their contractors and Employer which relate to Invention Rights or to the safeguarding of information pertaining to the defense of the United States of America.

The provisions of this contract shall be construed as severable.

It is understood and I agree that the term 'period of my employment' used in this Agreement shall be the entire time in which I am in the employ of the Employer including such time prior to the date of this Agreement.

As a matter of record, I have given below a complete list of all unpatented inventions, including a description thereof, which I now own and which are not to be included in this Agreement, and I covenant that this list is complete.

WITNESS my hand and seal this _____ day of _____, 19 _____.

WITNESS:

_____ _____

Employee

RESERVED INVENTIONS: TITLE AND BRIEF DESCRIPTION

(USE REVERSE SIDE IF NECESSARY)

EXHIBIT A

R-171 4/80

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

FILED
SEP 23 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

LAURENCE and SHELLY GRAHAM,	)	
Plaintiffs,	)	
vs.	)	Case No. 88-C-513 B
LAURA LEE PARIS,	)	
Defendant.	)	

NOTICE OF
DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiffs, Laurence and Shelly Graham, and moves this Honorable Court to dismiss with prejudice, the above styled and numbered cause of action for the reason that parties have reached a settlement.

Respectfully,

Rick W. Bisher, #12215
BOETTCHER & RYAN
4200 East Skelly Drive
Suite 180
Tulsa, Oklahoma 74135
(918) 492-1614

FILED

SEP 23 1988

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

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

AMCON DISTRIBUTING COMPANY, a Delaware corporation, d/b/a NWI Distributing Company, Plaintiff,	)	Case No. 88-C-617-B
vs.	)	
JIM L. TREAT, Defendant.	)	

JOURNAL ENTRY OF JUDGMENT

On this 23rd day of September, 1988, this matter comes on for hearing before the undersigned United States District Judge. Plaintiff, AMCON Distributing Company ("AMCON") appears by its attorneys, Dana L. Rasure and James E. Carrington of Baker, Hoster, McSpadden, Clark, Rasure & Slicker. The Court, having examined the pleadings and being fully advised, finds that the Defendant Jim L. Treat, by and through his attorney, entered an appearance, but has not answered or otherwise pleaded and is in default.

The defaulting Defendant, having failed to plead or answer, is hereby adjudged by the Court to be in default. The Court further finds that:

AMCON should be granted judgment in its favor against Jim L. Treat in the aggregate amount of $329,731.48 as of February 6, 1988, together with interest and finance charges accruing thereafter on such amount as described in the Complaint

through the date hereof, interest accruing from the date hereof at the highest applicable rate, AMCON's reasonable attorneys' fees and the costs of this civil action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that a judgment be entered in favor of AMCON and against Jim L. Treat in the aggregate amount of $329,731.48 as of February 6, 1988, together with interest and finance charges accruing thereafter on such amount as described in the Complaint through the date hereof, interest accruing from the date hereof at the highest applicable rate, AMCON's reasonable attorneys' fees and the costs of this civil action.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

James E. Carrington

Dana L. Rasure, OBA #7421
James E. Carrington, OBA #11249
Baker, Hoster, McSpadden,
Clark, Rasure & Slicker
800 Kennedy Building
Tulsa, Oklahoma 74103
(918) 592-5555

Attorneys for Plaintiff
AMCON Distributing Company

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

WMD DEVELOPMENT, LTD., an Oklahoma corporation, Plaintiff, vs. THE GLOBE SAVINGS BANK, Defendant and Third-Party Plaintiff, vs. ROBERT E. McCORMACK AND SPOUSE, if any; DEBORAH JAN GRAHAM, Personal Representative of the Estate of Ralph Eugene Williams, Deceased; DAISY VERLEE WILLIAMS; BLAIN F. DEEM and LILLIAN DEEM, husband and wife; RENT IT COMPANY OF TULSA, INC.; ELECTRICAL DESIGN AND CONSTRUCTION, INC.; STATE OF OKLAHOMA ex rel Oklahoma Tax Commission; JOHN F. CANTRELL, County Treasurer of Tulsa County, Oklahoma; BOARD OF COUNTY COMMISSIONERS OF TULSA COUNTY, OKLAHOMA; and FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, as Receiver of Territory Savings and Loan Association, Third-Party Defendants.	)	NO. 88-C-577-B FILED SEP 23 1988 Jack C. Silver, Clerk U. S. DISTRICT COURT

ORDER

This matter comes before the Court upon Third Party Plaintiff The Globe Savings Bank's ("Globe") Motion to Remand and Third Party Defendant Federal Savings and Loan Insurance Corporation's

("FSLIC") Motion to Dismiss FSLIC from this action.

WMD Development, Ltd., initiated this action in Tulsa County District Court for damages sustained when Globe allegedly failed to fund a construction loan. In its Answer, Counterclaim and Third Party Petition, Globe sought contribution and reimbursement from the FSLIC, as receiver for Territory Savings and Loan Association ("Territory"), because Territory allegedly had a participation interest in the construction loans which they failed to fund. In short, Globe alleges it fulfilled its obligations under the construction loan contract and the FSLIC is responsible for any liability incurred from Territory's failure to fund their portion of the loan agreement.

Upon receiving the Third Party Petition, the FSLIC removed the action to this Court pursuant to 28 U.S.C. §1441 et seq. and 28 U.S.C. §1730(k)(1). The FSLIC sought to have the Complaint dismissed because federal regulations require a claimant to exhaust its administrative remedies before seeking judicial review. Globe filed a motion to remand the because the FSLIC improperly removed the action to federal court. In its Motion to Remand, Globe asserts that neither 28 U.S.C. §1442(a)(1) nor 28 U.S.C. §1703(k)(1) confers this Court with subject matter jurisdiction.

Globe first asserts that this Court does not have jurisdiction because no officer of the United States or one of its agencies is a party under 28 U.S.C. §1442(a)(1). Globe argues that only an individual officer of the United States or an officer of any agency thereof may remove an action to the federal court. This argument,

however, disregards the plain intent behind 12 U.S.C. §1730(k)(1), which specifically grants the FSLIC the authority to remove actions to federal court. Section 1730(k) provides in part:

> "(k)(1) Notwithstanding any other provision of law, (A) the Corporation shall be deemed to be an agency of the United States within the meaning of section 451 of Title 28; (B) any civil action, suit, or proceeding to which the Corporation shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy; and (C) the Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district and division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect..."[1]

Globe's argument fails for two reasons. The section conferring authority to remove cases to federal district court becomes effective "notwithstanding any other provision of law" and supersedes the general language of §1442. Additionally, when §1730(k) grants original jurisdiction or authority to remove a case, the statute speaks of the Corporation, not its officers. It is clear that §1730(k) does not require the presence of a named officer before a suit may be brought in federal court.

Globe further argues the Proviso in §1730(k) defeats any potential jurisdictional grant in this case. The Proviso reads[2]:

---

[1] Section (k)(1) continues with a Proviso which is the basis for another of Globe's arguments. The Proviso will dealt with later in this Order.

[2] The Proviso is a continuation of the §1730(k)(1) text quoted above.

> "Provided: That any action, suit, or proceeding to which the Corporation is a party in its capacity as conservator, receiver, or other legal custodian of an insured State-chartered institution and which involves only the rights or obligations of investors, creditors, stockholders, and such institution under State law shall not be deemed to arise under the laws of the United States."

The proviso dictates that "arising under" jurisdiction does not exist when 1) the FSLIC is a party to the action in its capacity as receiver of an insured state chartered institution; 2) the action involves only the rights or obligations of investors, creditors, stockholders and the institution ("proviso parties"); and 3) these rights and obligations arise under state law. The proviso, "which is designed to keep certain actions in state courts," thus establishes three conditions that, if satisfied, preclude the exercise of removal jurisdiction pursuant to §1730(k)(1)(B). Morrison-Knudsen Co. v. CHG Int'l., Inc., 811 F.2d 1209, 1220 (9th Cir. 1987).

The proviso, however, does not prevent the FSLIC from removing this case to federal court. The proviso requires that the case only involve the rights or obligations of investors, creditors, stockholders and the state-chartered institution. It is apparent there is more at stake than the rights and obligations of only investors, creditors, stockholders, and the state-chartered institution. None of the parties in this action are investors, creditors, or stockholders and cannot be considered "proviso parties." At best, the parties are nothing more than possible judgment creditors and are, therefore, beyond the proviso's scope.

Although Globe has the possibility of ultimately becoming a judgment creditor, provided Globe loses the underlying action and its counterclaim, that status should not be equated with the proviso's creditor status of a failed institution. If Globe loses the underlying action, WMD Development, Ltd. would thereby become one of Globe's creditors. Concluding that Globe automatically becomes a creditor entitled to contribution from the FSLIC if the Court were to decide in WMD's favor would restrain or affect the FSLIC's powers as receiver to distribute assets in violation of 12 U.S.C. §1464(d)(6)(C). Globe must seek contribution by presenting its claim to the FSLIC in the appropriate administrative proceeding before Globe may be considered a creditor. Until that time, Globe is no more than one of Territory's former business associates.

Furthermore, the FSLIC argues the proviso's limiting effect should be read in light of subsequent Congressional enactments and the relevant legislative history. Such a reading would purportedly reveal that the proviso's limiting effect should only be applied in situations where the FSLIC is a party in its capacity as a state-appointed receiver of a state-chartered association. Consequently, the proviso would be inapplicable in this case because the Federal Home Loan Bank Board appointed the FSLIC as Receiver of Territory Savings and Loan under 12 U.S.C. §1729(c)(2). It is unnecessary to decide whether this is an accurate construction of the relevant legislative history because, assuming arguendo the proviso applies in this instance, Globe has failed to establish that it is one of Territory's investors, creditors,

or stockholders. Therefore, 12 U.S.C. §1730(k)(1)(B) and (C) confer this Court with subject matter jurisdiction over the FSLIC and Globe's Motion to Remand hereby is overruled.

Upon removing this action to federal court, the FSLIC filed a Motion to Dismiss Third Party Defendant. The FSLIC asserts that judicial review is premature and that all claims must be first presented in an administrative proceeding. This Court hereby adopts its Order entered in Mortgage Clearing Corporation v. Territory Savings and Loan Association and the Federal Savings and Loan Insurance Corporation, No. 88-C-157-B (N.D. Okla. April 26, 1988), attached hereto, requiring all potential claimants to proceed through administrative channels.

Finally, Globe argues the FSLIC should not be dismissed and judicial review is appropriate because any attempt to administratively solve the contribution claim would cause irreparable injury, would violate statutory or constitutional rights, and would be futile. Globe alleges the possibility of inconsistent judgments would cause irreparable injury and deny due process of law. Globe has failed to identify any irreparable injury other than the possibility of inconsistent money judgments. The very fact that judicial review is ultimately available for such judgments denies their irreparable nature. Additionally, Globe's bare assertion that it will be denied due process of law if it is forced to proceed in an administrative action for contribution rather than have the issue decided in the same forum as the underlying action is unsubstantiated. On the contrary, this is the

type of claim for which the administrative process was established.

> "... resolution of even the facial merits of claims outside of the statutory reorganization process would delay the receivership function of distribution of assets: the FSLIC would not be able to determine how much to pay other claimants until the termination of the parallel litigation. Given the overriding Congressional purpose of expediting and facilitating the FSLIC's task as receiver, such a delay is a 'restraint' within the scope of [12 U.S.C. §1464(d)(6)(C)]."

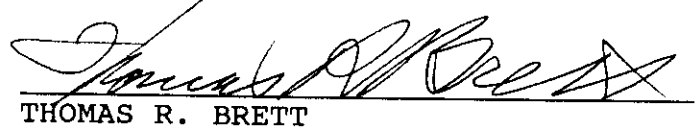
North Mississippi Savings & Loan Ass'n. v. Hudspeth, 756 F.2d 1096, 1102 (5th Cir. 1985). Allowing a court to determine the right of contribution would undermine and unnecessarily delay the administrative process.

Globe's remaining grounds for this Court to retain jurisdiction are that any administrative actions would be futile and too time consuming. Exhausting the administrative process is not considered futile merely because the party anticipates an adverse decision. Randolph-Sheppard Vendors of America v. Weinberger, 795 F.2d 90, 104-06 (D.C. Cir. 1986). Furthermore, Globe urges this Court to retain jurisdiction because of the complex nature of the contribution claim and the considerable discovery required. Globe's arguments fail for two reasons. First, the very nature of the FSLIC is to identify and settle complex banking claims. One of the precepts for administrative action is to allow the agencies to exercise their specialized expertise. McKart v. United States, 395 U.S. 185, 194 (1969). Second, the judicial action would disrupt and stay the agency's disposition of any assets until the litigation becomes final.

Globe readily admits the action is complex and would require protracted discovery. Therefore, the administrative proceeding is the proper forum for determining whether the FSLIC's has any financial obligations to Globe.

It is therefore **ORDERED** that The Globe Savings Bank's Motion to Remand is denied, and the Motion to Dismiss Third-Party Defendant Federal Deposit Savings and Loan Association is granted. It is **FURTHER ORDERED** that this action be remanded to the Tulsa County District Court because there is no longer any basis for federal jurisdiction.

IT IS SO **ORDERED** this 23 day of September, 1988.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

MORTGAGE CLEARING CORPORATION, Plaintiff,	)	
v.	)	No. 88-C-157-B
TERRITORY SAVINGS AND LOAN ASSOCIATION and the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, Defendants.	)	

O R D E R

This matter comes before the Court on Defendant Federal Savings and Loan Insurance Corporation's ("FSLIC") motion to dismiss for lack of subject matter jurisdiction. The FSLIC claims that federal law and regulations require the Plaintiff to pursue its claims through an administrative process established by the Federal Home Loan Board ("Bank Board").

Plaintiff has alleged in the complaint that Defendant Territory Savings and Loan Association breached a mortgage loan servicing contract between the parties causing actual damages of $58,562.00, and entitling Plaintiff to $250,000.00 in exemplary damages.

On January 29, 1988, the Federal Home Loan Bank Board found and declared that Territory Savings and Loan Association was insolvent and in an unsafe and unsound condition to transact business. Accordingly, the Bank Board appointed the FSLIC as receiver for Territory Savings and Loan Association for purposes of

9

liquidation. Pursuant to 12 U.S.C. §1730(k)(1)(c), the FSLIC removed this action to this court.

The FSLIC's assertion of adjudicatory power rests first on 12 U.S.C. §1464(d)(6)(c) which states:

> "Except as otherwise provided in this subsection, no court may take any action for or toward the removal of any conservator or receiver, or, except at the instance of the Board, restrain or affect the exercise of powers or functions of a conservator or receiver."

The FSLIC asserts that judicial adjudication of creditors claims would restrain or affect the exercise of its receivership powers in violation of the statute. The FSLIC cites North Mississippi Savings and Loan Association v. Hudspeth, 756 F.2d 1096 (5th Cir. 1985), which held that no court can adjudicate or enforce any right against the receiver or its assets, or delay or otherwise effect any allocation or distribution of receivership assets in satisfaction of a claim. The court reasoned that "resolution of even the facial merits of claims outside the statutory reorganization process would delay the receivership function of distribution of assets..." Given the overriding Congressional purpose of expediting the FSLIC's task as receiver, such a delay is a restraint within the scope of the statute. Hudspeth at 1102.

Several courts have construed the §1464 statute provisions to require the dismissal for lack of subject matter jurisdiction of any claims asserted by any party against the closed association, the receiver, or the receivership assets. E.g., Lyons Savings and Loan Association v. Westside Bancorporation, Inc., 828 F.2d 387 (7th Cir. 1987) (affirming 636 F.Supp. 576 (N.D.

Ill. 1986); First Financial Savings and Loan Association of El Dorado v. FSLIC, 651 F.Supp. 1289 (E.D. Ark. 1987); Kohlbek v. Kis, 651 F.Supp. 1233 (D.Mont. 1987); Sunrise Savings and Loan Association v. LIR Development Co., 641 F.Supp. 744 (S.D. Fla. 1986).

The FSLIC also relies on 12 U.S.C. §1729(d), which states:

> "In connection with the liquidation of insured institutions in default, (FSLIC) shall have the power to carry on the business of and to collect all obligations to the insured institutions, to settle, compromise, or release claims in favor of or against the insured institutions, and to do all other things necessary in connection therewith, subject only to the regulation of the court or other public authority having jurisdiction over this matter."

This provision, argues FSLIC, demonstrates Congress' intent that the FSLIC have plenary power in connection with the liquidation of insolvent institutions. See also, §1729(a) (grant of authority to facilitate the liquidation of insured institutions), §1729(b)(1)(A)(v) (FSLIC authorized to liquidate assets in an orderly manner), §1729(c)(3)(B) (authority to liquidate granted).

Plaintiff cites the alternate construction of §1464 as held by the Ninth Circuit in Morrison-Knudsen Co. v. CHG International, Inc., 811 F.2d 1209 (9th Cir. 1987). The Morrison-Knudsen court held that a receiver's ordinary functions do not include adjudication. Common law receivers have never in ordinary practice had the power to adjudicate claims: that power remains vested in the courts. Id. at 1219. After a review of FSLIC's statutes and legislative history, the Ninth Circuit found that it was unable to locate a single explicit indication in the legislative history

or the language of its governing statutes that Congress intended or expected the FSLIC to adjudicate claims as part of its receivership functions. Id.

The Ninth Circuit's holding in Morrison-Knudsen seems to stand alone in its interpretation of §1464. Several courts have taken the posture of the Fifth Circuit's holding in Hudspeth, including the District Court for the Northern District of Florida, which stated:

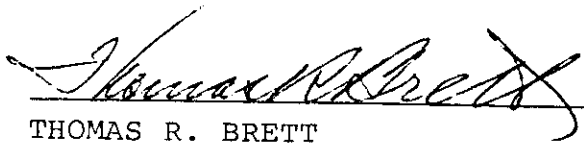
> "The primary purpose of this entire statutory scheme was to protect the average depositor from financial ruin resulting from the failure of a savings institution. This purpose would be defeated by the denial of even one valid depositor claim. This legislation was not designed to protect creditors.... Under Hudspeth, all claims of Fairfax are switched to the administrative process by §1464(d)(6)(c). Fairfax can challenge the FSLIC's actions before the FHLBB and, if dissatisfied, can seek judicial review under the Administrative Procedure Act. Until such time, the statute prevents Fairfax from going forward in any court before seeking review before the FHLBB.
>
> "This Court concludes that 12 U.S.C. §1464, 1729(d), preclude courts from adjudicating creditor claims and thus dismissal due to lack of subject matter jurisdiction."

FSLIC v. Urquhardt, No. 86-04294 (N.D.Fla. April 7, 1987); FSLIC v. Oldenburg, No. 85-C-1481W (D.Utah April 18, 1987); Acquisition Corp. of America v. Sunrise Savings and Loan Association, No. 86-2144-CIV (S.D.Fla. April 14, 1987).

The great weight of authority leads to the conclusion that this Court has no power to affect the functions of the receiver, as would the adjudication of the present claims. The FSLIC should

be subject to the regulation of the FHLBB and the motion to dismiss for lack of subject matter jurisdiction is hereby granted.

IT IS SO ORDERED, this 26 day of April, 1988.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

3752-000

IN THE UNITED STATES DISTRICT COURT FOR

THE NORTHERN DISTRICT OF OKLAHOMA

THURSTON ASSOCIATES, LTD., an Oklahoma limited partnership; MZ INVESTMENTS, LTD.; an Oklahoma limited partnership; P. THOMAS MANN and PETER A. DYSERT,	)	
Plaintiffs,	)	
vs.	)	
FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver of First Repbulicbank Dallas, N.A. and NCNB TEXAS NATIONAL BANK,	)	
Defendants.	)	No. 88-C-1054-B

NOTICE OF DISMISSAL

The Plaintiffs herein, hereby notify the above-described Court that a Dismissal Without Prejudice was filed in the state court action which is the basis of the Plaintiffs' Petition for Removal herein.

A certified copy of the Dismissal Without Prejudice, filed in the Tulsa County District Court, in and for the State of Oklahoma, in Case No. CJ-87-04672, is attached hereto marked Exhibit "A" and made a part hereof by reference.

Accordingly, with the filing of the Dismissal Plaintiffs request that the Petition for Removal be dismissed.

BARROW, GADDIS, GRIFFITH & GRIMM

By: _____
Wm. Brad Heckenkemper 4041
Suite 300
610 South Main Street
Tulsa, OK 74119-1226
(918) 584-1600

Attorneys for the Plaintiffs

CERTIFICATE OF MAILING

I do hereby certify that on the 22 day of September, 1988, a true and correct copy of the above and foregoing instrument was mailed via first class mail with proper postage fully prepaid thereon to:

M. E. McCollam, Esq.
Conner & Winters
2400 First National Tower
Tulsa, OK 74103

Jay B. White, Esq.
Jones, Givens, Gotcher,
Bogan & Hilborne
3800 First National Tower
Tulsa, OK 74103

Susan L. Karamanian, Esq.
First Republicbank Center
3600 Tower II
Dallas, TX 75201-3989

_____
Wm. Brad Heckenkemper

WBH2/lam:TALFD

3752-000

Code No. 11

IN THE DISTRICT COURT OF TULSA COUNTY

STATE OF OKLAHOMA

THURSTON ASSOCIATES, LTD., an Oklahoma limited partnership; MZ INVESTMENTS, LTD.; an Oklahoma limited partnership; P. THOMAS MANN and PETER A. DYSERT,	)	
Plaintiffs,	)	
vs.	)	
FIRST REPUBLICBANK DALLAS, N.A. (formerly known as Republic Bank Dallas, N.A.),	)	
Defendant.	)	No. CJ-87-04672

DISMISSAL WITHOUT PREJUDICE

Come now the Plaintiffs in the above-referenced action and hereby dismiss without prejudice the above-styled action.

BARROW, GADDIS, GRIFFITH & GRIMM

By: _____
Wm. Brad Heckenkemper 4041
Suite 300
610 South Main Street
Tulsa, OK 74119-1226
(918) 584-1600

Attorneys for the Plaintiffs

CERTIFICATE OF MAILING

I do hereby certify that on the 22 day of September, 1988, a true and correct copy of the above and foregoing instrument was mailed via first class mail with proper postage fully prepaid thereon to:

M. E. McCollam, Esq.
Conner & Winters
2400 First National Tower
Tulsa, OK 74103

Jay B. White, Esq.
Jones, Givens, Gotcher,
Bogan & Hilborne
3800 First National Tower
Tulsa, OK 74103

I, Don E. Austin, Court Clerk, for Tulsa County, Oklahoma, hereby certify that the foregoing is a true copy of the original on file in this office.

Don E. Austin
Court Clerk

EXHIBIT "A"

Susan L. Karamanian, Esq.
First Republicbank Center
3600 Tower II
Dallas, TX 75201-3989

Wm. Brad Heckenkemper

WBH2/lam:TALD

FILED

SEP 23 1988

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

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

JUDIE J. NANCE, Plaintiff, v. COMMERCIAL FEDERAL MORTGAGE CORPORATION, f/k/a CFS MORTGAGE, a foreign corporation, Defendant.	)	No. 88-C-429-E

STIPULATION AND DISMISSAL

Comes now the Plaintiff and the Defendant pursuant to the Federal Rules of Civil Procedure 41(a)(1)(ii) and hereby stipulate to the dismissal with prejudice of Plaintiff's claim against the Defendant for the reason that the claims stated in the above entitled action have been fully settled and satisfied.

Larry D. Henry, OBA No. 4105
1000 ONEOK Plaza
Tulsa, Oklahoma 74103
(918) 585-8141

Attorney for Plaintiff

OF COUNSEL:

HUFFMAN ARRINGTON KIHLE GABERINO
& DUNN
A Professional Corporation
1000 ONEOK Plaza
Tulsa, Oklahoma 74103
(918) 585-8141
Attorneys for Plaintiff

Steven E. Edgar, OBA 2818

2524 East 71st Street
Tulsa, Oklahoma 74136

Attorney for Defendant

OF COUNSEL:

EDGAR, PERIGO & HILSABECK, Inc.
2524 East 71st Street
Tulsa, Oklahoma 74136
Attorneys for Defendant

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

DAVID LORAN UNDERWOOD and BRENDA LEE GORDON, Personal Representatives of the Estate of Phyllis Rose Underwood, deceased, et al., Plaintiffs, vs. BILLY JAKE MYERS, d/b/a RHINELAND AGRI-SHIPPERS, d/b/a MYERS GRAIN AND FERTILIZER, et al., Defendants.	Case No. 87-C-644-B
AND MILDRED REYNOLDS, Plaintiff, vs. BILLY JAKE MYERS, d/b/a RHINELAND AGRI-SHIPPERS, d/b/a MYERS GRAIN AND FERTILIZER, et al., Defendants.	Case No. 87-C-645-B
AND CHARLES OVERGARD, Personal Representative of the Estate of Elizabeth Ann Overgard, deceased, et al., Plaintiffs, vs. BILLY JAKE MYERS, d/b/a RHINELAND AGRI-SHIPPERS, d/b/a MYERS GRAIN AND FERTILIZER, et al., Defendants.	Case No. 87-C-819-B

FILED
SEP 23 1988
Jack C. Silver, Clerk
U. S. DISTRICT COURT

AND	)	
MYRTLE V. MORGAN,	)	
Plaintiff,	)	
vs.	)	Case No. 87-C-863-B
BILLY JAKE MYERS, d/b/a RHINELAND AGRI-SHIPPERS, d/b/a MYERS GRAIN AND FERTILIZER, et al.,	)	
Defendants.	)	
AND	)	
HARRY CHEATWOOD, Personal Representative of the Estate of Pauline Thomas, deceased,	)	
Plaintiff,	)	
vs.	)	Case No. 87-C-863-B
BILLY JAKE MYERS, d/b/a RHINELAND AGRI-SHIPPERS, d/b/a MYERS GRAIN AND FERTILIZER, et al.,	)	
Defendants.	)	
AND	)	
VERA L. TRESLER,	)	
Plaintiff,	)	
vs.	)	Case No. 88-C-544-E
BILLY JAKE MYERS, d/b/a RHINELAND AGRI-SHIPPERS, d/b/a MYERS GRAIN AND FERTILIZER, et al.,	)	
Defendants.	)	(Consolidated in 87-C-644-B)

ORDER

NOW, on this the 16th day of September, 1988, these con-

solidated causes come on for hearing before the Court for Pre-Trial Conference and disposition of pending Motions per Rule 16, F.R.C.P.; and the following parties were represented by their respective counsel making appearances on their behalves: J. Duke Logan, Donald K. Switzer and Renee J. Janzen of Vinita, Oklahoma, appearing for the Plaintiff, Harry Cheatwood, Personal Representative of the Estate of Pauline Thomas, deceased; James E. Poe of Tulsa, Oklahoma, for the Defendant, Protective Casualty Insurance Company; Michael S. McMillin of Oklahoma City, Oklahoma, for the Defendant, James T. Odiorne, Ancillary Receiver of Citizens National Assurance Company; Scott B. Wood of Tulsa, Oklahoma, for the Defendant, Fabian Chavez, Domicillary Receiver for Citizens National Assurance Company; Jot Hartley of Vinita, Oklahoma, for the Plaintiff, Myrtle Morgan; Jack G. Bush and Steven S. Mansell of Oklahoma City, Oklahoma, for the Plaintiffs: (i) David Loren Underwood and Brenda Lee Gordon, Personal Representatives of the Estate of Phyllis Rose Underwood; (ii) David Loren Underwood, individually; (iii) Brenda Lee Gordon, individually; and (iv) Mildred Reynolds; Kent F. Frates and Kendal W. Tresler of Oklahoma City, Oklahoma, for the Plaintiff, Vera L. Tresler; John A. Dunnery of Tulsa, Oklahoma, for the Defendant/Intervenor, Kansas City Fire & Marine Insurance Company; Tim Olsen of Tulsa, Oklahoma, for the Plaintiffs: (i) Charles Overgard, Personal Representative of the Estate of Elizabeth Ann Overgard,

deceased, and (ii) Charles Overgard, individually; John C. Sims of Lubbock, Texas, for the Defendants, Billy Jake Myers, individually and d/b/a Rhineland Agri-Shippers and RAS, Myers Grain and Fertilizer, Inc. and R.A.S. Trucking, Inc.; and John E. Patterson, Jr. of Edmond, Oklahoma [1620 East 19th Street] on behalf of C. Wayne Litchfield of Oklahoma City, Oklahoma, for the Defendants, Underwriters Reinsurance Company and New York Insurance Exchange, Inc. [and the members thereof]; and each of the parties through their respective counsel having announced ready, the Court proceeded to request that counsel identify those Motions still pending in these consolidated causes which might be without opposition or which might otherwise be quickly resolved.

I.

CHEATWOOD APPLICATION FOR LEAVE

Attorney Donald K. Switzer then advised the Court that there was pending before it his client Harry Cheatwood's Application for Leave of Court to File Second Amended Complaint which had as its object allowing him to: (i) join James T. Odiorne, ancillary Receiver of Citizens National Assurance Company, as a Defendant in Case No. 87-C-644-B; and (ii) amend and add claims for relief in the said cause to bring it into line with the other cases pending in this consolidated matter, and, further, to reflect the fact that he, Cheatwood, had recently dismissed the previous wrongful

death action against Myers pending in the District Court of Nowata County, without prejudice. And the Court, upon being advised by John A. Dunnery on behalf of Kansas City Fire & Marine Insurance Company that the objection of his client was withdrawn, and, further, upon being advised by Attorney Michael S. McMillin that the objection of James T. Odiorne was withdrawn upon the condition that counsel for Cheatwood would cooperate expeditiously as to any proper discovery request [which assurance was given], the Court, then, being well advised in the premises, did,

> ORDER, that the Plaintiff Harry Cheatwood, Personal Representative of the Estate of Pauline Thomas, deceased, be and he hereby is granted leave to file his Second Amended Complaint for the purposes hereinabove set forth;
>
> FURTHER ORDERED, that Cheatwood be and he hereby is allowed to intervene as a Plaintiff in the Motions for Summary Judgment filed by Plaintiffs Overgard and Tresler;
>
> FURTHER ORDERED that all parties shall respond to the said Second Amended Complaint within FIFTEEN (15) days from September 16, 1988, or by no later than Monday, October 3, 1988.

II.

OVERGARD MOTION FOR PARTIAL SUMMARY JUDGMENT

The Court next recognized Attorney Tim Olsen, counsel for Charles Overgard, individually and as Personal Representative of the Estate of Elizabeth Overgard, deceased, who advised the Court that he had previously filed a Motion for Partial Summary Judgment seeking a determination in the con-

solidated cases that the driver of the Myers truck, i.e., Roger Eugene East, was at the time of the accident in question operating the said vehicle in a negligent manner in violation of law and that he was negligent per se; Attorney Olsen advised the Court that no party appeared to have filed response or objection to the requested relief, and, upon there being no objection by or on behalf of any party, and upon being well and fully advised in the premises, the Court thereupon did,

> ORDER, that the Motion for Partial Summary Judgment of Charles Overgard be and it hereby is SUSTAINED, and the Court Orders that with respect to the Pliantiffs in each of the consolidated causes [i.e., Overgard, Cheatwood, Morgan, Tresler, Underwood, and Reynolds] the driver of the 1978 Mack semi-trailer truck involved in the accident of June 22, 1987, i.e., Roger Eugene East, be and he hereby is held to have been driving said vehicle in such a manner as to constitute negligence per se.

III.

CHAVEZ MOTION TO DISMISS

The Court next recognized Attorney Scott B. Wood who advised the Court that he had, on behalf of Fabian Chavez, Superintendent of Insurance of the State of New Mexico and Domiciliary Receiver of Citizens National Assurance Company, filed a Motion to Dismiss herein and as to the Plaintiffs Morgan, Underwood, Reynolds, and Overgard premised upon an alleged lack of en personam jurisdiction; and the Court upon being advised by Attorneys Tim Olsen (for Charles Overgard, individually and as Personal Representative); Jot Hartley

(for Myrtle Morgan); and Jack Bush (for Underwood and Reynolds) that they, indeed, concurred in the dismissal of the Domiciliary Receiver, the Court did thereupon,

> ORDER, that Fabian Chavez, Superintendent of Insurance of New Mexico and Domiciliary Receiver of Citizens National Assurance Company, be and he hereby is dismissed from each of the referenced causes.

IV.

KANSAS CITY FIRE & MARINE INSURANCE COMPANY - INTERPLEADER

Attorney John A. Dunnery, Esquire, of Tulsa, Oklahoma, next advised that he had pending before the Court an Application for Interpleader which he had filed in each of the consolidated causes on behalf of his client, Kansas City Fire & Marine Insurance Company; Mr. Dunnery noted that the object of the interpleader was to obtain an Order allowing his client to deposit the sum of FIFTY THOUSAND DOLLARS ($50,000.00) as the sum determined to be owing as the "Uninsured Motorists" benefit under Part 6 of a certain policy of automobile liability insurance No. 35PCP04901519 which it had issued to Elizabeth Overgard, now deceased; Mr. Dunnery stated that two of the Plaintiffs, i.e., Harry Cheatwood and Myrtle Morgan, had objected to the interpleader upon making the assertion that the interpleader should only be allowed if Kansas City Fire & Marine

Insurance Company should deposit the sum of FIFTY THOUSAND DOLLARS ($50,000.00) for each of the six (6) injured and/or deceased occupants of the Overgard vehicle; at this juncture and upon counsel for both Cheatwood and Morgan advising the Court that they did withdraw their previous objection to the interpleader, the Court did then,

> ORDER, that the Defendant, Kansas City Fire & Marine Insurance Company, be and it hereby is authorized to deposit with the Clerk at interest the sum of FIFTY THOUSAND DOLLARS ($50,000.00), such sum to be held pending further Order of the Court directed thereto;
>
> FURTHER ORDERED, that upon payment of said sum, the said company shall stand discharged of and from any and all uninsured motorists liability which might be asserted against it by any of the parties to this consolidated cause as to the said Policy No. 35PCP04901519;
>
> FURTHER ORDERED, that Jot Hartley, counsel for Mildred Morgan, is directed to work with Mr. Dunnery and the Clerk to make certain that the sum aforesaid is deposited at interest.

V.

PROTECTIVE CASUALTY INSURANCE COMPANY - INTERPLEADER

The Court next advised all counsel that the (i) Motion for Summary Judgment filed on behalf of Tresler as to Protective Casualty's coverage, (ii) the Motion for Summary Judgment filed by Protective Casualty Insurance Company relative to allowance of its profferred interpleader sum of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00), and (iii) the Motion for Declaratory Judgment and Objection to Inter-

pleader filed by Odiorne address the same issue of whether the contract obligation of Protective Casualty shall be deemed to be in the sum of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00) or in the sum of ONE MILLION DOLLARS ($1,000,000.00).

All counsel agreed as to the scope of the issue, and the Court then proceeded to hear argument of counsel regarding the law applicable to the facts, which include the salient facts that the "contract" of Protective is evidenced by:

i) the Form E Endorsement, appearing in the record as Exhibit "A" to Protective's Brief in Support of Motion for Summary Judgment; and

ii) the "Agreement" between Protective Casualty and Citizens National Assurance Company dated August 1, 1986, and appearing at Exhibit "D" to Odiorne's Objection to Protective's Interpleader.

Such argument was heard from Attorneys Frates (Tresler); Poe (Protective); Hartley (Morgan); Bush (Underwood and Reynolds); Switzer (Cheatwood); Olsen (Overgard); and McMillin (Odiorne); WHEREUPON, the Court determined the matters and issues raised by the Motions and arguments aforesaid to be submitted and TAKEN UNDER ADVISEMENT.

VI.

ODIORNE MOTION FOR SUMMARY JUDGMENT AND LEAVE TO AMEND

At this juncture, Michael McMillen, on behalf of James T. Odiorne, requested that the Court consider the separate Motion for Summary Judgment which had been filed seeking judgment in Odiorne's favor dismissing him from these consolidated causes, also noting that he had requested leave for Odiorne to file an Amended Answer to deny en personam jurisdiction; the Court was advised that all parties Plaintiff other than Cheatwood (who was just allowed to amend) had filed objections to the Motion for Summary Judgment; the Court allowed Donald K. Switzer, counsel for Cheatwood, to make oral argument adopting the positions taken by Underwood, Reynolds, Overgard, and Tresler in their responses and, further, to argue to the Court on the issue of the status of Odiorne as an insolvent insurance company statutory receiver and the attribution of the "minimum contacts" of the insurer to the receiver as the legal representative of that defunct insurer; WHEREUPON, the Court stated that the issues as raised by Odiorne in this Motion for Summary Judgment and addressed by the Briefs of Tresler, Overgard, Underwood and Reynolds, and the concurring arguments of Morgan and Cheatwood, were considered submitted and were TAKEN UNDER ADVISEMENT; further, the Court,

ORDERS that Odiorne be and he hereby is granted leave to file his Amended Answer for the purposes prayed.

VII.

REINSURERS' MOTION TO DISMISS

Attorney John E. Patterson, Jr., appearing on behalf of C. Wayne Litchfield as counsel for Underwriters Reinsurance Company and New York Insurance Exchange, Inc. [and the members thereof], requested leave of Court for an additional thirty (30) days herefrom within which to file their Motion to Dismiss; WHEREUPON, no objection being heard, the Court did then,

ORDER, that Underwriters Reinsurance Company and New York Insurance Exchange, Inc. be and they hereby are granted until October 11, 1988 within which to file their Motions to Dismiss; objecting parties shall file responses, if any, by October 21, 1988; and the said Movants shall file any replies by no later than October 28, 1988.

VIII.

MYERS JOINDER OF REINSURERS

Attorney John C. Sims then requested of the Court that he, on behalf of Billy Jake Myers, individually; Billy Jake Myers, d/b/a RAS; Billy Jake Myers, d/b/a Rhineland Agri-Shippers; Myers Grain and Fertilizer, Inc., and R.A.S. Trucking, Inc., be granted leave to amend his pleadings in the consolidated causes so as to join the above-identified reinsurers as parties; there being no objection to such request, the Court did then,

ORDER, that Attorney Sims may file pleadings appropriate to join said reinsurers herein as parties Defendant, or as Third Party Defendants by no later than September 30, 1988, if at all;

FURTHER ORDER, with express oral consent of Attorney Patterson, that Mr. Patterson will accept service of process on behalf of all said reinsurers, including the members of the New York Insurance Exchange, Inc.

IX.

MORGAN AND CHEATWOOD PRE-TRIAL MEMORANDUM

At this juncture, counsel for Morgan (Jot Hartley) and Cheatwood (Donald K. Switzer) requested leave to file their Addendum to the Pre-Trial Memorandum out of time; WHEREUPON, there being no objection, the Court directed that same be filed within seven (7) days from this date.

X.

PREPARATION OF ORDER

The Court next directed that Attorney Donald K. Switzer prepare an Order memorializing the rulings of the Court and submit same for execution within ten (10) days therefrom.

ENTERED this 22nd day of September, 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

CLERK'S OFFICE

UNITED STATES COURT HOUSE

TULSA, OKLAHOMA 74103

JACK C. SILVER
CLERK

(918) 581-7796
(FTS) 736-7796

September 23, 1988

TO: Counsel/Parties of Record

RE: Case # 88-C-35-C
FDIC vs. Sellers

This is to advise you that Chief Judge H. Dale Cook entered the following Minute Order this date in the above case:

> The motion of the plaintiff, FDIC, to compel discovery is hereby granted. The Court has not record of a response filed by the defendant. Pursuant to Local Rule 15(a), the failure of a party to respond to a motion amount to a confession or acquiescence of the matter contained therein.

Very truly yours,

JACK C. SILVER, CLERK

By: _____
Deputy Clerk

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

TERRALL MACK JOHNSON, Plaintiff,	)	
vs.	)	No. 88-C-450-B
GIT-N-GO, INC., Defendant.	)	

O R D E R

This matter comes before the Court on Defendant Git-N-Go, Inc.'s motion to dismiss Count II of the Plaintiff Terrall Mack Johnson's Complaint.

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. Okla. 1978).

Plaintiff filed this Complaint alleging he was fired because of his age, 52, in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. §621, et seq. In Count II Plaintiff alleges that the termination was also in violation of Oklahoma public policy under Hinson v. Cameron, 742 P.2d 549 (Okla. 1987).

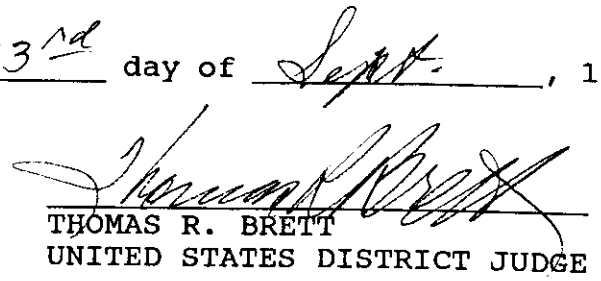
Hinson v. Cameron, supra, indicates at least in *dicta* that in an at-will employee termination suit, public policy grounds might

support a claim in tort. Claims that might be recognized are those by employees fired for exercising a legal right or interest, performing an act that public policy would encourage, or when the discharge is coupled with a showing of bad faith or retaliation. Hinson v. Cameron, at 552-553.

While public policy discourages age discrimination, this Court need not carve out a public policy exception to the at-will doctrine where sufficient remedies are available by statute. The Plaintiff is limited to relief under 29 U.S.C. §621. Further, the Oklahoma Supreme Court has not yet recognized a tort cause of action for wrongful employment termination. Hinson v. Cameron, 742 P.2d 549 (Okla. 1987). Count II, therefore, is dismissed. The other theories concerning dismissal of Count II are therefore moot.

Plaintiff requests that the Court allow him to amend the Complaint to allege a claim for "emotional distress." As Defendant points out, the facts as alleged will not support a claim for intentional infliction of emotional distress. Termination on the basis of age, although certainly unreasonable is not extreme and outrageous. However, the Plaintiff is given leave to amend if there is another viable theory of recovery by October 8, 1988.

IT IS SO ORDERED this 23rd day of Sept., 1988.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

AO 450 (Rev. 5/85) Judgment in a Civil Case

FILED

SEP 23 1988

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

United States District Court

NORTHERN DISTRICT OF OKLAHOMA

JEROME MAREK

V.

K-MART CORPORATION

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 87-C-790-B

☒ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☐ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT JUDGMENT IS HEREBY ENTERED FOR THE DEFENDANT K-MART CORPORATION, AGAINST THE PLAINTIFF, JEROME MAREK, AND THAT THE PLAINTIFF TAKE NOTHING.

IT IS FURTHER ORDERED THAT THE DEFENDANT RECOVER OF THE PLAINTIFF THEIR COSTS OF THE ACTION AND EACH PARTY TO BEAR THEIR OWN ATTORNEYS FEES.

9-23-88

Date

THOMAS R. BRETT, JUDGE

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

MARTIN R. LAIRD, Plaintiff, v. McDONNELL DOUGLAS CORPORATION, Defendant.	)	Civil Action No. 88-C-181 C

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties to this proceeding, by and through their attorneys of record, hereby stipulate pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii) that this action is dismissed, with prejudice. Each party is to bear his or its own costs and attorneys fees.

For Plaintiff
Martin R. Laird:

E. Terrill Corley
1809 East 15th Street
Tulsa, Oklahoma 74104

For Defendant
McDonnell Douglas Corporation

Thomas D. Robertson
Suite 400, Old City Hall Bldg.
124 East Fourth Street
Tulsa, Oklahoma 74103-4004

FILED

1988

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

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

WOLVERINE TECHNOLOGIES, INC., a Michigan corporation, Plaintiff,	)	
vs.	)	Case No. 87-C-143-E
RONALD G. ROBINSON d/b/a AMERICAN WHOLESALE SIDING SUPPLY, Defendant.	)	

ORDER OF DISMISSAL OF
DEFENDANT COUNTERCLAIM

NOW on this 21 day of Sept., 1988, the Court being advised that a compromise settlement has been reached between the Plaintiff and the Defendant, and those parties stipulating to a Dismissal with Prejudice as to the Defendant Counterclaim, the Court,

HEREBY ORDERS, ADJUDGES AND DECREES that the Defendant, Ronald G. Robinson's Counterclaim as against the Plaintiff, Wolverine Technologies, Inc. be dismissed with prejudice as to the Plaintiff, Wolverine Technologies, Inc.

/s/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

LAW OFFICES
UNGERMAN
CONNER &
LITTLE

RIVERBRIDGE OFFICE PARK
1323 EAST 71ST
SUITE 300

P. O. BOX 2099
TULSA, OKLAHOMA
74101

FILED

SEP 1988

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

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

ALLENE A. RIFFE Plaintiff, vs. UNITED STATES OF AMERICA, Defendants.	)	Case No. 85-C-565-E

ADMINISTRATIVE CLOSING ORDER

It appearing to the court that the parties have reached tentative grounds for settlement, this case is hereby administratively closed for a period of ninety days. If the parties have not filed written papers reflecting settlement by that date, the case will be set for immediate pretrial conference and trial on the next non-jury trial docket.

IT IS SO ORDERED this 22d day of September, 1988

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

18

FILED

1988

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

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

BILLIE W. BARRIER Plaintiff, vs. MARK E. ALLISON, M.D., and SPRINGER CLINIC, LTD., an Oklahoma partnership Defendants.	)	Case No. 87-C-203-E

ORDER

Now on this 22nd day of September, 1988, the above-styled matter comes on for hearing before this Honorable Court, and the Court, having fully considered all pleadings and arguments made by the parties in this matter finds that Plaintiff herein has moved the Court to dismiss the action without prejudice. Defendants herein have no objection to a dismissal, but do object to such dismissal being without prejudice. The Court being fully advised, finds that this case should appropriately be dismissed with prejudice, pursuant to Fed. R. Civ. P. 41.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that this case should be and is hereby dismissed with prejudice to any subsequent refiling.

JAMES O. ELLISON
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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

TOM CULVER and MARILYN CULVER,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 87-C-456-C
	)	
NANCY J. COX and ATKINSON TRUCKING COMPANY,	)	
	)	
	)	
Defendants.	)	

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the parties, Plaintiffs represented by and through their attorney of record, Don Dees, Tulsa, Oklahoma, and Defendants, represented by and through their attorney of record, Walter D. Haskins, of the law firm of Thomas, Glass, Atkinson, Haskins, Nellis & Boudreaux, Tulsa, Oklahoma, and hereby stipulate that this cause may be dismissed with prejudice as to Defendant Nancy J. Cox only.

Don Dees,
Attorney for Plaintiffs

Walter D. Haskins,
Attorney for Defendants

WDH/al
20-105

FILED

SEP 22 1988

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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, -VS- WILLIAM BRADFORD INGE; MARY BETH INGE; DORIS ANN SIMON; COUNTY TREASURER, Tulsa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma; Defendants.	)	CIVIL ACTION NO. 88-C-591-8

JUDGMENT OF FORECLOSURE

This matter comes on for consideration on this the 22nd day of September 1988. The plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of Commissioners, Tulsa County, Oklahoma, appears by Doris L. Fransein, Assistant District Attorney, Tulsa County, Oklahoma; the Defendants, William Bradford Inge and Mary Beth Inge, appears by their attorney Frank M. Rowell, Jr.; and the Defendant, Doris Ann Simon, appears not, but makes default.

The Court being fully advised and having examined the file herein finds that the Defendant, William Bradford Inge, acknowledged receipt of Summons and Complaint on June 28, 1988; that the Defendant, Mary Beth Inge, acknowledged receipt of Summons and Complaint on June 29, 1988; that the Defendant, Doris Ann Simon, acknowledged receipt of Summons and Complaint on July 13, 1988; that Defendant, County

Treasurer, Tulsa County, Oklahoma acknowledged receipt of Summons and Complaint on June 30, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 29, 1988.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on July 18, 1988; and that the Defendants, William Bradford Inge and Mary Beth Inge, filed their Answer and Cross-Claim herein on July 18, 1988; and that the Defendant, Doris Ann Simon, 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 Tulsa County, Oklahoma within the Northern Judicial District of Oklahoma:

> Lot Ten (10), Block Three (3), GANTZ ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on June 8, 1984, the Defendants, William Bradford Inge and Mary Beth Inge, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of $24,250.00, payable in monthly installments, with interest thereon at the rate of thirteen percent (13%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, William Bradford Inge and Mary Beth Inge, executed and delivered to the United States of America,

acting on behalf of the Administrator of Veterans Affairs, a mortgage dated June 8, 1984, covering the above-described property. Said mortgage was recorded on June 12, 1984, in Book 4796, Page 1366, in the records of Tulsa County, Oklahoma.

The Court further finds that on or about April 30, 1987 William Bradford Inge and Mary Beth Inge sold the property to the Defendant, Doris Ann Simon, who assumed and agreed to pay all amounts becoming due on the mortgage note and Real Estate Mortgage described herein. The Plaintiff did not release the Defendants, William Bradford Inge and Mary Beth Inge, from their personal liability thereon.

The Court further finds that the Defendant, Doris Ann Simon, made default under the terms of the aforesaid note and mortgage for reason of her failure to make the monthly installments due thereon, which default has continued. By reason thereof, the Defendants, William Bradford Inge and Mary Beth Inge, are indebted to the plaintiff in the principal sum of $23,837.49, plus interest at the rate of thirteen (13%) per annum from October 1, 1987 until Judgment, plus interest thereafter at the legal rate until fully paid and the cost of this action accrued and accruing.

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

The Court further finds that the Defendant, Doris Ann Simon, failed to make the required payments on the aforesaid note and mortgage. She is in default and has no right, title or interest in the subject real property.

IT IS THERFORE ORDERED, ADJDUGED AND DECREED that the plaintiff have and recover judgment against the defendants, William Bradford Inge and Mary Beth Inge, in the principal sum of $23,837.49 plus interest at the rate of 13% per annum from October 1, 1987 until judgment, plus interest thereof at the current legal rate of 8.32 percent per annum until paid, plus the cost of this action accrued and accruing, plus any additional sum advanced or to be advanced or expended during this foreclosure action by the Plaintiff for taxes, insurance, abstracting, or sums for the preseveration of the subject property.

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

IT IS FURTHER ORDERED, ADJDUGED AND DECREED that upon the failure of said Defendants, William Bradford Inge, Mary Beth Inge and/or Doris Ann Simon, to satisfy the money judgment of the plaintiff herein, an Order of Sale shall be issued to the United States Marshall for the Northern District of Oklahoma commanding him to advertise and sell with appraisment 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 cost 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 wait further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the said 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

By Phil Pinnell
PHIL PINNELL
Assistant United States Attorney

Frank M. Rowell, Jr.
FRANK M. ROWELL, JR.,
Attorney for Defendants, William Bradford Inge and Mary Beth Inge

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

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

FILED

SEP 22 1988

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

THE STANDARD FIRE INSURANCE COMPANY,	)	
Plaintiff,	)	
-vs-	)	
BILLY BEAN d/b/a BEAN PLUMBING AND ELECTRIC,	)	
	)	NO. 87-C-182-B
Defendant and Third-Party Plaintiff	)	
-vs-	)	
SUMMERS ELECTRIC COMPANY OF OKLAHOMA CITY, INC., an Oklahoma corporation d/b/a NELSON ELECTRIC SUPPLY and ADVANCE TRANSFORMER COMPANY, a Delaware corporation,	)	
Third-Party Defendants.	)	

ORDER OF DISMISSAL

Now on this 22nd day of Sept., 1988, the above styled and numbered cause coming on for hearing before the undersigned Judge of the United States District Court in and for the Northern District of Oklahoma, upon plaintiff's Motion to Dismiss, and the Court having examined the pleadings and being well and fully advised in the premises, is of the opinion that said cause should be dismissed with prejudice.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

FILED

U.S. DISTRICT COURT, Clerk

MORELAND INVESTMENT CO., INC., an Oklahoma Corporation, Plaintiff	)	
v.	)	CIVIL NO. 88-C-269-E
UNITED STATES OF AMERICA, Defendant	)	

ADMINISTRATIVE CLOSING ORDER

It appearing to the Court that the parties have reached tentative grounds for settlement, this case is hereby administratively closed for a period of sixty (60) days. If the parties have not notified the Court of a final settlement by that date the case will be set for scheduling conference.

SIGNED this 21st day of Sept, 1988.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Approved for entry:

MICHAEL NEMEC
2642 East 21st Street, Suite 190
Tulsa, Oklahoma 74114
(918) 747-1161

ATTORNEY FOR MORELAND INVESTMENT CO., INC.

M. KENT ANDERSON
Attorney, Tax Division
Department of Justice
Room 5B31, 1100 Commerce Street
Dallas, Texas 75242
(214) 767-0293

ATTORNEY FOR UNITED STATES OF AMERICA

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

UNITED STATES OF AMERICA, Plaintiff, vs. M. T. PRODUCTS, LTD., a corporation, and MILDRED TRUMBULL, an individual, Defendants,	)	No. 84-C-994-B

ORDER

This matter comes before the Court on Defendant Mildred Trumbull's and Defendant M. T. Products, Ltd.'s motions for reduction of sentence pursuant to Fed.R.Crim.P. 35. Mildred Trumbull was sentenced to 33 months probation and 6 months incarceration for criminal contempt. M.T. Products was fined $50,000.00. The Court has reviewed the motions and briefs, the record, and sentences imposed, and finds a reduction is appropriate in this case.

The sentences are hereby reduced. Mildred Trumbull is to serve 4 months incarceration and 35 months probation. M.T. Products' fine is reduced from $50,000.00 to $35,000.00.

The United States Court Clerk is directed to pay $35,000.00 in satisfaction of the fine from the $50,000 bond and the balance of $15,000.00 is to be returned to M.T. Products, Ltd.

IT IS SO ORDERED this 22nd day of September, 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

SLJ:INTTOU-21:8-2 58

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

I.T. FINANCIAL CORP. and INTERNATIONAL TOURS, INC., an Oklahoma corporation,	)	
Plaintiffs,	)	
vs.	)	No. 87-C-642-B (Consolidated)
BUDDY EARL PROFFITT and ANNETTE PROFFITT, dba INTERNATIONAL TOURS - ONE MEMORIAL PLACE,	)	
Defendants,	)	
and	)	
MARTIN McMILLAN d/b/a INTERNATIONAL TOURS OF BROOKSIDE,	)	
Defendant,	)	
and	)	
HARRIS & GISH, INC., d/b/a INTERNATIONAL TOURS OF SAND SPRINGS,	)	
Defendant.	)	

PERMANENT INJUNCTION

The above-entitled cause came on for hearing before the court on August 23, 1988, with Benjamin P. Abney appearing as counsel for Plaintiffs I. T. Financial Corporation and International Tours, Inc., and Larry Oliver appearing as counsel

50

for Defendants Bud Proffitt, Annette Proffitt, Martin McMillan, and Harris & Gish, Inc. The Court, being fully advised of the premises, finds as follows:

1. International Tours, Inc. should be substituted as party-plaintiff on claims arising by virtue of the ownership of the International Tours tradename and the service mark composed of the letters "i" and "t" combined with a stylized globe (hereinafter the "IT logo").

2. Defendants and each of them, their servants, agents, attorneys, employees and all persons acting under the authority, control or direction of said Defendants, or any of them, should be perpetually enjoined from doing, transacting, soliciting, carrying on, or engaging in any business wherein or whereby any travel products or travel services are provided, sold, handled or otherwise dealt with under the name or style of "International Tours" or using the IT logo or any other similar name by which the public may be deceived; and from causing, directly or indirectly to be done, carried on, or transacted any business wherein or whereby travel services or travel products are provided, sold, handled or otherwise dealth with under the name and style of "International Tours" or using the IT logo or any other similar name by which the public may be deceived; and from maintaining or operating any place of business under said name "International Tours" or using the IT logo or any other similar name or logo by which the public may be deceived, wherein or

whereby any travel products or travel services are provided, sold or handled.

3. The Defendants are enjoined from using the International Tours name or the IT logo in the future; however, at this time, the Court makes no finding concerning the Defendants' past acts and the Defendants waive no defenses or claims regarding past acts by entering into this Permanent Injunction voluntarily.

4. This order resolves the Plaintiffs' claims for injunctive relief; however, the issue of damages remains to be tried. The parties are to exchange lists of witnesses to be called at the trial of the damages issues no later than October 6, 1988.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that International Tours, Inc. be substituted as party-plaintiff on claims arising by virtue of the ownership of the International Tours tradename and the service mark composed of the letters "i" and "t" combined with a stylized globe.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants and each of them, their servants, agents, attorneys, employees and all persons acting under the authority, control or direction of said Defendants, or any of them, shall be perpetually enjoined from doing, transacting, soliciting, carrying on, or engaging in any business wherein or whereby any travel products or travel services are provided, sold, handled or otherwise dealt with

under the name or style of "International Tours" or using the IT logo or any other similar name by which the public may be deceived; and from causing, directly or indirectly to be done, carried on, or transacted any business wherein or whereby travel services or travel products are provided, sold, handled or otherwise dealt with under the name and style of "International Tours" or using the IT logo or any other similar name by which the public may be deceived; and from maintaining or operating any place of business under said name "International Tours" or using the IT logo or any other similar name or logo by which the public may be deceived, wherein or whereby any travel products or travel services are provided, sold or handled.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants are enjoined from using the International Tours name or the IT logo in the future; however, at this time, the Court makes no finding concerning the Defendants' past acts and the Defendants waive no defenses or claims regarding past acts by entering into this Permanent Injunction voluntarily.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties are to exchange lists of witnesses to be called at the trial of the damages issues no later than October 6, 1988.

Thomas R Brett

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

BENJAMIN P. ABNEY, OBA# 115
STEPHANIE L. JONES, OBA# 10362
CHAPEL, WILKINSON, RIGGS & ABNEY
COUNSEL FOR PLAINTIFFS

LARRY L. OLIVER
GREG P. ROBINSON
LARRY L. OLIVER & ASSOCIATES
COUNSEL FOR DEFENDANTS

9-21-88

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

FEDERAL DEPOSIT INSURANCE CORPORATION Plaintiff, vs. HOLLAND WELL SERVICE, INC. et al Defendants.	)	Case No. 87-C-1002

ORDER

This matter comes on before the court on the Plaintiff's Motion for Summary Judgment against the defendant William R. Holland. After reviewing the pleadings and affidavits filed herein, the court finds as follows:

Holland Well Service, Inc. executed a note in favor of the Bank of Commerce(the "note"). The defendant William R. Holland (Holland) executed a personal guaranty of the note(the "guaranty"). The Federal Deposit Insurance Corporation (FDIC) purchased the note and guaranty when it took over the Bank of Commerce. Holland is asserting that the FDIC breached a duty of good faith in its failure to collect accounts receivable of the failed Holland Well Service, Inc. which were pledged as collateral on the note. Holland alleges this as a defense against collection from him of the remaining sums due under the guaranty.

The Uniform Commercial Code, as adopted in Oklahoma is applicable to the case at bar because the FDIC "does business on business terms."United States v. Willis, 593 F.2d 247,254 (6th Cir.

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1979) This court does recognizes the duty of a Lender to conduct a commercially reasonable sale of collateral it has in its possession if a sale is appropriate. Further, a secured party, even the FDIC, is under a duty to proceed in a commercially reasonable manner in the protection of collateral entrusted to it. Id

However, these duties can be waived by contract. United States of America v. New Mexico Landscaping, Inc., 785 F.2d 843, 846 (10th Cir., 1986) In the present action, the guarantee signed by defendant Holland says, in pertinent part,

> "liability will not be affected or impaired by any failure, neglect or omission by Lender to protect in any manner, the collection of the indebtedness of the security given therefor ...Lender may at any time without the consent of or notice to the undersigned, ... sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order any property at any time pledged to secure or securing the indebtedness of Debtor to Lender ".

Holland has waived via the guaranty the defenses he has attempted to assert. Thus, the plaintiff is correct, there are no material facts in controversy , no defenses available to the defendant Holland and the plaintiff is entitled to judgment against defendant Holland as a matter of Law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion for Summary Judgment against the Defendant Holland is granted. Plaintiff to present a proposed form of judgment within ten days.

Dated this 20th day of September, 1988

James O. Ellison
United States District Court Judge

LDO:lc
9/19/88

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

FILED
SEP 21 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ST. PAUL GUARDIAN INSURANCE COMPANY, Plaintiff,	)	
vs.	)	No. 88-C-458B
ROBERT J. NEWPORT and KIM COATNEY, Defendants.	)	

NOTICE OF DISMISSAL

The plaintiff, St. Paul Guardian Insurance Company, hereby advises the court service has not been perfected upon the defendants and that plaintiffs no longer desire to prosecute their action at this time.

Larry D. Ottaway

Larry D. Ottaway/James D. Hill

FOLIART, HUFF, OTTAWAY & CALDWELL
20th Floor
First National Center
Oklahoma City, OK 73102
Telephone: (405) 232-4633

ATTORNEYS FOR PLAINTIFF.

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

FILED

SEP 21 1988

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

THE HOME INSURANCE COMPANY,	)	
Plaintiff,	)	
vs.	)	No. 88-C-0005-C
MICHAEL O'BRIEN and MERRILL LYNCH RELOCATION MANAGEMENT, INC.,	)	
Defendants.	)	

STIPULATION ~~FOR~~ OF DISMISSAL

Pursuant to Federal Rule of Civil Procedure 41(a)(1), the parties hereby stipulate that all claims, causes of action and counter claims which are the subject of the above captioned action be dismissed with prejudice as to the refiling of same.

KNIGHT, WAGNER, STUART, WILKERSON & LIEBER

JOHN HOWARD LIEBER
Attorney for The Home
Insurance Company

TILLY & WARD

KEITH WARD
Attorney for Merrill Lynch
Relocation Management, Inc.,
and for Michael O'Brien

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

BOBBY RILEY,	)	
Plaintiff,	)	
vs.	)	Case No. 88-C-672-C.
TULSA COUNTY AREA VOCATIONAL-TECHNICAL SCHOOL DISRICT NO. 18,	)	
Defendant.	)	

FILED

SEP 20 1988

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

ORDER

This matter comes on for consideration of the parties' Joint Application for Dismissal with Prejudice. Upon consideration thereof, the parties' Joint Application is granted and this action is ordered dismissed with prejudice.

It is further ordered that each of the parties shall bear their own costs and attorney fees associated with this action.

UNITED STATES DISTRICT JUDGE

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

TRANSPORT INSURANCE COMPANY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 88-C-187-C**
	)	
HODGES MOVING & STORAGE, INC., and MERRILL LYNCH RELOCATION MANAGEMENT, INC.,	)	
	)	
Defendants.	)	

FILED
SEP 20 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

This matter comes before the Court on the parties Stipulation for Dismissal. After reviewing the matter and being fully advised in the premises, the Court finds that this action has been settled by the parties and should therefore be dismissed with prejudice.

IT IS THEREFORE ORDERED BY THE COURT that this action should be and is hereby dismissed with prejudice.

H. Dale Cook, Chief Judge

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

FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity, Plaintiff, vs. PETE'S AUTO SALES, a Partnership; BILL C. (Pete) McALVAIN, an individual and a general partner in Pete's Auto Sales; and JAMES M. FREEMAN, an individual and a general partner in Pete's Auto Sales, Defendants.	)	Case No. 88-C-0007-C

FILED
SEP 20 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

AGREED JOURNAL ENTRY OF JUDGMENT AGAINST
BILL C. (PETE) McALVAIN AND PETE'S AUTO SALES

On this 19th day of Sept, 1988, this matter comes on before the Court. The Court being fully advised and having reviewed the pleadings on file herein finds as follows:

1. That the FDIC is organized and operates under the authority of the Federal Deposit Insurance Corporation Act, as amended, 12 U.S.C. §1811, et. seq.

2. That on January 15, 1987, the Comptroller of the Currency declared the First National Bank of Skiatook ("Bank") to be insolvent pursuant to 12 U.S.C. §191.

3. That the Comptroller of the Currency tendered to the FDIC appointment as Receiver of the Bank pursuant to 12 U.S.C. §1821(c). The FDIC accepted appointment in accordance with 12 U.S.C. §1821(c). Pursuant to 12 U.S.C. §1823(d), the FDIC in its capacity as Receiver of Bank has sold certain assets of the Bank to the FDIC in its corporate capacity. Among the assets sold to the FDIC in its corporate capacity are the assets which are the subject of this action. The FDIC is the owner and holder of the subject assets and is the proper plaintiff entitled to bring this action.

ZUZ/08-88388/lms

4. That at all relevant times, Pete's Auto was a name under which Bill C. (Pete) McAlvain ("McAlvain") did business and he was, at all relevant times, a resident of the State of Oklahoma and the transactions out of which the cause of action asserted herein took place were in the Northern District of Oklahoma.

5. That pursuant to 12 U.S.C. §1819 all suits of a civil nature common law or in equity to which the FDIC in its corporate capacity is a party are deemed to arise under the laws of the United States and the District Courts of the United States have original jurisdiction thereof, without regard to amount in controversy.

6. That on or about October 31, 1984, James M. Freeman ("Freeman"), on behalf of Pete's Auto, made, executed and delivered to the Bank a Promissory Note ("Note 1") in the original principal amount of $10,022.50. According to the terms of Note 1, interest was to accrue on the outstanding principal balance at the rate of sixteen and one-half percent (16.5%) per annum.

7. That Note 1 originally matured on December 30, 1984, but payment of the outstanding balance and accrued interest was deferred until June 6, 1986. Pete's Auto defaulted on its obligation to repay the outstanding indebtedness on June 6, 1986 and despite demand therefor there was due and owing on that date $4,791.25 in principal and such amount has been paid. Interest has accrued from that date at the per diem rate of $1.90.

8. That on or about May 29, 1985, Freeman, on behalf of Pete's Auto, made, executed and delivered to the Bank Promissory Note ("Note 2") in the original principal amount of $24,309.95. According to the terms of Note 2, interest was to accrue on the outstanding principal balance at the rate of sixteen and one-half percent (16.5%) per annum.

9. That as security for Note 2, Pete's Auto pledged the following vehicles:

1978 Pontiac GRN 4 Dr., #2N35Z8X147700

1980 Datsun KHN10 2DR CPE, #KHN10051607

1981 Mercury Zephyr 4DR SDN, #1MEBP71AOBK621118

1982 Buick 2 DR CPE, #1G4AP37Y2CX140586

1981 Honda Civic 4DR, #JHMST3434BS030193

1981 Pontiac Grand Prix 2DR CPE, #1G2AP37N6BP554721

10. That Note 2 originally matured on June 28, 1985, but payment of the outstanding balance of principal and accrued interest was deferred until June 6, 1986. Pete's Auto defaulted on its obligation to repay the outstanding indebtedness on June 6, 1986 and despite demand therefor, there was due and owing on that date $11,150.37 in principal and such amount has not been paid. Interest has accrued from that date and continues to accrue at the per diem rate of $4.43.

11. That on or about March 18, 1985, McAlvain made, executed and delivered to the Bank a Promissory Note ("Note 3") in the original principal amount of $29,187.17. According to the terms of Note 3, interest was to accrue on the outstanding principal balance at the rate of sixteen and one-half percent (16.5%) per annum.

12. That as security for Note 3, pledged the following vehicles:

1972 Winnebago Motorhome, #3224112113745

1977 Chev. Fleetside Pickup, #CCU147S113619

1979 Ford Styleside Pickup, #F15BKFF1054

1984 Harris Flotedek 20' Boat, #KAYD179M84F ("Boat")

OKT Boat Trailer, #205230184

13. That the FDIC recovered the Boat and Boat Trailer which were sold pursuant to the Oklahoma version of the Uniform Commercial Code in a commercially reasonable manner for the net amount of $2,665.40.

14. That Note 3 originally matured on September 11, 1985 but payment of the outstanding balance of principal and accrued interest was deferred until March 26, 1986. McAlvain defaulted on his obligation to repay the outstanding indebtedness on March 26, 1986, and there was due and owing on that date $23,577.10 in principal and

such amount has not been paid. Interest has accrued and continues to accrue at the per diem rate of $10.66, subject to a credit of $2,665.40 for the net sales proceeds realized upon the sale of the Boat and Boat Trailer.

IT IT THEREFORE ORDERED, ADJUDGED AND DECREED that the FDIC is entitled to judgment against Bill C. (Pete) McAlvain in the principal sum of $52,678.30, plus accrued and accruing interest and costs of this action, including a reasonable attorney's fee if properly applied for under local court rules.

JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM AND CONTENT:

JOEL R. HOGUE
GABLE & GOTWALS
2000 Fourth National Bank Bldg.
Tulsa, OK 74119-1217
(918) 582-9201

Attorneys for Federal Deposit Insurance Corporation

CURTIS J. BIRAM
BIRAM & KAISER
Sixth Floor, Pratt Tower
125 West 15th Street
Tulsa, OK 74119

Attorneys for Defendant, Bill C. (Pete) McAlvain d/b/a Pete's Auto Sales

ROBERT P. KELLY
KELLY & GAMBILL
P.O. Box 329
Pawhuska, OK 74056

Attorneys for Defendant,
James M. Freeman

Entered opy

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

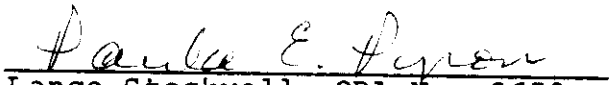
FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity, Plaintiff, vs. HOLLAND WELL SERVICE, INC. BRUCE G. HOLLAND, GERRY P. HOLLAND, and WILLIAM R. HOLLAND, Defendants.	)	Case No. 87-C-1002-E

PLAINTIFF FEDERAL DEPOSIT INSURANCE CORPORATION'S
NOTICE OF DISMISSAL WITHOUT PREJUDICE OF
DEFENDANTS BRUCE HOLLAND AND GERRY P. HOLLAND ONLY

COMES NOW the Plaintiff Federal Deposit Insurance Corporation in its corporate capacity ("FDIC") and dismisses this action without prejudice as against the Defendants Bruce Holland and Gerry P. Holland only pursuant to Federal Rule of Civil Procedure 41(a) and reserves its rights to proceed in this action against all other Defendants. In support of this Notice of Dismissal, the FDIC states that Defendants Bruce and Gerry Holland have not served an answer or motion for summary judgment in this action and that this Notice of Dismissal is entered due to the confirmation by the United States Bankruptcy Court for the Northern District of Oklahoma of the Chapter 13 plan of Bruce

Holland and Gerry P. Holland in Bankruptcy Case No. 87-03557-C (Chapter 13).

Respectfully submitted,



Lance Stockwell, OBA No. 8650
Paula E. Pyron, OBA No. 10446
April W. Mather, OBA No. 12026
BOESCHE, McDERMOTT & ESKRIDGE
800 ONEOK Plaza
100 West Fifth
Tulsa, OK 74103
(918) 583-1777

ATTORNEYS FOR PLAINTIFF FEDERAL DEPOSIT INSURANCE CORPORATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 20th day of September, 1988, the foregoing Plaintiff Federal Deposit Insurance Corporation's Notice of Dismissal Without Prejudice of Defendants Bruce Holland and Gerry P. Holland was placed in the United States mail, postage prepaid to the following:

John Tucker, Esq.
Mary Quinn-Cooper, Esq.
Rhodes, Hieronymus, Jones,
Tucker & Gable
2800 Fourth National Bank Building
Tulsa, OK 74119
Attorneys for William Holland

Mark A. Craige, Esq.
Herrold, Gregg & Herrold
1719 East 71st Street
Tulsa, OK 74136
Attorneys for Bruce and Gerry Holland

Paula E. Tyson

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

ITT COMMERCIAL FINANCE CORPORATION, Plaintiff, vs. F.C.M., INC. d/b/a SHOWPLACE HOUSING; JOE BRANSCUM; JUDITH K. BRANSCUM; JOHN W. ALLISON; and JENNIFER L. ALLISON, Defendants.	)	Case No. 87-C-1001-C

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

COMES NOW the plaintiff, ITT Commercial Finance Corporation, and the defendants, F.C.M., Inc. d/b/a Showplace Housing, Joe Branscum, Judith K. Branscum, John W. Allison and Jennifer L. Allison, who have all appeared in the above-styled action, and hereby stipulate pursuant to Fed.R.Civ.P. 41(a)(1) to dismiss the above captioned action with prejudice.

Respectfully submitted,

DOYLE & HARRIS

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

Attorneys for Plaintiff

MCGIVERN, SCOTT, GILLIARD,
MCGIVERN & ROBINSON

David R. Scott

David R. Scott
P.O. Box 2619
Tulsa, OK 74101-2619
(918) 584-3391

Attorneys for Defendants,
F.C.M., Inc., d/b/a Showplace
Housing, Joe Branscum, Judith
K. Branscum, John W. Allison
and Jennifer L. Allison

404-2/ras

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

DEAN B. KNIGHT LEASING COMPANY, A Corporation	)	
Plaintiff,	)	
vs.	)	Case No. 88-C-0022-B
CHEVRON U.S.A., INC., A Corporation,	)	
Defendant.	)	

ORDER OF DISMISSAL

The Court, having received the Stipulation for Dismissal which was filed by the plaintiff and defendant finds that pursuant to Rule 41(a) - Federal Rules of Civil Procedure the captioned case should be dismissed and, accordingly . . .

IT IS ORDERED that the claims of the plaintiff as alleged in the Complaint are dismissed with prejudice to any refiling and each of the parties is directed to pay their costs including their attorney's fees.

S/ THOMAS R. BRETT

JUDGE THOMAS R. BRETT

APPROVED FOR ENTRY

Edwin S. Hurst, Attorney for the defendant

Gene L. Mortensen, Attorney for the plaintiff

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

STEVEN SCOTT, et al Plaintiff, vs. OKLAHOMA DEPARTMENT OF HUMAN SERVICES, et al Defendant.	))))))))))	Case No. 87-C-1068-B

ORDER

This matter comes on for consideration of the parties' Joint Application for Dismissal with Prejudice. Upon consideration thereof, the parties' Joint Application is granted and this action is ordered dismissed with prejudice.

It is further ordered that each of the parties shall bear their own costs and attorney fees associated with this action.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 20 1988

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

GUESS?, INC., Plaintiff,	)	
v.	)	Case No. 87-C-191-C
RANDY'S SILK SCREENING INC. OF TULSA, et al., Defendants.	)	

STIPULATION OF DISMISSAL

Plaintiff Guess?, Inc., and Defendant Merle Harmons FAN FAIR ~~Fanfare,~~ hereby stipulate pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii) that Defendant Merle Harmons FAN FAIR ~~Fanfare~~ may be dismissed from the above-styled action pursuant to the settlement entered into between the parties.

DATED this 12 day of September, 1988.

GSChilton

ROY J. DAVIS
GARY S. CHILTON
-of-
ANDREWS DAVIS LEGG BIXLER
MILSTEN & MURRAH
500 West Main
Oklahoma City, Oklahoma 73102
Telephone:(405) 272-9241

ATTORNEYS FOR PLAINTIFF

MERLE HARMONS FAN FAIR ~~FANFARE~~

Merlin R. Wildermuth Sec. Trans

By: for Mark Wildermuth

MARK WILDERMUTH
22 Courtlandt Street, 32nd Floor
New York City, New York 10007

PRO SE

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

NANCY LEANN POLLEY, Plaintiff,	)	
vs.	)	No. 88-C-426-B
ARROW TRUCKING COMPANY, Defendant.	)	

O R D E R

This matter comes before the Court on Defendant Arrow Trucking Company's Motion to Dismiss Counts III, IV and V of Plaintiff's Complaint pursuant to Fed.R.Civ.P. 12(b)(6) and Motion for Summary Judgment on Count II. Plaintiff objects to the motions. For the reasons set forth below, the Motion for Summary Judgment will be addressed after there has been time for discovery by Plaintiff and the Motion to Dismiss Counts III and IV is sustained.

Plaintiff, Nancy Leann Polley, was employed by Defendant, Arrow Trucking Company, as an Office Manager from July 1981 through August 8, 1986. Plaintiff contends that on August 8, 1986, Defendant terminated Plaintiff's employment for the sole reason that she had become pregnant. On March 10, 1988, Plaintiff was issued a "Notice of Right to Sue" by the United States Equal Employment Opportunity Commission (EEOC) relating to her termination by Defendant.

On May 13, 1988, Plaintiff filed this action against Defendant asserting five causes of action. Plaintiff's first cause of action alleges a violation under 42 U.S.C. §2000(e). Defendant has not filed any motions concerning Count I. Defendant contends that

Plaintiff's third through fifth claims fail to state claims on which relief can be granted under Oklahoma law. To prevail on a motion to dismiss 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 her 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, 387 U.S. 167 (1967).

Plaintiff's third cause of action alleges that Defendant's conduct in terminating her employment for the reason of her pregnancy amounted to a wrongful discharge in violation of the public policy of the State of Oklahoma. Hinson v. Cameron, 742 P.2d 549 (Okla. 1987), indicates in dicta that in an at will employee termination suit, public policy grounds might support a claim in tort. Claims that might be recognized are those by employees fired for exercising a legal right or interest, performing an act that public policy would encourage, or when the discharge is coupled with a showing of bad faith or retaliation. Hinson at 552-553. While public policy discourages gender based discrimination, this Court need not carve out a public policy exception to the at will doctrine where sufficient remedies are available by statute. The Plaintiff is limited to relief under Title VII. Further, the Oklahoma Supreme Court has not yet recognized a tort cause of action for wrongful employment termination. Hinson v. Cameron, 742 P.2d 549 (Okla. 1987). Plaintiff's third cause of action is therefore dismissed.

Plaintiff's fourth cause of action alleges that the Defendant's conduct "was extreme and outrageous" and was done "recklessly and intentionally." The tort of intentional infliction of emotional distress requires extraordinary transgression of the bounds of civility. Eddy v. Brown, 715 P.2d 74, 77 n. 6 (Okla.1986). Firing Plaintiff for the sole reason she became pregnant, although unreasonable and even actionable, is not conduct so outrageous in character and so extreme in degree to go beyond all possible bounds of decency. Therefore, Plaintiff's fourth cause of action is hereby dismissed.

Plaintiff's fifth cause of action alleges negligent infliction of emotional distress. Oklahoma prohibits recovery for negligent infliction of emotional distress unless there has been tangible, physical injury to the Plaintiff. Richardson v. J. C. Penney Co., Inc., 649 P.2d 564, 566 (Okla.Ct.App. 1982). Because Plaintiff has failed to state that she sustained any tangible, physical injury as a result of Defendant's conduct, she requests the Court to allow her to amend her fifth cause of action in order to bring her allegations into conformity with Oklahoma law. Defendant contends that the amendment should not be allowed because even if Plaintiff can allege some physical injury, she must assert Defendant should have realized its conduct involved an unreasonable risk of causing the distress. Defendant argues that in exercising its right to fire Plaintiff at will, it could not have known the conduct involved an unreasonable risk of causing distress. The Court notes Defendant does not have "a right" to fire Plaintiff for pregnancy.

42 U.S.C. §2000e-2(a)(1) and §2000e(k). Plaintiff is allowed to amend the Complaint concerning this fifth cause of action.

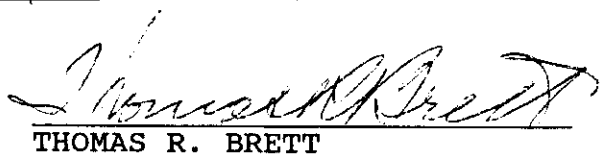
Finally, Defendant requests summary judgment on Plaintiff's second cause of action. Plaintiff's second cause of action alleges Defendant denied Plaintiff her benefits by failing to inform her of an option to continue her insurance coverage under a group insurance policy program. Plaintiff alleges this was a denial of her rights under Title IX of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Plaintiff was fired August 8, 1986 and Defendant contends it was not subject to COBRA notification requirements until June 26, 1987. Plaintiff requests this Court to hold this motion in abeyance until further discovery can be made to determine the truth or falsity of Defendant's contention. Fed.R.Civ.P. 56(f) provides:

> "Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just."

Defendant's Motion for Summary Judgment on the COBRA claim will be ruled on after the discovery requested by plaintiff.

IT IS THEREFORE ORDERED the motions to dismiss Counts III and IV are hereby sustained.

IT IS SO ORDERED this 19th day of September, 1988.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	FILED
vs.	)	SEP 19 1988
IN THE MATTER OF THE TAX INDEBTEDNESS OF HEMPHILL CORPORATION,	)	Jack C. Silver, Clerk U.S. DISTRICT COURT
Defendant.	)	CIVIL ACTION NO. M-1434-B

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 without prejudice.

Dated this 19th day of September, 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

PB/cen

CERTIFICATE OF SERVICE

This is to certify that on the 19th day of September, 1988, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

Jeffrey Stoermer, Esq.
1810 Mid Continent Tower
Tulsa, OK 74103

Assistant United States Attorney

FILED

SEP 19 1988

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

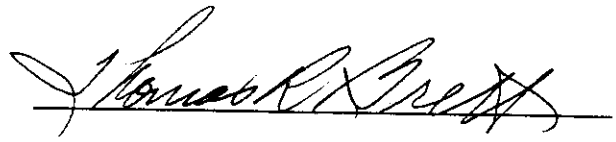
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOAM

MARY L. COBLER, Plaintiff, vs. OTIS R. BOWEN, M.D., Secretary of Health and Human Services, Defendant.	)	NO. 87-C-868-B

O R D E R

This matter comes before the Court on Plaintiff's Objection to the Findings and Recommendations of the United States Magistrate. After reviewing the Findings and Recommendations, together with the administrative record, this Court concludes the Magistrate's Findings and Recommendations were based upon substantial evidence and are therefore AFFIRMED.

DATED the 19th day of September, 1988.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

BONNIE J. HERRIN, Plaintiff,	)	
vs.	)	No. 87-C-352-B
OTIS R. BOWEN, M.D., SECRETARY OF HEALTH AND HUMAN SERVICES, Defendant,	)	

ORDER

This matter comes before the Court on objection to the Findings and Recommendations of the United States Magistrate John Leo Wagner in determining that the denial of claimant's social security disability benefits was not erroneous. The Court agrees with the Magistrate's Findings and adopts them herein.

Claimant filed an application for supplemental security income benefits claiming thoracic outlet syndrome, degenerative disc disease of the cervical spine, right handle branch block of the heart, thyroid disease, degenerative disease of the joints, arthritis, high blood pressure, edema, loss of hearing, sinusitis, and otitis media. The Administrative Law Judge (ALJ) denied claimant's request. Claimant's contention is that "the Plaintiff presented a case of pain and the ALJ erroneously ruled on her credibility in regard to pain." The ALJ has a duty to evaluate and assess the credibility of claimant's contentions of pain to the degree of severity alleged. Mayes v. Bowen, No. 87-1119 (10th Cir. Sept. 2, 1988); Huston v. Bowen, 838 F.2d 1125 (10th Cir. 1988).

After a review of the evidence, the ALJ stated "Any consideration that this claimant is totally disabled must rest almost solely on her multiple allegations of severe continuous pain and current complaints of severe depression with crying episodes. Since serious consideration that claimant is totally disabled must rest on her allegations, claimant's credibility is of the utmost importance." The ALJ found "Claimant's multiple subjective complaints to include severe pain are contradictory, self-serving, and are not credible to the extent alleged." The ALJ stated "The objective medical evidence in this file is persuasive that claimant retains the residual physical functional capacity to engage in a full range of light work on a sustained basis." The Court finds the ALJ invoked the correct legal standard and no error is found.

Claimant's second contention is that the ALJ failed to call a vocational expert witness.

If nonmedical pain testimony is not credible, then it is proper to apply the medical vocational guidelines. Huston v. Bowen, 838 F.2d 1125 (10th Cir. 1988). As the Magistrate pointed out, "The mere presence of a nonexertional impairment does not automatically preclude reliance on the grids. Use of the grids is foreclosed only '[t]o the extent that nonexertional impairments further limit the range of jobs available to the claimant.'" Channel v. Heckler, 747 F.2d 577 (10th Cir. 1984). Therefore, the Court finds no error by the ALJ in failing to call an expert.

The objection to the Magistrate's Findings and Recommendations is therefore overruled and the Findings are hereby adopted.

DATED this 19th day of September, 1988.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

SEP 19 1988

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 87-~~CR-45-E~~
	)	88-C-297-E
LAWRENCE CANTU SAENZ,	)	
	)	
Defendant.	)	

O R D E R

This matter comes before the Court upon the motion of Petitioner, Lawrence Cantu Saenz, pro se to vacate, set aside or correct his sentence pursuant to 28 U.S.C. 2255. Petitioner pled guilty on May 29, 1987 to a charge of interstate travel to facilitate a narcotics enterprise, a violation of 18 U.S.C. 1952. He was sentenced July 13, 1987 to a term of four years.

Petitioner now attempts to attack his conviction by means of a §2255 proceeding. He alleges four grounds for relief. First, that his counsel failed to file any motion pursuant to Rule 32 of the Fed.R.Crim.P. to object to information in the presentence report. Second, that his counsel failed to object to information in the presentence report. Third, that the parole commission used the information to which Petitioner objects in setting the guidelines for his release. Fourth, that the contents of the presentence report were not adequately explained to Petitioner before sentencing.

Because of the far-reaching impact that the presentence report has upon a criminal defendant, it is important that the information contained in the report be accurate. In an attempt to insure the accuracy of the report, Rule 32(c)(3) was amended in 1974 to require disclosure of the report to the defense prior to the imposition of sentence. Fed.R.Crim.P. 32(c)(3)(A).

The advisory committee is of the view that accuracy of sentencing information is important not only to the defendant but also to effective correctional treatment of a convicted offender. The best way of insuring accuracy is disclosure with an opportunity for the defendant and counsel to point out to the court information thought by the defense to be inaccurate, incomplete, or otherwise misleading. Notes of Advisory Committee on Rules, 1974 Amendment, Fed.R.Crim.P. 32(c)(3)(A). See also H.R.Rep. No. 94-247, 94th Cong., 1st Sess. 18, Reprinted in 1975 U.S.Code Cong. & Ad.News 674, 690.

It is in light of the importance of the presentence report and the need for accuracy in the report that we consider Saenz' motion.

Because Petitioner is proceeding pro se the Court must interpret his pleadings as liberally as possible. Downing v. New Mexico State Supreme Court, 339 F.2d 435 (10th Cir. 1964). When read liberally, Saenz' petition first suggests that he was not afforded a meaningful opportunity to review his presentence investigation report and to contest alleged factual inaccuracies at his sentencing. This suggestion is unfounded. Review of the record reveals that Petitioner and his counsel were provided a copy

of the original version of the presentence report eleven days before sentencing. The uncontroverted evidence before the Court is that Petitioner and his counsel strenuously objected to portions of the report and that those portions were removed from the final report provided to the Court. Further, the record itself reveals that Petitioner filed objections to the final report on July 8, 1987, and these objections were urged to the Court at the time of sentencing. Thus, there is nothing to indicate that Petitioner was denied the opportunity to meaningfully review and object to matters within the presentence report, and in fact, the record and the evidence before the Court is directly to the contrary. It is the conclusion of this Court that Petitioner fails to support his contention that he was denied a meaningful opportunity to review and object to his presentence report.

Second, Petitioner's pleadings suggest that he is entitled to have his sentence set aside or corrected because this Court, in imposing sentence, relied upon allegedly erroneous statements contained in the presentence report, and thus, he was sentenced on improper grounds. The Court disagrees.

In considering what sentence to impose, the judge is entitled to consider a broad range of information, including but not limited to the contents of the presentence report. United States v. Tucker, 404 U.S. 443, 92 S.Ct. 589 (1972). A sentencing court has great latitude with respect to matters that may be considered for the purpose of imposing an appropriate sentence. The judge may, before sentencing, conduct an inquiry, broad in scope, largely

unlimited either as to the kind of information he or she may consider or the source from which it may come. Id. In fact, the Court may consider the fullest information possible concerning the Defendant's life, his characteristics, and his conduct. 18 U.S.C. §3577; Smith v. United States, 551 F.2d 1193 (10th Cir.), cert. denied 434 U.S. 830, 98 S.Ct. 113 (1977). Additionally, due process does not preclude the Court from relying on hearsay in a presentence report. United States v. Garcia, 544 F.2d 681 (3rd Cir. 1976). Under ordinary circumstances, a sentence imposed on the basis of information contained in the presentence report would not be subject to attack.

A sentence based on inaccurate, erroneous, or incomplete information is, however, inconsistent with due process. Townsend v. Burke, 334 U.S. 736, 68 S.Ct. 1252 (1979). Thus, it has been held that a sentence explicitly based upon unverified and unreliable charges of serious criminal conduct must be vacated. United States v. Weston, 448 F.2d 626 (9th Cir. 1971), cert. denied, 404 U.S. 1061, 92 S.Ct. 748, 30 L.Ed.2d 749 (1972). This well-established rule emphasizes the importance of accuracy in the presentence report. But a sentence cannot be vacated upon the mere allegation that erroneous information was contained in the presentence report. The Ninth Circuit has expressed the standard for cases such as this as follows:

> The clear teaching of Townsend and Weston is that a sentence will be vacated on appeal if the challenged information is (1) false or unreliable, and (2) demonstrably made the basis for the sentence. In the context of a §2255 proceeding, a motion must be denied unless it affirmatively appears in the record that the

court based its sentence on improper information. Farrow v. United States, 580 F.2d 1339, 1359 (9th Cir. 1978). Thus, in order for the Court to correct or set aside his sentence, Petitioner must demonstrate first, that the presentence report contained erroneous information, and second, that the Court based its sentence upon that information. Here, Saenz alleges that any reference to "distribution of cocaine" in the presentence report is erroneous because he was convicted for "distribution of marijuana only." As the Court previously noted, Saenz was convicted of Interstate Travel to Facilitate a Narcotics Enterprise, in violation of 18 U.S.C. 1952. The Information to which Saenz pled guilty was not restricted to "marijuana only."

Even assuming, arguendo, that the presentence report was erroneous, Petitioner has failed to satisfy the second prong of the test set out in Farrow. He has offered nothing to support his contention that this Court based its sentence upon the allegedly erroneous information.

In addition, the Court believes that the proper time to challenge the information contained in the presentence report was at the sentencing stage. A review of the transcript of the sentencing hearing in this case clearly indicates that Saenz and his attorney had ample opportunity to review the presentence report and to state any objections that they had. They not only had such an opportunity but they presented objections to the Court. These objections were directed to whether Saenz requested permission to carry a gun while on probation, and to whether Saenz had or had not

expressed remorse for his actions. They were dealt with by the Court at sentencing, and did not include an objection to the quantity of cocaine in the presentence report. Any other objections could have been presented then. Likewise, the matter could have been raised on appeal.

> A defendant waives his right to attack the presentence report through a §2255 motion when he fails to avail himself of an opportunity to do so contemporaneously or on direct appeal. See Brown v. United States, 610 F.2d 672, 675-76 (9th Cir. 1980); United States v. Leonard, 589 F.2d 470 (9th Cir. 1979); Farrow v. United States, 580 F.2d 1339, 1358 (9th Cir. 1978) (en banc).

United States v. Donn, 661 F.2d 820 (9th Cir. 1981); see also Smith v. United States, 635 F.2d 693, 697 (8th Cir. 1980). Thus, even if the Court has relied upon erroneous information in imposing sentence, Saenz simply waived his opportunity to object with respect to the sentence actually imposed.

Petitioner's pleadings also suggest that he was denied effective assistance of counsel, in violation of the Sixth Amendment, because his attorney failed to object to items in the presentence report, and failed to file a motion pursuant to Rule 32 of the Federal Rules of Criminal Procedure. Further, Petitioner urges that the contents of the presentence report (and, presumably, their implications) were not adequately explained to him before sentencing.

In order to prove ineffective assistance of counsel, a defendant must show that his counsel did not exercise the skill, judgment and diligence of a reasonably competent attorney. Dyer

v. Crisp, 613 F.2d 275, 278 (10th Cir., en banc), cert. denied, 445 U.S. 945, 100 S.Ct. 1342, 63 L.Ed.2d 779 (1980). Thus, the Court must determine whether defense counsel exercised the skill, judgment and diligence of a reasonably competent attorney in his representation of Saenz at the sentencing stage. It should be noted that the adequacy of legal representation, where ineffective assistance of counsel is alleged, is not to be measured by hindsight or by success. See, e.g. United States v. Nelson, 582 F.2d 1246, 1250 (10th Cir. 1978).

The transcript of the sentencing hearing, and the record on file, clearly refute Petitioner's allegation that his counsel failed to object or file a motion regarding items in the presentence report. As the Court has noted above, written objections were filed July 8, 1987, and objections were urged before the Court at sentencing. Further, the uncontroverted affidavit of the United States Probation Officer, Christi McWilliams, states that defense counsel strenuously objected to portions of the initial presentence report and certain portions were removed before the final report was submitted to the Court for review.

As to Petitioner's allegation that his counsel failed to advise him of the significance of the presentence report, the transcript of the sentencing hearing is silent. Even assuming, however, that Petitioner was not advised of the potential impact of the presentence report, the Court is not convinced that such a failure on defense counsel's part constitutes ineffective

assistance of counsel.

The Court finds that Petitioner's counsel exercised the skill, judgment, and diligence of a reasonably competent attorney. Therefore, Petitioner was not denied effective assistance of counsel.

In addition to attacking the basis of the sentence, Petitioner contends that erroneous information contained in the presentence report has plagued him during the execution of his sentence and has led the parole commission to enhance the guidelines for his release. Petitioner, in essence, asks this Court to review the propriety of the decision of the parole commission in setting his guidelines.

Because such an inquiry concerns the execution of Petitioner's sentence rather than the imposition thereof, the Court believes that the issue has been improperly raised under 28 U.S.C. 2255. Although a 2255 motion is an appropriate method to challenge the validity of a sentence, it is not available to attack the manner of its execution. Robinson v. United States, 474 F.2d 1085 (10th Cir. 1973). Rather, the proper method of attacking the actions of the parole commission is by filing a petition for a writ of habeas corpus under 28 U.S.C. 2241. Because the Court is to construe pro se pleading liberally, the Court would treat Petitioner's contention regarding the action of the parole commission as if he was proceeding under 2241, except for the fact that Petitioner is not incarcerated in this district. He is presently incarcerated at the Federal Correctional Institution at Leavenworth, Kansas, and

this Court lacks jurisdiction to hear his contentions. Any habeas corpus action based on alleged improper actions of the parole board must be brought in the court of jurisdiction in which Petitioner is confined, rather than this Court, in the jurisdiction in which he was sentenced. See, United States v. Boccadisi, 468 F.Supp. 419 (E.D.N.Y. 1979).

IT IS THEREFORE ORDERED that Petitioner's motion to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. 2255 on the grounds that he was not afforded a meaningful opportunity to review and object to his presentence report, that his sentence was based on erroneous information in the presentence report, and that he was denied effective assistance of counsel is denied.

IT IS FURTHER ORDERED that Petitioner is directed to file his objections to the actions of the parole commission in the United States District Court for the District of Kansas.

ORDERED this 19th day of September, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

KEMAL SAIED and CONSTANCE SAIED,	)	
Plaintiffs,	)	
vs.	)	CASE NO. 87-C-532-B
LDX NET, INC.,	)	
Defendant.	)	

ORDER FOR DISMISSAL

Now on this 16 day of September, 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, LDX Net, 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, LDX Net, Inc., be and the same are hereby dismissed with prejudice. It is further

ORDERED that each party shall bear its own costs.

S/ THOMAS R. BRETT
U.S. DISTRICT JUDGE

0806W/TDQ

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

GOLDEN RULE INSURANCE COMPANY,	)	
Plaintiff,	)	
vs.	)	No. 88-C-738 E
WANDA L. HANCE,	)	
Defendant.	)	

NOTICE OF DISMISSAL

The plaintiff, Golden Rule Insurance Company, pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure, hereby dismisses this action without prejudice.

Patricia Ledvina Himes

Elsie C. Draper, OBA No. 2482
Patricia Ledvina Himes, OBA No. 5331
GABLE & GOTWALS
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119
(918) 582-9201

ATTORNEYS FOR PLAINTIFF
GOLDEN RULE INSURANCE
COMPANY

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

FILED

1988

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

BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION NO. 943, et al.,	)	
Plaintiffs,	)	
vs.	)	No. 81-C-82-E and 83-C-183-E
ROY J. HANNAFORD COMPANY, INC., et al.,	)	
Defendants.	)	

O R D E R

This matter comes on before the Court as a result of the report filed herein by Plaintiff. The report is unresponded to and the Court is treating it as a Motion to Dismiss. Upon reviewing the pleadings the Court finds that this matter should be dismissed without prejudice; further each party should bear their own costs.

IT IS THEREFORE ORDERED that the remaining causes of action are dismissed without prejudice. Each side is to pay its own costs.

ORDERED this 15th day of September, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
TWENTY-ONE FIREARMS AND THIRTY-FOUR ROUNDS OF AMMUNITION,	)	
	)	
Defendants.	)	CIVIL ACTION NO. 86-C-333-E

JUDGMENT OF FORFEITURE

Pursuant to the Order of the Court entered herein on August 23, 1988, it is hereby

ORDERED, ADJUDGED, AND DECREED that judgment be entered against the Defendants Twenty-One Firearms and Thirty-Four Rounds of Ammunition, more particularly described in Exhibit "A" attached hereto and against all persons interested in such property, and that the said property be and the same is hereby forfeited to the United States of America.

JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

EXHIBIT "A"

1. Ruger Mini-14, stainless steel, semiautomatic with folding stock and scope, serial number 183-04510 and magazine with 17 rounds of ammunition.

2. Rohm, RG-10X, blue steel revolver with 4" barrel, serial number 139854.

3. Colt, single action revolver, .45 caliber, serial number 310499.

4. Ruger Security Six, .357 magnum, stainless steel revolver, serial number removed.

5. Boito/K-Mart, over and under 20 gauge shotgun, serial number 30-4537.

6. Springfield Arms Co., 410 gauge double barrel shotgun, serial number T65927.

7. North American Arms, .22 caliber LR, 5-shot, stainless teel revolver, serial number C13293.

8. Colt single action revolver, .45 caliber, nickle finish, serial number 39888.

9. Unknown make, 5-shot revolver, .41 caliber, 3" barrel, serial number 764.

10. Marlin, Model 5510, 10 gauge bolt action shotgun, serial number 23701832.

11. Charter Arms Co., undercover, .38 special, 5-shot revolver, blue steel, serial number 126496.

12. ERG, Inc., RG-17, .38 special caliber, 2-shot, blue finish derringer, serial number N209248.

13. O. F. Mossberg & Sons, Model 190, 16 gauge bolt action shotgun, with no serial number.

14. Marlin, Model 6081, .22 caliber semiautomatic rifle, serial number OZ019833.

15. British Enfield, .303 caliber bolt action rifle, serial number 6829.

16. O. F. Mossberg and Sons, 410 gauge bolt action shotgun, no serial number.

17. Winchester, Model 67A, .22 caliber single shot rifle, with no serial number.

EXHIBIT "A"

18. Armi Tan Foglio (Excam), semiautomatic pistol, serial number E00972 with 7 rounds of ammunition.

19. Freedom Arms, .22 magnum, 4-shot stainless steel revolver, serial number B11362.

20. Smith & Wesson, Model 36, 3" barrel, nickle finish 5-shot revolver, serial number 329J76, with 4 rounds of ammunition.

21. Smith & Wesson, Model 19, 2 1/2" barrel, blue steel finish, revolver, serial number 1K35748, with 6 rounds of ammunition.

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

JAMES R. PLASTER, et al., Plaintiffs,	)	
vs.	)	No. 87-C-463-E
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, INC., Defendant.	)	

FILED
SEP 14 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The parties having requested certification of certain issues of law to the Oklahoma State Supreme Court and these proceedings being stayed thereby,

IT IS HEREBY ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within thirty (30) days of a final determination by the Oklahoma Supreme Court on the legal issues involved herein the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

ORDERED this 15th day of September, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

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

9-16-88

UNITED STATES OF AMERICA, Plaintiff, vs. CHEMICAL RESOURCES, INC., et al., Defendants.	)	No. 86-C-714-C

O R D E R

Now before the Court for its consideration is the motion of the defendants Chemical Resources, Inc., William J. Lamberton, and the William J. Lamberton revocable trust (CRI), for attorney fees.

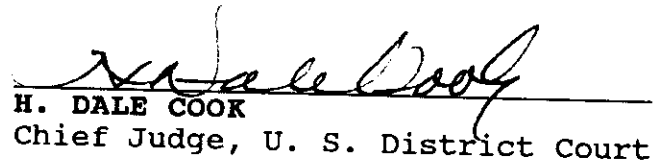
On July 18, 1988, the Court entered judgment in favor of the defendants, CRI, and against the plaintiff, United States of America.

Local Rule 6G requires a party requesting attorney fees to file an application for such, together with a supporting affidavit, within fifteen (15) days of the entry of judgment. Here the last day for filing such a notice was August 2, 1988.

Since defendants' motion was filed on August 4, 1988 and did not contain the required affidavit, the Court finds that the filing of the defendants' motion for attorney fees was untimely.

It is therefore the Order of the court that the motion for attorney fees by defendants Chemical Resources, Inc., William J. Lamberton, and the William J. Lamberton revocable trust, is hereby DENIED.

IT IS SO ORDERED this 12th day of September, 1988.



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

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

JAMES R. PLASTER, et al., Plaintiffs, vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, INC., Defendant.	)	No. 87-C-463-E

FILED
SEP 15 1988
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The parties having requested certification of certain issues of law to the Oklahoma State Supreme Court and these proceedings being stayed thereby,

IT IS HEREBY ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within thirty (30) days of a final determination by the Oklahoma Supreme Court on the legal issues involved herein the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

ORDERED this 15th day of September, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

21

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

FILED

1988

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

BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION NO. 943, et al.,	)	
Plaintiffs,	)	
vs.	)	No. 81-C-82-E and 83-C-183-E
ROY J. HANNAFORD COMPANY, INC., et al.,	)	
Defendants.	)	

O R D E R

This matter comes on before the Court as a result of the report filed herein by Plaintiff. The report is unresponded to and the Court is treating it as a Motion to Dismiss. Upon reviewing the pleadings the Court finds that this matter should be dismissed without prejudice; further each party should bear their own costs.

IT IS THEREFORE ORDERED that the remaining causes of action are dismissed without prejudice. Each side is to pay its own costs.

ORDERED this 15th day of September, 1988.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE