

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

FILED

TRANSWESTERN MINING COMPANY,)
a Nevada corporation,)
)
Plaintiff,)
)
vs.)
)
WAYMON W. BEAN and SHARON A.)
BEAN, husband and wife,)
et al.,)
)
Defendants.)

FEB 14 1989

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

Case Number 88-C-1220-B

ORDER OF DISMISSAL WITH PREJUDICE
AS TO DEFENDANT PRODUCERS PIPELINE COMPANY ONLY

This matter comes on before the Court upon the joint motion of Plaintiff and Defendant Producers Pipeline Company for dismissal with prejudice of Plaintiff's claims against Defendant Producers Pipeline Company only. The Court further finds that Defendant Producers Pipeline Company has disclaimed any and all right, title, and interest in and to the property which is the subject of this foreclosure action. The Court finds that there is good cause shown for granting such motion and it is, therefore,

ORDERED that the Plaintiff's claims against Defendant Producers Pipeline Company shall be and are hereby dismissed with prejudice, with Plaintiff and Defendant Producers Pipeline Company to bear their own costs and attorney's fees herein with respect to the Plaintiff's claims against Defendant Producers Pipeline Company.

IT IS FURTHER ORDERED that Defendant Producers Pipeline Company has no right, title or interest in and to the property which is the subject of this action.

IT IS FURTHER ORDERED that this Order of Dismissal is only effective as to Defendant Producers Pipeline Company and that this Order of Dismissal shall not affect, release, or dismiss the Plaintiff's claims against any of the other Defendants herein.

Dated this 14th day of February, 1989.

S/ THOMAS R. BRETT

HON. THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By: Richard H. Foster

Kevin C. Coutant (OBA #1953)
Richard H. Foster (OBA #3055)
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211

Attorneys for Plaintiff
Transwestern Mining Company

CRADY, JEWETT, JOHNSTON & McCULLEY

By: George E. Crady

George E. Crady
909 Fannin, Suite 1400
Two Houston Center
Houston, Texas 77010-1006
(713) 739-7007

Attorneys for Defendant
Producers Pipeline Company

BAKER & BAKER

By: Jay C. Baker

Jay C. Baker
1850 South Boulder Avenue
Tulsa, Oklahoma 74119
(918) 587-1168

Attorneys for Defendants
Waymon W. Bean and Sharon A. Bean

FILED

FEB 14 1989

U.S. CLERK
DISTRICT COURT

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

BONNIE J. JOHNSON and)
WILLIE JOHNSON,)
)
 Plaintiffs,)
)
 v.)
)
)
 COSMAIR, INCORPORATED, a)
 foreign corporation,)
)
 Defendants.)

88-C-115-B

JOINT STIPULATION OF
DISMISSAL WITH PREJUDICE

COME NOW the Plaintiffs, BONNIE J. JOHNSON and
WILLIE JOHNSON, and the Defendant, COSMAIR, INCORPORATED, and
stipulate pursuant to Federal Rules of Civil Procedure, Rule
41, that this action be dismissed with prejudice for the
reason that this action has been settled.

Dated this 14 day of ^{February} ~~January~~, 1989.

PLAINTIFFS

BY: [Signature]
JAMES E. FRASIER, OBA #3108
FRASIER & FRASIER
1700 Southwest Blvd., #100
Tulsa, OK 74101

BY: [Signature]
RICHARD M. ELDRIDGE, OBA #2665
RHODES, HIERONYMUS, JONES,
TUCKER & GABLE
2800 Fourth National Bank Bldg.
Tulsa, Oklahoma 74119
(918) 582-1173

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

FILED

FEB 14 1989

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

SHELTER GENERAL INSURANCE)
COMPANY, a Missouri)
corporation,)
)
Plaintiff,)
)
-vs-)
)
RONALD D. HOLMAN, LINDA HOLMAN,)
RON HOLMAN CONSTRUCTION, INC.,)
JOE LESTER, JIM D. PARKER,)
JEANA PARKER,)
)
Defendants.)

No. 88-C-1585-E

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the Plaintiff Shelter General Insurance Company and the Defendant Joe Lester, by and through their attorneys of record, and pursuant to Fed. R. Civ. Proc. 41(a)(1)(ii), hereby stipulate that the captioned case is hereby dismissed with prejudice as to the Defendant Joe Lester. Each party to bear its own costs.

NICHOLS, WOLFE, STAMPER,
NALLY & FALLIS, INC.

PAULK, HARMON & MOLES

By: *[Signature]*
S. M. Fallis, Jr., OBA #2813
Diane O. Palumbo, OBA #12154
400 Old City Hall Building
124 East Fourth Street
Tulsa, Oklahoma 74103
(918) 584-5182

By: *[Signature]*
Joseph H. Paulk, OBA #10110
2021 South Lewis, Suite 250
Tulsa, Oklahoma 74104
(918) 749-5749

ATTORNEYS FOR DEFENDANT
JOE LESTER

ATTORNEYS FOR PLAINTIFF

Certificate of Mailing

I hereby certify that on this 14 day of February, 1989, I mailed a true and correct copy of the above and foregoing Joint Stipulation of Dismissal, with proper postage thereon fully prepaid, to: Diane O. Palumbo, Esq., Nichols, Wolfe, Stamper, Nally & Fallis, Inc., 124 E. 4th St., Suite 400, Tulsa, Oklahoma 74103, Attorneys for Defendants Ron and Linda Holman, Holman Construction and Joe Lester; and P. Thomas Thornbrugh, Esq., 1914 South Boston, Tulsa, Oklahoma 74119, attorney for Defendants Jim and Jeana Parker.



Joseph H. Paulk

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

FILED

FEB 14 1989

L.E. SMITH,)
)
 Plaintiff,)
)
 v.) 89-C-37-B
)
 DR. ALEX LIZARRAGA, et al,)
)
 Defendants.)

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

ORDER

Plaintiff's Motion to Proceed in Forma Pauperis was granted and Plaintiff's Complaint was filed. Plaintiff brings this action pursuant to 42 U.S.C. §1983.

The Complaint is now to be tested under the standard set forth in 28 U.S.C. §1915(d). If the complaint is found to be obviously without merit, it is subject to summary dismissal. Henriksen v. Bentley, 644 F.2d 852, 853 (10th Cir. 1981). The test to be applied is whether or not the Plaintiff can make a rational argument on the law or the facts to support his claim. Van Sickle v. Holloway, 791 F.2d 1431, 1434 (10th Cir. 1986).

Applying the test to Plaintiff's claims, the Court finds that the instant action should be dismissed as obviously without merit. Plaintiff attempts to set out his claim in two (2) counts. Count I states, "13th or 14th Crule (sic) and unusual Punishment". Count II states, "Deprived of Some of My Privileges Being Here [Eastern State Mental Hospital]". In his Motion to Proceed in Forma Pauperis, Plaintiff describes his claim in the following manner: "The nature of this action is: Slander Mal.practis (sic)". As background for his claim, Plaintiff sets

forth a long and incomprehensible narrative bereft of facts to support any claim for relief available under §1983. The Complaint is thus, upon review, obviously without merit and must be dismissed. E.g., L.E. Smith v. City, Order, Case No. 86-C-772-E (September 9, 1986, N.D. Okla).

Accordingly, this action is hereby dismissed pursuant to 28 U.S.C., §1915(d). Plaintiff may refile his action, upon a clear and well-stated narrative of the facts which support his claim.

So ORDERED this 14 day of February, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

DAN R. PAYNE and LINDA K.)
PAYNE, husband and wife,)
)
Plaintiffs,)

vs.)

Case No. 87-C-306-E

FARMERS INSURANCE COMPANY, INC.,)
a Kansas corporation; FARMERS)
INSURANCE EXCHANGE; FARMERS)
INSURANCE GROUP, INC., a)
California corporation; TRUCK)
INSURANCE EXCHANGE, a California)
corporation; FIRE INSURANCE)
EXCHANGE; FIRE UNDERWRITERS)
ASSOCIATION, a California)
corporation; MID-CENTURY)
INSURANCE COMPANY, a California)
corporation; and FARMERS NEW)
WORLD LIFE INSURANCE COMPANY,)
a Washington corporation, all)
d/b/a FARMERS INSURANCE GROUP,)

Defendants.)

F I L E D

FEB 13 1989

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

ORDER

This matter comes on for hearing pursuant to the joint Stipulation for Order of Dismissal with Prejudice. The Court finds the Stipulation should be approved and dismissal so ordered.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and Counterclaim filed by the parties to this action are dismissed with prejudice, without costs being taxed against either party.

/s/ JAMES O. ELSON

JUDGE OF THE DISTRICT COURT

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

FILED

FEB 13 1989

CHARLES F. BOYER, MARY BOYER and GARY MAY,)

Plaintiffs,)

v.)

No. 88-C-0011-E

JANOUSH TOWING, INC.,)

Defendant and)
Third-Party Plaintiff,)

v.)

DIXIE INDUSTRIES, INC.,)

Third-Party Defendant.)

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

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 13th day of Feb, 1988, it appearing to the Court that this matter has been compromised and settled, and the Defendant/Third-Party Plaintiff's Complaint against Third-Party Defendant is herewith dismissed with prejudice to the refiling of a future action.

S/ JAMES O. ELISON

United States District Judge

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

FILED

FEB 13 1989

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

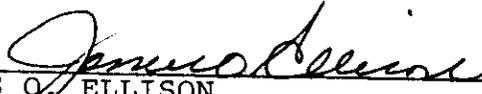
TOMMY L. PARKS,)
)
Plaintiff,)
)
vs.)
)
BURLINGTON NORTHERN RAILROAD)
COMPANY,)
)
Defendant.)

No. 88-C-234-E

ORDER OF DISMISSAL

Upon stipulation of the parties and for good cause shown, plaintiff's causes of action against the defendant, Burlington Northern Railroad Company, are hereby dismissed with prejudice to the refiling of such action.

IT IS SO ORDERED this 13th day of February, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

FEB 13 1989

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

CARBONEX COAL COMPANY)

Defendant)

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

Civil Action No. 88-C-1281E

AGREED JUDGMENT

This matter comes on for consideration this 13th day of February, 1989, upon the Joint Motion of the parties.

Appearing by Motion for the parties were their respective counsel, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, for the United States (U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement, or "OSMRE"), and Thomas J. McGeedy, of the law firm of Logan, Lowry, Johnston, Sweitzer, West & McGeedy, Vinita, Oklahoma, for Carbonex Coal Company.

The Court, having examined the file herein and the Joint Motion of the parties, and the fully executed Settlement Agreement, which is attached as Exhibit B and incorporated herein by this reference, FINDS as follows:

~~EXHIBIT A~~

1. That the Plaintiff validly and properly issued Cessation Order (CO) 85-3-5-9, violation 1 of 1, and Notice of Violation (NOV) 84-3-5-6, violation 2 of 2.

2. That the Defendant, Carbonex Coal Company (Carbonex), has agreed that it is liable for and will perform any and all remedial action required by the cited CO and NOV which is necessary to reclaim the Porum mine site to the reasonable satisfaction of the regulatory authority pursuant to the Settlement Agreement which contemplates that the required remedial action may be accomplished by Carbonex or by Yampa Resource Associates, Inc., provided that Carbonex shall remain liable for the successful completion of the reclamation of the Porum mine site for the full duration of the SMCRA bonding period or until bond release or bond substitution and permit transfer are approved and consummated by appropriate state action notwithstanding any contractual provision between Carbonex and Yampa Resource Associates, Inc. to the contrary.

3. That Carbonex has agreed to be enjoined from further surface coal mining activity in the United States until this Judgment has been fully and successfully satisfied.

Exhibit A

4. That the parties have agreed that OSMRE shall make all necessary entries on its "applicant violator system" records to reflect the terms and intent of this Judgment.

5. That, in consideration of the foregoing agreements, the parties have further agreed that Carbonex shall pay to OSMRE the sum of \$54,000 in full and complete satisfaction and compromise of all assessed penalties at issue in all presently pending administrative actions, and all other penalties and fines of whatsoever description which are presently asserted or which could have been presently asserted by OSMRE. The Agreement as to the administrative actions is attached as Exhibit C and incorporated herein by this reference.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. Carbonex shall promptly take appropriate action, as set forth above, and pursuant to the Settlement Agreement, to perform or have performed the remedial actions, required by the NOV and CO at issue here, which are necessary to reclaim the Porum mine site to the satisfaction of the regulatory authority.

Exhibit A

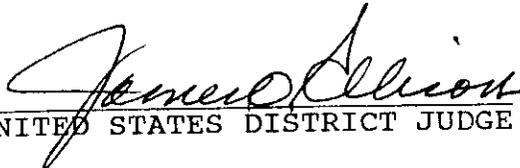
2. That Carbonex shall remain liable for the full and successful reclamation of the Porum mine site for the full period of the SMCRA bond or until bond release or bond substitution and permit transfer is approved for all permits here at issue by appropriate state action.
3. That, within the confines of the administrative actions, Carbonex shall pay to OSMRE the sum of \$54,000 in full and complete settlement of all civil penalties presently asserted or which could be presently asserted by OSMRE.
4. The Defendant is permanently enjoined from conducting any further surface coal mining and reclamation operations in the United States until this Judgment is satisfied, and the Defendant's name, Carbonex Coal Company, an Oklahoma corporation, and the names of past or present officers, agents, management, employees, shareholders, and partners of the Defendant and any corporate predecessor or affiliate of the Defendant shall remain on the Plaintiff's "applicant violator system" list for so long as applicable regulations require, provided, however, that Plaintiff shall, immediately upon receipt of the \$54,000 aforesaid, permanently memorialize in its "AVS, "CMIS", civil penalty assessment and all similar files,

Exhibit A

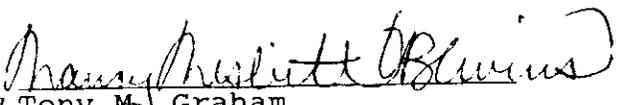
the fact that all presently outstanding Notices of Violation and Cessation Orders, issued to the Defendant (including those referenced in the Settlement Agreement) are closed, settled and terminated. The Characterization of these violations as "closed, settled and terminated" shall additionally be cross-referenced so as to appear in connection with any record maintained by the Plaintiff concerning past or present officers, agents, management, employees, shareholders, and partners of the defendant and any corporate predecessor or affiliate of the Defendant.

5. Plaintiff shall issue no additional Notices of Violation or Cessation Orders with respect to violations by the defendant occurring prior to the date of this Order.

IT IS FURTHER ORDERED that each party shall bear its own costs and attorneys' fees with regard to this case.


UNITED STATES DISTRICT JUDGE

APPROVED:

for 
Tony M. Graham
United States Attorney
(Attorney for Plaintiff)


Thomas J. McGeary
(Attorney for Defendant)

Exhibit A

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Agreed Judgment was mailed by regular mail on February 8, 1989 to the following:

Tony Graham
United States Attorney
Northern District of Oklahoma
3600 U.S. Courthouse
333 W. Fourth Street
Tulsa, Oklahoma 74103

Thomas J. McGeady
Counsel for Petitioner
101 S. Wilson Street
Vinita, OK 74301

Harvey C. Sweitzer
Administrative Law Judge
Office of Hearings and Appeals
6432 Federal Building
Salt Lake City, UT 84138-1194

Nancy Melitt (Blivins)

Exhibit A

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

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
vs.)
)
CARBONEX COAL COMPANY,)
)
)
 Defendant.)

Civil Action No. 88-C-1281E

Settlement Agreement

The Plaintiff, United States of America, on behalf of the Department of the Interior, Office of Surface Mining Reclamation and Enforcement (OSMRE), by and through its undersigned counsel, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, and the Defendant, Carbonex Coal Company (Carbonex), an Oklahoma corporation, by and through its undersigned counsel, Thomas J. McGeady, of the law firm of Logan, Lowry, Johnston, Switzer, West & McGeady, Vinita, Oklahoma, hereby enter into full settlement of the above captioned proceedings.

Exhibit B

The United States filed Civil Action No., 88-C-1281E seeking a court order against Carbonex for compliance with Cessation Order (CO) NO. 85-3-5-9 violation 1 of 1 and Notice of Violation (NOV) No. 84-3-5-6 violation 2 of 2. Carbonex filed requests for administrative review of the CO and NOV with the Department of the Interior Office of Hearings and Appeals. It is the intention of the parties that this settlement agreement shall delineate the full and final resolution of any and all issues between the parties which have been or could have been raised in proceedings pertaining to Carbonex's surface coal mining and related operations in the State of Oklahoma, prior to the date of this agreement.

Accordingly, the parties agree as follows:

1. Carbonex concedes the validity of CO 85-3-5-9 and NOV 84-3-5-6 and concedes that it is liable for the reclamation of all areas set forth and described in the above cited CO and NOV. Accordingly, Carbonex agrees to an entry of Judgment upholding the above cited CO and NOV and holding Carbonex liable to undertake any and all remedial actions required to bring the Porum mine site,

Exhibit B

here at issue, into compliance with Carbonex's permit, as well as the Surface Mining Control and Reclamation Act of 1977, 30 USC 1201 et seq. (SMCRA) and its implementing regulations.

2. The parties further agree that the remedial measures required for the reclamation of the Porum mine site may be accomplished either by Carbonex or, Yampa Resources, Inc. as set forth in the contract attached hereto and incorporated herein by this reference. However, the parties agree that, notwithstanding any hold harmless nor any other type of indemnity agreement or contractual provision to the contrary between Carbonex and Yampa Resources, Inc., Carbonex shall remain liable for the successful completion of the reclamation for the full term of the SMCRA Bond Period or until bond release or bond substitution and permit transfers are approved and consumated by appropriate state action.

Exhibit B

3. That the parties have agreed that OSMRE shall make all necessary entries on its "applicant violator system" records to reflect the terms and intent of this Judgment.

4. The parties further agree that Carbonex will immediately take any and all remedial measures required by the CO's and NOV's at issue in administrative proceedings listed on Exhibit C, hereto, with respect to the surface coal mining operations conducted by Carbonex in the State of Oklahoma, prior to the date of this Agreement, and that the penalties assessed for each and all of the CO's and NOV's there at issue shall be forever satisfied by the payment of \$54,000 by Carbonex to OSMRE, the distribution of which is outlined by agreement of the parties, by separate document, attached hereto as Exhibit C and incorporated herein by this reference.

5. The parties agree that the Defendant is permanently enjoined from conducting any further surface coal mining and reclamation operations in the United States until this Judgment is satisfied, and the Defendant's name, Carbonex Coal Company, an Oklahoma corporation, and the

Exhibit B

names of past or present officers, agents, management, employees, shareholders, and partners of the Defendant and any corporate predecessor or affiliate of the Defendant shall remain on the Plaintiff's "applicant violator system" list for so long as applicable regulations require, provided, however, that Plaintiff shall, immediately upon receipt of the \$54,000 aforesaid, permanently memorialize in its "AVS, "CMIS", civil penalty assessment and all similar files, the fact that all presently outstanding Notices of Violation and Cessation Orders, issued to the Defendant (including those referenced in the Settlement Agreement) are closed, settled and terminated. The Characterization of these violations as "closed, settled and terminated" shall additionally be cross-referenced so as to appear in connection with any record maintained by the Plaintiff concerning past or present officers, agents, management, employees, shareholders, and partners of the defendant and any corporate predecessor or affilliate of the Defendant.

6. The parties further agree that each party shall bear its own costs of litigation.

Exhibit B

7. The parties further agree that the United States District Court for the Northern District of Oklahoma shall retain jurisdiction of this case pending the successful implementation and full completion of the terms of this agreement.

Dated this 8th day of February, 1989.

Approved:

for Maura Nesbitt Blum
Tony M. Graham
United States Attorney
(Attorney For Plaintiff)

Thomas J. McGeady
Thomas J. McGeady
(Attorney for Defendant)

Exhibit B

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Settlement Agreement was mailed by regular mail on February 8, 1989 to the following:

Judge Harvey C. Sweitzer
Administrative Law Judge
Office of Hearings and Appeals
6432 Federal Building
Salt Lake City, UT 84138-1194

Tony Graham
United States Attorney
Northern District of Oklahoma
3600 U.S. Courthouse
333 W. Fourth Street
Tulsa, Oklahoma 74103

Thomas McGeady
P. O. Box 558
Vinita, OK 74103

Nancy Whitte Blum

Exhibit B

AGREEMENT FOR TRANSFER OF
PERMITS AND RELEASE OF BONDS

THIS AGREEMENT, made and entered into this 8th day of December, 1988, by and between COAL CORPORATION OF AMERICA, INC., a Delaware Corporation ("CCA"), and MIDWEST MINERALS, INC., a Kansas corporation ("Midwest").

W I T N E S S E T H :

Background Facts

A. CCA has, prior to the date of this Agreement, conducted surface coal mining operations in the State of Oklahoma, and obtained permits for such surface coal mining operations in the name of Carbonex Coal Company.

B. Prior to June 30, 1983, Carbonex Coal Company was an Oklahoma corporation wholly owned by CCA. On June 30, 1983, pursuant to a statutory merger, it became a division of CCA with no separate legal existence. Carbonex Coal Company has since been re-incorporated, on January 14, 1988 as a wholly-owned subsidiary of CCA as an Oklahoma business corporation.

C. CCA ceased active coal extraction operations in the State of Oklahoma in the Spring of 1985. CCA's business activities in Oklahoma since that date have been confined to reclamation and reclamation maintenance activities.

D. CCA has posted surety bonds (the "Bonds") with ODOM in the aggregate amount of TWO MILLION NINETY-THREE THOUSAND NINE HUNDRED THIRTY-TWO DOLLARS (\$2,093,932.00), securing the completion of reclamation activities on all of CCA's permitted Oklahoma surface coal mining operations. A list of the said bonds and the permitted mine sites to which they pertain is attached hereto as Exhibit "A".

E. CCA desires to obtain the release of the Bonds and the release of all future liability for reclamation and reclamation maintenance work on the permits described at Exhibit "A" hereto.

F. Midwest wishes to engage in the business of planning and overseeing surface coal mine reclamation activities and wishes, on the terms and for the considerations hereinafter set forth, to assume all of CCA's future liability with regard to the permits scheduled at Exhibit "A" hereto, and will further undertake to secure the release of the Bonds in the manner hereinafter set forth.

NOW, THEREFORE, the parties have agreed as follows:

1. Permit Transfers. On or before December 23, 1988, Midwest shall file an application with ODOM requesting the transfer of all of the permits scheduled at Exhibit "A" hereto from CCA to Midwest or Midwest's designee. CCA will

cooperate fully with Midwest in its efforts to obtain all necessary approvals of such application and for the transfer of all related licenses and permits during the period beginning on the date hereof and ending on February 28, 1989 (the "Transition Period") and such extensions of the Transition Period, if any, as may be approved pursuant to this Agreement. Fees payable to ODOM or to the Office of Surface Mining incident to getting the permits ready for transfer shall be paid by Midwest.

2. Closing. At 11:00 o'clock a.m. on the fourth business day (or such other day or time as the parties may subsequently agree in writing) after ODOM has advised Midwest that all procedural requirements for the transfer of the Exhibit "A" permits to Midwest or its designee have been satisfied, a closing (the "Closing") will be held at the offices of ODOM in Oklahoma City, Oklahoma. At the Closing, there will be a delivery and simultaneous exchange of the following:

- a. Midwest will present to ODOM such bond or bonds or such other security as may be necessary to secure the release of the CCA Bonds scheduled at Exhibit "A" hereto.
- b. Midwest shall secure and deliver to CCA ODOM's written approval of transfer of all of the permits scheduled at Exhibit "A" hereto from CCA to Midwest or Midwest's designee.

- c. Midwest shall obtain from ODOM all of the Exhibit "A" Bonds, and deliver the same to CCA for cancellation.
- d. CCA shall provide Midwest with evidence satisfactory to Midwest that a bank wire of federal funds in the amount of \$1-million U.S. has been delivered by CCA to Midwest's account at the Bank IV Pittsburg, N.A., of Pittsburg, Kansas, or such other bank as may be designated by Midwest.
- e. CCA and Carbonex Coal Company shall deliver to Midwest a Special Warranty Deed in the form attached hereto as Exhibit "B".
- f. CCA shall deliver to Midwest a Bill of Sale in the form attached hereto as Exhibit "C" for the Porum dragline and personalty.

3. Agreement Of Indemnity. CCA hereby agrees to hold harmless and indemnify Midwest from any liability, including attorneys' fees and cost of defense, for any Notice of Violation or Cessation Order or any proposed or final civil fine, penalty or assessment of any description asserted or assessed by ODOM or OSM on or before the Closing.

Should OSM or ODOM assert or attempt to enforce any such liability against Midwest, Midwest shall be obligated to promptly inform CCA, in writing, of such asserted liability and, thereafter, to cooperate and assist CCA in the defense of such asserted liability. Should Midwest fail to give such notice to CCA or to cooperate with CCA in its defense efforts, CCA's indemnity obligation shall be excused and

extinguished. CCA shall be entitled, in its sole discretion, to manage and control the defense of any asserted liability, and Midwest shall not pay any asserted fine or penalty without the express consent of CCA or incur any expense in the defense thereof without the express consent of CCA. Should Midwest make payment of any asserted fine or penalty without CCA's consent, CCA's indemnity obligation shall be excused.

4. Fees And Expenses. All parties to this Agreement shall bear their own costs and expenses, including attorneys' fees incurred in the preparation of this Agreement. No brokers have been involved in the negotiation of this Agreement, and no brokerage fees are payable to any party in connection to this Agreement.

5. Abstracts. Not less than thirty (30) days prior to the Closing, CCA shall furnish to Midwest good and sufficient abstracts of title, certified to current date, for examination by Midwest or its attorneys. Midwest shall pay the cost of bringing CCA's existing abstracts to date, provided however, that CCA shall pay any abstracting cost in excess of THREE THOUSAND DOLLARS (\$3,000.00). In the event the examination of such abstracts reveal defects which impair the merchantability of CCA's title, Midwest shall, at its option, be entitled to terminate this Agreement.

6. Taxes. Ad valorem taxes for 1988 and all prior years with respect to the real estate described in Exhibit "B" and with respect to the Porum dragline and the personalty described in Exhibit "C" shall be paid by CCA, and ad valorem taxes on all such property for 1989 shall be prorated between the parties as of the date of Closing.

7. Representations Of CCA. CCA hereby represents and warrants that:

- a. It has not performed or caused to be performed any work on the property deeded by the Special Warranty Deed attached hereto as Exhibit "B" which has not been paid for and which could constitute the basis for a lien against that property.
- b. This Agreement has been duly authorized by all necessary corporate action and the persons executing this Agreement are authorized to do so.

8. Representations Of Midwest. Midwest hereby represents and warrants that:

- a. This Agreement has been duly authorized by all necessary corporate action and the persons executing this Agreement are authorized to do so.

9. Indemnity By Midwest. Midwest and its assigns agree to indemnify and hold harmless CCA against any and all Notices of Violation, Cessation Orders, fines and any loss, liability, claim, damage or expense associated therewith

arising by reason of any act or omission by Midwest, its agents, invitees or employees with regard to any portion of the permitted lands scheduled at Exhibit "A" hereto from and after the date of Closing.

Midwest acknowledges receipt of copies of all of the lease documents described at Exhibit "D" hereto, the same being compiled in a volume captioned "Appendix of Lease Documents; Carbonex Coal Company et al., December 7, 1988", being comprised of 366 pages. The parties, having examined the said appendix volume have each signified their approval and examination of the contents thereof by signing the signature page which serves as a preface to the said appendix volume. Midwest, accordingly, agrees to hold harmless and indemnify CCA against any and all liability for the performance of all executory portions of the lease documents contained in the said appendix, provided, however, that Midwest's indemnification obligations shall be limited as follows:

- a. Midwest shall have no indemnification obligation to CCA with regard to any lease commitment by CCA not contained in the documents set forth at the said appendix, whether such obligation arises from written or verbal contract or otherwise.
- b. Midwest shall have no indemnification obligation of any sort with regard to any unpaid rents or royalties owing by CCA to any lessor.
- c. Midwest shall have no obligation to indemnify CCA or perform any executory lease obligation

of water lines contained in that certain lease between Carbonex Coal Company and George Foreman at the Carbonex Foyil mine (surface estates subsequently conveyed by Foreman to Rodney W. Carter, et al.).

10. Extension Of Transition Period. The Transition Period may be extended only upon the consent of CCA. Should CCA decline to extend the Transition Period and should Midwest fail to obtain ODOM permit transfer approval under paragraph number 1 hereinabove prior to the end of the Transition Period, this Agreement shall be null and void and of no further effect.

11. Delivery Of Maps And Documents. Thirty (30) days prior to the closing, CCA shall deliver unto Midwest all of the maps and documents described at Exhibit "E" hereto. Midwest agrees to maintain the Exhibit "E" maps and documents in orderly and accessible files, and to make the same available for inspection, reference and copying by CCA and its agents and attorneys for a period of five (5) years following the date of closing described hereinabove.

12. Return Of Documents. Should Midwest elect to terminate or cancel this Agreement as provided for hereinabove, Midwest shall promptly return all abstracts, maps or other materials provided by CCA hereunder.

13. Notices. All notices given hereunder will be in writing and will be delivered or mailed by certified or registered mail, proper postage prepaid, addressed as follows:

a. In the Case of Notice to CCA:

Jon C. Jenkins, President
Coal Corporation of America, Inc.
811 Corporate Drive
Suite 204
Lexington, Kentucky 40503

With copy to:

Thomas J. McGeady, Esquire
Logan, Lowry, Johnston,
Switzer, West & McGeady
P. O. Box 558
Vinita, Oklahoma 74301

b. In the Case of Notice to Midwest:

c/o Dennis R. Meier
4th and Broadway
P. O. Box 1507
Pittsburg, Kansas 66762

With copy to:

George E. Nettels, Jr.
709 North Locust
Pittsburg, Kansas 66762

With copy to:

John B. Towner
506 North Pine
P. O. Box V
Pittsburg, Kansas 66762

The address of any party hereto may be changed by written notice to the other parties hereto in the manner hereinbefore described. Any such notice will be deemed to have been given when delivered or mailed as aforesaid.

14. Entire Agreement. This Agreement constitutes the entire agreement between the parties and may not be amended or modified except by written agreement executed by all of the parties.

15. Choice Of Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Oklahoma.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first hereinabove written.

"CCA"

COAL CORPORATION OF AMERICA,
INC.

(SEAL)

ATTEST:

Robert A. Walker
Secretary

By: Sam C. Jenkins
Sam C. Jenkins, President

"MIDWEST"

MIDWEST MINERALS, INC.

(SEAL)

ATTEST:

Mary Geanne Nettles
Secretary

By: George E. Nettles, Jr.
George E. Nettles, Jr.
President

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
HEARINGS DIVISION

Carbonex Coal Company, Applicant)	Docket No. TU 5-58-R,
)	TU 5-68-R, TU 5-74-R,
)	TU 5-86-R, TU 5-100-R
v.)	TU 5-105-R, TU 5-110-R
)	TU 6-1-R, TU 6-38-R
Office of Surface Mining Reclamation and Enforcement, Respondent)	and, TU 6-47-R
)	

Joint Motion for Agreed Judgments

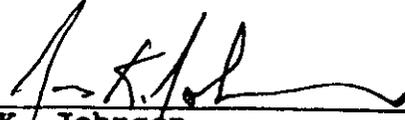
The parties hereto, by and through their respective counsel, for their joint motion for agreed judgment in the above-captioned cases, do hereby state as follows:

Both parties have discussed and agreed that judgment should be entered in each case captioned above according to the terms of the attached agreement (Exhibit 1), incorporated herein by this reference.

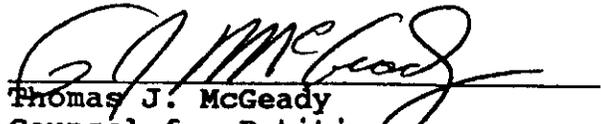
Wherefore, both parties hereto respectfully request that the court enter judgment in each respective case as delineated in the attached agreement, Exhibit 1.

EXHIBIT C

Respectfully submitted,



Jon K. Johnson
Department Counsel
U.S. Department of the Interior
Western Field Operations, DSM
PO Box 25007, DFC
Denver, CO 80225
(303) 236-8444, (FTS) 776-8444



Thomas J. McGeady
Counsel for Petitioner
101 S. Wilson Street
Vinita, OK 74301

EXHIBIT C

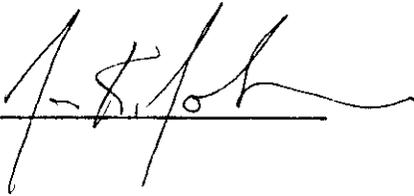
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Joint Motion For Agreed Judgments was mailed by regular mail, postage prepaid, on this 7th day of Feb 1989.

Thomas J. McGeady
Counsel for Petitioner
101 S. Wilson Street
Vinita, OK 74301

Harvey C. Sweitzer
Administrative Law Judge
Office of Hearings and Appeals
6432 Federal Building
Salt Lake City, UT 84138-1194

Tony Graham
United States Attorney
Northern District of Oklahoma
3600 U.S. Courthouse
333 W. Fourth Street
Tulsa, Oklahoma 74103



A handwritten signature in black ink, appearing to read 'Tony Graham', is written over a horizontal line.

EXHIBIT C



United States Department of the Interior

OFFICE OF THE SOLICITOR
DIVISION OF SURFACE MINING
P.O. BOX 25007
DENVER FEDERAL CENTER
DENVER, COLORADO 80225

OSM.SW.0329

Mr. Thomas J. McGready, Esq.
101 S. Wilson Street
Vinita, OK 74301

Re: Settlement of Dockets No.'s TU 5-58-R, TU 5-68-R,
TU 5-74-R, TU 5-86-R, TU 5-100-R, TU 5-105-R, TU 5-110-R,
TU 6-1-R, TU 6-38-R, TU 6-47-R, and U.S. v. Carbonex

Dear Mr. McGeady:

This confirms our recent discussions concerning settlement of the above-referenced cases. I will outline herein what I understand to be our agreement. If my understanding is accurate, please execute this document where indicated. Upon receipt of the executed document, I will forward the necessary papers to Judge Sweitzer and the U.S. District Court.

The agreement as to the Administrative cases noted above is conditioned upon Carbonex agreeing to the entry of the judgment which is attached as exhibit 2 and incorporated by reference herein.

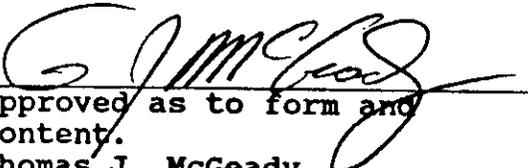

Approved as to form and
content.
Thomas J. McGeady
Attorney for Carbonex Coal Co.

Exhibit C

Our agreement is as follows:

TU 5-58-R
NOV 85-3-357-1
NOV 85-3-357-2
NOV 85-3-357-3
NOV 85-3-357-4

Carbonex will withdraw its appeal to the Interior Board of Land Appeals and pay the penalties assessed for NOV 85-3-357-2 in the amount of \$1,800 and the penalty for NOV 85-3-357-4 in the amount of \$2,600.

TU 5-68-R
NOV 85-3-6-20
NOV 85-3-6-21
NOV 85-3-6-22
NOV 85-3-6-23

Carbonex agrees to withdraw its Application for Review. OSMRE agrees to reduce the penalty on violation 2 of NOV 85-3-6-21 to \$550 and on violation 2 of NOV 85-3-6-23 to \$550.

TU 5-74-R
NOV 85-3-357-6
NOV 85-3-357-7

Carbonex agrees to withdraw its Application for Review. OSMRE agrees to reduce the penalty assessed for NOV 85-3-357-6 to \$650 and the penalty assessed for NOV 85-3-357-7 to \$700.

TU 5-86-R
NOV 85-3-357-9
NOV 85-3-357-10
NOV 85-3-357-11
NOV 85-3-357-12

Carbonex agrees to withdraw its Application for Review. OSMRE agrees to reduce the penalty on violation 1 of NOV 85-3-357-9 to \$1,150 and to reduce the penalty on violation 2 to \$950. OSMRE agrees to reduce the penalty on violation 3 of NOV 85-3-357-10 to \$650; to reduce the penalty for NOV 85-3-357-11 to \$850; and to reduce the penalty for NOV 85-3-357-12 to \$1,100.

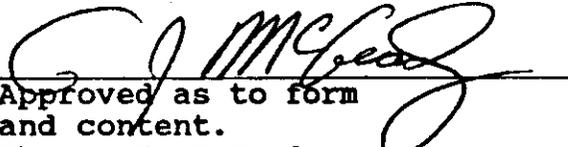

Approved as to form
and content.
Thomas J. McGeady
Attorney for Carbonex Coal Co.

Exhibit C

TU 5-100-R
CO 85-3-357-1
CO 85-3-357-2
CO 85-3-357-3
NOV 85-3-357-13
NOV 85-3-357-14
NOV 85-3-357-15

Carbonex agrees to withdraw its Application for Review. OSMRE agrees to reduce the penalty on each of the CO's to \$2,500 each. OSMRE agrees to reduce the penalty on violation 1 of NOV 85-3-357-13 to \$550 and on violation 2 to \$1,100. OSMRE agrees to reduce the penalty on NOV 85-3-357-14 to \$550.

TU 5-105-R
CO 85-3-6-14
CO 85-3-6-15
CO 85-3-6-16
CO 85-3-6-17
CO 85-3-6-18
NOV 85-3-6-46
NOV 85-3-6-47
NOV 85-3-6-48
CO 85-3-357-4
CO 85-3-357-5
CO 85-3-357-7
CO 85-3-357-8
NOV 85-3-357-17

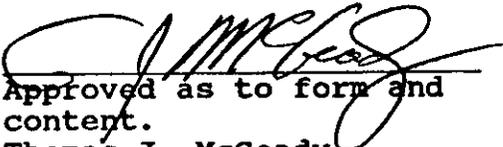
Carbonex agrees to withdraw its Application for Review. OSMRE agrees to reduce the penalties on CO's 85-3-6-14, 85-3-6-15, 85-3-6-18, 85-3-357-4, 85-3-357-7, and 85-3-357-8 to \$1,500 each.

TU 5-110-R
NOV 85-3-5-17
NOV 85-3-5-18
CO 85-3-357-6
NOV 85-3-357-18
NOV 85-3-357-19

Carbonex agrees to withdraw its Application for Review. OSMRE agrees to reduce the penalty for NOV 85-3-5-18 to \$500 and the penalty for CO 85-3-357-6 to \$2,500.

TU 6-1-R
CO 85-03-357-008
CO 85-03-357-9
CO 85-03-357-10
NOV 85-3-357-22
NOV 85-3-357-23

Carbonex agrees to withdraw its Application for Review. OSMRE agrees to reduce the penalty on each CO to \$3,000 each. OSMRE agrees to reduce the penalty on NOV 85-3-357-22 to \$900 and the penalty on NOV 85-3-357-23 to \$1,400.


Approved as to form and
content.
Thomas J. McGeady
Attorney for Carbonex
Coal Co.

TU 6-38-R
NOV 85-3-5-41
NOV 85-3-5-42
NOV 85-3-5-43
NOV 85-3-5-44
NOV 85-3-5-45

Carbonex agrees to withdraw its Application for Review. OSMRE agrees to reduce the penalty on violation 1 of NOV 85-3-5-41 to \$1,400; to reduce the penalty on violation 2 of NOV 85-3-5-42 to \$1,250; to reduce the penalty on NOV 85-3-5-43 to \$600; to reduce the penalty on NOV 85-3-5-44 to \$600; and to reduce the penalty on NOV 85-3-5-45 to \$600.

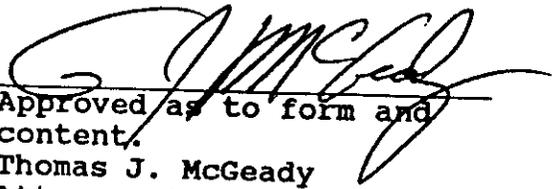
TU 6-47-R
NOV 85-3-234-1
NOV 85-3-260-5

Carbonex agrees to withdraw its Application for Review. OSMRE agrees to reduce the penalties for NOV 85-3-234-1 as follows:
for violation 1 \$1,350
for violation 2 \$ 750
for violation 3 \$ 800
for violation 4 \$ 750
OSMRE agrees to reduce the penalty for violation 1 of NOV 85-3-260-5 to \$750 and the penalty for violation 2 to \$600.

The total sum to be paid by Carbonex in satisfaction of this agreement is \$54,000. If you agree with my outline of this agreement please execute and return this letter with enclosures as well as the enclosed Joint Motion for Agreed Judgments.

Sincerely,


Jon K. Johnson
Department Counsel


Approved as to form and content.
Thomas J. McGeady
Attorney for Carbonex Coal Co.

Enclosure

Exhibit C

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

F I L E D

FEB 13 1989

JOYCE ANN SORRELLS, et al.,)
)
Plaintiffs,)
)
vs.)
)
WAL-MART STORES, INC.,)
)
Defendant.)

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

No. 88-C-430-E

ADMINISTRATIVE CLOSING ORDER

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 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, order, judgment, or for any other purpose required to obtain a final determination of the litigation.

ORDERED this 13th day of February, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

FEB 13 1989

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

JERRY PERIGO, Special Administrator
for the Estate of Scott Franklin
Freeman, Deceased,Plaintiff,

v.

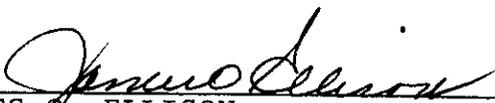
SHELTER LIFE INSURANCE COMPANY,
a Missouri corporation,Defendant.

Case No. 88-C-691-E

ORDER OF DISMISSAL WITHOUT PREJUDICE

NOW, on this 13th day of February, 1989, this matter comes on before this Court upon the Plaintiff's Motion to Dismiss Without Prejudice as filed herein, and the Court being fully advised in the premises finds that said Motion should be granted, and pursuant thereto,

IT IS THEREFORE ORDERED by the Court that said Dismissal Without Prejudice be and it is hereby granted.



JAMES C. ELLISON
Judge of the District Court

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
STEPHEN W. RANDOLPH; CITICORP)
PERSON-TO-PERSON FINANCIAL)
CENTER, INC.; JOHN DOE, Tenant;)
OKLAHOMA MORTGAGE COMPANY;)
COUNTY TREASURER, Tulsa County,)
Oklahoma; and BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
)
Defendants.)

FILED

FEB 13 1989

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

CIVIL ACTION NO. 87-C-615-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 13th day
of Feb., 1989. 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; the Defendant, Citicorp Person-
to-Person Financial Center, Inc., appears by its attorney
Robert J. Bartz; the Defendant, Oklahoma Mortgage Company,
appears not, having previously filed its Disclaimer; and the
Defendants, Stephen W. Randolph and Joe Doe, Tenant, appear not,
but make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Stephen W. Randolph,

acknowledged receipt of Summonses, Complaint, and Amended Complaint on August 27, 1987; that Defendant, Citicorp Person-to-Person Financial Center, Inc., acknowledged receipt of Summons and Complaint on August 7, 1987; that the Defendant, John Doe, Tenant, was served with Summons and Amended Complaint on September 25, 1987 and acknowledged receipt of Summons and Amended Complaint on October 27, 1987; that the Defendant, Oklahoma Mortgage Company, acknowledged receipt of Summons and Complaint on August 12, 1987 and Summons and Amended Complaint on August 17, 1987; that the Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 3, 1987; and that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 3, 1987.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on August 24, 1987; that the Defendant, Oklahoma Mortgage Company, filed its Disclaimer of Interest on August 28, 1987; that the Defendant, Citicorp Person-to-Person Financial Center, Inc., filed its Answer and Cross-Petition herein on August 26, 1987; and that the Defendants, Stephen W. Randolph and John Doe, Tenant, 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 One (1), Block Two (2) MICHAEL TERRACE ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on February 26, 1982, the Defendant, Stephen W. Randolph, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, his mortgage note in the amount of \$47,000.00, payable in monthly installments, with interest thereon at the rate of fifteen and one-half percent (15.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Stephen W. Randolph, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated February 26, 1982, covering the above-described property. Said mortgage was recorded on February 26, 1982, in Book 4597, Page 2317, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Stephen W. Randolph, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Stephen W. Randolph, is indebted to the Plaintiff in the principal sum of \$46,949.18, plus interest at the rate of fifteen and one-half percent (15.5%) per annum from July 1, 1986 until judgment, plus interest thereafter

at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a third lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$37.00 which became a lien on the property as of 1985-86. Said lien is inferior to the interest of the Plaintiff, United States of America.

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

The Court further finds that the Defendant, Citicorp Person-to-Person Financial Center, Inc., has a second lien on the property which is the subject matter of this action by virtue of a real estate mortgage in the amount of \$30,004.24 which includes principal, interest and charges to July 23, 1987, together with interest at the rate of 14.75 percent per annum from July 23, 1987, until paid, together with a reasonable attorney's fee in the sum of \$3,000.00.

The Court further finds that the Defendant, John Doe, Tenant, is in default and has no right, title, or interest in the subject real property.

The Court further finds that the Defendant, Oklahoma Mortgage Company, disclaimed any right, title, or interest in and to the subject real property.

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

Stephen W. Randolph, in the principal sum of \$46,949.18, plus interest at the rate of fifteen and one-half percent (15.5%) per annum from July 1, 1986 until judgment, plus interest thereafter at the current legal rate of 9.16 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$37.00 for personal property taxes for the year of 1985-86, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Citicorp Person-to-Person Financial Center, Inc., have and recover judgment in rem against the Defendant, Stephen W. Randolph, in the amount of \$30,004.24 which includes principal, interest and charges to July 23, 1987, together with interest at the rate of 14.75 percent per annum from July 23, 1987, until paid, together with a reasonable attorney's fee in the sum of \$3,000.00, plus the costs of this action, and that it have foreclosure of its mortgage lien against subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, John Doe, Tenant, Oklahoma Mortgage Company, 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 Defendant, Stephen W. Randolph, to satisfy the money judgment of the Plaintiff or the Defendant Citicorp Person-to-Person Financial Center, Inc. herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

Third:

In payment of the Defendant, Citicorp Person-to-Person Financial Center, Inc., in the amount of \$30,004.24 with interest at the rate of 14.75 percent per annum from July 23, 1987, until paid, plus a reasonable attorney's fee in the sum of \$3,000.00;

Fourth:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$37.00, plus penalties and interest, for personal property taxes which are currently due and owing.

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

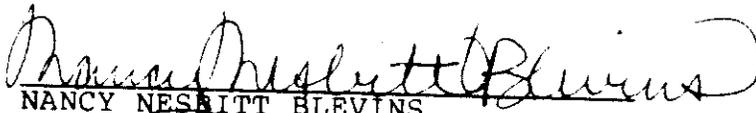
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


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
406 Tulsa County Courthouse
Tulsa, OK 74103


ROBERT J. BARTZ
Attorney for Defendant, Citicorp
Person-to-Person Financial Center, Inc.
314 East 3rd, Suite 201
Tulsa, OK 74120

NNB/css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
CHARLES B. NOBLE; DEBORAH J.)
PRUITT f/k/a DEBORAH J. NOBLE)
and as DEBORAH JEAN OATS;)
CITY FINANCE COMPANY; DONOVAN)
TAH; MARILYN JOANN TAH;)
ERNEST R. BROWN; ORVIL PRUITT;)
COUNTY TREASURER, Mayes County,)
Oklahoma; and BOARD OF COUNTY)
COMMISSIONERS, Mayes County,)
Oklahoma,)
)
Defendants.)

FILED

FEB 13 1989

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

CIVIL ACTION NO. 88-C-582-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 13th day
of Feb., 1989. 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, Mayes County, Oklahoma, and
Board of County Commissioners, Mayes County, Oklahoma, appear by
Dynda R. Post, Assistant District Attorney, Mayes County,
Oklahoma; the Defendant, Charles B. Noble, appears not, having
previously filed his Disclaimer; and the Defendants, Deborah J.
Pruitt f/k/a Deborah J. Noble and as Deborah Jean Oats, City
Finance Company, Donovan Tah, Marilyn JoAnn Tah, Ernest R. Brown,
and Orvil Pruitt, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Charles B. Noble, was
served with Summons and Complaint on October 26, 1988; that the
Defendant, Deborah J. Pruitt f/k/a Deborah J. Noble and as

Deborah Jean Oats, acknowledged receipt of Summons and Complaint on July 5, 1988; that the Defendant, City Finance Company, acknowledged receipt of Summons and Complaint on June 23, 1988; that the Defendant, Donovan Tah, acknowledged receipt of Summons and Complaint on November 26, 1988; that Defendant, Marilyn JoAnn Tah, acknowledged receipt of Summons and Complaint on November 26, 1988; that the Defendant, Ernest R. Brown, acknowledged receipt of Summons and Complaint on June 23, 1988; that the Defendant, Orvil Pruitt, acknowledged receipt of Summons and Complaint on July 18, 1988; that Defendant, County Treasurer, Mayes County, Oklahoma, acknowledged receipt of Summons and Complaint on June 24, 1988; and that Defendant, Board of County Commissioners, Mayes County, Oklahoma, acknowledged receipt of Summons and Complaint on June 27, 1988.

It appears that the Defendants, County Treasurer, Mayes County, Oklahoma, and Board of County Commissioners, Mayes County, Oklahoma, filed their Answer, Cross-Claim, and Counter-Claim herein on July 1, 1988; that the Defendant, Charles B. Noble, filed his Disclaimer herein on November 7, 1988; and that the Defendants, Deborah J. Pruitt f/k/a Deborah J. Noble and as Deborah Jean Oats, City Finance Company, Donovan Tah, Marilyn JoAnn Tah, Ernest R. Brown, and Orvil Pruitt, 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 Mayes County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Numbered Twelve (12) of OAK RIDGE HEIGHTS, SUBDIVISION NO. 1, Mayes County, State of Oklahoma, according to the official Survey and Plat thereof, filed for record in the office of the County Clerk of said County and State.

The Court further finds that on November 27, 1978, Charles B. Noble and Deborah J. Noble executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$28,750.00, payable in monthly installments, with interest thereon at the rate of 8.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, Charles B. Noble and Deborah J. Noble executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated November 27, 1978, covering the above-described property. Said mortgage was recorded on November 27, 1978, in Book 564, Page 60, in the records of Mayes County, Oklahoma.

The Court further finds that pursuant to a Divorce Decree dated January 22, 1981, and filed on January 22, 1981, in the District Court, Mayes County, State of Oklahoma, subject indebtedness was to be assumed by Deborah J. Noble. The Plaintiff did not release the Defendant, Charles B. Noble, from his personal liability thereon.

The Court further finds that the Defendant, Deborah J. Pruitt f/k/a Deborah J. Noble and as Deborah Jean Oats, made default under the terms of the aforesaid note and mortgage by

reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Charles B. Noble and Deborah J. Pruitt f/k/a Deborah J. Noble and as Deborah Jean Oats, are indebted to the Plaintiff in the principal sum of \$25,996.60, plus accrued interest in the amount of \$4,197.05 as of January 12, 1988, plus interest accruing thereafter at the rate of 8.5 percent per annum or \$6.0540 per day 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, Mayes County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$223.35, plus interest and penalties. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Charles B. Noble, disclaims any right, title, or interest in the subject real property.

The Court further finds that the Defendants, City Finance Company, Donovan Tah, Marilyn JoAnn Tah, Ernest R. Brown, and Orvil Pruitt, 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, Charles B. Noble and Deborah J. Pruitt f/k/a Deborah J. Noble and as Deborah Jean Oats, in the principal sum of \$25,996.60, plus

accrued interest in the amount of \$4,197.05 as of January 12, 1988, plus interest accruing thereafter at the rate of 8.5 percent per annum or \$6.0540 per day until judgment, plus interest thereafter at the current legal rate of 9.16 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, Mayes County, Oklahoma, have and recover judgment in the amount of \$223.35 for personal property taxes, plus interest and penalties.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, City Finance Company, Donovan Tah, Marilyn JoAnn Tah, Ernest R. Brown, and Orvil Pruitt, 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;

Third:

In payment of Defendants, County Treasurer, and Board of County Commissioners, Mayes County, Oklahoma, in the amount of \$223.35, personal property taxes which are currently due and owing.

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

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

S/ THOMAS R. BRETT

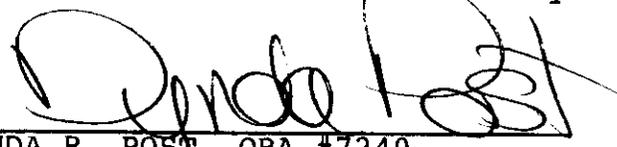
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney



DYNDA R. POST, OBA #7240
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Mayes County, Oklahoma

THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 13 1989

JAN ELLEN BATES,)
)
 Plaintiff,)
)
 vs.)
)
 CONTINENTAL INDUSTRIES, INC.,)
 and HANDY & HARMAN)
)
 Defendants.)

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

Case No. 87-C-439-E

STIPULATED JUDGMENT OF DISMISSAL

Upon consideration of the Joint Stipulation for Entry of Judgment submitted by all parties to this action, and in view of the parties' fair and reasonable settlement and resolution of all issues herein with the advice and assistance of counsel, it is hereby

ORDERED that this action be dismissed with prejudice, each party to bear its own attorney's fees and costs.

SO ORDERED this 13 day of February 1989.

S/ JAMES O. RUSON

UNITED STATES DISTRICT JUDGE

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

FRONTIER FEDERAL SAVINGS AND)
LOAN ASSOCIATION,)

Plaintiff,)

vs.)

No. 88-C-1346-E

GEORGE A. SHIPMAN,)

Defendant.)

FILED

FEB 13 1989

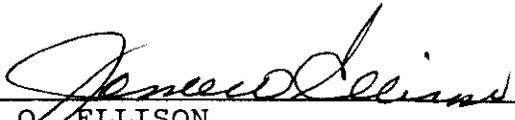
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The Defendant having filed his 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 13th day of February, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FEB 10 1989

CANNON ENGINEERING, INC.,
an Oklahoma corporation,

Plaintiff,

v.

INTEGRATOR SERVICES, INC.,
an Oklahoma corporation,

and

JERRY R. McCASKEY,
WILLIAM M. CARNAHAN,
and
DONALD SMITH,

Defendants.

SAC, OKLAHOMA CITY
U.S. DISTRICT COURT

No. 87-C-193-C

STIPULATION OF DISMISSAL

It is stipulated by and between all of the above identified parties:

1. That the parties hereto have settled the remaining claims in the above-identified action to their full and mutual satisfaction.

2. That the accounting, contempt and defendants' motion for attorneys' fees are hereby dismissed with prejudice and that each party is to bear its own costs and attorney fees.

Dated this 2nd day of November, 1988.

CANNON ENGINEERING, INC.

By Donald K. Mitchell
Donald K. Mitchell, President

Date: Nov 2, 1988

INTEGRATOR SERVICES, INC.

By Jerry R. McCaskey
Jerry R. McCaskey

Date: Nov. 2, 1988

MARGER & JOHNSON

By Alan T. McCollom
Alan T. McCollom

Attorneys for Cannon
Engineering Inc.

Date: Nov. 2, 1988

WILLIAM M. CARNAHAN

William M. Carnahan

Date: Nov. 2-1988

JERRY R. McCASKEY

Jerry R. McCaskey
Date: Nov. 2, 1988

DONALD SMITH

Donald Smith
Date: 11-2-88

HEAD & JOHNSON

By Fred P. Gilbert
Fred P. Gilbert

Date: Nov 2, 88

Entered

FILED

FEB 10 1989

MADEY, SERVED, CLERK
U.S. DISTRICT COURT

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

EDWARD MAMBUCA,

Plaintiff,

vs.

AARON RENTS, INC.,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

No. 88-C-863-C

J U D G M E N T

This matter came on for consideration of the motion for summary judgment of defendant Aaron Rents, Inc. The issues having been duly considered and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Court grants defendant's motion for summary judgment as to Claim II in accordance with the order filed February 10, 1989.

IT IS SO ORDERED this 9~~th~~ day of February, 1989.

H. Dale Cook
H. DALE COOK, Chief Judge
United States District Court

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

FEB 10 1989
Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
-vs-)
)
JILL L. (ABEYTA) HURLEY,)
004481215)
)
Defendant,)

CIVIL NUMBER 89-C-075 B

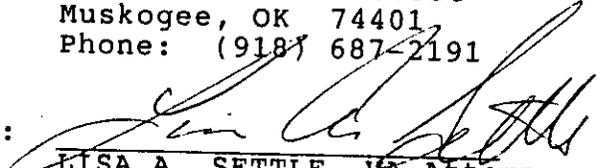
NOTICE OF DISMISSAL

COMES NOW the Plaintiff, United States of America, by and through its attorney, Herbert N. Standeven, District Counsel, Veterans Administration, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

Respectfully Submitted,

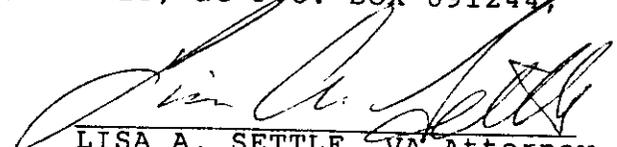
UNITED STATES OF AMERICA

Herbert N. Standeven
District Counsel
Veterans Administration
125 South Main Street
Muskogee, OK 74401
Phone: (918) 687-2191

By: 
LISA A. SETTLE, VA Attorney

CERTIFICATE OF MAILING

This is to certify that on the _____ day of February, 1989, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: JILL L. (ABEYTA) HURLEY, at P.O. BOX 691244, TULSA, OK 74169.


LISA A. SETTLE, VA Attorney

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

FEB 10 1989

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

DARRYL K. PEARSON,)
)
 Plaintiff,)
)
 vs.)
)
 NIAGARA MACHINE & TOOL WORKS,)
 a Foreign Corporation,)
 et al.,)
)
 Defendants.)

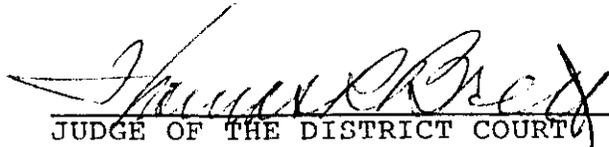
Case No. 88-C-71-B

ORDER DISMISSING DEFENDANT, OWENS-ILLINOIS
INCORPORATED GLASS CONTAINER DIVISION

NOW, on this 10th day of February, 1989, the Joint Stipulation of Dismissal of Plaintiff, Darryl K. Pearson, and Defendant, Owens-Illinois Glass Container Division[sic] Owens-Illinois Glass Container, Inc. comes on for hearing before me, the undersigned Judge of the United States District Court.

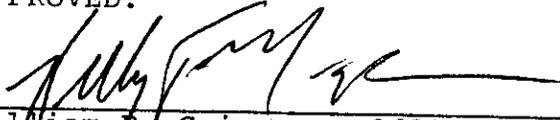
For good cause shown, the Stipulation should be granted.

IT IS THEREFORE ORDERED that Plaintiff's claims asserted herein against Owens-Illinois Incorporated Glass Container Division[sic] Owens-Illinois Glass Container, Inc. are dismissed with prejudice.



JUDGE OF THE DISTRICT COURT

APPROVED:



William R. Grimm 3628

Kelly F. Monaghan 11681

Robert B. Sartin 12848

Barrow Wilkinson Gaddis

Griffith & Grimm

610 South Main, Suite 300

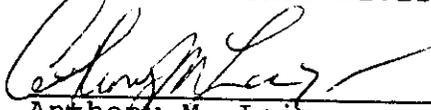
Tulsa, OK 74119-1226

(918) 584-1600

Attorneys for Defendant,

Owens-Illinois Incorporated

Glass Container Division



Anthony M. Laizure

P. O. Box 70110

Tulsa, OK 74170

Attorney for Plaintiff,

Darryl K. Pearson

RBS2/pb:ODOI

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

DARRYL K. PEARSON,

Plaintiff,

vs.

No. 88-C-71-B ✓

NIAGARA MACHINE & TOOL WORKS,
A Foreign Corporation; CHICAGO
STEEL CONTAINER, A Foreign
Corporation; E. PORTER ESSLEY
CORPORATION, A Foreign
Corporation; and OWENS-ILLINOIS
INCORPORATED GLASS CONTAINER
DIVISION, A Foreign Corporation,

Defendants.

and

OWENS-ILLINOIS INCORPORATED
GLASS CONTAINER DIVISION, a
Foreign Corporation,

Third Party
Plaintiff,

vs.

CONTINENTAL CAN COMPANY, INC.,
a Foreign Corporation, and
PETER KIEWIT SONS', INC.,
a Foreign Corporation,

Third Party
Defendants.

FILED

FEB 10 1989

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

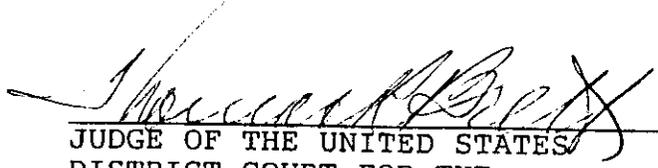
ORDER OF DISMISSAL

NOW ON this 10th day of Feb., 1989,

upon the written application of the defendant, Chicago Steel
Container, for a Dismissal Without Prejudice of its Cross Claim
against the defendants, Niagara Machine & Tool Works,
Owens-Illinois Incorporated Glass Container Division, E. Porter
Essley Corporation, Continental Can Company, Inc. and Peter

Kiewit Sons', Inc., in the case of Pearson vs. Niagara, et al., and all causes of action therein, the Court having examined said Application finds that said defendant and plaintiff have entered into a compromise settlement agreement believed to resolve all claims involved in the Cross Claim and have requested the Court to dismiss said Cross Claim without prejudice to any future action. The Court being fully advised in the premises finds that said settlement is in the best interest of the parties, and that said Cross Claim against Niagara Machine & Tool Works, Owens-Illinois Incorporated Glass Container Division, E. Porter Essley Corporation, Continental Can Company, Inc. and Peter Kiewit Sons', Inc., should be dismissed pursuant to said Application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that all causes of action in the Cross Claim of the defendant, Chicago Steel Container, against Niagara Machine & Tool Works, Owens-Illinois Incorporated Glass Container Division, E. Porter Essley Corporation, Continental Can Company, Inc. and Peter Kiewit Sons', Inc., be and the same hereby are dismissed without prejudice to any future action.


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

FILED
FEB 10 1988

THE CIT GROUP/FACTORING
MEINHARD-COMMERCIAL WESTERN,
INC.,

Plaintiff,

vs.

SIGHT & SOUND DISK-TRIBUTORS,

Defendant,

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

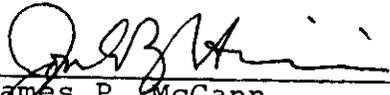
Case No. 88-C-1657-E

STIPULATION OF DISMISSAL

Plaintiff, the CIT Group/Factoring Meinhard-Commercial Western, Inc. ("CIT"), and Defendant, Sight & Sound Distributors, pursuant to Fed. R. Civ. P. 41(a)(1)(ii), hereby stipulate to the dismissal of this action.

DOERNER, STUART, SAUNDERS
DANIEL & ANDERSON

DOYLE & HARRIS

By 
James P. McCann
Jon E. Brightmire
Tulsa, OK 74103
(918(582-1211)

By 
Stephen M. Harris
Michael D. Davis
1414 S. Galveston
Tulsa, OK 74127

Attorneys for Plaintiff
THE CIT/FACTORING MEINHARD-
COMMERCIAL WESTERN, INC.

Attorneys for Defendant
SIGHT & SOUND DISTRIBUTORS

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

FILED

FEB 10 1989

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
-vs-)
)
MICHAEL FISHER,)
547-86-2310)
)
Defendant,)

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

CIVIL NUMBER 88-C-1597 C

NOTICE OF DISMISSAL

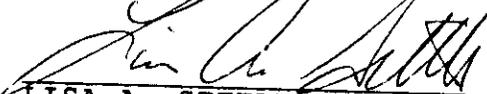
COMES NOW the Plaintiff, United States of America, by and through its attorney, Herbert N. Standeven, District Counsel, Veterans Administration, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

Respectfully Submitted,

UNITED STATES OF AMERICA

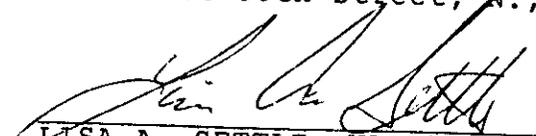
Herbert N. Standeven
District Counsel
Veterans Administration
125 South Main Street
Muskogee, OK 74401
Phone: (918) 687-2191

By:


LISA A. SETTLE, VA Attorney

CERTIFICATE OF MAILING

This is to certify that on the _____ day of February, 1989, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: MICHAEL FISHER, at 2324 East 60th Street, N., Tulsa, OK 74105.


LISA A. SETTLE, VA Attorney

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

Koss Corporation
Plaintiff(s),

vs.

No. 88-C-737-C

Otasco, Inc.
Defendant(s).

FILED

FEB 9 1989

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

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

IT IS SO ORDERED this 9 day of Feb, 1989.


UNITED STATES DISTRICT JUDGE

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

J.D. KELSO,, et al,)
)
 Plaintiffs,)
)
 v.)
)
 STANLEY GLANTZ, et al,)
)
 Defendants.)

88-C-1087-C

FILED

FEB 9 1989

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

ORDER

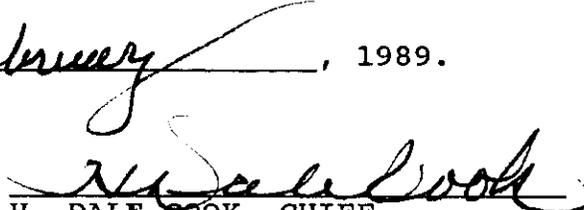
The Court has for consideration the Report and Recommendation of the Magistrate filed January 19, 1989 in which the Magistrate recommended that the action against Defendants Miller, Maynard, Mizor, Donnahoe, and Hunsfine be dismissed without prejudice.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is, therefore, Ordered that the action against Defendants Miller, Maynard, Mizor, Donnahoe, and Hunsfine be dismissed without prejudice.

Dated this 9 day of February, 1989.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

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

Letitia Magini

Plaintiff(s),

vs.

United States of America

Defendant(s).

No. 88-C-663-C

FILED

FEB 9 1989

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

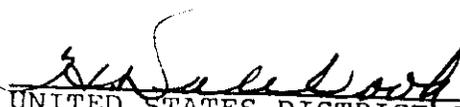
JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

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

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

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

Dated this 9 day of Feb, 1989.


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LETITIA MAGINI,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

12D-0 208

CLERK OF DISTRICT COURT
U.S. DISTRICT COURT

Civil Action No. 88-C-663-C

STIPULATION OF DISMISSAL

The Plaintiff, Letitia Magini, and the Defendant, United States of America, acting on behalf of the Drug Enforcement Administration, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, having fully settled all claims asserted by Plaintiff in this litigation, hereby stipulate to, and request entry by the Court of, the Order submitted herewith dismissing all such claims with prejudice, the parties to bear their own costs and attorneys' fees.

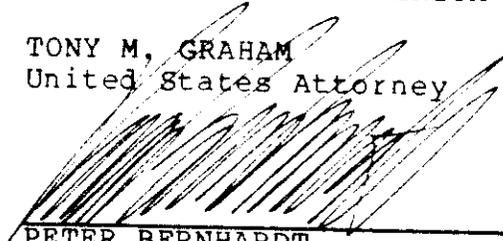
Dated this 23rd day of November, 1988.

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

Letitia Magini

LETITIA MAGINI
P.O. Box 17
Gig Harbor, Washington 98335


PETER BERNHARDT
Assistant U.S. Attorney
3600 U.S. Courthouse
333 West Fourth Street
Tulsa, Oklahoma 74103
(918) 581-7463

STATE OF WASHINGTON)

) SS.

COUNTY OF Pierce)

Subscribed and sworn to before me on this 23rd day
of November, 1988, by Letitia Magini.

Angela M. Lake
NOTARY PUBLIC

My Commission Expires:

_____ (seal)

Records and Identification Officer
Washington Corrections Center for Women
Authorized Officer Pursuant to
RCW 54.03.090.

Residing at Tacoma, WA

HL

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

Independent Metal Management)	
)	
Plaintiff(s),)	
)	
vs.)	No. 88-C-381-C
)	
)	
Roy E Thigpen III et al)	
)	
Defendant(s).)	

FILED
FEB 9 1989

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

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

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

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

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

Dated this 7 day of Feb., 1989.


UNITED STATES DISTRICT JUDGE

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

James C Van Meter
Plaintiff(s),

vs.

No. 87-C-1046-C

Cities Service Co. et al
Defendant(s).

FILED

FEB 9 1989

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

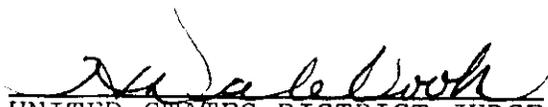
JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

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

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

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

Dated this 9 day of Feb., 1989.


UNITED STATES DISTRICT JUDGE

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

FILED

FEB 9 1989

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

UNITED STATES OF AMERICA
Plaintiff(s),

vs.

No. 88-C-1092-C

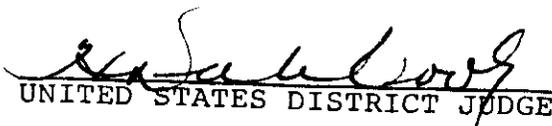
RAY E PEMBERTON
Defendant(s).

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

IT IS SO ORDERED this 9 day of February, 19 89.


UNITED STATES DISTRICT JUDGE

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

FILED

FEB 8 1989

PATTY PRECISION PRODUCTS COMPANY,)
a corporation,)

Plaintiff,)

vs.)

BROWN & SHARPE MANUFACTURING CO.,)
a corporation; GENERAL ELECTRIC)
COMPANY, a corporation; and)
TOOLS CAPITAL CORPORATION, a)
corporation,)

Defendants.)

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

Case No. 78-C-213-E

ORDER

ON this 7th day of Feb, 1989 came on for consideration the motion of Defendant Tools Capital Corporation, to dismiss its counterclaim with prejudice. Upon due consideration, this Court finds that the motion should be granted.

IT IS THEREFORE ORDERED that the counterclaim of Defendant Tools Capital Corporation is dismissed with prejudice.



THE HONORABLE JAMES O. ELLISON

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

E I L E D

FEB 8 1989

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

TRUMAN WAYNE BILL,)
)
 Plaintiff,)
)
 vs.)
)
 HALLIBURTON COMPANY,)
)
 Defendant.)

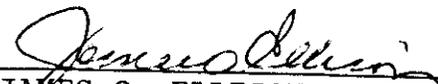
No. 87-C-326-E

ADMINISTRATIVE CLOSING ORDER

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 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, order, judgment, or for any other purpose required to obtain a final determination of the litigation.

ORDERED this 7th day of February, 1989.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

FEB 17 1989

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

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

ERMA J. DAVIS,

Plaintiff,

v.

WAL-MART DISCOUNT CITIES,

Defendant.

No. 87-C-271-B

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 7 day of Feb, 1989, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.

S/ THOMAS R. BRETT

United States District Judge

50-24/dlb

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

GATE CITY STEEL CORPORATION,)
a Nebraska corporation,)
)
Plaintiff,)

vs.)

Case No. 88-C-1432-E

MIDLAND DEVELOPMENT OF)
ARKANSAS, INC., a/k/a)
Midland Development, Inc.,)
an Arkansas corporation;)
and UNITED STATES FIDELITY)
& GUARANTY COMPANY, a)
Maryland corporation,)
)
Defendants.)

FILED

FEB 7 1989

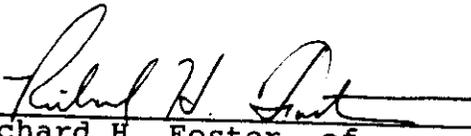
John C. Silver, Clerk
U.S. DISTRICT COURT

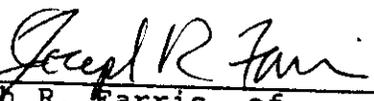
^{OF}
JOINT APPLICATION ~~FOR~~
STIPULATION OF DISMISSAL

Plaintiff and Defendants, pursuant to Rule 41(a)(1), Fed. R. Civ. P., jointly stipulate that this matter may be dismissed with prejudice, with each party to bear its own costs and attorney's fees. In support hereof, the parties would show the Court that the claims of the Plaintiff against Defendants have been settled.

Dated this 7th day of February, 1989.

Respectfully submitted,


Richard H. Foster, of
DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON
Attorneys for Plaintiff


Joseph R. Farris, of
FELDMAN, HALL, FRANDEN,
WOODARD & FARRIS
Attorneys for Defendants

FILED

FEB -7 1989

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JACK O. SILVER, CLERK
DISTRICT COURT

INTERNATIONAL UNION, UNITED)
AUTOMOBILE, AEROSPACE and)
AGRICULTURAL IMPLEMENT WORKERS)
OF AMERICA, AFL-CIO, and its)
LOCAL NO. 73,)

Plaintiffs,)

vs.)

McDONNELL DOUGLAS)
CORPORATION,)

Defendant.)

Civil Action No. 88-C-669-B

STIPULATION OF DISMISSAL

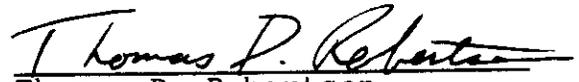
Come now plaintiff's UAW and its Amalgamated Local 73, and defendant McDonnell Douglas, pursuant to Rule 41(a)(1)(ii), Fed. R. Civ. P., and submit this Stipulation Of Dismissal with prejudice of the above-styled action. The dispute raised in this litigation has been resolved by all parties hereto.

WHEREFORE, all parties move for dismissal with prejudice pursuant to Rule 41(a)(1)(ii), Fed. R. Civ. P.

YOUNGDAHL & YOUNGDAHL, P.A.
2101 South Main Street
P. O. Box 6030
Little Rock, Arkansas 72216
(501) 376-6355


Chad Farris
Attorney for Plaintiffs

NICHOLS, WOLFE, STAMPER,
NALLY & FALLIS, INC.
Suite 400, Old City Hall Bldg.
124 East Fourth Street
Tulsa, Oklahoma 74103-4004
(918) 584-5182


Thomas D. Robertson
Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 7 1989

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 SEVEN TEXAS LIFE INSURANCE)
 POLICIES,)
)
 Defendant.)

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

CIVIL ACTION NO. 88-C-1228-B

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, Seven Texas Life Insurance Policies more particularly described as:

<u>POLICY #</u>	<u>INSURED</u>	<u>OWNER</u>
UL0708350	TERESSA LOUISE GONZALES	TERESSA LOUISE GONZALES
UL0722937	RICHARD C. IRVING	TERESSA LOUISE GONZALES
UL0722936	DELLA CYLENE BARKER	TERESSA LOUISE GONZALES
UL0708349	JERIMIAH GONZALES	JERIMIAH GONZALES
UL0722935	TERESSA A. SCOTT	TERESSA LOUISE GONZALES
UL0708996	DELLA C. BARKER	TERESSA LOUISE GONZALES
UL0708995	TERESSA A. SCOTT	TERESSA LOUISE GONZALES

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.

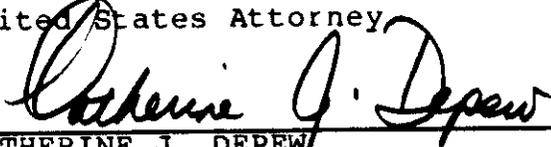
S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

A handwritten signature in cursive script, reading "Catherine J. DePew". The signature is written in black ink and is positioned above a horizontal line.

CATHERINE J. DEPEW
Assistant United States Attorney

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

FILED

FEB -7 1989

DECK CLERK, CLERK
DISTRICT COURT

ELRA D. GLENN, d/b/a)
GLENN LEASING COMPANY,)
)
Plaintiff,)
)
vs.)
)
COMMUNICATION ASSOCIATES)
LEASING, INC., an Oklahoma)
corporation; MENTCO, INC.,)
a Delaware corporation; and)
GLEN E. MICHAEL,)
)
Defendants.)

Case No. 88-C-1234-B

NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, Elra D. Glenn, d/b/a Glenn Leasing Company, pursuant to Rule 41(1) of the Federal Rules of Civil Procedure and hereby provides notice that he is voluntarily dismissing the above-captioned action, with the consent and approval of all Defendants, without prejudice to the refiling of this action at a future date.

Respectfully submitted,

BEST, SHARP, SHERIDAN & STRITZKE

By:

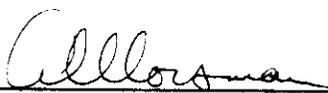


Andrew B. Morsman OBA#10911
The Kennedy Building, Suite 700
321 South Boston
Tulsa, Oklahoma 74103
(918)582-1234

CERTIFICATE OF MAILING

I hereby certify that on the 7th day of February, 1989, I mailed a true and correct copy of the above and foregoing instrument to Dianne L. Smith, 2021 South Lewis, Suite 725,

Tulsa, OK 74104, and Charles W. Shipley and Mark B. Jennings,
3401 First National Tower, Tulsa, OK 74103, with the correct and
proper postage thereon fully prepaid.



Andrew B. Morsman

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

FILED

FEB 17 1989

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

ERMA J. DAVIS,

Plaintiff,

v.

WAL-MART DISCOUNT CITIES,

Defendant.

No. 87-C-271-B ✓

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 7 day of Feb., 1989, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.


United States District Judge

50-24/dlb

FILED

FEB 7 1989

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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 FOUR THOUSAND TWO HUNDRED)
 DOLLARS IN UNITED STATES)
 CURRENCY (\$4,200.00),)
)
 Defendant.)

89-C-082 B

CIVIL ACTION NO.

AGREED JUDGMENT OF FORFEITURE

IT NOW APPEARS that the forfeiture proceeding herein has been fully compromised and settled. Such settlement more fully appears by the written Stipulation entered into between Johnny L. Hughes and the United States of America on February 1, 1989, and filed herein, to which Stipulation reference is hereby made and is incorporated herein.

It further appearing that no other claims to said property have been filed since such property has been seized and that no other person has any right, title or interest in the defendant property,

Now, therefore, on motion of Catherine J. Depew, Assistant United States Attorney, and with the consent of Johnny L. Hughes, it is

ORDERED that the claim of Johnny L. Hughes in the administrative proceeding be and the same hereby is dismissed with prejudice, and it is

FURTHER ORDERED AND DECREED that \$1,300.00 in United States Currency be and hereby is condemned as forfeited to the United States of America for disposition according to law.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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

FILED

JASPER GEORGE PITTS, JR.,)
)
 Petitioner,)
)
 v.)
)
 TED WALLMAN, et al,)
)
 Respondents.)

88-C-250-B

FEB 7 1989
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

Now before the court is Petitioner Jasper George Pitts, Jr.'s Motion for Judicial Review (Docket #12)¹ and Motion for Leave to File Amended Motion for Judicial Review With Brief in Support and Motion to Vacate (#16). Petitioner asked this court to vacate or modify its Order of August 23, 1988 denying petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. §2254.

Petitioner filed his Motion for Judicial Review and Affidavit (#13) on September 2, 1988, and his Motion for Leave to File Amended Motion for Judicial Review on October 11, 1988. The court finds that the Motion for Leave to File Amended Motion should be and hereby is granted.

Upon review of the Amended Motion for Judicial Review and Amended Affidavit filed on October 13, 1988, the court finds that petitioner now raises claims of misrepresentation of counsel

¹ "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

which were never raised in his petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254. The petitioner's new claims cannot be considered by the court in this case and provide no grounds to vacate or modify the Order of this court dismissing the petition involving unrelated allegations.

Petitioner also alleges that the court erred in finding that, because there were other prior convictions that could be utilized to enhance the sentence he is now serving, the use of the conviction he challenges as invalid was harmless error. The petitioner claims that the state "did not have utilization to use other prior convictions", because he had made a plea bargain agreement with the state to strike all prior convictions except the conviction now challenged. The transcript of sentencing in Case No. CRF-86-2209, the sentence petitioner is now serving, does show that the plea negotiations resulted in all of petitioner's prior felony convictions being struck except the challenged conviction. However, it is clear that there were other prior felony convictions that could have been used to enhance his sentence and the state was free to chose any one of them for enhancement purposes during plea negotiations. In Beavers v. Alford, 582 F.Supp. 1504, 1506 (W.D.Okla. 1984), the court said: "'under Oklahoma law, only one prior conviction is necessary to enhance a defendant's sentence'.... [W]here enhancement could have been based on other convictions, reliance on an invalid one is harmless." There is no merit in

petitioner's allegation that harmless error analysis cannot be applied in this case.

The court also finds that the case of Meagher v. Dugger, 861 F.2d 1242 (11th Cir. 1988), is inapplicable to this case, although petitioner, in a letter to this court dated 1/20/89, requested that it be applied. Meagher involved a discussion of the procedural bar of a claim and an allegation that the defendant would not have pled guilty if he had known that his sentence would not run concurrent to a parole violation sentence, issues not raised in this case by either side.

For the foregoing reasons, the court finds that petitioner's Amended Motion for Judicial Review should be and hereby is denied.

It is so ordered this 7 day of February, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA FEB -7 1989

FILED

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

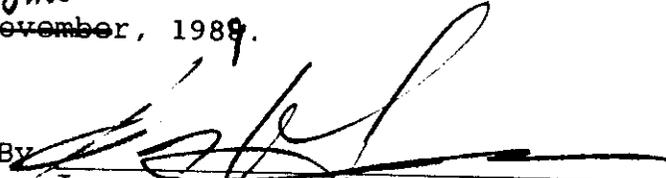
ACRISON, INC.,)
)
Plaintiff,)
)
v.)
)
FACILITIES SYSTEMS)
ENGINEERING CORPORATION,)
and FISCHBACH AND MOORE)
INTERNATIONAL CORPORATION,)
)
Defendants.)

Case No. 88-C-249-C

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the Plaintiff, Acrison, Inc., by and through its counsel, James D. Fornari, and the Defendants, Facilities Systems Engineering Corporation and Fischbach and Moore International Corporation, by and through their counsel Richard A. Paschal, pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, and hereby stipulate that this case be dismissed with prejudice to the bringing of another action. It is stipulated by the parties that they shall each bear their own attorney's fees and costs.

DATED this 3 day of ^{Jan} ~~November~~, 1989.

By 
James D. Fornari
Jarblum, Solomon & Forhari, P.C.
650 Fifth Avenue
New York, New York 10029

ATTORNEY FOR PLAINTIFF,
ACRISON, INC.

By:



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

ATTORNEY FOR DEFENDANTS,
FACILITIES SYSTEMS ENGINEERING
CORPORATION and FISCHBACH AND
MOORE INTERNATIONAL CORPORATION

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

FILED

FEB -7 1989

JACOB L. BAKER, CLERK
U.S. DISTRICT COURT

WILLIE F. McCALISTER,)
)
 Plaintiff,)
)
 vs.)
)
 QUALITY INN INTERNATIONAL, INC.)
 an Oklahoma corporation,)
 FRANK D. BRITTON, an individual,)
 and PEGGY NICHOLAS, an)
 individual,)
)
 Defendants.)

No. 88-C-61-B

O R D E R

On October 6, 1988 a status conference was held in this matter. At that time Plaintiff announced he would dismiss this action within ten (10) days. The record reflects Plaintiff has filed nothing since January 22, 1988, the date of the complaint.

This matter is dismissed for failure to prosecute.

IT IS SO ORDERED this 7th day of February, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

BENJAMIN WILLIAM SCOTT,)
)
 Petitioner,)
)
 v.)
)
 RON CHAMPION, et al,)
)
 Respondents.)

FEB - 6 1989

Jack C. S... Clerk
88-C-437-B U. S. DISTRICT COURT

ORDER

On November 22, 1988, the United States Magistrate stayed consideration of this action until Petitioner answered the interrogatories propounded in a companion case.¹

Petitioner having answered said interrogatories, the instant habeas petition is ready for review.

Scott was convicted by a jury of Attempted Burglary in the First Degree, After Former Conviction of Two or More Felonies in Tulsa County District Court, Case No. CRF 80-3246 and sentenced to sixty-five (65) years in prison.

In this habeas petition, four grounds for relief are set forth:

1. State trial court error in admitting evidence of other crimes;
2. Insufficient evidence at trial on which to base his conviction;
3. State trial court error in failing to quash an arrest; and
4. Cruel and unusual punishment under sentence imposed.

¹ In a companion case, 87-C-607-B, Petitioner attacks convictions in Tulsa County District Court, Case No. CRF 80-3311.

The first three grounds were raised before the Oklahoma Court of Criminal Appeals and considered on Petitioner's direct appeal. Scott v. State, 663 P.2d 17 (Okla.Crim.App. 1983). The fourth ground, however, has been presented only to the state trial court in Petitioner's application for post-conviction relief.²

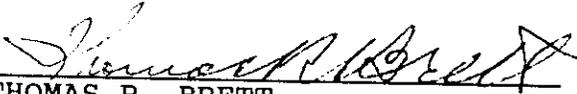
In order to satisfy the exhaustion requirement, a petitioner is ordinarily required to show "that a state appellate court has had an opportunity to rule on the same claim presented in federal court" or that he has "no available state avenue of redress" White v. Meachum, 838 F.2d 1137, 1138 (10th Cir. 1988) (emphasis added). Petitioner here has done neither with respect to his Eighth Amendment claim for cruel and unusual punishment. The result is a mixed petition, containing both exhausted claims one, two, and three and the unexhausted claim four, which cannot be entertained by this court. Rose v. Lundy, 102 S.Ct. 1198, 1205 (1982) ("In sum, because a total exhaustion rule promotes comity and does not unreasonably impair the prisoner's right to relief, we hold that a district court must dismiss habeas petitions containing both unexhausted and exhausted claims" (footnote omitted) (emphasis added).)

Accordingly, Scott's Petition is hereby dismissed. Petitioner may resubmit his habeas petition after deleting the unexhausted Eighth Amendment claim in ground four within thirty

² After a writ of mandamus issued from the Court of Criminal Appeals, the trial court denied post-conviction relief on Eighth Amendment grounds.

(30) days, or file a new application after his Eighth Amendment claim has been fully and fairly presented to the Oklahoma Court of Criminal Appeals.

So ORDERED this 6th day of February, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

FEB -6 1988

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

HARVEY BROWER, on behalf of
himself and all others
similarly situated,

Plaintiff,

vs.

No. 87-C-766-C ✓

TELEX CORP., S. J. JATRAS,
G. L. BRAGG, ANSEL KLEIMAN,
FRANK E. COCHRAN, RICHARD H.
HUGHES, JAMES B. HUNT, HOWARD
UPTON, and JOHN S. ZINK,

Defendants.

ORDER

Before the Court is the motion of defendants to dismiss the amended complaint. Defendants have previously filed a motion to dismiss the original complaint under Rules 9(b) and 12(b)(6) F.R.Cv.P. Following consideration of the first motion to dismiss, the Court granted plaintiff leave to file an amended complaint. Under both complaints plaintiff alleges violation of the Securities Exchange Act, 15 U.S.C. §78j(b) and Rule 10b-5 of the Securities and Exchange Commission (17 C.F.R. §240.10b-5), together with pendent claims for fraud and negligent misrepresentation, arising under Oklahoma law.

The facts as set forth by plaintiff, from which to evaluate the motion to dismiss, are as follows:

1. On July 1, 1987, after Telex's first quarter closed, but before it released its quarterly report, the company held a meeting for security analysts at the Adolphus Hotel in Dallas, Texas. Defendants S. J. Jatras and G. L. Bragg were present.

2. During the meeting, the analysts purportedly asked Jatras and Bragg what the reported earnings would be for the quarter just ended. Jatras and Bragg were unable to give a precise figure but responded that they were comfortable with the \$1.50 to \$1.55 that the analysts were predicting. Jatras and Bragg allegedly repeated their assurances even though some of the analysts present expressed doubts that earnings would be that high.

3. In mid-July the actual earnings for the first quarter were reported to be \$1.40, off from management's predictions by \$.10 and \$.15. Defendants' stock dropped in price by five points in one day from \$74.75 on July 14th to \$69.75 the following day.

4. Plaintiff alleges that defendants persisted in disseminating optimistic forecasts of future earnings. Analysts repeatedly contacted Jatras and Bragg to determine management's prediction of future earnings. Both Jatras and Bragg allegedly predicted that Telex would do better at the end of the second quarter than it did for the first quarter. Plaintiff asserts:

They [defendants] explained that even though the transition from dumb terminal to microcomputer markets was difficult, Telex's technical and marketing problems relating to the System 38 terminal, a line of terminals for IBM's midrange computers and a new line of products that mixed computers and telecommunications, had been or shortly would be resolved. They predicted that profit margins would recover and that Telex would resume market expansion. They endorsed the \$1.50 per share earnings the analysts were predicting based upon Jatras' and Bragg's optimistic reports.

5. Plaintiff concludes that as a result of these false and misleading misrepresentations and omissions, the price of Telex stock rose to a high of \$71.50 during the class period, a gain of \$1.75 over the price to which it had fallen after the disappointing first quarter results were released.

6. On September 14, 1987 Telex issued a press release stating that its fiscal second quarter earnings for the quarter ending September 30, 1987 would be \$.50 per share lower than analysts' earlier prediction of \$1.50 per share. The press release attributed the lower than expected per share earnings to lower than budgeted shipments of several new product families, higher costs of gearing up to manufacture and market new products and competitive price pressures in the company's principle markets. Shortly after this announcement, the market price of Telex shares fell from 65-3/8 per share to 51-7/8 on September 14, 1987.

In his amended complaint plaintiff alleges that defendants' conduct was intentional and reckless in that defendants knew:

First, Telex's stock price was highly sensitive and would react volatilly if actual earnings were less than predicted earnings, even by as little as ten percent. And second, the method that Telex's management was using to predict earnings was not reliable. Because of this, circumstances dictated extreme caution in making or endorsing projections given the likelihood that an overly optimistic projection would artificially inflate the price of the stock which would then plummet if the results did not measure up to the prediction.

Plaintiff outlines, in his brief, the alleged fraudulent misrepresentations contained in his amended complaint which allegedly are violative of the securities laws:

- (1) the endorsement of the \$1.50 per share earnings projection (Complaint at ¶29);
- (2) the claim that the company would do better for the second quarter ending September 30, 1987 than it had for the quarter ended on June 30, 1987 (Complaint at ¶29);

- (3) the claim that Telex's technical and marketing problems relating to the System 38 terminal had been or would shortly be resolved (Complaint at ¶131);
- (4) the claim that the technical and marketing problems related to the new line of products mixing computers and telecommunications had been or would shortly be resolved (Complaint at ¶131);
- (5) the claim that profit margins would recover (Complaint at ¶131); and
- (6) the claim that the company would resume margin expansion (Complaint at ¶132).

Plaintiff alleges that defendants knew and failed to disclose or take into consideration in making their earnings projection, the following material facts:

- (1) telex was facing a serious lag in sales along with significant new product problems (Complaint at ¶121(i));
- (2) the serious short-fall in sales and the new product problems would result in a considerable decline in profitability (Complaint at ¶121(ii)-(iii)) forcing Telex to report substantially lower earnings during the second quarter of the 1987-1988 fiscal year (Complaint at ¶121(iv); and
- (3) the full extent of pricing pressure by competitors on Telex's product sales and the effect it would have on second-quarter earnings (Complaint at ¶121(v)).

In their second motion to dismiss, defendants assert that plaintiff's amended complaint fails to satisfy the requirements of Rule 9(b) and 12(b)(6) F.R.Cv.P., and is therefore subject to dismissal. Defendants assert that plaintiff has failed to identify with particularity under Rule 9(b)¹ any facts to support defendants' involvement in securities fraud.

The Tenth Circuit has stated that dismissal of a complaint for failure to satisfy the requirements of Rule 9(b) is treated as a

¹F.R.Cv.P. 9(b) provides:
Rule 9. Pleadings Special Matters

* * *

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

dismissal for failure to state a claim upon which relief can be granted under 28 U.S.C. §12(b)(6). Seattle-First Nat'l Bank v. James Carlstedt, et al., 800 F.2d 1008 (10th Cir. 1986). In Seattle the court elaborated upon the Rule 9(b) requirements:

Rule 9(b) does not ... require the pleading of detailed evidentiary matter, nor does it require any particularity in connection with an averment of intent, knowledge, or condition of mind. It only requires identification of the circumstances constituting fraud or mistake.

Id. at 1011.

The Rule has multiple purposes, including providing defendant with enough specificity to inform defendant of the alleged fraudulent activity. See, e.g. Dudley v. Southeastern Factor & Finance Co., 446 F.2d 303, 308 n.6 (5th Cir. 1971), cert. denied, 404 U.S. 858 (1971). However, another important function is to eliminate those complaints filed as a pretext for discovery of unknown wrongs. The complaint should seek to redress a wrong, not find one. See, e.g. Segal v. Gordon, 467 F.2d 602, 607-08 (2nd Cir. 1972). In furtherance of this function, a Rule 9(b) pleading cannot be based upon information and belief. However, the allegations of fraud may be so alleged as to demonstrate facts peculiarly within the opposing party's knowledge, in which event, the allegations must be accompanied by a statement of the facts upon which the belief is based. Divittorio v. Equidyne Extractive Industries, Inc., 822 F.2d 1242, 1247 (2nd Cir. 1987). The pleader bears a heavy burden of alleging specific facts upon which his belief is founded. Plaintiff's complaint fails to satisfy this requirement. It contains little by way of embellishment of the bald conclusion that defendants recklessly predicted future earnings. It is not enough

to quote public statements made by defendants or speculate about defendants' motives and press reports. Such allegations simply do not provide the "specific, well-pleaded facts" necessary to satisfy Rule 9(b). See, Stern v. Leucadia Nat'l. Corp., 844 F.2d 997, 1004 (2nd Cir. 1988).

In his amended complaint, plaintiff is viewing a result (i.e. the drop in stock prices), looking to the cause (a drop in earnings) and concluding that the result was achieved by fraudulent conduct on behalf of the defendants. This is illustrative of a "fraud-by-hindsight" pleadings. "Fraud-by-hindsight" pleadings have been characterized as follows:

In the typical "fraud-by-hindsight" case, the defendant company has experienced some business misfortune which is ultimately reported in its own periodic reports to stockholders and in the financial press. The publication of this information produces a drop in the market price of the company's stock and many unhappy stockholders. The suit which follows normally alleges that information concerning the impending misfortune or its root causes was omitted from earlier management publications despite the fact that management then knew the information. The omitted material is frequently contrasted with optimistic rhetoric from the pre-misfortune period in connection with an assertion that the earlier publications were false and misleading.

In re Storage Technology Corp. Securities Litigation, 630 F.Supp. 1072, 1075 (D.Colo. 1986), citing, In re Ramada Inns Securities Litigation, 550 F.Supp. 1127, 1132 (D.Del. 1982).

Such situations can result by negligent mismanagement or by fraud. Situations which result from negligence or as a result of unforeseeable events beyond management's control are not actionable. However, fraudulent conduct wherein a deliberate decision was made by management to cover up facts likely to depress the market in the company's stock, are actionable. See, In re Ramada Inns Securities Litigation, *supra*, 550 F.Supp. at 1132. In order to defeat a motion under Rule 9(b), plaintiff must specify

the factual bases tending to show deliberate conduct rather than mere negligence. In this instance, plaintiff has failed to provide such a showing.

The amended complaint does not allege any facts to suggest who at Telex possessed such knowledge, when and how they obtained the knowledge, or even why anyone should have known knowledge other than what was already known in the open market. See, e.g. Devaney v. Chester, 813 F.2d 566, 568 (2nd Cir. 1987).

Additionally, under 17 C.F.R. §230.175 "forward-looking" statements are not actionable unless there is a showing that they were made "without a reasonable basis or were disclosed other than in good faith." Forward-looking statements are defined to include "a statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items." 17 C.F.R. §230.175(1). Thus, the Securities Exchange Commission currently permits disclosure of financial projections on a voluntary basis.

As the Fourth Circuit has cautioned in acknowledging its support for voluntary disclosures as contemplated by Rule 175:

Of course, it would appear prudent to release only those projections that are reasonably certain. (citation omitted). Furthermore, if a company undertakes projection disclosures, it must make the full disclosures necessary to avoid making the statements misleading.

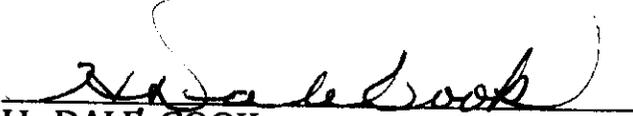
Walker v. Action Industries, Inc., 802 F.2d 703, 710 (4th Cir. 1986), cert. denied, 107 S.Ct. 952 (1987).

There is no factual basis stated in the amended complaint that would indicate defendants were acting in bad faith when they made their projected earnings predictions. Outside of such a showing, plaintiff's amended complaint is subject to dismissal.

The Report and Recommendation of the United States Magistrate filed on October 24, 1988 is hereby AFFIRMED.

It is the Order of the Court that the motion to dismiss filed by the defendants on June 28, 1988 is hereby GRANTED.

IT IS SO ORDERED this 6th day of February, 1989.


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

McAFEE & TAFT
A Professional Corporation

By John R. Morris
John R. Morris (OBA #6425)
Tenth Floor, Two Leadership Square
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-9621

ATTORNEYS FOR DEFENDANT, GENERAL
FOODS MANUFACTURING CORPORATION

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

FEB 3 1989

R & L ASSOCIATES, INC.,
an Oklahoma corporation,

Plaintiff,

vs.

FRONTIER FEDERAL SAVINGS
& LOAN ASSOCIATION,
a corporation,

Defendant.

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

No. 88-C-1347-E

STIPULATION OF DISMISSAL

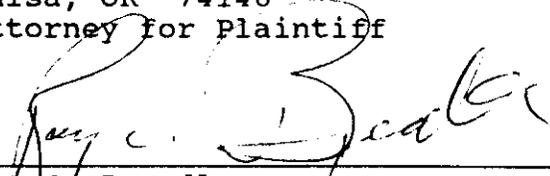
COMES NOW the Plaintiff herein, R & L Associates, Inc., an Oklahoma corporation, by and through its attorney of record and, pursuant to Fed.R.Civ.P. 41(a)(1)(ii), hereby files this Stipulation of Dismissal signed by all the parties who have appeared in the action. In consideration of the dismissal the Defendants have agreed not to seek costs against the Plaintiff. This dismissal is with prejudice to future refileing. Attached hereto is a copy of the Consent to Actions of the Board of Directors of R & L Associates, Inc., adopted and effective February 2, 1989, authorizing and directing its executive officer and manager and/or its attorney to dismiss this action with prejudice.



Robert C. Patuto
Executive Officer and Manager
R & L Associates, Inc.



Patrick H. Kernan
Kernan & Kernan
4500 South Garnett, Suite 900
Tulsa, OK 74146
Attorney for Plaintiff



Roy C. Breedlove
Jones, Givens, Gotcher, Bogan &
Hilborne, a professional corporation
3800 First National Tower
Tulsa, Oklahoma 74103
Attorneys for Frontier Federal
Savings & Loan Association



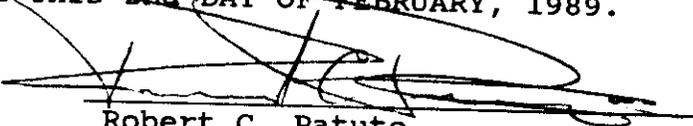
Douglas F. Behm/Karl R. Ulrich
Morrison, Hecker, Curtis, Kuder &
Parrish
1700 Bryant Building
1102 Grand Avenue
Kansas City, MO 64106-2370
Attorneys for Federal Savings and
Loan Insurance Corporation, as
Receiver for Frontier Federal
Savings and Loan Association

**CONSENT TO ACTIONS OF THE BOARD OF DIRECTORS
OF R & L ASSOCIATES, INC., AN OKLAHOMA CORPORATION,
IN LIEU OF SPECIAL MEETING, ADOPTED
AND EFFECTIVE FEBRUARY 2, 1989**

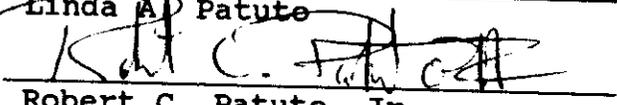
The undersigned, Robert C. Patuto and Linda A. Patuto, and Robert C. Patuto, Jr. being all of the Directors of R & L Associates, Inc., an Oklahoma corporation, pursuant to Section 1027 (F)(1) of the Oklahoma General Corporation Act, do hereby waive notice and the holding of a formal meeting and do hereby make the following determinations and unanimously take, and consent to, the following actions as the Directors of R & L Associates, Inc., the same to be effective as of the 2nd day of February, 1989:

1. DIRECTED the Secretary of the Corporation to file this Consent to Actions in the Minute Book of the Corporation, in order that the same shall become a part of the permanent records of the Corporation.
2. AUTHORIZED and DIRECTED its executive officer and manager, Robert C. Patuto, and/or the attorney for the Corporation in the lawsuit styled "R & L Associates, Inc. v. Frontier Federal Savings & Loan Association", Case No. 88-C-1347-E in the United States District Court for the Northern District of Oklahoma, Mr. Patrick H. Kernan, to dismiss the lawsuit with prejudice to refileing.
3. ACKNOWLEDGED that the aforementioned lawsuit should be dismissed with prejudice to refileing, and UNDERSTOOD AND ACKNOWLEDGED that the Corporation thereby forever waives its right to pursue the claims asserted or which could have been asserted by the Corporation in exchange for an agreement by the defendants not to seek costs against R & L Associates, Inc.

ADOPTED AND EFFECTIVE ~~THIS~~ 2nd DAY OF FEBRUARY, 1989.


Robert C. Patuto


Linda A. Patuto


Robert C. Patuto, Jr.

(Being all of the Directors of R & L ASSOCIATES, INC., an Oklahoma corporation)

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

F I L E D

FEB 3 1989

BERT COX, JR.,

Plaintiff,

vs.

FRANK THURMAN, et al.,

Defendants.

No. 88-C-130-E

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

JOURNAL ENTRY OF JUDGMENT

This cause comes on for hearing on this _____ day of _____, 1989, the Plaintiff Bert Cox, through his attorney of record Steven L. Sessinghaus, and the Defendant, Board of County Commissioners of Tulsa County, Oklahoma, appears by and through the District Attorney David Moss, by Assistant District Attorney, Gordon W. Edwards.

The parties having waived a jury and tried this cause to the Court, the Court finds that on January 3, 1989, the Board of County Commissioners for Tulsa County, Oklahoma, approved the recommendation of the District Attorney to Confess Judgement in the case herein in the amount of Three Thousand Five Hundred Dollars (\$3,500.00), which includes all costs and attorney's fees of this action.

The Court further finds the Plaintiff Bert Cox sustained his damages and is entitled to recover damages against the defendant in the sum of Three Thousand Five Hundred Dollars (\$3,500.00).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff Bert Cox recover judgement against the defendant, Board of County Commissioners for Tulsa County, Oklahoma in the sum of Three Thousand Five Hundred Dollars (\$3,500.00).

6/ JAMES O. ELLISON

JAMES O. ELLISON
DISTRICT COURT JUDGE

Bert Cox

BERT COX, PLAINTIFF

Steven L. Sessinghaus

STEVEN L. SESSINGHAUS
Attorney for Plaintiff Cox
P.O. Box 200
Tulsa, Oklahoma 74101-0200

Gordon W. Edwards

GORDON W. EDWARDS OBA #2636
ASSISTANT DISTRICT ATTORNEY
Attorney for Defendant
406 County Courthouse
Tulsa, Oklahoma 74103

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

FEB -3 1989

JASON G. SILVER, CLERK
U.S. DISTRICT COURT

IN RE;)
VERN O. LAING,)
Debtor.) No. 89-C-11-C

ORDER

Now before the Court for its consideration is the motion of the debtor for leave to appeal from an order of the bankruptcy court under 28 U.S.C. §158(a).¹

Rule 8003 of the Bankruptcy Rules sets forth the following requirements:

A motion for leave to appeal under 28 U.S.C. §158(a) shall contain: (1) a statement of the facts necessary to an understanding of the questions to be presented by the appeal; (2) a statement of those questions and of the relief sought; (3) a statement of the reasons why an appeal should be granted; and (4) a copy of the judgment, order, or decree complained of and of any opinion or memorandum relating thereto.

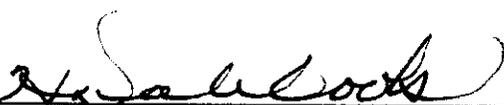
The present motion is wholly inadequate. No statement of facts has been presented, but rather a synopsis of bankruptcy proceedings essentially stating "the judge ruled against me." As for requirement (3), the movant states that the appeal should be granted "because this Court is a proper one from which to perfect an appeal from the Order complained of." This statement is irrelevant and useless to the Court. Finally, despite a contrary statement in the

¹The caption of the motion states that it is pursuant to Section 1528(a). The Court assumes this is a typographical error.

motion, a copy of the bankruptcy judge's order has not been provided.

It is the Order of the Court that the motion of the debtor for leave to appeal is hereby DENIED.

IT IS SO ORDERED this 2nd day of February, 1989.



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

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

FILED

FEB -3 1989

U.S. DISTRICT COURT

BROWN & LOE, INC.,
Plaintiff,
v.
BANK OF OKLAHOMA, BROKEN
ARROW, N.A.,
Defendant.

Case No. 88-C1283-C

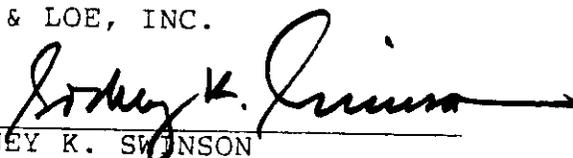
STIPULATION OF DISMISSAL

Brown & Loe, Inc., Plaintiff ("B&L"), and Bank of Oklahoma, Broken Arrow, N.A., Defendant ("BOK"), by and through their respective attorneys of record, hereby stipulation to the dismissal of this lawsuit, with prejudice, with each party responsible for its own costs and attorney fees.

DATED at Tulsa, Oklahoma, this 2nd day of February, 1989.

BROWN & LOE, INC.

By



SIDNEY K. SWANSON
JULIE HIRD THOMAS
Of Counsel:
HUFFMAN ARRINGTON KIHLE
GABERINO & DUNN
1000 ONEOK Plaza
Tulsa, Oklahoma 74103
(918) 585-8141

ATTORNEYS FOR PLAINTIFF

BANK OF OKLAHOMA, BROKEN ARROW,
N.A.

By *William C. Connor*

WILLIAM C. CONNOR
ROBINSON, BOESE, ORBISON &
LEWIS

P.O. Box 1046
Tulsa, Oklahoma 74101

ATTORNEYS FOR DEFENDANT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 TWO THOUSAND THREE HUNDRED)
 SIXTY-NINE DOLLARS AND)
 EIGHTY-ONE CENTS (\$2,369.81))
 CONTAINED IN BANK OF OKLAHOMA)
 SAVINGS ACCT. NO. 101 0915 236)
 (IN THE NAME OF TREISA LOUISE)
 ANDERSON OR MICHAEL S. KELLY))
 INCLUDING ANY ADDITIONAL MONIES)
 IN SAID SAVINGS ACCOUNT,)
)
 Defendant.)

FILED

FEB 3 1989

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

CIVIL ACTION NO. 88-C-1229-C

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, Two Thousand Three Hundred Sixty-Nine Dollars and Eighty-One Cents (\$2,369.81) 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.

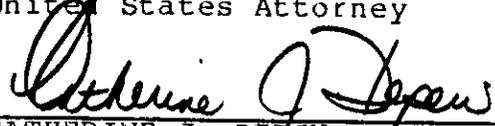
H. Dale Cook

H. DALE COOK
CHIEF, UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney


CATHERINE J. DEVIEW
Assistant United States Attorney

FILED

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

FEB 23 1989

ROY E. JACKSON,)
)
 Plaintiff,)
)
 vs.)
)
 THE MAY DEPARTMENT STORES)
 COMPANY D/B/A PAYLESS)
 SHOESOURCE,)
)
 Defendant.)

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

No. 88-C-1509-B

ORDER

This was an action originally brought in the District Court of Creek County, Oklahoma and subsequently removed by Defendant alleging diversity jurisdiction and amount in controversy pursuant to 28 U.S.C. §1332. Plaintiff seeks damages for a slip and fall on ice outside of Defendant's shoe store. Plaintiff filed a motion to remand and requests sanctions under Rule 11 against Defendant and Defendant's counsel for a frivolous removal of the action to this court.

In support of Plaintiff's motion to remand Plaintiff contends that the amount in controversy is less than Ten Thousand Dollars (\$10,000.00). The prayer for damages in Plaintiff's original petition is Nine Thousand Nine Hundred Dollars (\$9,900.00). Defendant alleges that although Plaintiff prayed for only \$9,900.00, the matter in controversy and in dispute actually exceeds \$10,000.00.

In Rocket Oil and Gas Co. v . Arkansas Louisiana Gas Co., 435 F.Supp. 1306 (W.D.Okla. 1977), the Court held "the amount in

controversy is to be determined by the allegations of the complaint, or where they are not dispositive, the allegations in the petition for removal. See, McCurtain Cty. Production Corp. v. Cowett, 482 F.Supp. 809 (E.D. Okla. 1978); Lonnquist v. J. C. Penney Co., 421 F.2d 597 (10th Cir. 1970). Because Plaintiff clearly prayed for \$9,900.00 in his complaint, he claims that the action cannot be removed because the amount in controversy is less than the jurisdictional minimum. Defendant alleges the allegations of the complaint are not dispositive. Defendant contends that Plaintiff values his claim at more than Four Hundred Thirteen Thousand Dollars (\$413,000.00). Defendant relies on an affidavit by claims adjuster Jeanne M. Costello, who dealt with Plaintiff during settlement negotiations prior to this suit. Attached to Ms. Costello's affidavit is an itemized list of actual and future damages in excess of \$413,000.00 as well as a settlement brochure for \$25,000.00.

Plaintiff contends use of these settlement agreements are improper and that as master of his suit, Plaintiff can ask for less than the jurisdictional amount.

The United States Supreme Court stated in 1938 that if a plaintiff "does not desire to try his case in the federal court he may resort to the expedient of suing for less than the jurisdictional amount, and though he would be entitled to more, the defendant cannot remove." St. Paul Indemnity Co. v. Red Cab Co., 303 U.S. 283, 294 (1938).

In the instant case, Plaintiff prays for \$9,900.00 in damages. This amount is clearly less than the jurisdictional minimum required under 28 U.S.C. §1332. Accordingly, the Court grants Plaintiff's motion to remand. This action is remanded to the District Court of Creek County, Oklahoma.

Plaintiff's request for sanctions is based on Fed.R.Civ.P. 11 as amended in 1983. Rule 11 requires that a filing be warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Rule 11 is violated "where it is patently clear that a claim has absolutely no chance of success under the existing precedents, and where no reasonable argument can be advanced to extend, modify, or reverse the law as it stands." Eastway Construction Corp. v. City of New York, 762 F.2d 243, 254 (2nd Cir. 1985). The Tenth Circuit has emphasized the objective standard of Rule 11. In Cotner v. Hopkins, 795 F.2d 900, 903 (10th Cir. 1986), the court stated:

"The party or attorney, in signing the pleading, affirms that, after making a reasonable inquiry, he believes in good faith that the pleading is well grounded both in fact and in law."

If Rule 11 has been violated, sanctions are appropriate. If an attorney's conduct appears to fall within the scope of Rule 11, the court must first examine the actions at issue according to a standard of objective reasonableness. The inquiry focuses on whether a reasonable attorney in like circumstances could believe his actions to be factually and legally justified. Cabell v. Petty, 810 F.2d 463 (4th Cir. 1987).

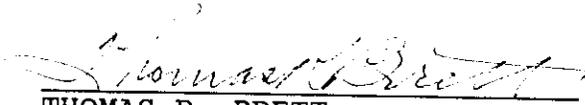
After consideration, this Court finds that sanctions are proper against Defendant May Department Store and Defendant's counsel Jo Anne Deaton. The law concerning what constitutes "amount in controversy" is clear. That amount is established from the face of Plaintiff's pleading. Rocket Oil and Gas Co. v. Arkansas-Louisiana Gas Co., 435 F.Supp. 1306. Title 28 U.S.C. §1447(c) provides for costs for improper removal and provides in part:

"If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the new case, and may order the payment of just costs."

Sanctions are so ordered. Costs of improper removal and attorney fees will be awarded. A hearing will be held on the 17 day of March, 1989, at 10:30 o'clock A.M., to determine the amount of the attorney fee. If the parties can stipulate to the amount prior to the date of hearing, they are directed to contact Mr. Howard Overton at the Court Clerk's office and the hearing will be stricken.

The United States District Court Clerk is directed to mail a certified copy of this order to the District Court of Creek County, Oklahoma.

IT IS SO ORDERED this 2nd day of February, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FREYTAG, PERRY, LaFORCE,)
RUBINSTEIN & TEOFAN,)
)
Plaintiff,)
)
v.)
)
MACHINERY LOCATORS, INC. and)
GENE TAYLOR,)
)
Defendants.)

FILED

FEB 2 1989

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

No. 87-C-305-E

ORDER

The Court has before it the Joint Application for Approval of Settlement and Dismissal of Action presented by the Plaintiff and Defendants in the above-captioned matter. Having reviewed the executed Settlement Agreement and Exhibits thereto, and upon the advice of the adjunct settlement judge who presided over the settlement conference between the parties, the Court finds that the settlement is fair and proper and freely entered into by both parties.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the settlement of the above-captioned matter be and hereby is approved in all respects, and upon the Joint Application of both parties and for good cause shown, this action is hereby DISMISSED WITH PREJUDICE.


James O. Ellison
U. S. District Judge

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

GARY L. BURGER, individually and)
derivatively on behalf of H.L.C.,)
Inc., an Oklahoma corporation, and)
H.L.C. Printing and Die Cutting Co.)
an Oklahoma corporation; H.L.C.,)
Inc., individually; and H.L.C.)
Printing and Die Cutting Co.,)
individually,)

Plaintiffs,)

vs.)

SAM ALLENBERG,)

Defendant.)

FILED

FEB 1 1989

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

✓
No. 87-C-767-B

O R D E R

This matter was heard by the Court on February 1, 1989 for a status conference. Plaintiffs' counsel previously had been allowed to withdraw by order of the Court. Plaintiffs were ordered to obtain new counsel or appear *pro se* within 30 days. Plaintiffs or counsel for Plaintiffs failed to appear for the status conference.

Pursuant to Local Court Rule 35 Plaintiffs' case is hereby dismissed with prejudice for failure to prosecute. Defendant announced in court at the status conference that Defendant is hereby dismissing all counterclaims against Plaintiffs with prejudice.

The case in its entirety is hereby dismissed with prejudice.

DATED this 1st day of February, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

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

FEB 21 1989

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

ITT COMMERCIAL FINANCE)
CORPORATION,)
)
Plaintiff,)
)
vs.)
)
RAYMOND E. CASON d/b/a CUSTOM)
MARINE & R.V.'S, RAYMOND E.)
CASON, individually, and)
ELOUISE CASON,)
)
Defendants.)

No. 88-C-1147-B

O R D E R

Plaintiff ITT Commercial Finance Corporation filed this breach of contract action against Raymond E. Cason d/b/a Custom Marine & R.V.'S, and against RAYMOND E. CASON, individually, and Elouise Cason. The complaint alleges Raymond E. Cason d/b/a Custom Marine & R.V.'S is in default on an agreement for wholesale financing and that Raymond E. and Elouise Cason unconditionally guaranteed this financing.

On November 10, 1988 Plaintiff filed a Motion for Summary Judgment against all Defendants and requests judgment in the amount of \$13,258.00.

Defendants have failed to respond to the Motion for Summary Judgment.

On December 5, 1988 Plaintiff filed a Motion for Default Judgment pursuant to Local Rule 15(A). Defendants have failed to respond.

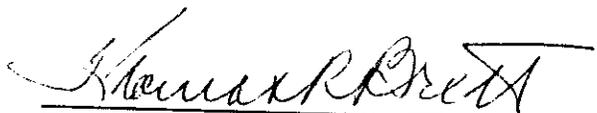
Plaintiff has also requested prejudgment and postjudgment interest at a rate of \$11.33 per day from August 1, 1988. However,

Plaintiff does not cite to the court authority nor state when the parties agreed to this rate.

Pursuant to Local Rule 15(A) Plaintiff's Motion for Summary Judgment in the amount of \$13,258 is hereby sustained.

Attorney's fees will be considered upon proper application pursuant to Local Rule 6(G).

DATED this 1st day of February, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILE

FEB 1 1989

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

ITT COMMERCIAL FINANCE CORPORATION,)

Plaintiff,)

vs.)

No. 88-C-1147-B ✓

RAYMOND E. CASON d/b/a CUSTOM MARINE & R.V.'S, RAYMOND E.)

CASON, individually, and)

ELOUISE CASON,)

Defendants.)

J U D G M E N T

In accordance with the Order filed this date, Judgment is hereby entered for Plaintiff, ITT Commercial Finance Corporation, and against Defendants, Raymond E. Cason, d/b/a Custom Marine & R.V.'S, and Raymond E. Cason, individually, and Elouise Cason, in the amount of Thirteen Thousand Two Hundred Fifty Eight and No/100 Dollars (\$13,258.00), with interest thereon at the legal rate of 9.16% per annum from this date.

DATED this 1st day of February, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE