

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 14 1989

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

T.O. HUEY and LILLIAN F. HUEY )  
d/b/a HUEY'S PAWN SHOP, )  
 )  
Plaintiffs, )

v. )

Case No. 88-C-727-B

CITY OF BROKEN ARROW; GLEN )  
LANGLEY, individually and )  
as police officer for the )  
City of Broken Arrow; J.R. )  
(SMOKEY) STOVER, individually )  
and as Police Chief for the )  
City of Broken Arrow, )  
 )  
Defendants. )

ORDER FOR DISMISSAL

NOW ON THIS 14<sup>th</sup> day of April, 1989,  
matter comes before the Court upon the Application of the  
Plaintiff to file a Dismissal as to the Third Cause of Action in  
the above styled cause of action.

The Court, having read the Application, in support of the  
Plaintiff's Motion, finds that the Plaintiff's Motion is  
meritorious and should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court  
that the Plaintiff's Motion to Dismiss his Third Cause of Action  
as to the constitutionality of Title 59 Okla. Stat. 1508(a), is  
hereby sustained and the Third Cause of Action is, by this Order,  
dismissed without prejudice to future filing.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PHILLIP KEITH WRIGHT; LILLIE )  
 GALE WRIGHT; COUNTY TREASURER, )  
 Tulsa County, Oklahoma; and )  
 BOARD OF COUNTY COMMISSIONERS, )  
 Tulsa County, Oklahoma, )  
 )  
 Defendants. )

**FILED**

**APR 14 1989**

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

CIVIL ACTION NO. 88-C-185-B

ORDER VACATING DEFICIENCY JUDGMENT

This matter comes on before the Court on this 14<sup>th</sup> day  
of April, 1989, upon the Motion of the Plaintiff,  
United States of America, for an Order of this Court vacating the  
Deficiency Judgment entered in this case on November 15, 1988.  
The Court, having considered the motion and the records and files  
in this case, and being fully advised in the premises, finds that  
good cause has been shown for the relief sought and that the  
motion should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the  
Deficiency Judgment entered in this case on November 15, 1988,  
be, and the same is hereby vacated, set aside and held for  
naught.

S/ THOMAS R. BRETT  

---

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

EDWARD R. YOUNG and ARNOLD E. )  
PERL, TRUSTEES OF THE YOUNG & )  
PERL EMPLOYEES PENSION PLAN )  
AND TRUST, AS AMENDED, and AS )  
TRUSTEES OF THE YOUNG & PERL )  
EMPLOYEES PROFIT SHARING PLAN )  
AND TRUST, AS AMENDED, )

Plaintiffs, )

vs )

J. RONALD PETRIKIN, )

Defendant. )

No. 87-C-981-B

**FILED**

**APR 14 1989**

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

DISMISSAL WITH PREJUDICE

NOW on this 14<sup>th</sup> day of April, 1989, the written Stipulations of Settlement come on for decision. Plaintiffs appear by Theodore P. Gibson and the Defendant appears pro se. The Court having reviewed the Joint Settlement Motion finds the same disposes of all causes of action between the parties arising out of the Defendant's employment by the Plaintiffs to date and that each shall bear his or their own costs and attorney's fees.

The Court further finds, and,

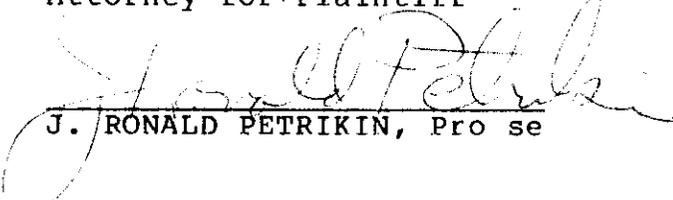
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this cause, including all claims and counter-claims to date, be and the same are hereby dismissed with prejudice with each

party to bear his or their own costs including all attorney's fees.

S/ THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
THEODORE P. GIBSON  
Attorney for Plaintiff

  
J. RONALD PETRIKIN, Pro se

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

**FILED**

APR 14 1989

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

BETH BARNETT, by and through her )  
husband and next friend, LARRY )  
BARNETT, and LARRY BARNETT, )  
INDIVIDUALLY and as GUARDIAN )  
AD LITEM of BETH BARNETT, )  
Plaintiffs, )  
vs. )  
GENERAL AMERICAN LIFE INSURANCE )  
COMPANY, a foreign insurance )  
corporation, )  
Defendant, )  
LAKE ERIE INSTITUTE OF )  
REHABILITATION, )  
INTERVENOR AS AGAINST PLAINTIFFS. )

Case No. 87-C-803-B

JOURNAL ENTRY OF JUDGMENT

On February 27 and 28, 1989, and on March 2, 3, and 9, 1989, this matter came on before the Court for non-jury trial and arguments of counsel. Plaintiff Larry Barnett, individually, and as next friend of Beth Barnett, was present, along with their attorney, C. Jack Maner. Defendant General American Life Insurance Company was present by and through its attorneys of record, David B. McKinney and Leslie Zieren, of Boesche, McDermott & Eskridge, and through General American's representative, Ms. Carol Johnson. The Intervenor, Lake Erie Institute of Rehabilitation, was present by and through its attorney, John M. Quinn, Jr. of Quinn, Gent, Buseck & Leemhuis, Inc.

This matter, having been duly tried and a decision having

been duly rendered in accordance with the Findings of Fact and Conclusions of Law filed on March 29, 1989, the Court hereby orders, adjudges and decrees as follows:

THAT JUDGMENT BE HEREBY ENTERED in favor of the Intervenor, Lake Erie Institute of Rehabilitation, and against Plaintiffs Beth Barnett and Larry Barnett, individually, and as next friend of Beth Barnett, in the amount of \$107,805.50, in addition to post-judgment interest thereon from the date of this judgment until paid in full at the rate of 9.51 percent per annum;

THAT JUDGMENT BE HEREBY ENTERED in favor of the Defendant General American Life Insurance Company and against Plaintiffs Beth Barnett and Larry Barnett, individually and as next friend of Beth Barnett, who take nothing on Plaintiffs' claim that Defendant General American Life Insurance Company abused its discretion or acted unreasonably or arbitrarily or capriciously in refusing to pay Lake Erie Institute of Rehabilitation following September 21, 1987, or by refusing to approve Winning Wheels of Prophetstown, Illinois, in September-October 1987, or in 1988, as an interim chronic care facility for Beth Barnett;

THAT JUDGMENT BE HEREBY ENTERED in favor of the Defendant General American Life Insurance Company and against Plaintiffs Beth Barnett and Larry Barnett, individually and as next friend of Beth Barnett, who take nothing on Plaintiffs' claim that Defendant General American Life Insurance Company was obligated to indemnify and hold harmless the Plaintiffs in reference to the amount of the judgment in favor of Lake Erie Institute of

Rehabilitation, set forth above;

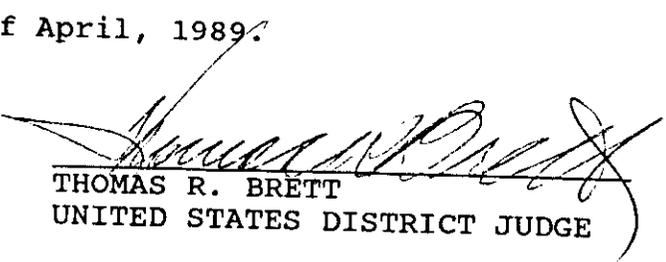
THAT JUDGMENT BE HEREBY ENTERED in favor of the Plaintiffs and against Defendant General American Life Insurance Company on Plaintiffs' claim for Beth Barnett's room and board and medically necessary medications and therapies at Winning Wheels of Prophetstown, Illinois, not already heretofore paid, from the date of August 1, 1988, until the date of the commencement of this trial on February 27, 1989, not exceeding the sum of \$4,000.00 per month. Defendant General American Life Insurance Company is hereby ordered to pay to Winning Wheels of Prophetstown, Illinois, this adjudged amount which is in the sum of \$8,876.85;

THAT JUDGMENT BE HEREBY ENTERED that as of February 27, 1989, there remain lifetime benefits for Beth Barnett under General American Life Insurance Company's plan in the amount of \$397,961.59, less any amounts ordered herein to be paid by General American Life Insurance Company to Winning Wheels of Prophetstown, Illinois;

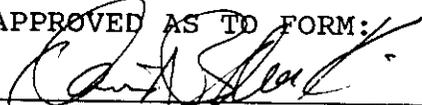
THAT JUDGMENT BE HEREBY ENTERED, denying General American Life Insurance Company's request for this Court to appoint a guardian for Beth Barnett, for now; and

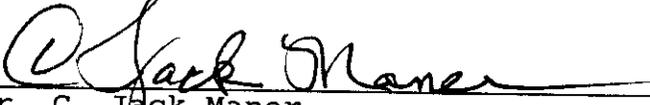
THAT JUDGMENT BE HEREBY ENTERED that the parties are to pay their own respective attorney's fees and costs, there being no prevailing party in this matter.

ENTERED this 14<sup>th</sup> day of April, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

  
\_\_\_\_\_  
David B. McKinney  
Attorneys for Defendant  
General American Life  
Insurance Company

  
\_\_\_\_\_  
Mr. C. Jack Maner  
Attorneys for Plaintiffs.

\_\_\_\_\_  
Mr. John M. Quinn, Jr.  
Mr. H. L. Holtmann  
Attorneys for Intervenor.

LAW OFFICES

**BOESCHE, McDERMOTT & ESKRIDGE**

800 ONEOK PLAZA

100 WEST 5TH STREET

TULSA, OKLAHOMA 74103

T. HILLIS ESKRIDGE  
FRANKLIN D. HETTINGER  
LANCE STOCKWELL  
R. CASEY COOPER  
DAVID B. MCKINNEY  
CHARLES A. GRISSOM, JR.  
BRADLEY K. BEASLEY  
MALCOLM E. ROSSER IV  
BURK E. BISHOP\*  
GARY W. BOYLE  
FRANK D. SPIEGELBERG\*  
DAVID A. JOHNSON  
R. DAVID WHITAKER  
EMILY Y. DUENSING  
LESLIE ZIEREN  
KENTON W. FULTON  
APRIL WARD MATHER  
R. KEVIN LAYTON

\*ALSO ADMITTED IN TEXAS

RICHARD B. McDERMOTT  
(1905-1977)

OF COUNSEL  
FENELON BOESCHE

TELEPHONE  
(918) 583-1777

TELECOPIER  
(918) 592-5809

April 10, 1989

HAND DELIVERED

Judge Thomas R. Brett  
333 West 4th, Room 4-508  
Tulsa, OK 74103

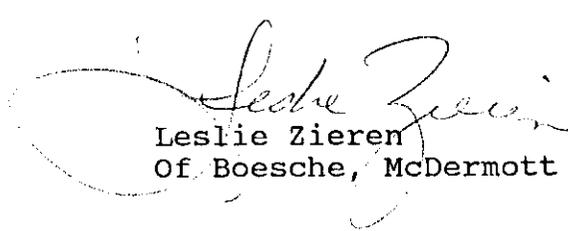
Re: Barnett Vs. General American Life Insurance Company  
Case No. 87-C-803-B

Dear Judge Brett:

Enclosed is the Journal Entry of Judgment you requested in the Findings of Fact and Conclusions of Law entered on March 29, 1989, in this matter.

Although Mr. John M. Quinn, Jr., attorney for Lake Erie Institute of Rehabilitation has not signed the Journal Entry, he has authorized me to represent to you that he has no objection to the Journal Entry of Judgment. Should you require a copy signed by him, please let me know and we can provide you with one.

Yours very truly,

  
Leslie Zieren  
Of Boesche, McDermott & Eskridge

LZ:ri

cc: Mr. C. Jack Maner  
Mr. John M. Quinn, Jr.

*Signed & delivered*

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

WIL-GRO FERTILIZER, INC.,            )  
  )  
  )            Plaintiff,            )  
  )  
v.                                        )            No. C-88-479-E  
  )  
CARDOX CORPORATION, a division)            )  
of LIQUID AIR CORPORATION, a    )            )  
Delaware corporation,            )            )  
  )            )  
  )            Defendant.            )

JUDGMENT

This matter comes on for consideration of the joint application of the parties for entry of a stipulated judgment herein. The parties have entered into a Settlement Agreement which covers the issues raised in the pleadings herein, and which also settles certain other disputes between the parties arising under that certain Agreement dated as of July 5, 1984, which is the subject matter of this action.

The parties have requested that said Settlement Agreement be approved by, and its terms and provisions incorporated in, the judgment entered herein. Having reviewed said Settlement Agreement and being advised in the premises, it is therefore

ORDERED, ADJUDGED AND DECREED that the Settlement Agreement entered into between the parties, a copy of which is



SETTLEMENT AGREEMENT

This Agreement is made and entered into as of the 10<sup>th</sup> day of April, 1989, by and between Willard Grain & Feed, Inc., a Texas corporation, doing business as Wil-Gro Fertilizer, Inc. (hereinafter referred to as "Seller"), and Cardox Division, Liquid Air Corporation, a Delaware corporation (hereinafter referred to as "Buyer").

WHEREAS, a certain Agreement dated as of July 5, 1984 (hereinafter the "Contract") governing the sale and purchase of bulk liquid carbon dioxide (hereinafter referred to as the "Product") was entered into between N-REN Corporation, the predecessor in interest of Seller herein, and Cardox Corporation, the predecessor in interest of Buyer herein; and

WHEREAS, a dispute exists between the parties with reference to the interpretation of certain of the provisions of the Contract, which has resulted in litigation in the United States District Court for the Northern District of Oklahoma, Cause No. 88-C-479-E, which litigation the parties desire to compromise and settle, without the necessity of trial, pursuant to the terms and conditions of this Settlement Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, the parties hereto agree as follows:

**EXHIBIT A**

1. The litigation shall be settled by entry of a stipulated judgment which shall have attached thereto a copy of this Settlement Agreement and which shall incorporate by reference all of the terms, conditions and stipulations hereof.

2. Unless defined or modified herein, capitalized terms used in this Agreement shall have the meanings assigned to such terms in the Contract. As used in this Agreement and in the Contract, beginning with the Contract Year commencing February 1, 1989:

a. A "day" shall, for all purposes (including, without limitation, the determination and reporting of daily production as contemplated by subparagraph b of paragraph 3 and also by paragraph 7 of this Agreement), be deemed to be the 24-hour period commencing at 6:00 a.m. Central Time.

b. A "month" shall be deemed to commence at 6:00 a.m. Central Time on the first day of a calendar month and to end at 6:00 a.m. Central Time on the first day of the following calendar month.

c. A "Contract Year" shall be deemed to commence at 6:00 a.m. Central Time on February 1 and to end at 6:00 a.m. Central Time on the following February 1.

3. With respect to sub-section 1.2 of the Contract referring to "additional quantities of Product" and sub-section 5.1 of the Contract referring to "excess capacity of Product" (both of said terms being hereinafter referred to as "Additional Quantities"), the parties shall utilize the following procedures in determining the available amount of such Additional Quantities subject to Buyer's first option to purchase and any remaining available amount which Seller may sell to any other buyer:

a. As provided by sub-section 5.1 of the Contract, Buyer shall give Seller a good faith weekly nomination indicating Buyer's expected requirements of Product for the following week. Seller shall then advise Buyer by telecopy or other facsimile transmission ("FAX"), utilizing a form of "Weekly Carbon Dioxide Availability Forecast" which shall contain all of the substantive information contained on the form attached hereto as Exhibit A and incorporated herein by this reference, of Seller's good faith estimate of projected production and the amount of projected Additional Quantities available for the week. Said form so transmitted to Buyer by Seller shall be fully completed and shall provide all of the information specified therein. Buyer shall indicate its nomination of the available Additional Quantities or some portion thereof by return FAX within twenty-four (24) hours of Buyer's receipt of Seller's FAX. Any portion of such Additional Quantities which Buyer does not so nominate may

thereafter be sold by Seller to any other buyer, retail or wholesale, as prescribed in sub-section 1.2 of the Contract.

b. For operational purposes, Seller shall orally report daily by 10:00 a.m. Central Time, Monday through Friday, but excluding holidays, the following to Buyer:

i. The daily inventory of Product in Buyer's storage tanks (800 ton maximum);

ii. The daily inventory of Product in Seller's storage tank (400 ton maximum);

iii. The total actual production of Product for the preceding day;

iv. The tons of Product delivered into the transportation equipment of Buyer or its designee during the preceding day;

v. The tons of Product shipped to third party buyers from Seller's 400 ton tank during the preceding day; and

vi. The tons of Product, if any, transferred by Seller from Seller's 400 ton tank to Buyer's storage tanks during the preceding day.

Monday reports shall include the above information for the preceding weekend as well as the preceding Friday. Reports provided on the next business day following a holiday shall include figures for the holiday as well as for the last preceding business day. All reports of inventory shall be as of 6:00 a.m. on the day of the report (i.e., at the beginning of the day of the report). At the same time as Seller's daily oral report to Buyer, Buyer will orally provide Seller with a general estimate of its anticipated take of Product from Seller during that day.

c. With respect to amounts in Seller's separate storage tank (400 ton maximum), amounts reported pursuant to subparagraph b above and on the weekly reporting form (see Exhibit A attached hereto) shall not be considered as Product available for purchase by Buyer, even if such Product has not been committed by Seller for sale to third party buyers, except at the discretion of Seller; provided, if Seller, in its discretion, verbally advises Buyer that any portion of such Product is available and Buyer verbally advises Seller that Buyer wishes to nominate the same, each party shall promptly confirm the above to the other by FAX.

d. Notwithstanding any other provision of this Agreement or the Contract, it is specifically understood and agreed that all production of Product from the Plant shall be dedicated first to Buyer and to maintaining Buyer's

inventory storage at a full 800 tons before any production of the Product shall be diverted, or otherwise deemed to accrue, to the separate inventory storage of Seller. Any and all sales by Seller to third parties of Product manufactured at the Plant shall be made solely from Seller's separate storage tank; provided, sales made by Seller in mitigation of damages in accordance with paragraph 5 of this Agreement may be made from Buyer's inventory storage. Buyer's election not to take all or any portion of projected Additional Quantities of Product for any given week shall not alter or affect Buyer's first right to take all or any portion of projected production of Product during any succeeding week.

e. Seller may, at its sole discretion, transfer Product from Seller's storage tank (400 ton maximum) to Buyer's storage tanks (800 ton maximum); provided, however, any Product so transferred shall thereafter be inventory dedicated for the exclusive use of Buyer, and Seller may not subsequently transfer such Product or any other Product in Buyer's storage tanks to Seller's storage tank.

4. Sales of Additional Quantities of Product by Seller to third parties shall not serve to reduce the "take or pay" obligations of Buyer under the Contract except to the extent specifically provided for in this paragraph 4. Any monthly take or pay deficiency of Buyer (for monthly billing purposes and for

purposes of the year-end accounting contemplated by sub-section 3.3 of the Contract) shall be equal to the lesser of the following:

- a. Buyer's minimum purchase obligation (as possibly reduced by paragraph 7 below or by any other provision of the Contract or this Agreement) for the month minus Product taken by Buyer during the month; or
- b. "Adjusted Maximum Production" (as hereinafter defined) for the month minus Seller's combined sales for the month to Buyer and to all third party buyers of Product manufactured at the Plant.

As used in this Agreement, the term "Adjusted Maximum Production" shall mean 240 tons multiplied by the number of days in the month, but less all actual reductions in production during the month for any reason specified in sub-section 1.3 of the Contract.

5. No sales of Additional Quantities by Seller to third parties shall be considered as sales in "mitigation of damages" under sub-section 3.3 of the Contract, and Seller shall have no right or duty to make any such sales in mitigation of damages, except under the following express conditions:

a. Buyer shall have notified Seller, by a monthly nomination, that Buyer does not expect to take its anticipated minimum monthly purchase obligation and shall have specifically requested Seller in writing to reduce or negate its damages by attempting to sell at any reasonable price the deficient monthly quantity (that being the difference between Buyer's anticipated minimum monthly purchase obligation and Buyer's projected purchases for the month); and

b. Seller shall first be entitled to sell all of its monthly Adjusted Maximum Production in excess of Buyer's minimum monthly purchase obligation before any further sales which Seller may be able to make of Additional Quantities shall be considered as sales in mitigation of damages.

6. On a quarterly basis, Seller will furnish Buyer with photocopies of Seller's actual invoices relating to its sales to third parties. Said photocopies shall reflect the dates and tons of Product sold, but shall exclude as proprietary information the name and address of the purchaser, the price paid (except such price shall be provided in case of a sale to another re-seller) and the place of delivery; provided, such proprietary information shall be subject to inspection by an independent certified public accountant to the extent, and in accordance with the restrictions, prescribed in sub-section 3.4 of the Contract.

7. With respect to sub-section 1.3 of the Contract, the parties desire to establish an objective standard for determining when Seller does not "supply Product" in accordance with the terms of the Contract and for determining the corresponding reduction in Buyer's minimum purchase obligations resulting from any such failure to supply. In that regard, the parties agree as follows:

a. If on any given day, the inventory of Product in Buyer's dedicated storage tanks (800 ton maximum) at 6:00 a.m. is less than 400 tons and if for any reason Seller does not produce at least 183.33 tons of Product on that day, such failure to produce shall be deemed a "failure to supply Product" and the minimum monthly and annual purchase obligations of Buyer shall be reduced by 183.33 tons.

b. Except as provided in subparagraph d of this paragraph 7, any lack of production from the Plant on a day when the inventory in Buyer's dedicated storage tanks at 6:00 a.m. of the day is 400 tons or greater shall not be deemed to be a "failure to supply Product" which would result in a reduction in the minimum monthly and annual purchase obligations of Buyer.

c. The parties recognize that in the orderly, efficient and economical operation of the Plant and the Facilities, Seller may elect to operate the same in a manner designed to

produce less than 240 tons per day of the Product, and that Seller often does operate the Plant at a 150 ton per day rate when such rate, together with available inventory storage, is sufficient to be expected to reasonably meet the projected needs of Buyer. Such operations on a given day shall not be deemed a "failure to supply Product" which would result in a reduction in Buyer's minimum purchase obligations if the inventory in Buyer's dedicated storage tanks at 6:00 a.m. of the day is 400 tons or more.

d. With respect to scheduled maintenance downtime of the Facilities or the Plant, or any portion of either of them, the minimum monthly and annual purchase obligations of Buyer shall be reduced by 45.83 tons for each 6-hour period (6:00 a.m. to Noon, Noon to 6:00 p.m., 6:00 p.m. to Midnight, Midnight to 6:00 a.m.), or part thereof, of such maintenance downtime during which the Plant fails to produce at least 45.83 tons, even if Buyer's dedicated storage inventory is 400 tons or greater at the commencement of such maintenance downtime; provided, however, if Buyer's dedicated storage inventory is 583 tons or more at the beginning of such scheduled maintenance downtime, there shall be no reduction in Buyer's minimum take or pay obligation for the first four (4) 6-hour periods, or parts thereof, of such scheduled maintenance downtime.

e. Nothing contained in this paragraph 7 or elsewhere in this Agreement is intended to interpret or construe the meaning or effect of the last sentence of sub-section 1.3 of the Contract. The parties do not agree on the meaning or effect of said sentence, and said dispute is not resolved by this Agreement but, instead, is reserved for subsequent resolution.

8. Within five days after execution of this Settlement Agreement and entry of the stipulated judgment thereon, Buyer shall pay Seller the total sum of \$100,844.48. Said sum represents Seller's claim of Buyer's alleged total deficiency under the Contract for the Contract Year which ended January 31, 1989, which Buyer has agreed to pay for settlement purposes only, without conceding the correctness of Seller's computations.

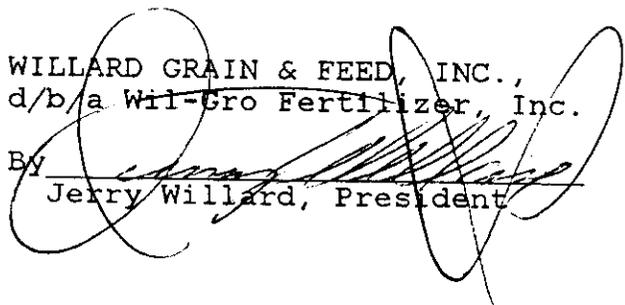
9. This Agreement shall not be construed to amend, modify or interpret any term or provision of the Contract except to the extent specifically provided for herein. All of the terms and provisions of said Contract shall remain in full force and effect, including those provisions which have been modified or interpreted by this Agreement. By executing this Agreement, the parties have settled and compromised any and all monetary disputes and monetary claims which either may have against the other for any matter arising under the Contract through the Contract Year ending January 31, 1989. Nothing contained in this

Agreement, however, shall prejudice or alter any claim or cause of action either party may have against the other party by reason of any action or occurrence arising subsequent to the execution of this Agreement or preclude either party from seeking declaratory relief with respect to any provision of the Contract not specifically addressed in this Settlement Agreement.

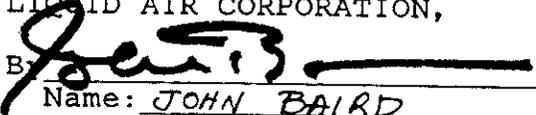
10. This Agreement shall only become effective upon its execution by the parties hereto, and approval and incorporation of the terms and provisions hereof in a stipulated judgment to be entered by the Court in the above-described litigation pending in the United States District Court for the Northern District of Oklahoma.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in multiple originals by their duly authorized representatives on this 10<sup>th</sup> day of April, 1989.

WILLARD GRAIN & FEED, INC.,  
d/b/a Wil-Gro Fertilizer, Inc.

BY   
Jerry Willard, President

CARDOX DIVISION,  
f.w. LIQUID AIR CORPORATION,

BY   
Name: JOHN BAIRD  
Title: SECRETARY

WIL-GRO FERTILIZER, INC.  
WEEKLY CARBON DIOXIDE AVAILABILITY FORECAST

Forecast Date: \_\_\_\_\_

Week of \_\_\_\_\_, 19\_\_\_\_, through \_\_\_\_\_, 19\_\_\_\_.

TONS

1. Total Projected Production for Week:  
(Tons per Day: \_\_\_\_\_) \_\_\_\_\_
2. Cardox Total Projected Sales for Week: \_\_\_\_\_
3. Cardox Full Storage: 800 Tons
4. Less Projected Cardox Tanks  
Inventory (6:00 a.m. Monday): \_\_\_\_\_
5. Production required to bring  
Cardox Inventory to 800 Tons  
[Line 3 minus Line 4]: \_\_\_\_\_
6. Projected Additional Quanti-  
ties of Product Available for  
Week under Contract §1.2  
[Line 1 - (Line 2 + Line 5)]: \_\_\_\_\_  
(Cardox shall indicate its  
nomination of such Available  
Additional Quantities or some  
portion thereof by return FAX  
within 24 hours of its receipt  
of this FAX)

- 
- A. Projected Wil-Gro Tank  
Inventory (6:00 a.m. Monday): \_\_\_\_\_
  - B. Quantity Subject to  
Prior Sale Commitment: \_\_\_\_\_
  - C. Wil-Gro Tank Inventory  
Presently Uncommitted  
(Line A minus Line B): \_\_\_\_\_  
(Call to check on sub-  
sequent availability)

FAX to: Herb Hyatt/Paul Witkay, Walnut Creek, 415/977-6705  
Aaron Tesch, Countryside, IL, 312/789-3083,  
Richard Mohun, Dallas, 214/241-6140

cc: Ken Thomas - Cardox, Pryor  
JBW, CFS, CRL, JO, CLE, JAF, JRC

EXHIBIT A

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

KAREN L. CHASE, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 LITTON CORE LABORATORIES, )  
 INC., a Texas corporation, )  
 )  
 Defendants. )

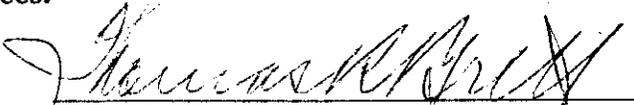
No. 88-C-1444-~~E~~ ✓  
B

**FILED**  
**APR 13 1989**  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER DISMISSING CASE WITH PREJUDICE

Pursuant to a stipulation of the parties advising the Court that the issues involved in this case have been resolved and requesting dismissal with prejudice.

IT IS HEREBY ORDERED that the case be dismissed with prejudice, with each party to bear its own costs and attorney's fees.

  
UNITED STATES DISTRICT JUDGE

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

**FILED**

**APR 13 1989**

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

CROWN CENTRAL PETROLEUM )  
CORP., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
W. E. ALLFORD, INC., )  
 )  
Defendant. )

Case No. 88-C-1450-B

ADMINISTRATIVE CLOSING ORDER

The Defendant having filed its petition in bankruptcy and these proceeding being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other 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 13<sup>th</sup> day of APRIL, 1989.

  
UNITED STATES DISTRICT JUDGE  
THOMAS R. BRETT

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

IN RE:	)	
ARTHUR ARNOLD ALLEN,	)	Case No. 88-01254-W
Debtor,	)	Chapter 13 and
ARTHUR ARNOLD ALLEN,	)	Adversary No. 88-1094-W
Plaintiff/Appellee,	)	
v.	)	
DAVIS S. CLINGER	)	and <u>88-C-1240-B</u>
PROSECUTING ATTORNEY FOR	)	88-C-1241-B
BENTON AND CARROLL COUNTIES,	)	
STATE OF ARKANSAS,	)	
Defendant/Appellant.	)	

**FILED**

**APR 13 1988**

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

ORDER

Now before the court are the appeals of Arthur Arnold Allen ("Allen") from the final Orders of the United States Bankruptcy Court for the Northern District of Oklahoma, entered in these cases on September 9, 1988. Allen pled guilty to charges of theft by deception on October 14, 1986 in Benton County, Arkansas and, pursuant to a suspended sentence, was ordered to pay \$46,729.53 in restitution. After paying \$500.00 of the debt, Allen filed a Chapter 7 Petition in Bankruptcy. The Bankruptcy Court found the restitution debt nondischargeable under 11 U.S.C. § 523 on July 12, 1988. Ten days later Allen filed for relief under Chapter 13 and filed an adversary proceeding seeking an emergency and immediate permanent injunction enjoining David Clinger, the Benton County prosecutor, from executing on the criminal sentence and seeking extradition of Allen. On September

9, 1988 the Bankruptcy Court issued orders dismissing both the Chapter 13 case and the adversary case and these appeals followed.

Allen alleges that the right to criminal restitution payments is a claim, that a debtor's obligation to pay such a claim is a debt, and that the bankruptcy court erred in failing to find that such restitution payments may be discharged under 11 U.S.C. § 1328 in a Chapter 13 case, notwithstanding a finding of nondischargeability in the debtor's previous Chapter 7 case. Allen also claims the bankruptcy court erred in failing to allow Mr. Clinger to testify as to procedures involved in bringing the criminal charges against Allen. Finally, Allen alleges that the bankruptcy court erred in dismissing Allen's Chapter 13 case after determining that his income was irregular and thus his plan was not confirmable and no new plan would be devisable.

Title 11 of the Code of the Laws of the United States deals with bankruptcy. Section 1328 of that title discusses the dischargeability of debts in a Chapter 13 bankruptcy and is more liberal than § 727, which applies to dischargeability of debts in a Chapter 7 bankruptcy. Neither section specifically allows the discharge of orders to pay criminal restitution. However, § 727 includes the general provisions of § 523, which does not allow discharge of any debt for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.

In Kelly v. Robinson, 479 U.S. 36, 107 S.Ct. 353, 362-363, 93 L.Ed.2d 216 (1986), the Supreme Court found that, because

criminal proceedings focus on a state's interests in rehabilitation and punishment, rather than a victim's desire to be compensated, restitution orders in such proceedings operate for the benefit of a state, not for compensation of a victim, and thus are protected from dischargeability in a Chapter 7 bankruptcy. The dissent in that case noted that the majority left open the possibility that such an obligation would be dischargeable under Chapter 13.

The bankruptcy laws allow a debtor to convert a case under Chapter 13 to a case under Chapter 7 (11 U.S.C. § 1307) and to convert a case under Chapter 7 to a case under Chapter 13 (11 U.S.C. § 706). In this case, no conversion occurred; rather, Allen filed a Chapter 7 case, discharged as many of his debts as possible, and then filed a Chapter 13 case to work out a "plan" as to his non-dischargeable debts under Chapter 7.

Under § 1325(a)(3), a plan proposed by a debtor in a Chapter 13 case to provide for payment of creditors' claims is only to be confirmed by the bankruptcy court if "proposed in good faith". Under § 1325(a)(4), it will only be confirmed if "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under Chapter 7 of this title on such date." Under § 1325(a)(6), it will only be confirmed if "the debtor will be able to make all payments under the plan and to comply with the plan".

The court finds that the Order of the Bankruptcy Court, that Allen's Chapter 13 plan is not feasible and therefore confirmation should be denied, should be affirmed. Because Allen is unable to formulate another plan, the Order of the Bankruptcy Court, that the Chapter 13 case should therefore be dismissed, should also be affirmed. The judge's decision was based on the declarations of Allen that he could earn \$950.00 a month by substitute teaching and could live on \$100.00 per month. The judge noted that the income was irregular and that one would have trouble eating on only \$100.00 a month. The judge also pointed out that the Chapter 13 case was filed just ten days after Allen's debts were discharged in his Chapter 7 case. The value of the restitution amount to be distributed under the plan (13% of the total) was considerably less than the full amount of restitution to be paid under his Chapter 7 case.

The court finds that there is a question of whether Allen's plan was proposed in good faith and there is some question of whether Allen would be able to comply with the plan as long as his income was irregular and the plan only provided him a small amount for living expenses. Under § 1325, confirmation of the plan proposed by Allen was properly denied and, because Allen would be unable to formulate another plan based on regular income, the case was properly dismissed.

The court also finds that the Order of the Bankruptcy Court, that Allen's adversary case should be dismissed, should also be affirmed, as Allen pled guilty to the charges of theft by

deception and he is estopped and cannot now make a case that the prosecutor had unethical or illegal motives for filing the charges against him. Allen was told at the time he pled guilty of the rights he was giving up. The bankruptcy court under Kelly v. Robinson, supra, is to remain separate from state enforcement of criminal laws and state criminal proceedings. The court notes that the bankruptcy judge pointed out to Allen that the proper place to bring up his claims against Clinger would be at the hearing on revocation of his parole for non-payment of restitution in the Arkansas court.

Therefore the court finds that the final Orders of the Bankruptcy Court entered in these cases on September 9, 1988 should be and are affirmed.

Dated this 13<sup>th</sup> day of April, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

JESSE D. GUTHRIE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 88-C-812-B
	)	
VOELLER, INC.,	)	
a foreign corporation,	)	
	)	
Defendant.	)	

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1)(ii), the parties stipulate that the above-styled and numbered cause of action is dismissed, with prejudice.

  
\_\_\_\_\_  
Thomas A. Layon  
Attorney for Plaintiff

  
\_\_\_\_\_  
John R. Woodard, III  
Attorney for Defendant

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

IN RE:	)	
ARTHUR ARNOLD ALLEN,	)	Case No. 88-01254-W 4-13-89
Debtor,	)	Chapter 13 and
ARTHUR ARNOLD ALLEN,	)	Adversary No. 88-1094-W
Plaintiff/Appellee,	)	
v.	)	88-C-1240-B
DAVIS S. CLINGER	)	and
PROSECUTING ATTORNEY FOR	)	88-C-1241-B
BENTON AND CARROLL COUNTIES,	)	
STATE OF ARKANSAS,	)	
Defendant/Appellant.	)	

ORDER

Now before the court are the appeals of Arthur Arnold Allen ("Allen") from the final Orders of the United States Bankruptcy Court for the Northern District of Oklahoma, entered in these cases on September 9, 1988. Allen pled guilty to charges of theft by deception on October 14, 1986 in Benton County, Arkansas and, pursuant to a suspended sentence, was ordered to pay \$46,729.53 in restitution. After paying \$500.00 of the debt, Allen filed a Chapter 7 Petition in Bankruptcy. The Bankruptcy Court found the restitution debt nondischargeable under 11 U.S.C. § 523 on July 12, 1988. Ten days later Allen filed for relief under Chapter 13 and filed an adversary proceeding seeking an emergency and immediate permanent injunction enjoining David Clinger, the Benton County prosecutor, from executing on the criminal sentence and seeking extradition of Allen. On September

9, 1988 the Bankruptcy Court issued orders dismissing both the Chapter 13 case and the adversary case and these appeals followed.

Allen alleges that the right to criminal restitution payments is a claim, that a debtor's obligation to pay such a claim is a debt, and that the bankruptcy court erred in failing to find that such restitution payments may be discharged under 11 U.S.C. § 1328 in a Chapter 13 case, notwithstanding a finding of nondischargeability in the debtor's previous Chapter 7 case. Allen also claims the bankruptcy court erred in failing to allow Mr. Clinger to testify as to procedures involved in bringing the criminal charges against Allen. Finally, Allen alleges that the bankruptcy court erred in dismissing Allen's Chapter 13 case after determining that his income was irregular and thus his plan was not confirmable and no new plan would be devisable.

Title 11 of the Code of the Laws of the United States deals with bankruptcy. Section 1328 of that title discusses the dischargeability of debts in a Chapter 13 bankruptcy and is more liberal than § 727, which applies to dischargeability of debts in a Chapter 7 bankruptcy. Neither section specifically allows the discharge of orders to pay criminal restitution. However, § 727 includes the general provisions of § 523, which does not allow discharge of any debt for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.

In Kelly v. Robinson, 479 U.S. 36, 107 S.Ct. 353, 362-363, 93 L.Ed.2d 216 (1986), the Supreme Court found that, because

criminal proceedings focus on a state's interests in rehabilitation and punishment, rather than a victim's desire to be compensated, restitution orders in such proceedings operate for the benefit of a state, not for compensation of a victim, and thus are protected from dischargeability in a Chapter 7 bankruptcy. The dissent in that case noted that the majority left open the possibility that such an obligation would be dischargeable under Chapter 13.

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The court finds that the Order of the Bankruptcy Court, that Allen's Chapter 13 plan is not feasible and therefore confirmation should be denied, should be affirmed. Because Allen is unable to formulate another plan, the Order of the Bankruptcy Court, that the Chapter 13 case should therefore be dismissed, should also be affirmed. The judge's decision was based on the declarations of Allen that he could earn \$950.00 a month by substitute teaching and could live on \$100.00 per month. The judge noted that the income was irregular and that one would have trouble eating on only \$100.00 a month. The judge also pointed out that the Chapter 13 case was filed just ten days after Allen's debts were discharged in his Chapter 7 case. The value of the restitution amount to be distributed under the plan (13% of the total) was considerably less than the full amount of restitution to be paid under his Chapter 7 case.

The court finds that there is a question of whether Allen's plan was proposed in good faith and there is some question of whether Allen would be able to comply with the plan as long as his income was irregular and the plan only provided him a small amount for living expenses. Under § 1325, confirmation of the plan proposed by Allen was properly denied and, because Allen would be unable to formulate another plan based on regular income, the case was properly dismissed.

The court also finds that the Order of the Bankruptcy Court, that Allen's adversary case should be dismissed, should also be affirmed, as Allen pled guilty to the charges of theft by

deception and he is estopped and cannot now make a case that the prosecutor had unethical or illegal motives for filing the charges against him. Allen was told at the time he pled guilty of the rights he was giving up. The bankruptcy court under Kelly v. Robinson, supra, is to remain separate from state enforcement of criminal laws and state criminal proceedings. The court notes that the bankruptcy judge pointed out to Allen that the proper place to bring up his claims against Clinger would be at the hearing on revocation of his parole for non-payment of restitution in the Arkansas court.

Therefore the court finds that the final Orders of the Bankruptcy Court entered in these cases on September 9, 1988 should be and are affirmed.

Dated this 13<sup>th</sup> day of April, 1989.

**S/ THOMAS R. BRETT**  
\_\_\_\_\_  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

APR 13 1989

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

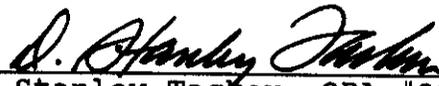
GOLDEN GAS ENERGIES, INC., )  
an Oklahoma corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
EL PASO NATURAL GAS COMPANY, )  
a Delaware corporation, )  
 )  
Defendant. )

Case No. 89-C-207-C

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, GOLDEN GAS ENERGIES, INC., and pursuant to Rule 41(a)(1) dismisses the cause of action stated in its Complaint. This dismissal is filed without prejudice.

DATED April 13, 1989.

  
\_\_\_\_\_  
D. Stanley Tacker, OBA #8819  
R. Scott Savage, OBA #7926  
MOYERS, MARTIN, SANTEE,  
IMEL & TETRICK  
320 South Boston  
Suite 920  
Tulsa, Oklahoma 74103  
(918) 582-5281

Attorneys for Plaintiff,  
GOLDEN GAS ENERGIES, INC.



*Entered*

**L E D**

APR 12 1989

Silver, Clerk  
DISTRICT COURT

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

LEWIS AARON COOK,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 89-C-55-E
	)	
JUDGE JOE JENNINGS,	)	
	)	
Defendant.	)	

O R D E R

The Court has for consideration the Report and Recommendation of the Magistrate filed February 13, 1989. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Plaintiff's Complaint be dismissed with prejudice.

ORDERED this 10<sup>th</sup> day of April, 1989.

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

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

FILED

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 EDGAR MOORE, )  
 )  
 Defendant. )

APR 12 1989

No. 89-C-57-E

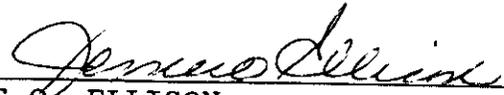
J. Silver, Clerk  
DISTRICT COURT

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 10<sup>th</sup> day of April, 1989.

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

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

APR 12 1989

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

DOYLE MATTHEWS d/b/a DOYLE )  
MATTHEWS DRILLING CO., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
THE HOME INSURANCE COMPANY, )  
 )  
Defendant. )

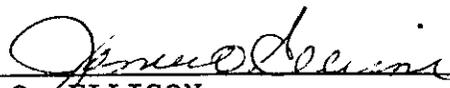
No. 88-C-441-E ✓

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. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within fifteen (15) days that settlement has not been completed and further litigation is necessary.

ORDERED this 10<sup>th</sup> day of April, 1989.

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

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

STEVE MACKIN d/b/a WORLD TRANSPORT  
COMPANY,

Plaintiff,

vs.

Case No. 88-C-684-E

W. T. C. AIR FREIGHT, a California  
corporation; BURLINGTON AIR EXPRESS,  
INC., a Delaware corporation, BURLINGTON  
AIR EXPRESS MANAGEMENT, INC., a Delaware  
corporation; and THE PITTSTON COMPANY,  
a Delaware corporation,

Defendants.

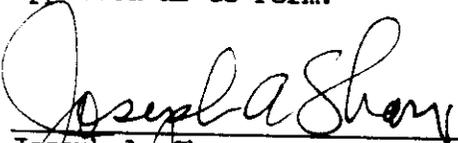
ORDER OF DISMISSAL

Pursuant to the Joint Stipulation of Dismissal filed by the parties herein, the  
above-captioned cause is hereby dismissed with prejudice.

Dated this 11 day of April, 1989.

James O. Ellison  
United States District Judge

Approved as to Form:

  
Joseph A. Sharp  
Attorney for Plaintiff

  
Richard A. Groenendyke, Jr.  
Attorney for Defendants

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

INTERNATIONAL PROFESSIONAL )  
RODEO ASSOCIATION, an Oklahoma )  
corporation, )

Plaintiff, )

vs. )

No. 88-C-1212E

SOMBRERO STOCK, INC., a/k/a )  
SOMBRERO RODEO STOCK, an Oregon )  
corporation, )

Defendant. )

JUDGMENT

Plaintiff commenced this action against Defendant on September 12, 1988, seeking to recover the proceeds of a Fifteen Thousand Dollar (\$15,000.00) loan, plus interest, its attorney fees and costs. Defendant has failed to respond to Plaintiff's Complaint.

IT IS THEREFORE ORDERED AND ADJUDGED that Judgment be entered in Plaintiff's favor, and against the Defendant, in the amount of Fifteen Thousand Dollars (\$15,000.00), plus interest thereon to run at the legal rate of 8.15% per annum from this date until paid. Costs and attorney fees will be considered only after proper application under Local Rule 6.

DATED this 11 day of April, 1989.

~~JAMES O. ELLISON~~

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

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LIZZIE MAE JOHNSON, )  
 )  
 Plaintiff, )  
 )  
 vs. ) Case No. 88-C-1250-E  
 )  
 WAL-MART STORES, INC., )  
 a Delaware corporation, )  
 )  
 Defendant. )

JOURNAL ENTRY OF JUDGMENT

ON THIS 10 day of April, 1989, this matter comes on for consideration by the Court, the Plaintiff, Lizzie Mae Johnson, appearing by her attorneys, Michael L. Green and Steven L. Hunt, and the Defendant, Wal-Mart Stores, Inc., appearing by its counsel, Doerner, Stuart, Saunders, Daniel & Anderson. Being advised in the premises and having received the pleadings and considering the evidence herein, the Court finds as follows:

1. That the Defendant filed its Motion for Partial Summary Judgment, Brief in Support of Motion for Partial Summary Judgment and Exhibits pertaining thereto on October 26, 1988, relating to Plaintiff's Second Cause of Action.

2. That Plaintiff failed to respond in a timely manner pursuant to Federal Rules of Civil Procedure.

3. That on February 14, 1989, Defendant filed its Motion for Judgment Pursuant to Local Rule 15(a) and Brief in Support Thereof.

4. That on March 20, 1989, Defendant's Motion for Partial Summary Judgment was granted with regard to Plaintiff's Second Cause of Action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Defendant be granted its Motion for Partial Summary Judgment on Plaintiff's Second Cause of Action.

*BY JAMES O. ELLISON*  

---

JAMES O. ELLISON,  
UNITED STATES DISTRICT JUDGE

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

FILED  
APR 12 1989

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

FIRST OKLAHOMA SAVINGS BANK, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CARL PALERMO and PEGGY K. )  
PALERMO, husband and wife, )  
and GEORGE A. SHIPMAN, )  
 )  
Defendants. )

No. 88-C-1337-E ✓

ORDER OF DISMISSAL WITHOUT PREJUDICE

Upon the stipulation of the parties hereto, plaintiff's claim against Shipman and Shipman's claim against FSLIC as receiver for First Oklahoma Savings Bank are hereby dismissed without prejudice.

IT IS SO ORDERED this 11<sup>th</sup> day of April, 1989.

James J. DeLoach  
United States District Judge

APPROVED FOR ENTRY:

John B. Heatly  
John B. Heatly (OBA #4037)  
Fellers, Snider, Blankenship,  
Bailey & Tippens  
2400 First National Center  
Oklahoma City, Oklahoma 73102  
(405) 232-0621

and

Huffman, Arrington, Kihle,  
Gaberino & Dunn  
1000 ONEOK Plaza  
Tulsa, Oklahoma 74103  
(918) 585-8141  
Attorneys for FSLIC as Receiver  
for First Oklahoma Savings Bank

*Robert S. Erickson*

Robert S. Erickson (OBA #11825)  
Jones, Givens, Gotcher, Bogan  
& Hilborne, P.C.  
3800 First National Tower  
Tulsa, Oklahoma 74103  
(918) 581-8200

Attorneys for Plaintiff,  
Local America Bank of Tulsa

*Judi E. Beaumont, Trustee*

Judi Beaumont  
610 South Main, Suite 215  
Tulsa, Oklahoma 74119

Trustee for George A. Shipman

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

APR 12 1989

LOUIS WILDER STALLINGS,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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

88-C-1130-C

~~854CR-57-C~~

ORDER

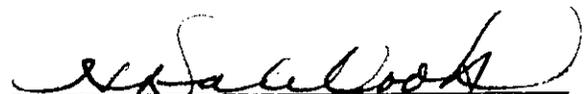
The Court has for consideration the Report and Recommendation of the United States Magistrate filed March 8, 1989 in which the Magistrate recommended that Plaintiff's motion for \$2255 habeas relief be denied; and that Movant's Motion to Vacate, Set Aside, or Correct Sentence be denied.

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

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

It is, therefore, Ordered that Plaintiff's motion for \$2255 habeas relief is denied; and that Movant's Motion to Vacate, Set Aside, or Correct Sentence is denied.

Dated this 12<sup>th</sup> day of April, 1989.

  
H. DALE COOK, CHIEF  
UNITED STATES DISTRICT JUDGE

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

ERIC KLAUS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 86-C-278 E
	)	
LARRY TAYLOR d/b/a LARRY	)	
TAYLOR CAR WASH AND GAS, and	)	
LEISURE TIME, INC., a	)	
corporation; FORREST W.	)	
UNDERWOOD, d/b/a PARTNERS	)	
IN PROFIT,	)	
	)	
Defendants.	)	

ORDER

Pursuant to Stipulation of counsel for a dismissal of the captioned cause with prejudice on all claims, the court finds that the same should be entered.

IT IS ORDERED that this cause is hereby dismissed with prejudice as to all claims and causes of action.

Dated this 11 day of April, 1989.

\_\_\_\_\_  
JAMES O. ELLISON  
JUDGE OF THE U.S. DISTRICT COURT

*Entered*

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

APR 12 1989

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

UNITED STATES POSTAL SERVICE, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PAUL GRAYSON MERSCH, )  
 )  
Defendant. )

Civil Action No. 88-C-1526-C

ORDER RE-OPENING AND DISMISSING  
ACTION WITHOUT PREJUDICE

Plaintiff has moved to re-open this action and for  
dismissal of same without prejudice, pursuant to Rule 41(a)(2),  
Fed. R. Civ. P.

Because the administrative action upon which this  
action was predicated has been terminated, this Court finds and  
it is ORDERED that this action should be re-opened and dismissed  
without prejudice.

IT IS SO ORDERED this 11<sup>th</sup> day of April, 1989.

(Signed) M. Dale Cook  
UNITED STATES DISTRICT JUDGE

*pi*

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SUSAN DREADFULWATER, a/k/a )  
SUSAN R. DREADFULWATER, a/k/a )  
SUSAN ROSE DREADFULWATER, a/k/a )  
SUSAN MADDEN, a/k/a )  
SUSAN R. MADDEN, a/k/a )  
SUSAN ROSE MADDEN, )  
 )  
Defendant. )

**F I L E D**

*APR 12 1989*

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

CIVIL ACTION NO. 89-C-199-E

AGREED JUDGMENT

This matter comes on for consideration this 10<sup>th</sup>  
day of April, 1989, the Plaintiff appearing by  
Tony M. Graham, United States Attorney for the Northern District  
of Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney, and the Defendant, Susan Dreadfulwater, a/k/a Susan R.  
Dreadfulwater, a/k/a Susan Rose Dreadfulwater, a/k/a Susan  
Madden, a/k/a Susan R. Madden, a/k/a Susan Rose Madden,  
appearing pro se.

The Court, being fully advised and having examined the  
court file finds that the Defendant, Susan Dreadfulwater, a/k/a  
Susan R. Dreadfulwater, a/k/a Susan Rose Dreadfulwater, a/k/a  
Susan Madden, a/k/a Susan R. Madden, a/k/a Susan Rose Madden,  
acknowledged receipt of Summons and Complaint on March 31, 1989.  
The Defendant has not filed an Answer but in lieu thereof has  
agreed that she is indebted to the Plaintiff in the amount  
alleged in the Complaint and that judgment may accordingly be

entered against her in the principal amount of \$2,725.13, plus accrued interest of \$445.29 as of January 11, 1989, plus interest thereafter at the rate of 3 percent per annum until judgment, plus interest thereafter at the legal rate until paid, plus the costs of this action.

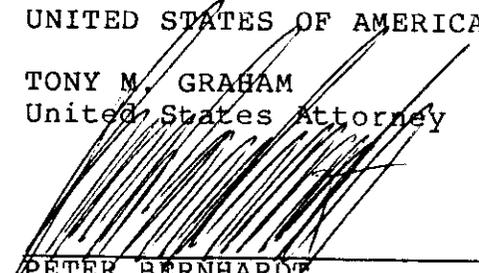
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Susan Dreadfulwater, a/k/a Susan R. Dreadfulwater, a/k/a Susan Rose Dreadfulwater, a/k/a Susan Madden, a/k/a Susan R. Madden, a/k/a Susan Rose Madden, in the principal amount of \$2,725.13, plus accrued interest of \$445.29 as of January 11, 1989, plus interest thereafter at the rate of 3 percent per annum until judgment, plus interest thereafter at the current legal rate of 9.51 percent per annum until paid, plus the costs of this action.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM  
United States Attorney

  
PETER BERNHARDT  
Assistant U.S. Attorney

  
SUSAN DREADFULWATER

PB/cen

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

DORIS H. COLE,

Plaintiff,

vs.

OTIS R. BOWEN, M.D.,  
SECRETARY of HEALTH  
and HUMAN SERVICES,

Defendant.

No. 87-C-468-C

**F I L E D**

**APR 12 1989**

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

O R D E R

Now before the Court for its consideration is the Defendant's Objection to the Report and Recommendation of the United States Magistrate, the latter filed November 21, 1988. The Magistrate has recommended that the decision of the Secretary be reversed and remanded, with specific instructions that the Administrative Law Judge (ALJ) properly execute his duty of inquiry and that he consider both the treating physician's and claimant's reports of pain.

Defendant's objection is based on his claim that the Magistrate misinterprets the ALJ's basic duty of inquiry. The Magistrate relied on Dixon v. Heckler, 811 F.2d 506, (10th Cir. 1987), citing Heckler v. Campbell, 461 U.S. 458, 471. "(T)he ALJ

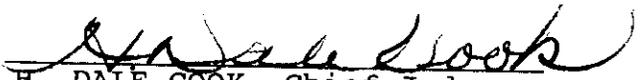
has a basic duty of inquiry, 'to inform himself about facts relevant to his decision and to learn the claimant's own version of those facts.' The duty of inquiry takes a special urgency when the claimant has little education and is not represented by counsel." 811 F.2d at 510. Defendant excuses the ALJ's failure to guide the hearing through questions by the fact that he patiently listened to claimant's lengthy testimony. Since, as the Magistrate points out, claimant's "testimony consisted of a rambling soliloquy", this hardly fulfilled the ALJ's duty to "diligently explore all relevant facts". Walker v. Harris, 642 F.2d 712, 714 (4th Cir. 1981).

Defendant further claims that the Magistrate failed to consider the highly relevant case of Jordan v. Heckler, 835 F.2d 1314 (10th Cir. 1987). In Jordan the Tenth Circuit rejected claimant's argument that the ALJ had a duty to specifically ask Jordan to describe his pain, because he had asked a number of other questions concerning the extent of claimant's pain. Jordan had finished the twelfth grade, and he responded to questions completely and logically. Jordan offered no evidence of lingering physical disability. Here Mrs. Cole had finished only the seventh grade. Her testimony was not guided by questions from the ALJ and it rambled from picking cotton to Oral Robert's clothes. Her doctor has diagnosed arthritis, obesity, reflex

differences in facts and the narrow question of law.

The Court has independently reviewed the pleadings and briefs of the parties and the case file and finds that the recommendation of the Magistrate that the decision of the Secretary be reversed and remanded is reasonable under the circumstances of this case and consistent with applicable law.

IT IS SO ORDERED this 12<sup>th</sup> day of April, 1989.

  
H. DALE COOK, Chief Judge  
United States District Court

*Entered*

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

**FILED**

APR 12 1989

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

ATLAS UTILITY COMPANY, )  
an Oklahoma corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
WAYNE ODOM d/b/a NEW START )  
INDUSTRIES, )  
 )  
Defendant. )

Case No. 87-C-862-C

ORDER

NOW on this 11 day of April, 1989, the Court, upon consideration of the Report and Recommendation of the Magistrate, filed August 3, 1988, in which the Magistrate recommended that the sum of One Thousand Fifty Dollars (\$1,050.00) be assessed against the Defendant in favor of the Plaintiff, for attorney's fees accrued, has concluded that the Report and Recommendation of the Magistrate should be and is hereby affirmed.

IT IS THEREFORE ORDERED that the Plaintiff have judgment against the Defendant for attorney's fees accrued in the sum of One Thousand Fifty Dollars (\$1,050.00).

Dated this 11 day of April, 1989.

(Signed) H. Dale Cook  
\_\_\_\_\_  
H. DALE COOK  
Chief United States District Judge

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

APR 12 1988 K

LONNIE LONNIEL EDMUNDSON, )  
et al., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
THE CITY OF TULSA, et al., )  
 )  
Defendants. )

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

No. 88-C-1429-E ✓

O R D E R

This matter comes on before the Court on Defendant City of Tulsa's Motion to Dismiss. After reviewing the pleadings, the Court finds as follows:

The §1983 Claim:

This part of the motion is denied. The Plaintiffs have stated a minimum case that will survive at this point in the litigation. This is not to say that after discovery Plaintiffs will survive a motion for summary judgment. This motion may only fail because it is premature.

Exhaustion of Administrative Remedies:

Defendant City of Tulsa asserts that Plaintiffs have failed to exhaust their administrative remedies under the Governmental Tort Claims Act. 51 O.S. §153A. While Plaintiff's complaint is void of allegations regarding compliance with this Act, the exhibits attached to Plaintiffs' response to Defendant's Motion to Dismiss, show that Plaintiffs have complied with the terms of the Tort Claims Act. This motion is denied. Plaintiffs are given

fifteen (15) days from the date of this order to amend their Complaint to reflect compliance with the Governmental Tort Claim Act.

Punitive Damages Against City of Tulsa:

The Court is in agreement with the parties that this remedy is not available to Plaintiffs. Defendant's Motion to Dismiss is granted as to Plaintiffs' claim for punitive damages.

Joint and Several Judgments from Tulsa and Tulsa's Police Officer Employees:

This motion is denied as premature. The Court is without sufficient facts to determine the question of whether the City should be liable for the acts of these employees. This must be denied at this time.

IT IS THEREFORE ORDERED that Defendant's Motion is denied in part and granted in part.

ORDERED this 10<sup>th</sup> day of April, 1989.

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

FILED

APR 11 1989

IN THE UNITED STATES DISTRICT COURT of C. Silver, Clerk  
FOR THE NORTHERN DISTRICT OF OKLAHOMA DISTRICT COURT

HOMeward BOUND, INC., <u>et al.</u>	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Case No. 85-C-437-E
	:	
THE HISSOM MEMORIAL CENTER,	:	
<u>et al.</u>	:	
	:	
Defendants.	:	

**STIPULATED JUDGMENT ON MOTION FOR ATTORNEYS' FEES FILED BY THE PUBLIC INTEREST LAW CENTER**

The Public Interest Law Center (PILCOP) filed an Application for Attorneys' Fees, dated February 1, 1989, for the time period covering November 18, 1987 through December 31, 1988.

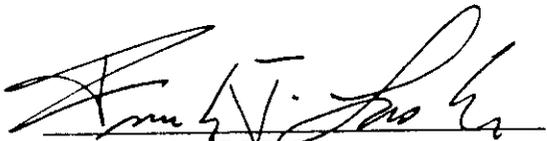
The Defendants and the Plaintiffs have agreed to resolve the Application in part in accordance with the following terms:

1. The defendants will pay fees and costs in the amount of \$65,787.00 to the Public Interest Law Center of Philadelphia.

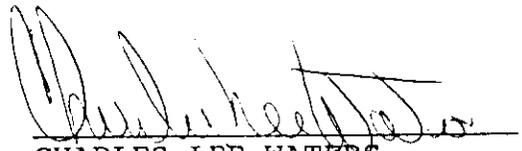
2. Frank Laski on behalf of PILCOP will execute an Acknowledgment of Payment upon receipt of payment acknowledging that the Law Center received full payment for all work performed during the time period November 18, 1987 through December 31, 1988 in connection with the district court work in the case.

3. This stipulation in no way affects the outstanding Application for Attorneys' Fees and Costs as it applies to work done and expenses for the Appeal of the district court order. By this stipulation the parties request that the portion of the application pertaining to the Court of Appeals, be deferred by the Court until the Court of Appeals renders an opinion on the issues briefed and argued to date.

4. As a result of this stipulation that defendants' liability for fees and costs covered in PILCOP's application filed February 1, 1989, is now limited to no more than \$29,998.00 in fees and \$3,732.00 in costs, plus any interest that may be awarded.

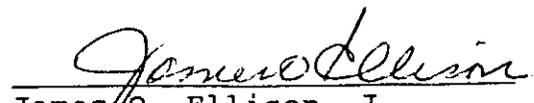
  
FRANK J. LASKI  
Public Interest Law Center  
125 S. 9th St., Ste 700  
Philadelphia, PA 19107

Counsel for Plaintiffs

  
CHARLES LEE WATERS  
General Counsel  
Dept. of Human Services  
P.O. Box 53025  
Oklahoma City, OK 73512

Counsel for Defendants

Approved:

  
James O. Ellison, J.

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 GREGORY I. HAWKINS; VANESSA J. )  
 HAWKINS; JIMMY L. PERRY a/k/a )  
 JIMMIE L. PERRY; WORTHEN FIRST )  
 MORTGAGE COMPANY of Little )  
 Rock, Arkansas; COUNTY )  
 TREASURER, Tulsa County, )  
 Oklahoma; BOARD OF COUNTY )  
 COMMISSIONERS, Tulsa County, )  
 Oklahoma; SOONER FEDERAL )  
 SAVINGS & LOAN ASSOCIATION; )  
 and RENBERG'S, INC., )  
 )  
 Defendants. )

APR 1 1989  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 87-C-999-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 10th day  
of April, 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 Carl Robinson, Assistant District Attorney,  
Tulsa County, Oklahoma; the Defendant, Vanessa J. Hawkins,  
appears pro se; the Defendants, Worthen First Mortgage Company of  
Little Rock, Arkansas and Sooner Federal Savings & Loan  
Association, appear not, having previously filed their Disclaimers;  
the Defendant, Renberg's, Inc., appears by its attorney Mark W.  
Dixon; and the Defendants, Gregory I. Hawkins and Jimmy L. Perry  
a/k/a Jimmie L. Perry, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Gregory I. Hawkins, was served with Summons and Amended Complaint on June 1, 1988; that Defendant Vanessa J. Hawkins, was served with Summons and Amended Complaint on July 8, 1988; that Defendant, Worthen First Mortgage Company of Little Rock, Arkansas, was served with Summons and Amended Complaint on April 11, 1988; that Defendant, Renberg's, Inc., acknowledged receipt of Summons and Amended Complaint on April 7, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on December 3, 1987; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on December 2, 1987.

The Court further finds that the Defendant, Jimmy L. Perry a/k/a Jimmie L. Perry, was served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning October 12, 1988, and continuing to November 16, 1988, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, Jimmy L. Perry a/k/a Jimmie L. Perry, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern

Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, Jimmy L. Perry a/k/a Jimmie L. Perry. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to his/her present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on December 24, 1987, and their Answers to Amended Petition herein on April 8, 1988; that the Defendant, Vanessa J. Hawkins, filed her Answer herein on July 13, 1988; that the Defendant, Worthen First Mortgage Company of Little Rock, Arkansas, filed its Disclaimer herein on June 14, 1988; that Defendant, Renberg's, Inc., filed

its Answer herein on April 12, 1988; that the Defendant, Sooner Federal Savings & Loan Association, filed its Disclaimer herein on April 26, 1988; and that the Defendants, Gregory I. Hawkins and Jimmy L. Perry a/k/a Jimmie L. Perry, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on June 12, 1987, Vanessa J. Hawkins filed her voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 87-01584. On September 22, 1987, a Discharge of Debtor was entered in the United States Bankruptcy Court for the Northern District of Oklahoma releasing debtor from all dischargeable debts. Case No. 87-01584 was closed on January 20, 1988.

The Court further finds that on December 2, 1987, Gregory Ivan Hawkins, filed his voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 87-03361-C. On February 23, 1988, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtor by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described below.

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 Seventeen (17), Block Forty-Seven (47),  
VALLEY VIEW ACRES III ADDITION, to the City of  
Tulsa, Tulsa County, State of Oklahoma,  
according to the recorded plat thereof.

The Court further finds that on November 12, 1982,  
Gregory I. Hawkins and Vanessa J. Hawkins executed and delivered  
to the United States of America, acting on behalf of the  
Administrator of Veterans Affairs, their mortgage note in the  
amount of \$26,500.00, payable in monthly installments, with  
interest thereon at the rate of twelve and one-half percent (12.5%)  
per annum.

The Court further finds that as security for the  
payment of the above-described note, Gregory I. Hawkins and  
Vanessa J. Hawkins executed and delivered to the United States of  
America, acting on behalf of the Administrator of Veterans Affairs,  
a mortgage dated November 12, 1982, covering the above-described  
property. Said mortgage was recorded on November 15, 1982, in Book  
4650, Page 790, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Gregory I.  
Hawkins and Vanessa J. Hawkins, made default under the terms of the  
aforesaid note and mortgage by reason of their failure to make the  
monthly installments due thereon, which default has continued, and  
that by reason thereof the Defendants, Gregory I. Hawkins and  
Vanessa J. Hawkins, are indebted to the Plaintiff in the principal  
sum of \$26,642.06, plus interest at the rate of 12.5 percent per  
annum from June 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 lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$270.00, plus penalties and interest, for the year of 1987. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Renberg's, Inc., has a lien on the property which is the subject matter of this action by virtue of a Statement of Judgment, Case No. SC-87-03779, in the amount of \$262.56, plus interest and attorney's fees, dated April 7, 1987, and recorded on November 17, 1987, in Book 5064 at Page 1011 in the records of Tulsa County, Oklahoma. 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, Tulsa County, Oklahoma, claims no right, title, or interest in the subject real property.

The Court further finds that the Defendants, Vanessa J. Hawkins, Worthen First Mortgage Company of Little Rock, Arkansas and Sooner Federal Savings & Loan Association, disclaim all right, title, or interest in the subject real property.

The Court further finds that the Defendants, Gregory I. Hawkins and Jimmy L. Perry a/k/a Jimmie L. Perry, are in default and have no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendants, Gregory I. Hawkins and Vanessa J. Hawkins, in the principal sum of

\$26,642.06, plus interest at the rate of 12.5 percent per annum from June 1, 1986 until judgment, plus interest thereafter at the current legal rate of 9.51 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 \$270.00, plus penalties and interest, for ad valorem taxes for the year of 1987, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Renberg's, Inc., have and recover judgment in the amount of \$262.56, plus interest and attorney's fees, by virtue of a Statement of Judgment, Case No. SC-87-03779, dated April 7, 1987, and recorded on November 17, 1987, in Book 5064 at Page 1011 in the records of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Gregory I. Hawkins; Vanessa J. Hawkins; Jimmy L. Perry a/k/a Jimmie L. Perry; Worthen First Mortgage Company of Little Rock, Arkansas; Sooner Federal Savings and Loan Association; and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell

with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$270.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

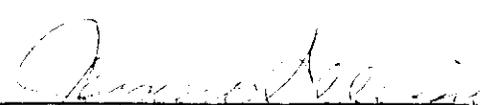
In payment of the judgment rendered herein in favor of the Plaintiff;

Fourth:

In payment of the Defendant, Renberg's, Inc., in the amount of \$262.56, plus interest and attorney's fees.

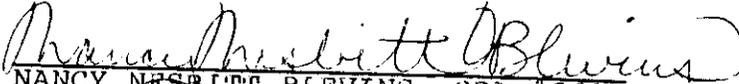
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

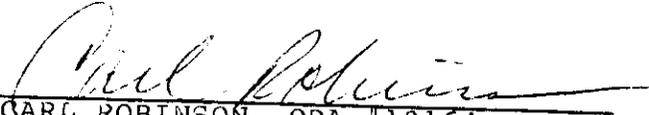
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

  
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
NANCY NESBITT BLEVINS, OBA #6634  
Assistant United States Attorney

  
CARL ROBINSON, OBA #10164  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

  
MARK W. DIXON, OBA #2378  
Attorney for Defendant,  
Renberg's, Inc.

Judgment of Foreclosure  
Civil Action No. 87-C-999-E

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

FILED

APR 11 1989

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

LINDA PARTEN, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JOE LUNDY; FORD MOTOR COMPANY, )  
 a Delaware corporation; and )  
 UNITED AUTOMOBILE, AEROSPACE AND )  
 AGRICULTURAL IMPLEMENT WORKERS )  
 OF AMERICA (UAW), LOCAL #1895, )  
 )  
 Defendants. )

No. 88-C-1652-B

ORDER SUSTAINING MOTION TO REMAND

Plaintiff's Motion to Remand is before the Court for decision. Following a review of the issues, the parties' briefs of legal authority and arguments, the Court concludes the Motion to Remand should be sustained.

The immediate action was filed by Plaintiff in the District Court in and for Tulsa County, Oklahoma, alleging two state law causes of action; one for assault and battery and one for intentional infliction of emotional distress.<sup>1</sup>

The operative facts are as follows: On December 6, 1988 (sic 1986) Plaintiff was a female employee of the Ford Motor Company ("Ford") in Tulsa, Oklahoma, and a member of the labor-management

---

<sup>1</sup>Plaintiff originally commenced the action in this court for alleged sexual harassment under 42 U.S.C. §2000e-5(f)(1) and joined state pendent claims for alleged assault and battery and intentional infliction of emotional distress. On August 8, 1988 the Court sustained Defendants' Motion for Summary Judgment relevant to the §2000(e) sexual harassment claim and dismissed the state pendent claims without prejudice to be pursued, if at all, in the state court.

bargaining unit of United Automobile Aerospace and Agricultural Implement Workers of America (UAW), Local #1895 ("UAW"). Defendant, Joe Lundy ("Lundy"), was a fellow male employee who on December 6, 1986, while passing down the aisle at work and to the rear of Plaintiff, clenched Plaintiff's buttocks and crotch firmly with his right hand. Both representatives of management and labor met with Plaintiff following the incident concerning her resulting complaint. Plaintiff's first cause of action sounds in assault and battery against Defendants Lundy and against Ford on a *respondeat superior* vicarious liability theory.<sup>2</sup> The alleged second cause of action for intentional infliction of emotional distress is alleged against all three Defendants, Lundy, Ford and UAW. Ford and UAW's alleged involvement stems from their representatives' oral discussions and comments while addressing Plaintiff's complaint. Specifically it is alleged representatives of Ford "were almost nonchalant, scheduled Plaintiff to work with Lundy, and instructed a supervisor to watch Plaintiff closely to develop some reason for discharging her." Plaintiff remains in the employment of Ford. Allegations against the UAW are that its representatives tried to dissuade Plaintiff from filing a complaint against Lundy and the union bargaining representative in one conversation shouted and

---

<sup>2</sup>Whether or not Plaintiff can establish Lundy's "scope of employment" to create vicarious liability remains to be seen as does Plaintiff's meeting the requirements of Breeden v. League Services Corporation, 575 P.2d 1374 (Okla. 1978).

cursed at Plaintiff.<sup>3</sup>

Ford asserts that the removal was proper because the Plaintiff's state law claims are pre-empted by §301 of the Labor Management Relations Act under the "complete pre-emption" doctrine.

It is fundamental that the Plaintiff is the master of her claim; she is permitted to avoid federal jurisdiction by exclusive reliance on state law. The Fair v. Kohler Die & Specialty Company, 228 U.S. 22, 25, 57 L.Ed. 716, 33 S.Ct. 410 (1913); Merrell Dow Pharmaceuticals, Inc. v. Thompson, 478 U.S. 804, \_\_\_ n. 6, 92 L.Ed.2d 650, 106 S.Ct. 3229 (1986); and Great Northern R. Co. v. Alexander, 246 U.S. 276, 282, 62 L.Ed. 713, 38 S.Ct. 237 (1918).

In the recent case of Lingle v. Norge Div. of Magic Chef, Inc., \_\_\_ U.S. \_\_\_, 108 S.Ct.1877, 98 L.Ed.2d 185 (1988), the Supreme Court stated:

"In sum, we hold that an application of state law is pre-empted by §301 of the Labor Management Relations Act of 1947 only if such application requires the interpretation of a collective bargaining agreement."

See, Allis-Chalmers Corporation v. Lueck, 471 U.S. 202, 211, 105 S.Ct. 1904, 1911, 85 L.Ed.2d 206 (1985).

As the state law claim herein for intentional infliction of emotional distress is not substantially dependent upon analysis of

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<sup>3</sup>Even if Plaintiff can prove allegations in her intentional infliction of emotional distress claim against UAW, it appears doubtful that such meets the "extreme and outrageous" conduct requirement of Breeden v. League Services Corporation, 575 P.2d 1374 (Okla. 1978). However, this is for the state court to address.

terms of the collective bargaining agreement, it is not pre-empted by §301 of the LMRA. Lingle v. Norge Div. of Magic Chef, Inc., \_\_\_ U.S. \_\_\_, 108 S.Ct. 1877 (1988); Caterpillar v. Williams, 482 U.S. \_\_\_, 96 L.Ed.2d 318 (1987); see, Peabody Galion v. Dollar, 666 F.2d 1309 (10th Cir. 1981); and Newberry v. Pacific Racing Assn., 854 F.2d 1142 (9th Cir. 1988).

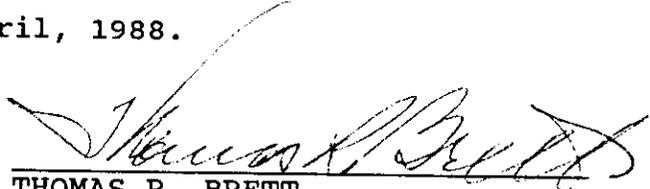
In the case of Farmers v. Carpenters, 430 U.S. 290, 51 L.Ed.2d 338, 97 S.Ct. 1056 (1977), a member and officer of a labor union commenced an action for intentional infliction of emotional distress against respondent union and union officials as a result of their alleged intentional outrageous conduct, threats, and intimidation. The Supreme Court concluded that the federal labor law pre-emption doctrine did not apply where the state has a substantial interest in regulation of the conduct at issue and the state's interest is one that does not threaten undue interference with the federal regulatory scheme. With respect to the Plaintiff's claim of intentional infliction of emotional distress, the court stated it could not conclude that Congress intended the exclusive jurisdiction to lie under the National Labor Relations Act.

For the reasons set out above, the Plaintiff's Motion to Remand is hereby SUSTAINED.<sup>4</sup>

---

<sup>4</sup>The remaining motions for summary judgment of Defendants are therefore moot before this court.

DATED this 11<sup>th</sup> day of April, 1988.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

STATE FARM MUTUAL AUTOMOBILE )  
INSURANCE COMPANY, an Illinois )  
corporation, )

Plaintiff, )

vs. )

No. 88-C-280-B

GREYHOUND LINES, INC., a California )  
corporation, ROGER ADKINS, ALFRED )  
BREWERTON, JR., DERRICK CLADY, )  
VINCENTE COUARRUBIAS, PATRICK )  
A. DEAN, DAJIANA ERSKINE, DESMOND )  
FELTUS, DOROTHY FELTUS, FAITH )  
FLEISCHMANN, WALTER FLOWERS, )  
LILLY HILL, LARRY C., ROSIE, )  
AMY and AUDIE JAMES, KENNETH )  
MILLER, KATHRINE A. MOATS, )  
DON MOORE, JASON W. PARKER, )  
WALTER and CAROL PATTON, )  
LEE G. PURDY, MUSKOGEE MEDICAL )  
CENTER AUTHORITY, TIMOTHY )  
RAYFIELD, MARUICIO RUEDA, )  
JUAN E. SANCHEZ, CLIFTON G. )  
SHACKELFORD, CHARLENE STARR, )  
DONALD THOMAS, JAMES TOLIVER, )  
JULIE A. TOTH, LORENZA VANGUS, )  
a/k/a LORENZA VARGAS, ANGEL and )  
IMELDA VILLAGOMEZ, RICHARD )  
MARRIOTT WYLIE, MARIA ZENDEJAS, )  
ST. FRANCIS HOSPITAL, INC., )  
DR. JAROSLAW SLUSARENKO, )  
RADIOLOGY CONSULTANTS OF TULSA, )  
CHICAGO TRAUMA CENTER, )  
DR. E. P. COUCH, DR. WILLIAM B. )  
DAWSON, ALLSTATE INSURANCE )  
COMPANY, MID-AMERICA PREFERRED )  
INSURANCE, and UNIVERSAL )  
CASUALTY COMPANY, )

Defendants. )

FILED

NOV 17 1988

Jack E. ...  
U. S. DISTRICT COURT

JUDGMENT AND ORDER OF DISBURSAL

NOW ON this 11<sup>th</sup> day of ~~March~~<sup>April</sup>, 1989, comes on before me, the undersigned United States District Judge, the above styled and numbered cause following a successful settlement conference held before the referred-to Magistrate, John Leo Wagner. As a result thereof, the pleadings filed in this cause, and other matters which have taken place, the Court finds as follows:

1. Plaintiff herein was the insurer of a van involved a van-bus collision which occurred on or about December 27, 1988.
2. Plaintiff has tendered into Court the sum of \$200,000.00, which represents the limits of liability of the insurance policy carried on the van. Plaintiff admits liability for so much under the policy, same having limits of \$50,000.00 per person and \$100,000.00 per accident for personal injury liability and \$50,000.00 per person and \$100,000.00 per accident for uninsured motorist coverage.
3. The Defendants are claimants or potential claimants against the operator of the van and anyone who might be insured under the policy carried on the van.
4. Defendant Greyhound Lines, Inc. was present at the settlement conference by and through its attorney of record, Charles Greenough, and it indicated that it was the owner and operator of said bus and has paid out in settlement of claims against it the sum of \$3,905.50, which it claims against the funds deposited herein.
5. Defendant Roger Adkins was duly served with process herein and has made no appearance or filed any answer, is in default

and judgment should be entered that he take nothing from the funds deposited herein.

6. Defendant Alfred Brewerton, Jr. was duly served with process herein and has made no appearance or filed any answer, is in default and judgment should be entered that he take nothing from the funds deposited herein.

7. Defendant Derrick Clady was duly served with process herein and has made no appearance or filed any answer, is in default and judgment should be entered that he take nothing from the funds deposited herein.

8. Defendant Vincente Couarrubias was present at the settlement conference by and through his attorney of record, Tom Birmingham, and indicated medical bills and lost wages in his claim against the liability portion of the fund in the sum of \$2,176.15.

9. Patrick A. Dean has previously had default judgment entered against him and he should take nothing from the funds deposited herein.

10. Defendant Dajiana Erskine entered her appearance herein by and through her mother and next friend and received notice of the settlement conference to be held herein. Said Defendant failed to appear at the settlement conference and is in default thereby and judgment should be entered that she take nothing from the funds deposited herein.

11. Defendants Desmond Feltus and Dorothy Feltus were present at the settlement conference by and through their attorney of record, Tom Birmingham, and indicated medical bills and lost

wages in their claim against the liability portion of the fund in the sum of \$2,275.07.

12. Defendant Faith Fleischmann was duly served with process herein and has made no appearance or filed any answer, is in default and judgment should be entered that she take nothing from the funds deposited herein.

13. Defendant Walter Flowers was represented at the settlement conference by and through the settlement conference statement filed by his attorney, David Alexander, herein. The Court finds that said Defendant Flowers was one of the persons paid by Defendant Greyhound Lines, Inc., and that said Defendant Flowers was paid in an amount equal to his wages and four times his medical specials. With this representation and the agreement of the parties that they would receive from the funds on deposit with the Court an amount less than that, pro-rata, received by Defendant Flowers, with the agreement of counsel for Defendant Flowers that the settlement proposal entered into by the parties is reasonable, said Defendant Flowers should receive no further sums from either the liability or UM portion of the fund on deposit here.

14. Defendant Lilly Hill was duly served with process herein and has made no appearance or filed any answer, is in default and judgment should be entered that she take nothing from the funds deposited herein.

15. Defendants Larry C., Rosie, Amy and Audie James were duly served with process herein and have made no appearance or filed any answer, are in default and judgment should be entered that they take nothing from the funds deposited herein.

16. Defendant Kenneth Miller as personal representative of the estates of James E. Miller, Mandoline K. Miller and Traci Michelle Miller, deceased, was present at the settlement conference personally and by and through his attorney of record, Steven R. Hickman, and indicated that each of the three decedents has a claim against both the liability and uninsured motorist portions of the fund for the wrongful deaths of the three decedents.

17. Defendant Katherine A. Moats, entered her appearance herein by and through her mother and next friend and received notice of the settlement conference to be held herein. Said Defendant failed to appear at the settlement conference and is in default thereby and judgment should be entered that she take nothing from the funds deposited herein.

18. Defendant Don Moore was present at the settlement conference by and through his attorney of record, Don Pearson, and indicated medical bills in his claim against the liability portion of the fund in the sum of \$12,729.87 and medical bills and lost wages which have not been itemized, but which are continuing.

19. Defendant Jason W. Parker was duly served with process herein and has made no appearance or filed any answer, is in default and judgment should be entered that he take nothing from the funds deposited herein.

20. Defendants Walter and Carol Patton, as sole surviving heirs of John Patton, deceased, were present at the settlement conference by and through their attorney of record, Bill V. Wilkinson, and indicated that the decedent has a claim against both the liability

and uninsured motorist portions of the fund for the wrongful death of the decedent.

21. Defendant Lee G. Purdy was duly served with process herein and has made no appearance or filed any answer, is in default and judgment should be entered that he take nothing from the funds deposited herein.

22. Defendant Muskogee Medical Center Authority was present at the settlement conference by and through its attorney, A. Camp Bonds, Jr., and claims an interest to the liability portion of fund by virtue of a lien on the claim of Don Moore, said amount being in the amount of \$5,622.49.

23. Defendant Timothy Rayfield was present at the settlement conference by and through his attorney of record, Phil R. Richards, and indicated medical bills and lost wages in his claim against the liability portion of the fund in the sum of \$11,783.00.

24. Defendant Maruicio Rueda has previously had default judgment entered against him and he should take nothing from the funds deposited herein.

25. Defendant Juan E. Sanchez was duly served with process herein and has made no appearance or filed any answer, is in default and judgment should be entered that he take nothing from the funds deposited herein.

26. Clifton G. Shackelford was duly served with process herein and has made no appearance or filed any answer, is in default and judgment should be entered that he take nothing from the funds deposited herein.

27. Charlene Starr was paid sums by Greyhound Lines, Inc., and has indicated that she is fully satisfied and makes no claim on the funds herein and judgment should be entered that she take nothing from the funds deposited herein.

28. Defendant Donald Thomas was present at the settlement conference by and through his attorney of record, William John Patterson, and indicated medical bills in his claim against the liability portion of the fund in the sum of \$1,250.00.

29. Defendant James Toliver was present at the settlement conference by and through his attorney of record, S. Dan George, and indicated medical bills and lost wages in his claim against the liability portion of the fund in the sum of \$10,736.37.

30. Defendant Julie A. Toth was duly served with process herein and has made no appearance or filed any answer, is in default and judgment should be entered that she take nothing from the funds deposited herein.

31. Defendant Lorenza Vangus, a/k/a Lorenza Vargas has previously had default judgment entered against him and he should take nothing from the funds deposited herein.

32. Defendants Angel and Imelda Villagomez were present at the settlement conference by and through their attorney of record, Timothy E. McCormick, and indicated medical bills in their claim against the liability portion of the fund in the sum of \$1,500.00.

33. Defendant Richard Marriott Wylie was present at the settlement conference by and through his attorney of record, Charles Greenough, and indicated that he suffered no injuries or damages and makes no claim on the fund herein and judgment should be

entered that he take nothing from the funds deposited herein.

34. Defendant Maria Zendejas was duly served with process herein and has made no appearance or filed any answer, is in default and judgment should be entered that she take nothing from the funds deposited herein.

35. Defendant St. Francis Hospital, Inc., requested dismissal from this action and has released any lien that it has herein and the Court finds that it should be dismissed from this action and take nothing from the funds on deposit herein.

36. Defendant Dr. Jaroslaw Slusarenko was duly served with process herein and has made no appearance or filed any answer, is in default and judgment should be entered that he take nothing from the funds deposited herein. The Court further finds that any lien said Defendant may have had upon sums due herein to any other Defendant is dormant and extinguished by virtue of Defendant Slusarenko's failure to make claim on and foreclose said lien in this action.

37. Defendant Radiology Consultants of Tulsa was duly served with process herein and has made no appearance or filed any answer, is in default and judgment should be entered that it take nothing from the funds deposited herein. The Court further finds that any lien said Defendant may have had upon sums due herein to Defendant Don Moore is dormant and extinguished by virtue of Defendant Radiology Consultants' failure to make claim on funds herein and foreclose said lien in this action.

38. Defendant Chicago Trauma Center was duly served with process herein and has made no appearance or filed any answer, is in

default and judgment should be entered that it take nothing from the funds deposited herein. The Court further finds that any lien said Defendant may have had upon sums due herein to any Defendant is dormant and extinguished by virtue of Defendant Chicago Trauma Center's failure to make claim on the funds herein and to foreclose its lien in this action.

39. Defendant Dr. E. P. Couch was duly served with process herein and has made no appearance or filed any answer, is in default and judgment should be entered that he take nothing from the funds deposited herein. The Court further finds that any lien said Defendant Couch may have had upon sums due herein to Defendant Don Moore is dormant and extinguished by virtue of Defendant Couch's failure to make claim on the funds herein and to foreclose said lien in this action.

40. Defendant Dr. William B. Dawson was duly served with process herein and has made no appearance or filed any answer, is in default and judgment should be entered that he take nothing from the funds deposited herein. The Court further finds that any lien said Defendant may have had upon sums due herein to any Defendant is dormant and extinguished by virtue of Defendant William B. Dawson's failure to make claim on the funds herein and to foreclose its lien in this action.

41. Defendant Allstate Insurance Company was present at the settlement conference by and through its attorney of record, Mark A. Hanson. Said Defendant had a potential claim to the liability of portion of the fund by virtue of a subrogation right on an uninsured motorist policy. Said Defendant announced that it made

no claim to the fund and that it would waive any right it had to subrogation to the fund.

42. Defendant Mid-America Preferred Insurance was dismissed with prejudice from this action on November 17, 1988, and should take no share in the funds on deposit herein.

43. Defendant Universal Casualty Company was not present at the hearing, having been previously dismissed from this action after indicating that it made no claim to the fund on deposit herein. Dismissal was by Order of this Court filed November 1, 1988.

44. The parties have entered into a settlement agreement as described below and judgment should be entered herein and the funds on deposit herein should be disbursed as set forth below.

45. This Court has previously enjoined and restrained the Defendants named herein from seeking to enforce against the Plaintiff, State Farm Mutual Automobile Insurance Company, any judgments obtained against any insured of State Farm Mutual Automobile Insurance Company arising out of the action which is the subject of this suit, except in this action. (See this Court's Order of December 2, 1988).

46. A settlement agreement having been reached among the Defendants to this action, the Court finds that the injunction should be made permanent and that State Farm Mutual Automobile Insurance Company is relieved of any further liability as to all named Defendants herein under policy #160-1423-B14-36G issued to James Miller, except for said Plaintiff's continuing duty to defend its insured in other actions that may be brought against its insured.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Defendants Roger Adkins, Alfred Brewerton, Jr., Derrick Clady, Patrick A. Dean, Dajiana Erskine, Faith Fleischmann, Walter Flowers, Lilly Hill, Larry C. James, Rosie James, Amy James, and Audie James, Katherine A. Moats, Jason W. Parker, Lee G. Purdy, Maruicio Rueda, Juan E. Sanchez, Clifton G. Shackelford, Charlene Starr, Julie A. Toth, Lorenza Vangus, a/k/a Lorenza Vargas, Richard Marriott Wylie, Maria Zendejas, St. Francis Hospital, Inc., Dr. Jaroslaw Slusarenko, Radiology Consultants of Tulsa, Chicago Trauma Center, E. P. Couch, M.D., Dr. William B. Dawson, Allstate Insurance Company, Mid-America Preferred Insurance, and Universal Casualty Company take nothing in this action and they are hereby determined to be entitled no part nor portion of the fund on deposit in this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Court Clerk pay from the funds on deposit herein to the following Defendants the amounts indicated:

Total \$208,207.21

1. Vincente Couarrubias and Tom Birmingham, his attorney, \$2,176.15 plus .01088 of any interest accrued.  $\$89.30 = \underline{\$2,265.45}$
2. Desmond and Dorothy Feltus and Tom Birmingham, their attorney, \$2,275.07 plus .01138 of any interest accrued.  $\$93.40 = \underline{\$2,368.47}$
3. Timothy Rayfield and Phil R. Richards, his attorney, \$11,783.00 plus .05892 of any interest accrued.  $\$483.57 = \underline{\$12,266.57}$
4. Donald Thomas and William John Patterson, his attorney, \$1,250.00 plus .00625 of any interest accrued.  $\$51.30 = \underline{\$1,301.30}$
5. James Toliver and S. Dan George, his attorney, \$10,736.37 plus .05369 of any interest accrued.  $\$440.65 = \underline{\$11,177.02}$

6. Angel and Imelda Villagomez and Timothy E. McCormick, their attorney, \$1,500.00 plus  $\frac{\$61.55}{.00750} = \underline{\$1,561.55}$  of any interest accrued.

7. Muskogee Medical Center Authority \$5,622.49 plus  $\frac{\$230.70}{.02811} = \underline{\$5,853.19}$  of any interest accrued.

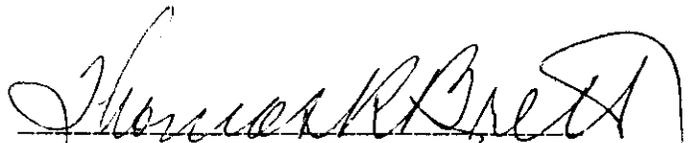
8. Greyhound Lines, Inc., \$3,905.50 plus  $\frac{\$160.30}{.01952} = \underline{\$4,065.70}$  of any interest accrued.

9. Don Moore and Don Pearson, his attorney, \$16,502.15 plus  $\frac{\$677.18}{.08251} = \underline{\$17,179.33}$  of any interest accrued.

10. Walter and Carol Patton and Bill V. Wilkinson, their attorney, \$64,624.64 plus  $\frac{\$2,651.91}{.32312} = \underline{\$67,376.55}$  of any interest accrued.

11. Kenneth Miller, Personal Representative, and Frasier and Frasier, his attorneys, \$79,624.63 plus  $\frac{\$3,267.45}{.39812} = \underline{\$82,892.08}$  of any interest accrued.  
*✓ 4-24-89 jc*

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff State Farm Mutual Automobile Insurance Company be and the same is hereby DISMISSED from this action and the Defendants and each of them are hereby PERPETUALLY ENJOINED and RESTRAINED from pursuing or prosecuting in this proceeding or any Court of law or in equity any action against the Plaintiff, State Farm Mutual Automobile Insurance Company, on account of the policy of insurance #160-1423-B14-36G, except upon State Farm Mutual Automobile Insurance Company's continuing duty to defend its insureds.

  
THOMAS R. BRETT,  
UNITED STATES DISTRICT JUDGE

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

FILED  
APR 11 1989

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

SHIRLEY K. BARKER,

Plaintiff,

-vs-

MARGARET HECKLER,

Defendant.

No. 83-C-770-E ✓

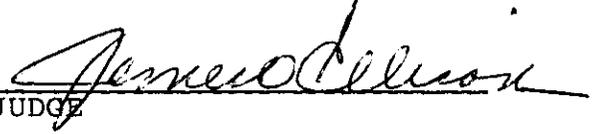
ORDER

This matter came on for hearing upon Motion of Shirley Barker by and through her counsel, W. Neil Wilson, for an Order of the Court authorizing the charge of Attorney Fees for legal services performed with regard for the Petition and Appeal from an Order of Administrative Law Judge and the Court being fully advised upon the premises finds as follows:

1. That the parties hereto have entered into a Stipulation with regard to the nature of the services performed and the fact that they were reasonable and necessary.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that the Secretary and her successor be authorized to remit for reasonable and necessary legal services performed as related to an appeal directly to the Federal Court of the

Northern District of the State of Oklahoma, the sum of \$4,294.70. That upon remission of said sum to counsel for the Petitioner herein that the said payment will constitute full and final payment in full of all legal services performed with regard to the appearances before the Administrative Agency and this Court.

  
\_\_\_\_\_  
JUDGE

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 DAN A. BOYD, )  
 441562837 )  
 )  
 Defendant, )

CIVIL NUMBER 89-C-071 E

NOTICE OF DISMISSAL

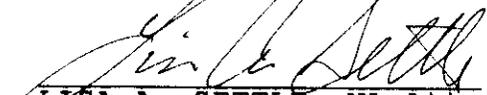
COMES NOW the Plaintiff, United States of America, by and through its attorney, Herbert N. Standeven, District Counsel, Veterans Administration, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

Respectfully Submitted,

UNITED STATES OF AMERICA

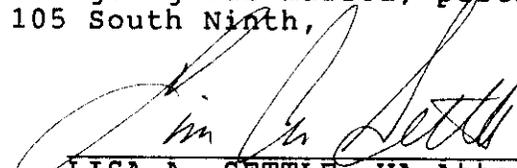
Herbert N. Standeven  
District Counsel  
Veterans Administration  
125 South Main Street  
Muskogee, OK 74401  
Phone: (918) 687-2191

By:

  
LISA A. SETTLE, VA Attorney

CERTIFICATE OF MAILING

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 1989, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: DAN A. BOYD, at 105 South Ninth, Jenks, OK 74037.

  
LISA A. SETTLE, VA Attorney

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

FILED

APR 11 1989

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

MIDAMERICA FEDERAL SAVINGS AND )  
LOAN ASSOCIATION, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ROBERT LEE SHEPLER and DEBORAH JO )  
SHEPLER, husband and wife; JOHN F. )  
CANTRELL, TULSA COUNTY TREASURER; )  
and BOARD OF COUNTY COMMISSIONERS, )  
TULSA COUNTY, OKLAHOMA; HOME )  
SAVINGS AND LOAN ASSOCIATION; and )  
THE FOURTH NATIONAL BANK OF TULSA, )  
 )  
Defendants. )

No. 88-C-1340-B

O R D E R

This matter comes before the Court upon Defendant The Fourth National Bank of Tulsa's Motion for Summary Judgment against Defendants Robert Lee Shepler and Deborah Jo Shepler. Fourth National asserted its Motion in state court before the case was removed, and now reasserts the Motion before this Court.

MidAmerica initiated the suit in the District Court of Tulsa County, Oklahoma, to collect upon a promissory note and to foreclose a second mortgage. Fourth National moved for summary judgment asserting it possesses a valid and superior claim in the real property described as:

Lot Six (6), Block Six (6), BROOKWOOD, an Addition in Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The parties responding to the motion have no objection to Fourth National's claim of a superior interest in the property. Defendants Robert and Deborah Shepler have not responded to the

motion for summary judgment, although they are represented by counsel who has made an appearance in this lawsuit. Pursuant to local Rule 15(B), all material facts set forth in a motion for summary judgment are deemed admitted unless specifically controverted. Therefore, Defendants Robert and Deborah Shepler confess Fourth National's claim of superior interest to the property at issue herein. Summary judgment is appropriate where there is no genuine issue of material fact. Matsushita Electric v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). In this instance, there is no dispute that Fourth National possesses a superior claim.

It is therefore ORDERED that Fourth National's Motion for Summary Judgment be sustained, the claim be declared a valid, superior lien on the property and the mortgage foreclosed. It is FURTHER ORDERED that Fourth National submit a proposed Judgment in accordance with this Order within 10 days from the date of this Order.

IT IS SO ORDERED, this 11<sup>th</sup> day of April, 1989.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

FILED

APR 11 1989  
Jack P. Scher, Clerk  
U. S. DISTRICT COURT

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

AMARYLLIS LYNN SIMOKAT,  
Plaintiff,  
v.  
NEW YORK LIFE INSURANCE CO.,  
Defendant.

88-C-1244-B

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate filed March 20, 1989 in which the Magistrate recommended that this case file should be closed.

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 United States Magistrate should be and hereby is affirmed.

It is, therefore, Ordered that this case file is closed.

Dated this 11 day of April, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



*entered*

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

**APR 10 1989**

MAURICE J. COBLECK  
CLERK  
U.S. DISTRICT COURT

KENNEDY & MITCHELL, INC.,	)
	)
	)
Plaintiff,	)
	)
vs.	)
	)
INTERNORTH, INC., (Now ENRON	)
Corp.), d/b/a NORTHERN	)
NATURAL GAS COMPANY,	)
	)
	)
Defendant.	)

No. 86-C-404-C  
No. 86-C-609-C  
(Consolidated)

**ORDER**

Now before the Court for its consideration are the objections of both parties to the Report and Recommendation of the Magistrate, the latter filed on September 21, 1988.

Coming before the Magistrate were the defendant's motion for partial summary judgment and the plaintiff's motion for partial summary judgment and supplemental motion for partial summary judgment, and to strike affidavit of William J. Poehling. The Magistrate issued a 38-page Report and Recommendation of a highly analytical and detailed nature. Most of his conclusions have not been objected to and, upon review, the Court finds that they should be adopted. The specific portions to which objections have been made are discussed below.

### Facts

Plaintiff Kennedy & Mitchell, Inc. (KMI) is a producer of natural gas which has entered into approximately twenty-four long term natural gas purchase contracts with defendant Internorth, Inc. (Northern). The contracts contain take-or-pay clauses. These clauses require Northern to take a minimum volume of natural gas each year (all but one of the contracts have a June 30th year end) or pay for the gas as if taken. KMI alleges that Northern has failed to take or pay for the minimum volume of natural gas in each year beginning in 1981 and extending through the present.

### Defendant's Objections

On December 18, 1984, the parties entered into a settlement agreement to resolve the issue of take-or-pay payments for the contract years ending in 1983, 1984, 1985 and 1986. The agreement was amended on December 31, 1985. The parties agreed as follows:

- (a) Northern would make an interest-free loan to KMI and its joint venturers in the total amount of \$7,000,000, of which \$1,855.827 was tendered to KMI.
- (b) KMI agreed to repay its share of the loan in 5 equal annual installments of \$371,165.40 each, commencing December 31, 1985.
- (c) Northern agreed to continue to take or pay for gas under the Contracts, but at reduced quantity requirements, namely, 60% of the "Contract Quantity" for the Contract Year ending June 30, 1985 and 70% of the "Contract Quantity" for the Contract Year ending June 30, 1986, unless such quantities were less than "ratable volumes" prescribed by state regulatory authorities.

It is undisputed that Northern made the payments referred to in paragraph (a) [the \$1,855.827 payment is termed the "Northern Payment"; the remaining \$5,144,173 payment is the "Additional Payment"]. However, take or pay deficiencies were incurred under the contracts, referred to in paragraph (c) for the contract year

ending in 1985. Northern has not made the payment for the years ending in 1985 or 1986. Northern relies upon paragraph 10 of the settlement agreement, which states:

10. The Northern Payment and the Additional Payment represent full and complete settlement by Northern of all deficiency payment claims made by KMI and the participating Additional Interest Owners for the two Contract Years prior which ended June 30, 1983 and June 30, 1984 respectively under the contracts.

Northern argues that since it has made the "Northern Payment" and the "Additional Payment", it has fulfilled its obligation under the agreement. Plaintiff responds by referring to the December 31, 1985 amendatory agreement, which provides in pertinent part:

Paragraph 4 of the Settlement Agreement calls for KMI to make a payment to Northern on December 31, 1985 in the amount of \$371,165.40. A further payment is to be made by an escrow agent, at the direction of KMI, on January 15, 1986 in the amount of \$924,941.18. KMI and Northern agree that the spirit and the letter of the Settlement Agreement requires Northern to make the deficiency payments, which may be due per paragraphs 1 and 2 of the Settlement Agreement, prior to the above described payments being made to Northern. KMI has not yet received a deficiency payment from Northern as contemplated by paragraph 1 of the Settlement Agreement.

(emphasis added).

It is not disputed that Northern has still not made the required deficiency payments. In its Amended Complaint, KMI seeks to rescind the Settlement Agreement and enforce its contract rights as they existed prior to execution of the Settlement Agreement. (Amended Complaint at ¶11). Northern moved for partial summary judgment that

KMI cannot rescind the December 18, 1984 settlement agreement between the parties because there has been no breach of the settlement agreement by Northern amounting to a failure of consideration, and no breach that cannot be compensated in damages, that would entitle KMI to rescind the settlement agreement.

(Defendant's August 7, 1987, motion for partial summary judgment at 2).

The parties agree that the following statement by the Supreme Court of Oklahoma is applicable:

The true rule appears to be that rescission or cancellation may properly be ordered where that which was undertaken to be performed in the future was so essential a part of the bargain that the failure of it must be considered as destroying or vitiating the entire consideration of the contract, or so indispensable a part of what the parties intended that the contract would not have been made with that condition omitted.

Davis v. Hastings, 261 P.2d 193, 195 (Okla. 1953)  
(quoting Hurst v. Champion, 244 P.419, 421  
(Okla. 1925)).

See also Davis v. Gwaltney, 291 P.2d 820, 823 (Okla. 1955). The Magistrate concluded that such a failure of consideration took place here, thus permitting rescission. See Report and Recommendation at 20 n.10. The Court disagrees. The initial agreement clearly states that the "Northern Payment" and the "Additional Payment" represent full and complete settlement for the two contract years noted. If either of these payments had not been made, plaintiff would be entitled to rescission, but it is not disputed that they were in fact made. If the plaintiff considered the deficiency payments "essential", it had a perfect opportunity to memorialize this belief in the December 31, 1985 amendatory agreement. However, the emphasized language, on page 3 of this Order, shows that plaintiff merely hinged its payments to Northern upon Northern making the deficiency payments. Plaintiff is bound by the language chosen, and may not rescind the Settlement Agreement, though it may sue for breach thereof.<sup>1</sup> In sum, defendant's motion for partial summary judgment will be granted on this point.

---

<sup>1</sup>The contractual language in the case at bar is quite different from that in Zenith Drilling Corp. v. Internorth, Inc. and Belnorth Petro. Corp (10th Cir.) (Mar. 10, 1989), in which the Tenth Circuit Court of Appeals found rescission available against this same defendant.

For the reasons recited above, the Court must also reject the Magistrate's recommendation that plaintiff be granted partial summary judgment as to Northern's affirmative defense of accord and satisfaction. Obviously, however, the defense is only applicable to those claims covered by the language of the Settlement Agreement.

Finally, defendant objects to the Magistrate's conclusion that the take-or-pay provisions of the contracts operate as unenforceable penalty clauses. See 15 O.S. §213. Authority appears to be uniform -- and the Magistrate's recommendation is in accord -- that a take-or-pay clause is not a penalty, but rather establishes an alternative means of performance. See J. Medina, Take-Or-Pay Oklahoma Style, 60 O.B.J. 705, 708-09 & n.21 (1989) (citing many unpublished decisions). Therefore, the Magistrate will be followed on this recommendation.

#### Plaintiff's Objections

Plaintiff objects to the Magistrate's recommendation that plaintiff's motion for partial summary judgment be denied as to plaintiff's claim of repudiation. The Magistrate found that there existed genuine issues of material fact as to (1) whether repudiation had actually taken place, (2) whether plaintiff has "waived" repudiation by its actions of continuing sales to defendant, and (3) whether defendant's actions substantially impaired the value of the whole of each contract. The Court has independently reviewed the evidence and arguments presented by the parties and finds that the Magistrate should be affirmed. The defendant has filed a

"supplemental" objection on October 17, 1988, arguing that the Magistrate should have concluded that defendant's motion for partial summary judgment (that plaintiff had reinstated the contracts through its actions) should be granted. This supplemental objection is untimely, but in any event the Court is persuaded that genuine issues of material fact remain.

It is the Order of the Court that the motion of the defendant for partial summary judgment is hereby granted as to plaintiff's claim for rescission. The motion of the plaintiff for partial summary judgment as to defendant's affirmative defense of accord and satisfaction is hereby denied.

It is the further Order of the Court that, in accordance with the Report and Recommendation of the Magistrate, defendant's motion for partial summary judgment as to repudiation/reaffirmation is hereby denied. Plaintiff's motion for partial summary judgment as to each of defendant's affirmative defenses and counterclaims is hereby granted, with the exception of the affirmative defense of accord and satisfaction. The plaintiff's motion to strike Poehling's affidavit is hereby denied. Plaintiff's supplemental motion for partial summary judgment as to repudiation is hereby denied.

IT IS SO ORDERED this 10<sup>th</sup> day of April, 1989.

  
H. DALE COOK

Chief Judge, U. S. District Court

FILED

APR 10 1989

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

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

HAROLD WALLACE, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 RON CHAMPION, Warden; ROBERT H. )  
 HENRY, Attorney General, )  
 )  
 Respondents. )

No. 88-C-394-B

ORDER

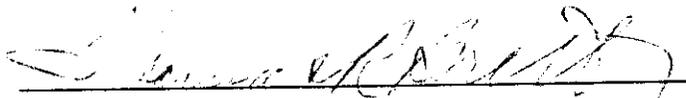
This matter comes before the Court upon Petitioner Harold Wallace's petition for habeas corpus. This Court has already addressed several of Petitioner's arguments in a prior Order, which is currently on appeal to the Tenth Circuit. Petitioner now seeks to raise additional grounds for relief.

Petitioner argues the trial court committed reversible error by allowing Petitioner's counsel to waive the right to a bifurcated trial. As Petitioner waived his right to a jury trial, the issue of whether Petitioner was entitled to a bifurcated trial became moot. The issue of whether Petitioner intelligently waived his right to a jury trial is presently before the Tenth Circuit.

Petitioner also asserts the trial court committed reversible error by failing to instruct itself with regard to all issues in dispute. As there are no instructions to give in a trial to the court, Petitioner's argument is baseless.

Therefore, Petitioner's motion to vacate or set aside this Court's previous Order is DENIED.

IT IS SO ORDERED, this 10<sup>th</sup> day of April, 1989.

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

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

FILED  
United States  
Court

MAR 22 1989

ROBERT L. HOECKER  
Clerk

HAROLD WALLACE,  
Plaintiff - Appellant,  
  
v.  
  
RON CHAMPION, Warden; ROBERT H. HENRY,  
Attorney General,  
  
Defendants - Appellees.

No. 88-2913

88-C-394-B ✓

FILED

MAR 28 1989

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

ORDER

Appellant's motion for a remand is construed as a motion to abate appellate proceedings and is denied without prejudice to its renewal if the district court indicates it would grant the relief requested. Garcia v. Regents of the University of California, 737 F. 2d 889 (10th Cir. 1984).

Entered for the Court  
ROBERT L. HOECKER, Clerk

By: Patrick Fisher  
Patrick Fisher, Chief Deputy Clerk

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

FILED  
APR 1989  
U.S. DISTRICT COURT

SIDNEY K. SWINSON, Trustee in )  
Bankruptcy for Woodrow Wilson )  
Childers and Betty Jo Childers, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
BARUCH-FOSTER CORPORATION, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No. 86-C-824-E

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, Sidney K. Swinson, Trustee, Plaintiff, and Baruch-Foster Corporation, Defendant, by and through their respective attorneys of record, hereby stipulate to the dismissal of the captioned case, with prejudice, with each party bearing its own costs and attorney fees.

DATED at Tulsa, Oklahoma, this 8th day of February, 1989.

SIDNEY K. SWINSON, TRUSTEE

B. Jack B. Sellers  
JACK B. SELLERS  
JACK B. SELLERS LAW  
ASSOCIATES, INC.  
P.O. Box 730  
Sapulpa, Oklahoma 74067  
(918) 224-9070

BARUCH-FOSTER CORPORATION

By   
Richard F. Campbell III  
FELLERS, SNIDER, BLANKENSHIP,  
BAILEY & TIPPENS  
2400 First Nat'l Ctr. West  
Oklahoma City, Oklahoma 73102  
(405) 232-9659

FILED

APR 7 1989

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

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

ALFRED R. LEWIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	NO. 88-C-657-E
	)	
SOHIO OIL COMPANY d/b/a	)	
TRUCK STOPS OF AMERICA,	)	
	)	
Defendant.	)	

JOINT STIPULATION OF  
DISMISSAL WITH PREJUDICE

Plaintiff, ALFRED R. LEWIS, and Defendant, SOHIO OIL COMPANY, d/b/a TRUCK STOPS OF AMERICA, do hereby stipulate that Plaintiff's Complaint herein shall be and is hereby dismissed with prejudice, with each party to bear its own costs and attorney's fees.

EXECUTED this 1<sup>st</sup> day of April, 1989.

MORICOLI, WILSON, HARRIS & DUBBERSTEIN,  
A Professional Corporation

By Michael G. Harris  
Michael G. Harris - OBA No. 3903

First Oklahoma Tower, Suite 1200  
210 West Park Avenue  
Oklahoma City, Oklahoma 73102-5664  
Telephone: (235-3357)

Attorneys for Defendant:  
SOHIO PETROLEUM COMPANY,  
d/b/a TRUCK STOPS OF AMERICA

WYATT, AUSTIN & ASSOCIATES

By H. Leo Austin  
H. Leo Austin - OBA No. 380

P. O. Box 333  
Ada, Oklahoma 74820  
Telephone: (405) 436-2300

Attorneys for Plaintiff:  
ALFRED R. Lewis

MGH/4/791.1-791.2

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

FILED

APR 7 1989

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

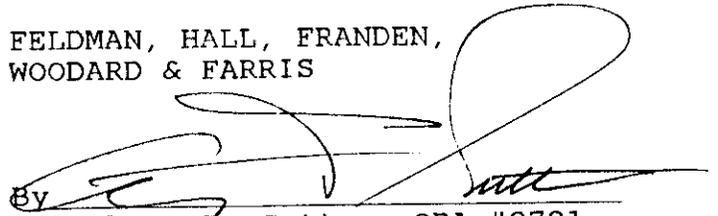
BROWNING-FERRIS, INC., a )  
corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
NICK ROBSON, an individual, )  
 )  
Defendant.)

Case No. 88-C-443-B

DISMISSAL WITHOUT PREJUDICE

Pursuant to Rule 41, Fed.R.Civ.P., and this Court's Order of April 4, 1989, Plaintiff hereby dismisses its Complaint against Defendant without prejudice.

FELDMAN, HALL, FRANZEN,  
WOODARD & FARRIS

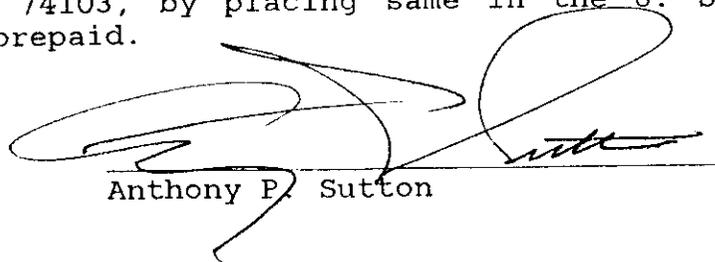


By \_\_\_\_\_  
Anthony P. Sutton, OBA #8781  
Park Centre - Suite 1400  
525 South Main  
Tulsa, OK 74103-4409  
(918) 583-7129

ATTORNEYS FOR PLAINTIFF,  
BROWNING-FERRIS, INC.

CERTIFICATE OF MAILING

THIS IS TO CERTIFY that I have this 7<sup>th</sup> day of April, 1989, served a copy of the above and foregoing instrument upon Laurence L. Pinkerton, Esq., Conner & Winters, 2400 First National Tower, Tulsa, OK 74103, by placing same in the U. S. Mail, first-class postage prepaid.



Anthony P. Sutton

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

FILED  
1989  
DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
VINCENT G. CLARK, )  
246868716 )  
 )  
Defendant, )

CIVIL NUMBER 89-C-072 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.

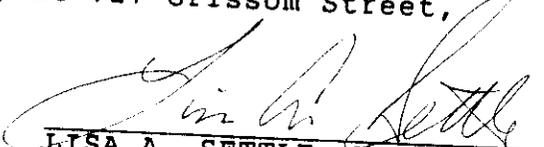
Respectfully Submitted,

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 April, 1989, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: VINCENT G. CLARK, at 727 Grissom Street, San Diego, CA 92154.

  
LISA A. SETTLE, VA Attorney

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

DYCO PETROLEUM CORPORATION, )  
a corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CABOT PIPELINE CORPORATION, )  
a corporation, and WESTAR )  
TRANSMISSION COMPANY, a division )  
of CRANBERRY PIPELINE CORPORATION, )  
a corporation, )  
 )  
Defendants. )

Case No. 89 C 257C

PLAINTIFF'S DISMISSAL WITHOUT PREJUDICE

Plaintiff Dyco Petroleum Corporation, pursuant to Federal Rule of Civil Procedure 41(a)(1), hereby files its notice of dismissal of the above styled action without prejudice to refiling. Defendant has not served an answer or any other pleading in this action and therefore under Federal Rule of Civil Procedure 41(a)(1), Plaintiff may, as a matter of right, dismiss this action without prejudice to refiling.

  
\_\_\_\_\_  
Danny P. Richey, OBA # 10458  
Ned Dismukes, OBA # 11813  
BRUNE, PEZOLD, RICHEY & LEWIS  
700 Sinclair Building  
Six East Fifth Street  
Tulsa, Oklahoma 74103  
(918) 584-0506

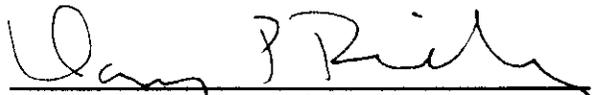
ATTORNEYS FOR  
DYCO PETROLEUM CORPORATION

CERTIFICATE OF MAILING

I, Danny P. Richey, hereby certify that on the 7<sup>th</sup> day of April, 1989, I placed in the United States mails at Tulsa, Oklahoma, a true and correct copy of the above and foregoing document with correct postage fully prepaid thereon, addressed to the following:

CABOT PIPELINE CORPORATION  
c/o The Corporation Company  
735 First National Bldg.  
Oklahoma City, Oklahoma 73102

CRANBERRY PIPELINE CORPORATION  
c/o C. T. Corporation  
811 Dallas Avenue  
Houston, Texas 77002

  
\_\_\_\_\_  
Danny P. Richey



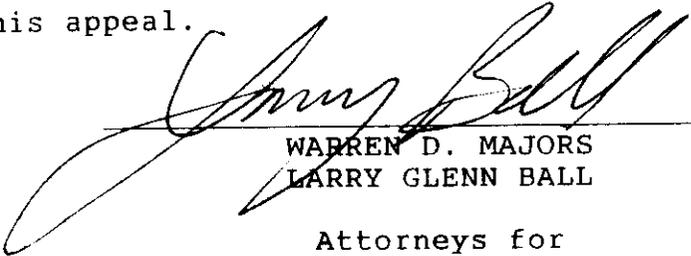


IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ANDREWS R. TURNER, CHAPTER 11	)	
TRUSTEE for the Estate of the	)	
Debtor,	)	
	)	
Plaintiff,	)	88-C-1527B
	)	
v.	)	Adv. No. 88-0195-C
	)	
PETRO SOURCE CORPORATION,	)	
	)	
Defendant.	)	
	)	
IN RE:	)	
	)	Bankruptcy Appeal
PETROPLEX, INC.	)	NO. 88-01818-C
	)	(Chapter 11)
Debtor.	)	(Involuntary)
	)	

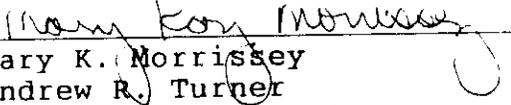
STIPULATION OF DISMISSAL

The parties to this cause seek to have the above-captioned appeal dismissed by this Court, and hereby stipulate that same should be dismissed. The parties further stipulate that each party hereto shall bear its own costs and attorneys fees involved with the prosecution of this appeal.

  
WARREN D. MAJORS  
LARRY GLENN BALL

Attorneys for  
Petro Source Corporation

OF COUNSEL:  
SPRADLING, ALPERN, FRIOT & GUM  
101 Park Avenue, Suite 700  
Oklahoma City, OK 73102  
405/272-0211

  
Mary K. Morrissey  
Andrew R. Turner  
2400 First National Tower  
Tulsa, Oklahoma 74103

Attorney for Trustee  
7559P114

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

APR 10 1989

BANK OF OKLAHOMA, LEWIS CENTER )  
(formerly Bank of Oklahoma, )  
Boulder Park), )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MIDAMERICA FEDERAL SAVINGS )  
AND LOAN ASSOCIATION OF TULSA, )  
OKLAHOMA, )  
 )  
Defendant. )

Case No. 88-C-1342-B

**STIPULATION OF DISMISSAL**

The Federal Savings and Loan Insurance Corporation, as Receiver for MidAmerica Federal Savings and Loan Association (the "FSLIC"), by and through its counsel of record, Barry K. Beasley, Local America Bank of Tulsa ("Local America") as Successor in Interest to MidAmerica Federal Savings and Loan Association ("MidAmerica"), by and through its counsel of record, L. Dru McQueen, and the Bank of Oklahoma ("BOK"), by and through its counsel of record, Christopher L. Coyle, hereby file this Stipulation of Dismissal.

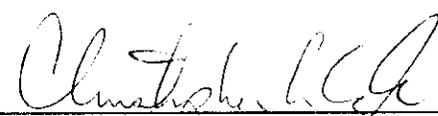
THEREFORE, pursuant to Fed. R. Civ. P. 41(a)1, the FSLIC, Local America and BOK hereby dismiss, without prejudice, this Cause of Action, including each and every claim asserted against each and every Party in this case.

DATED this 5th day of April, 1989.

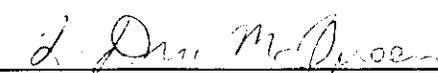
APPROVED AS TO FORM:

By: 

Barry K. Beasley, OBA #11220  
HUFFMAN, ARRINGTON, KIHLE,  
GABERINO & DUNN  
A Professional Corporation  
1000 ONEOK Plaza  
Tulsa, Oklahoma 74103  
(918) 585-8141  
Attorney for THE FEDERAL  
SAVINGS AND LOAN INSURANCE  
CORPORATION, AS RECEIVER  
FOR MIDAMERICA FEDERAL SAVINGS  
AND LOAN ASSOCIATION

By: 

Christopher L. Coyle, Esq.  
ROBINSON, BOESE, ORBISON & LEWIS  
A Professional Corporation  
P. O. Box 1046  
Tulsa, Oklahoma 74101  
(918) 583-1232  
Attorney for BANK OF OKLAHOMA,  
LEWIS CENTER (formerly Bank of  
Oklahoma, Boulder Park)

By: 

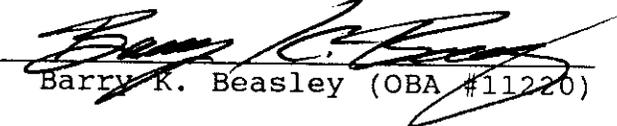
L. Dru McQueen, Esq.  
DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
(918) 582-1211  
Attorney for LOCAL AMERICA  
BANK, SUCCESSOR IN INTEREST  
TO MIDAMERICA FEDERAL SAVINGS  
AND LOAN ASSOCIATION

CERTIFICATE OF MAILING

The undersigned certifies that a copy of the foregoing Stipulation of Dismissal was mailed this 6th day of April, 1989, by First-Class mail, postage prepaid, to the parties and attorneys of record as follows:

Christopher L. Coyle, Esq.  
Robinson, Boese, Orbison & Lewis  
P. O. Box 1046  
Tulsa, Oklahoma 74101

L. Dru McQueen, Esq.  
Doerner, Stuart, Saunders,  
Daniel & Anderson  
1000 Atlas Life Building  
415 South Boston Avenue  
Tulsa, Oklahoma 74103

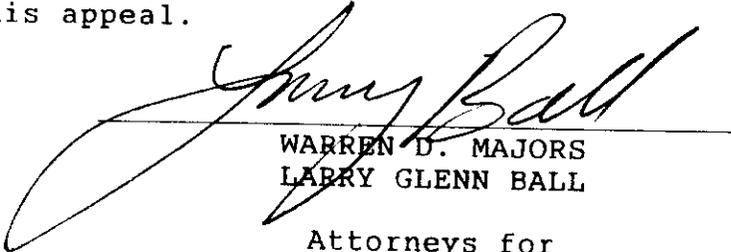
  
Barry K. Beasley (OBA #11220)

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

ANDREWS R. TURNER, CHAPTER 11	)	
TRUSTEE for the Estate of the	)	
Debtor,	)	
	)	
Plaintiff,	)	88-C-1572B
	)	
v.	)	Adv. No. 88-0195-C
	)	
PETRO SOURCE CORPORATION,	)	
	)	
Defendant.	)	
	)	
IN RE:	)	
	)	
PETROPLEX, INC.	)	Bankruptcy Appeal
	)	NO. 88-01818-C
	)	(Chapter 11)
Debtor.	)	(Involuntary)
	)	

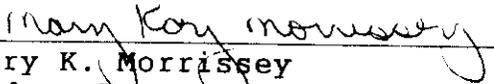
STIPULATION OF DISMISSAL

The parties to this cause seek to have the above-captioned appeal dismissed by this Court, and hereby stipulate that same should be dismissed. The parties further stipulate that each party hereto shall bear its own costs and attorneys fees involved with the prosecution of this appeal.

  
WARREN D. MAJORS  
LARRY GLENN BALL

Attorneys for  
Petro Source Corporation

OF COUNSEL:  
SPRADLING, ALPERN, FRIOT & GUM  
101 Park Avenue, Suite 700  
Oklahoma City, OK 73102  
405/272-0211

  
Mary K. Morrissey  
Andrew R. Turner  
2400 First National Tower  
Tulsa, Oklahoma 74103

Attorney for Trustee  
7559P112

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

TURBOTECH, INC., an )  
Oklahoma corporation )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
GRENSTED LIMITED, )  
 )  
Defendant. )

No. 88-C-1370-B

NOTICE OF DISMISSAL

COMES NOW, the Plaintiff, TurboTech, Inc., and dismisses its Complaint against the Defendant, Grensted Limited, pursuant to Federal Rule of Civil Procedure 41(a).

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

By: Robert S. Erickson  
Robert S. Erickson, OBA #11825  
3800 First National Tower  
Tulsa, Oklahoma 74103  
(918) 581-8200

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

DARRYL K. PEARSON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 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. )

Case No. 88-C-71-B

FILED  
APR 5 1989  
Jack C. Smith, Clerk  
U. S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

This matter coming on for Hearing before the Court on this 5<sup>th</sup> day of April, 1989, upon the Application of the Plaintiff for Order of Dismissal With Prejudice in this cause, Plaintiffs appearing by Counsel, Tony Laizure and Mark Koss, and the Defendant, Niagara Machine & Tool Works, appearing by counsel, Dale F. McDaniel, and the Court being advised in the premises and having examined the Application of the Plaintiffs herein, finds that all issues of law and fact heretofore existing between the parties have been settled, compromised, released and extinguished, for valuable consideration flowing from Plaintiffs to Defendant and from Defendant to Plaintiffs, and further finds that there remains no issue of law or fact to be determined in this cause. The Court further finds that Plaintiffs desire to dismiss their cause to future actions for the reason stated, and their Application should be granted.

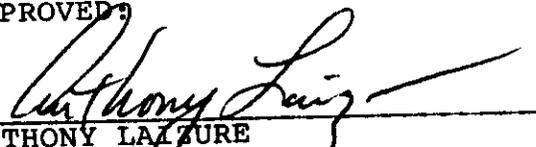
BE IT, THEREFORE, ORDERED, ADJUDGED AND DECREED BY THE COURT, that all issues of law and fact heretofore existing between the Plaintiff and Defendant have been settled, compromised, released and extinguished for valuable consideration, and that there remains no issue to be determined in this cause between the parties.

BE IT FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT, that Plaintiffs cause and any causes arising therefrom, be in the same are hereby dismissed with prejudice to all future actions thereon.

S/ THOMAS R. BRETT

\_\_\_\_\_  
JUDGE

APPROVED:

By   
ANTHONY LAZURE  
ATTORNEY FOR PLAINTIFF  
DARRYL K. PEARSON

By   
MARK KOSS  
ATTORNEY FOR THE TRAVELERS  
INSURANCE COMPANY

44  
  
Attorney for Niagara

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

FILED

APR 5 1989

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

JOHN B. JARBOE, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 BARBARA C. TREIBER, et al, )  
 )  
 Defendants. )

88-C-1540-B

OPINION

Appellant brings the instant appeal from a decision of the United States Bankruptcy Court, granting Appellee's Motion for Summary Judgment; thereby concluding that Debtor's homestead interest was exempt property and not subject to the Trustee's reach.

A. The Facts

Within a year before Debtor sought protection of the United States Bankruptcy Court, he executed a deed whereby he purported to transfer his interest in he and his wife's home, to his wife.

The home, prior to Debtor's action, was held jointly by he and his wife, as joint tenants, as required under Oklahoma law (see, Tit. 16 O.S. §4).

Subsequent to Debtor's filing, the Trustee filed an adversary action against Debtor's wife, claiming that Debtor's transfer of his interest in the couple's home was voidable under 11 U.S.C. §547(b). Thereafter, on October 27, 1987, the Debtor amended Schedule B-4, adding to it his homestead interest, claiming same as exempt. Notwithstanding Bankruptcy Rule 4003(b), which provides that the Trustee shall file any objection

to claimed exemptions within thirty (30) days, the Trustee filed no objection. On March 3, 1988 the Debtor again amended Schedule B-4, reiterating his claim for exemption of his homestead interest pursuant to Tit. 31 O.S. §1. The Trustee responded on March 31, 1988, objecting to the claimed exemption by reason of Debtor's purported earlier transfer.

The Bankruptcy Court consolidated the adversary proceeding with that of the Trustee's objection on April 12, 1988. Thereafter, on June 7, 1988, the Debtor and his wife (Defendant), filed a joint Motion for Summary Judgment on the Trustee's objection. Following hearing, the Bankruptcy Court granted Debtor's Motion on August 26, 1988 and subsequently overruled the Trustee's Motion for Rehearing on November 1, 1988.

#### B. The Issues on Appeal

Two fundamental issues are presented on appeal. First, does the Trustee have an interest in Debtor's home, in light of the homestead? Second, may Debtor claim an exemption to the homestead after transferring same to his wife?

The Bankruptcy Court found (1) that Debtor's homestead is exempt property, hence not part of his estate; and (2) that avoidance of the conveyance would be a fruitless exercise in light of the wife's superior homestead rights. As a result, the Trustee would not be able to partition the homestead, thus rendering avoidance of the transfer meaningless.

Upon review, the Court agrees. The Bankruptcy Court correctly addressed the fundamental issues, finding the homestead

to be exempt and indivisible.

Furthermore, this Court finds persuasive the holding of Rutledge v. Johansen, 270 F.2d 881 (10th Cir. 1959), adopted by the Bankruptcy Court as governing the instant case. There, the debtor conveyed his homestead some four (4) months before declaring bankruptcy. The Trustee sought to set aside the conveyance, but the Court of Appeals upheld a finding to the contrary, stating:

[A] transfer of exempt property of a debtor, though it is to a creditor and to apply on an antecedent indebtedness, does not give rise to a voidable preference ... The statement is grounded in the legal concept that property exempt by law remains in the bankrupt, does not pass to the trustee, and the bankrupt's disposition of it prior to bankruptcy is therefore no concern to the trustee or the creditors he represents. (Id.) (Emphasis added.)

The Debtor's transfer of his homestead interest to his wife, was a transfer of otherwise exempt property and "therefore [of] no concern to the trustee or the creditors he represents."

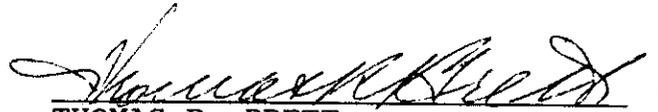
Notwithstanding the foregoing, under Oklahoma law, the homestead belongs to the entire family. (See, In re: Carothers' Estate, 167 P.2d 899, 902 (Okla. 1946)). Here, not only is there a real question as to the validity of debtor's initial transfer to his wife (Oklahoma law requires both husband and wife execute a deed conveying the interest of one, when the real property is held in joint tenancy, as here), but as to the effect of same, even if valid. See, eg: Pettis v. Johnston, 190 P. 681, 78 Okl. 277 (Okla. 1920), wherein the court held, (and such is Oklahoma law today), that the homestead interest "is jointly

vested in the husband and wife for the benefit of themselves and family, without regard to which spouse owns the title to the land." (Emphasis added.)

Thus, the effect of the husband's attempted conveyance, notwithstanding the exempt character of the property, is the same as if he had never conveyed it. The trustee cannot, therefore, acquire an interest superior to the homestead.

In sum, this case is determined by the character of the property about which it is centered. The homestead, exempt at the outset, does not lose its character, either by transfer between husband and wife or by reason of the bankruptcy filing.

ACCORDINGLY, the judgment of the Bankruptcy Court is hereby AFFIRMED.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT COURT

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

ANITA RUSSELL,

Plaintiff,

vs.

JEEP EAGLE CORPORATION, ET AL.,

Defendants.

No. 88-C-1609-E

ORDER OF DISMISSAL

Upon the stipulation of the parties filed herein, advising the court that the parties have consummated a complete and final settlement of all claims asserted, or which might have been asserted, herein, and having stipulated that this action may, therefore, be dismissed with prejudice,

IT IS HEREBY ORDERED AND DECREED that this case be, and the same hereby is, dismissed with prejudice to the bringing of any further action, costs to be born by the party having incurred them.

DATED: ~~March~~ <sup>April</sup> 5, 1989.

JAMES O. HUSON

UNITED STATES DISTRICT JUDGE

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

FILED

APR 5 1989

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

DAVID STEVEN MOSHER, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
VICTOR SAVINGS AND LOAN )  
ASSOCIATION, et al, )  
 )  
Defendants. )

✓  
88-C-122-B

ORDER

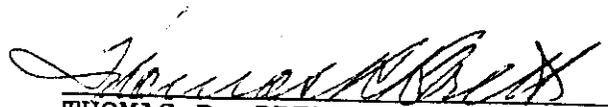
The Court has for consideration the Report and Recommendation of the United States Magistrate filed March 8, 1989 in which the Magistrate recommended that the action against Dennison should be dismissed without prejudice.

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 United States Magistrate should be and hereby is affirmed.

It is, therefore, Ordered that the action against Dennison is dismissed without prejudice.

Dated this 5<sup>th</sup> day of April, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

FILED

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

APR 5 1989

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

JAMES M. NEELEY,  
Plaintiff,

v.

OTIS R. BOWEN, M.D.,  
Secretary of Health  
and Human Services,  
Defendant.

88-C-1278-B

ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed March 20, 1989, in which the Magistrate recommended that defendant's Motion to Dismiss be granted. 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 defendant's Motion to Dismiss is granted.

Dated this 5<sup>th</sup> day of April, 1989.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

APR 5 1989

JACK U. SELL, CLERK  
U. S. DISTRICT COURT

JIMMY THOMAS, a minor, and )  
JOHN THOMAS and SANDY THOMAS )  
individually and as parents )  
and natural guardians of )  
JIMMY THOMAS, a minor, )

Plaintiffs, )

vs. )

No. 88-C-469-B

THE CITY OF SAPULPA, OKLA. )  
A municipal corporation, )

Defendant. )

ORDER OF DISMISSAL

NOW on this 5<sup>th</sup> day of April, 1989, upon the  
written application of the Plaintiffs, John Thomas and Sandy Thomas,  
individually and as parents and natural guardians of Jimmy Thomas, a  
minor, and the Defendant, The City of Sapulpa, Oklahoma, for a  
dismissal with prejudice of the Complaint of Thomas v. Sapulpa, and all  
causes of action therein, the Court having examined said application,  
finds that said parties have entered into a compromise settlement  
covering all claims involved in the Complaint and have requested the  
Court to dismiss said Complaint with prejudice to any future action.  
The Court being fully advised in the premises finds said settlement is  
to the best interest of the Plaintiffs, and that said Complaint should  
be dismissed pursuant to said application. The Court further finds  
that the parties hereto have entered into an agreed settlement in the

sum of ONE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$1,500.00), inclusive of attorney fees, costs, and medical expenses, and the Court finds same is reasonable and to the best interest of the minor.

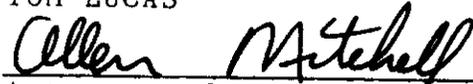
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiffs, John Thomas and Sandy Thomas, individually and as parents and natural guardians of Jimmy Thomas, a minor, against the Defendant, The City of Sapulpa, Oklahoma, be and the same hereby are dismissed with prejudice to any future action.

S/ THOMAS R. BRETT

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

APPROVALS AS TO FORM:

ALLEN MITCHELL  
TOM LUCAS



Attorneys for the Plaintiffs

JOHN HOWARD LIEBER

Attorney for the Defendant

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

PATRICK FAULKNER,

Plaintiff,

vs.

TOWN OF MANNFORD, ORLIN WHITE,  
MARK PAYNE and OTHER UNKNOWN  
INDIVIDUALS,

Defendants.

No. 89-C-103E

FILED

APR 5 1989

Jack C. Silver,  
U.S. DISTRICT COURT

ORDER OF DISMISSAL

Pursuant to the Joint Stipulation of Dismissal filed by the plaintiff, Patrick Faulkner, the Court dismisses, with prejudice, his complaint against the defendants, Town of Mannford, Orlin White, Mark Payne and other unknown individuals, with each party being responsible for their costs and attorney fees incurred herein.

Dated this 5 day of April, 1989.

s/ JAMES O. ELLSON

UNITED STATES DISTRICT JUDGE

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

**F I L E L**

APR 5 1989 *pw*

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

LYNDELL E. HARRELL,  
Plaintiff,  
  
-vs-  
  
NORTHERN ARKANSAS  
WHOLESALE COMPANY, INC.,  
and CLAUDE ALLEN  
MCDOWELL,  
Defendants.

No. 88-C-545-C ✓

O R D E R

NOW on this 5 day of April, 1989,  
plaintiff's Application to Dismiss with Prejudice came on for  
hearing. The Court being fully advised in the premises finds  
that said Application should be sustained and the defendants,  
should be dismissed from the above entitled action with  
prejudice.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that  
plaintiff's Application to Dismiss With Prejudice be sustained  
and the above captioned action be dismissed with prejudice as to  
defendants.

*[Handwritten Signature]*  
UNITED STATES DISTRICT JUDGE

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

IN RE: )  
)  
JOHN H. WILLIAMS, JR., and ) No. 88-C-1638-E  
CAROL S. WILLIAMS, )  
) (Bankruptcy Case No.  
Debtors. ) 86-00475-W, Chapter 11)

---

TOWN & COUNTRY BANK, an )  
Oklahoma Banking Corporation, )  
) *Consol. 88-C-1636-E*  
Plaintiff, )  
) (Bankruptcy Adversary  
vs. ) No. 87-0238-W)  
)  
JOHN H. WILLIAMS, JR., )  
)  
Defendant. )

---

ORDER OF DISMISSAL

The Court has for its consideration the Defendant's Voluntary Dismissal of Appeal filed in this matter by the Defendant, John H. Williams, Jr. Upon consideration of the Voluntary Dismissal of Appeal and for good cause shown, it is hereby

ORDERED that the instant appeal be dismissed. The dismissal of this appeal shall not affect Defendant's appeals in Case Nos. 88-C-1636-E, 88-C-1637-E, 88-C-1639-E or 88-C-1640-E.

IT IS FURTHER ORDERED that each party shall bear its own costs and attorneys' fees.

DATED this 5<sup>th</sup> day of April, 1989.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE  
FOR THE NORTHERN DISTRICT OF  
OKLAHOMA

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
vs. )  
)  
LARRY H. YOUNG; MARIANN L. )  
YOUNG a/k/a MARI ANN L. YOUNG )  
a/k/a MARI ANN YOUNG; BROKEN )  
ARROW MEDICAL CENTER, INC. )  
f/k/a FRANKLIN MEMORIAL )  
HOSPITAL OF BROKEN ARROW, INC.; )  
STATE OF OKLAHOMA ex rel. )  
OKLAHOMA TAX COMMISSION; )  
COUNTY TREASURER, Tulsa County, )  
Oklahoma; and BOARD OF COUNTY )  
COMMISSIONERS, Tulsa County, )  
Oklahoma, )  
)  
Defendants. )

CIVIL ACTION NO. 88-C-506-B

FILED  
APR 5 1989  
Jack G. Silver, Clerk  
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 5<sup>th</sup> day  
of April, 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 Carl Robinson, Assistant District Attorney,  
Tulsa County, Oklahoma; the Defendants, Broken Arrow Medical  
Center, Inc. f/k/a Franklin Memorial Hospital of Broken Arrow,  
Inc., and State of Oklahoma ex rel. Oklahoma Tax Commission,  
appear not, having previously filed their Disclaimers; and the  
Defendants, Larry H. Young and Mariann L. Young a/k/a Mari Ann L.  
Young a/k/a Mari Ann Young, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Larry H. Young, was served with Summons and Complaint on February 28, 1989; that the Defendant, Mariann L. Young a/k/a Mari Ann L. Young a/k/a Mari Ann Young, acknowledged receipt of Summons and Complaint on June 20, 1988; that the Defendant, Broken Arrow Medical Center, Inc. f/k/a Franklin Memorial Hospital of Broken Arrow, Inc., acknowledged receipt of Summons and Complaint on June 3, 1988; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on June 6, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 7, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 3, 1988.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on June 23, 1988; that the Defendant, Broken Arrow Medical Center, Inc. f/k/a Franklin Memorial Hospital of Broken Arrow, Inc., filed its Disclaimer on June 28, 1988; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Disclaimer on August 12, 1988; and that the Defendants, Larry H. Young and Mariann L. Young a/k/a Mari Ann L. Young a/k/a Mari Ann Young, 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 Seventeen (17), Block Eight (8), NEW HAVEN ADDITION, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on October 10, 1986, Larry H. Young and Mariann L. Young executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$27,500.00, payable in monthly installments, with interest thereon at the rate of 9.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, Larry H. Young and Mariann L. Young executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated October 10, 1986, covering the above-described property. Said mortgage was recorded on October 15, 1986, in Book 4976, Page 926, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Larry H. Young and Mariann L. Young a/k/a Mari Ann L. Young a/k/a Mari Ann Young, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that

by reason thereof the Defendants, Larry H. Young and Mariann L. Young a/k/a Mari Ann L. Young a/k/a Mari Ann Young, are indebted to the Plaintiff in the principal sum of \$27,536.01, plus interest at the rate of 9.5 percent per annum from October 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, Broken Arrow Medical Center, Inc. f/k/a Franklin Memorial Hospital of Broken Arrow, Inc., and State of Oklahoma ex rel. Oklahoma Tax Commission, disclaim any right, title, or interest in the subject real property.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, Larry H. Young and Mariann L. Young a/k/a Mari Ann L. Young a/k/a Mari Ann Young, in the principal sum of \$27,536.01, plus interest at the rate of 9.5 percent per annum from October 1, 1987 until judgment, plus interest thereafter at the current legal rate of 9.43 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, Broken Arrow Medical Center, Inc. f/k/a Franklin Memorial Hospital of Broken Arrow, Inc., State of Oklahoma ex rel. Oklahoma Tax Commission, and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants

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

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
NANCY NESBITT BLEVINS, OBA #6634  
Assistant United States Attorney

  
CARL ROBINSON, OBA #10164  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

NNB/css

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

WILLIAM P. ROOKS; JOYCE A. )  
ROOKS; COUNTY TREASURER, Tulsa )  
County, Oklahoma; and BOARD OF )  
COUNTY COMMISSIONERS, Tulsa )  
County, Oklahoma, )

Defendants. )

CIVIL ACTION NO. 88-C-372-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 5 day  
of April, 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, Tulsa County, Oklahoma, and  
Board of County Commissioners, Tulsa County, Oklahoma, appear by  
Carl Robinson, Assistant District Attorney, Tulsa County,  
Oklahoma; and the Defendants, William P. Rooks and Joyce A.  
Rooks, appear not, but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, Joyce A. Rooks, was served  
with Summons and Complaint on June 6, 1988; that Defendant,  
County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of  
Summons and Complaint on April 29, 1988; and that Defendant,  
Board of County Commissioners, Tulsa County, Oklahoma,  
acknowledged receipt of Summons and Complaint on April 28, 1988.

The Court further finds that the Defendant, William P. Rooks, was served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning January 19, 1989, and continuing to February 23, 1989, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, William P. Rooks, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, William P. Rooks. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to his present or last

known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on May 18, 1988; and that the Defendants, William P. Rooks and Joyce A. Rooks, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Two (2), Block Ten (10), PRAIRIE VIEW ADDITION, an Addition in Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on August 19, 1985, the Defendants, William P. Rooks and Joyce A. Rooks, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$62,000.00, payable in monthly installments, with interest thereon at the rate of 11.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, William P. Rooks and Joyce A. Rooks, executed and delivered to the United

States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated August 19, 1985, covering the above-described property. Said mortgage was recorded on August 21, 1985, in Book 4886, Page 10, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, William P. Rooks and Joyce A. Rooks, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, William P. Rooks and Joyce A. Rooks, are indebted to the Plaintiff in the principal sum of \$61,541.53, plus interest at the rate of 11.5 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendant, William P. Rooks, and recover judgment in personam against the Defendant, Joyce A. Rooks, in the principal sum of \$61,541.53, plus interest at the rate of 11.5 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the current legal rate of 7.43 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during

this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

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

First:

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

Second:

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

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

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

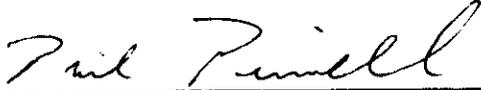
S/ JAMES L. ATWOOD

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UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney



---

PHIL PINNELL, OBA #7169  
Assistant United States Attorney



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CARL ROBINSON, OBA #10164  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

Judgment of Foreclosure  
Civil Action No. 88-C-372-E

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

IVAN NEIL COSPER; JULIE D.  
COSPER; STATE OF OKLAHOMA  
ex rel. OKLAHOMA TAX COMMISSION;  
COUNTY TREASURER, Tulsa County,  
Oklahoma; and BOARD OF COUNTY  
COMMISSIONERS, Tulsa County,  
Oklahoma,

Defendants.

CIVIL ACTION NO. 88-C-1581-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 5 day  
of April, 1989. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by Carl Robinson, Assistant District Attorney,  
Tulsa County, Oklahoma; the Defendant, State of Oklahoma ex rel.  
Oklahoma Tax Commission, appears not, having previously filed its  
Disclaimers; and the Defendants, Ivan Neil Cosper and Julie D.  
Cosper, appear not, but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendants, Ivan Neil Cosper and  
Julie D. Cosper, acknowledged receipt of Summons and Amended  
Complaint on March 1, 1989; that Defendant, State of Oklahoma

ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on November 30, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on or about December 5, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on December 1, 1988.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on December 14, 1988 and their Answers to the Amended Complaint on February 23, 1989; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Disclaimers on December 16, 1988 and March 6, 1989; and that the Defendants, Ivan Neil Cospers and Julie D. Cospers, 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 Seven (7), Block Two (2), WILLOW SPRINGS ADDITION, an Addition to the City of Broken Arrow, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on October 6, 1988, Ivan Neil Cospers and Julie Diane Cospers a/k/a Julie Diane Jones filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No.

88-03039-C. On January 20, 1989, the United States Bankruptcy Court for the Northern District of Oklahoma entered a Discharge of Debtors releasing the debtors of all dischargeable debts.

The Court further finds that on May 13, 1987, the Defendants, Ivan Neil Cosper and Julie D. Cosper, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$61,700.00, payable in monthly installments, with interest thereon at the rate of 9 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Ivan Neil Cosper and Julie D. Cosper, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated May 13, 1987, covering the above-described property. Said mortgage was recorded on May 14, 1987, in Book 5023, Page 804, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Ivan Neil Cosper and Julie D. Cosper, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Ivan Neil Cosper and Julie D. Cosper, are indebted to the Plaintiff in the principal sum of \$61,189.91, plus interest at the rate of 9 percent per annum from March 1, 1988 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 lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$19.00 which became a lien on the property as of 1988. 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, Tulsa County, Oklahoma, claims no right, title, or interest in the subject real property.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, disclaims any 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, Ivan Neil Cosper and Julie D. Cosper, in the principal sum of \$61,189.91, plus interest at the rate of 9 percent per annum from March 1, 1988 until judgment, plus interest thereafter at the current legal rate of 9.43 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 \$19.00 for personal property taxes for the year 1988, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, State of Oklahoma ex rel. Oklahoma Tax Commission, and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

Third:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$19.00, 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

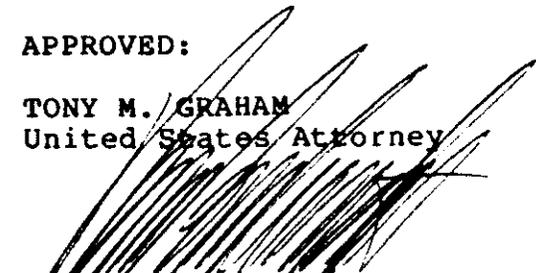
and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

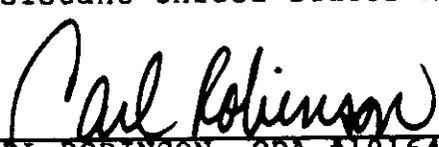
*S/* JAMES C. ROBINSON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
PETER BERNHARDT, OBA #741  
Assistant United States Attorney

  
CARL ROBINSON, OBA #10164  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

PB/css



1989; that Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on February 9, 1989; that Defendant, Tulsa Adjustment Bureau, Inc., acknowledged receipt of Summons and Complaint on January 31, 1989; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 1, 1989; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 30, 1989.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on February 21, 1989; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer and Cross-Petition herein on February 13, 1989; that the Defendant, Tulsa Adjustment Bureau, Inc., filed its Disclaimer herein on February 8, 1989; and that the Defendant, William Ray Odom, has failed to answer and his 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 Five (5), Block Fifteen (15), EASTLAND PARK, an Addition in the City of Tulsa, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on March 17, 1987, William Ray Odom filed his voluntary petition in bankruptcy in

Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 87-00658. On June 11, 1987, Discharge of Debtor was filed in the United States Bankruptcy Court for the Northern District of Oklahoma releasing William Ray Odom from all dischargeable debts.

The Court further finds that on July 31, 1980, the Defendant, William Ray Odom, executed and delivered to Nowlin Mortgage Company his mortgage note in the amount of \$51,900.00, payable in monthly installments, with interest thereon at the rate of 11.50 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, William Ray Odom, executed and delivered to Nowlin Mortgage Company a mortgage dated July 31, 1980, covering the above-described property. Said mortgage was recorded on August 5, 1980, in Book 4488, Page 1914, in the records of Tulsa County, Oklahoma.

The Court further finds that on March 22, 1988, Nowlin Mortgage Company assigned the above-described mortgage to the Administration of Veterans Affairs. This Assignment of Real Estate Mortgage was recorded on April 26, 1988, in Book 5095, Page 1116 in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, William Ray Odom, 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, William Ray Odom, is indebted to the Plaintiff in the principal sum of \$61,455.50, plus interest

at the rate of 9.5 percent per annum from May 1, 1988 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, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action by virtue of Income Tax Warrant No. ITI00012929, in the principal amount of \$1,110.28, plus penalties and interest, dated July 30, 1982, and recorded on August 11, 1982, in Book 4630, Page 1487 in the records of Tulsa County, Oklahoma. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Tulsa Adjustment Bureau, Inc., disclaims any right, title, or interest in the subject real property.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendant, William Ray Odom, in the principal sum of \$61,455.50, plus interest at the rate of 9.5 percent per annum from May 1, 1988 until judgment, plus interest thereafter at the current legal rate of 9.48 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, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover judgment in the amount of \$1,110.28, plus penalties and interest, by virtue of Income Tax Warrant No. ITI00012929, dated July 30, 1982, and recorded on August 11, 1982, in Book 4630, Page 1487 in the records of Tulsa County, Oklahoma.

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

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

First:

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

Second:

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

Third:

In payment of the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, in the amount of \$1,110.28, plus penalties and interest.

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

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

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
\_\_\_\_\_  
PHIL PINNELL, OBA #7169  
Assistant United States Attorney

  
\_\_\_\_\_  
CARL ROBINSON, OBA #10164  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

  
\_\_\_\_\_  
LISA HAWS, OBA #12695  
Attorney for Defendant,  
State of Oklahoma ex rel.  
Oklahoma Tax Commission



aff'd, 676 F.2d 681 (1st Cir. 1982). The Court will therefore allow the United States to be substituted and will style the Third Party Defendant as the United States of America.

A brief discussion of the material facts which led to the commencement of this suit is warranted. On November 11, 1983, Worthen made a Veterans Administration guaranteed loan to Oscar Charles and Ruth Elaine Thompson. The loan went into default and on June 13, 1984, Worthen through its attorney, Third-Party Plaintiff Main, filed suit to obtain judgment against the Thompsons and for foreclosure of the mortgage. At that time personal service could not be obtained and the action proceeded based on publication service of process. Judgment was entered on January 3, 1985 for \$54,580.00 with interest. In the subsequent Sheriff's Sale, Worthen bid in the property for \$35,334.00 in the name of the Administrator of Veteran Affairs. The deed was executed on May 9, 1985. The V.A. paid Worthen \$22,466.30 for the property under the loan government program.

Subsequent to the V.A.'s payment of Worthen the V.A. district council, after examining the abstract of title, concluded that the title was not marketable and that the property should be conveyed to Worthen. The V.A. had not acquired marketable title because Main had failed to comply with the provisions of 12 O.S. §2004(3c) in that notice by publication was not published for the statutory time period, thus creating a jurisdictional defect in the foreclosure.

The Journal Entry of Judgment and foreclosure sale was then

vacated and a Quit Claim Deed was executed from the Thompsons in favor of the V.A. The Veterans Administration refused to approve the recording of the Quit Claim Deed and reconveyed the property to Worthen because the recording of the Thompson's Quit Claim Deed had negated the V.A.'s right to collect the remaining indebtedness under the indemnity clause. The V.A. requested that Worthen reimburse the V.A. in the amount of \$22,466.00, and informed Main that a proper foreclosure action would not restore its indemnity claim against Mr. Thompson, thus refusing to accept a deficiency judgment against the Thompsons in substitution for the Indemnity Agreement in favor of the V.A. On April 29, 1988, Worthen and Main filed a joint settlement report asserting the case had been settled, however Main continues his action against the V.A.. It is from that action that the V.A. has requested summary judgment.

Main's reply brief states: "... the basis of this suit is that the V.A. is liable to Main under the laws of indemnity, not simply that the V.A. is a joint feisor who may also be liable to Worthen Mortgage." He goes on to say that his claim is not based in tort but rather on a quasi-contractual theory. The Court cannot find sufficient grounds to support this quasi-contractual theory. The V.A.'s duties and responsibilities run solely to Worthen. There was never an agreement between the V.A. and Main nor was there a duty running from the V.A. to Main. The Court recognizes a contract can be implied by conduct whereby creating an obligation imposed by law; however, Main has failed to set forth any obligations the law imposes on the V.A. with regard to Main.

The Court in National Mutual Insurance Co. v. Liberty Mutual Insurance Co., 196 F.2d 597 (D.C. Cir. 1952), cert. denied, 344 U.S. 819 (1952) states:

Since 1946, Rule 14(a) of the Federal Rules of Civil Procedure, 28 U.S.C.A., has permitted a defendant to move for leave to serve a third-party complaint only upon a person "who is or may be liable to him [the defendant] for all or part of the plaintiff's claim against him." No longer is it possible to bring in a person simply because he is or may be liable to the original plaintiff.

The National case applies to actions where a defendant has no independent claim or allegation against a third party. In the present action Main claims that he has a personal indemnity claim against the V.A. and states in support that he is entitled to bring the V.A. in because the V.A. may be liable to Main for all or part of Worthen's claim against Main. Again, Main fails to state any grounds for recovery against the Veterans Administration.

Main also alleges that the V.A. waived any alleged defense under Rule 14(a) by filing an answer May 20, 1988. The Court finds that the U.S. raised the affirmative defenses of failure to state a claim, and lack of jurisdiction over subject matter, thus preserving these issues for consideration by the Court.

Since Main purports that his cause of action is not one sounding in tort but rather a quasi-contractual cause of action, a discussion of the Federal Tort Claims Act is not warranted. However, the Court would point out to the parties that 28 U.S.C. §2680 sets forth the exceptions to Federal Tort Claims Act delineating those instances in which suit may not be brought.

Subsection (h) of §2680 includes among the exclusions claims based on misrepresentation. Our circuit has held that the exceptions contained in §2680 are to be construed broadly in misrepresentation claims, thereby prohibiting a tort cause of action against the U.S. based upon misrepresentation. Ortiz v. United States, 661 F.2d 826, 830 (10th Cir. 1981). The Court in Bor-Son Building Corp. v. Heller, 572 F.2d 174, 178 (8th Cir. 1978) goes on to state that "even if a claim purports to be grounded in theories other than misrepresentation, the exception set out in 28 U.S.C. §2680(h) bars the action if deceit or misrepresentation is a factor relied upon to maintain the suit."

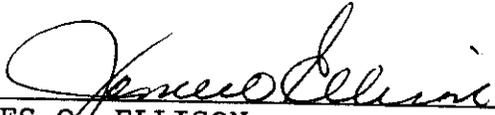
With only the allegedly quasi-contractual portion of the case remaining, the United States in its brief argues that Main's claim is in the exclusive jurisdiction of the Claims Court if the cause of action is to be construed to sound in contract. The Court agrees with the United States and finds that 28 U.S.C. §§1346(a)(2) and 1491 gives the Claims Court exclusive jurisdiction when a cause of action sounds in contract against the United States under the Tucker Act. Clearly suits seeking recovery under an amount of \$10,000.00 may be brought in either the District Court or the Claims Court, but suits of that type in excess of \$10,000.00 may only be entertained in Claims Court. See DSI Corp. v. Secretary of Housing and Urban Development, 594 F.2d 177, 180 (9th Cir. 1979).

This Court finds that under 28 U.S.C. §§1346(a)(2) and 1491 the Claims Court has exclusive jurisdiction over this cause of

action. Further, this Court finds that Main does not have a cause of action against the U.S. sounding in tort and that Main has failed to prove to this Court's satisfaction that an action should be maintained under a quasi-contractual theory.

IT IS THEREFORE ORDERED that Third Party Defendant's Motion for Summary Judgment is granted and this action is dismissed.

ORDERED this 5<sup>th</sup> day of April, 1989.

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

FILED

APR 4 1989

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

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

FLEET FINANCE, INC., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 WILLIAM E. NEWTON and )  
 CHARLOTTE NEWTON, husband and )  
 wife, et al, )  
 )  
 Defendants. )

Case No. 88-C-229-E

JOURNAL ENTRY OF DEFAULT JUDGMENT  
AND DECREE OF FORECLOSURE

NOW on this 3 day of April, 1989, the above-entitled cause comes on for hearing before the undersigned Judge of the United States District Court. The Plaintiff, Fleet Finance, Inc. ("Fleet"), appearing by and through its attorneys, Doerner, Stuart, Saunders, Daniel & Anderson, by James P. McCann; the Defendants, Board of County Commissioners of Rogers County, Oklahoma, and Mike Ryan, County Treasurer of Rogers County, Oklahoma, appearing by and through their attorney, T. Jack Graves, District Attorney, by Ernest E. Haynes, Jr., Assistant District Attorney; the Defendants, William E. Newton and Charlotte Newton, husband and wife ("Newton") and Defendants Vernon Michael Walker and Gaye Edmonds Walker, husband and wife, appearing not and this Court having previously noted the default of said Defendants by Orders dated April 4, 1988, and April 21, 1988, respectively.

The Court FINDS that the debts which are the subject of this action were contracted in Tulsa County, Oklahoma, and the property which is the subject of this action is located in Rogers County,

within the Northern District of Oklahoma, there by vesting this Court with jurisdiction over the action and making venue proper.

The Court FURTHER FINDS that Defendant, William E. Newton, duly executed and delivered a promissory note to Vernon Michael Walker and Gayle Edmonds Walker ("Walker"), husband and wife as more particularly described in the Complaint and that as a result of Newton's default in the performance of the terms and conditions of said promissory note, there is due to the Plaintiff from the Defendant William E. Newton the principal amount of \$64,851.38, and accrued interest through March 4, 1988, and interest accruing thereafter at the rate of \$25.02 per diem until paid in full, plus the costs of this action.

The Court FURTHER FINDS that Plaintiff has a good and valid first lien superior to the interests and claims of all others on the real estate and premises described by virtue of the mortgage executed by Defendant, William E. Newton, and recorded on the 10th day of May, 1985, and in Book 703 at Page 459 in the records of the County Clerk of Rogers County, State of Oklahoma, which mortgage was subsequently assigned to Plaintiff by virtue of an Assignment of Real Estate Mortgage recorded in Book 757 at Page 695 on the 4th day of April, 1987, in the records of the County Clerk of Rogers County, State of Oklahoma which mortgage secures the above-described indebtedness.

The Court FURTHER FINDS that the real estate which is subject to the above-described lien, as described in Newton's mortgage herein sued upon, is situated in Rogers County, Oklahoma, and is more particularly described as follows, to-wit:

The Southerly 50 feet of Lot 2 and the Northerly 10 feet of Lot 3 in Block 69 of the City of Claremore, State of Oklahoma, according to the Government Survey thereof.

The Court FURTHER FINDS that the mortgage of the Plaintiff should be foreclosed and the real estate described above sold according to law, to satisfy the indebtedness hereinabove set forth, that the proceeds of such sale, after payment of the costs of the sale, should be distributed to the Plaintiff as hereinafter provided.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff have and recover judgment against the Defendant William E. Newton in the amount of \$64,851.38 as of March 4, 1988, and interest accruing thereafter at the rate of \$25.02 per diem until paid in full, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the mortgage in favor of Plaintiff herein be, and the same is, hereby foreclosed, on the following described real estate and premises, and are hereby ordered to be sold subject to unpaid ad valorem real property taxes, if any, to satisfy the mortgages herein:

The Southerly 50 feet of Lot 2 and the Northerly 10 feet of Lot 3 in Block 69 of the City of Claremore, State of Oklahoma, according to the Government Survey thereof.

and that a special execution and order of sale and foreclosure shall issue, commanding the Sheriff of Rogers County to levy upon the above-described real estate, and after having the same appraised as provided by law, shall proceed to advertise and sell the same as provided by law, subject to unpaid ad valorem real

property taxes, if any, and such Sheriff shall apply the proceeds arising from such sale as follows:

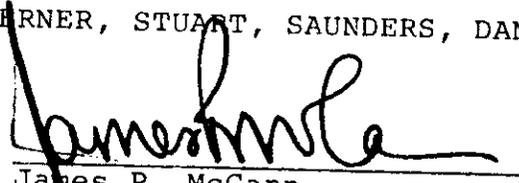
1. In payment of the costs of such sale and of this action;
2. In payment to Plaintiff the sum of \$64,851.38, together with interest thereon at the rate of \$25.02 per diem from March 4, 1988, until paid in full, plus the costs of this action.
3. The residue, if any shall be held by the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that from and after the sale of the above-described real estate and after the confirmation of such sale by the Court, the Defendants, and each of them, shall be forever barred and foreclosed of and from any claim or lien upon or adverse to the right and title of the purchaser of such sale; and the Defendants herein, and all persons claiming by, through or under them since the commencement of this action are hereby perpetually enjoined and restrained from ever setting up or asserting any lien upon the right, title, equity or interest in and to the above-described real estate adverse to the right or title of the purchaser at such sale if, as to the sale of the above-described real property, the same be had and confirmed; and that upon application by the purchaser, the Clerk, of the United States District Court shall issue a writ of assistance to the Sheriff of Rogers County, who shall, thereupon and forthwith, place such purchaser in full and complete possession and enjoyment of the premises.

An attorney fee will be considered upon proper application under Local Rule 6(G).

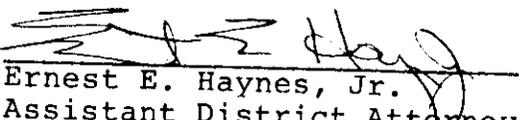
~~OFFICIAL COPY~~  
\_\_\_\_\_  
JUDGE OF THE UNITED STATES  
DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF OKLAHOMA

DOERNER, STUART, SAUNDERS, DANIEL & ANDERSON

By 

James P. McCann  
L. Dru McQueen  
100 Atlas Life Building  
Tulsa, Oklahoma 74103  
(918) 582-1211  
Attorneys for Fleet Finance, Inc.

T. JACK GRAVES, DISTRICT ATTORNEY

By 

Ernest E. Haynes, Jr.  
Assistant District Attorney  
219 S. Missouri, Room 1-111  
Claremore, Oklahoma 74107  
Attorney for Board of County  
Commissioners of Rogers County,  
Oklahoma, and Mike Ryan, County  
Treasurer of Rogers County,  
Oklahoma

FILED  
APR 4 1989

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

Jack C. Silver, Clerk  
DISTRICT COURT

In Re:	)	
	)	
MID-REGION PETROLEUM, INC.,	)	Case No. 87-C-563-C
	)	
Debtor,	)	
	)	
W. SCOTT MARTIN, Trustee,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 83-01871
	)	(Chapter 11)
APEX OIL COMPANY,	)	
	)	
Defendant,	)	
	)	
and	)	
	)	Adversary No. 85-0029
APEX HOLDING COMPANY, APEX	)	
ALASKA, INC., AIC S.A.,	)	
AIC LTD. (Bermuda) and JOHN	)	
DOES ONE THROUGH TWENTY,	)	
	)	
Additional Defendants.	)	

AMENDED  
DISMISSAL WITH PREJUDICE, RELEASE  
AND ACKNOWLEDGMENT OF CLAIM

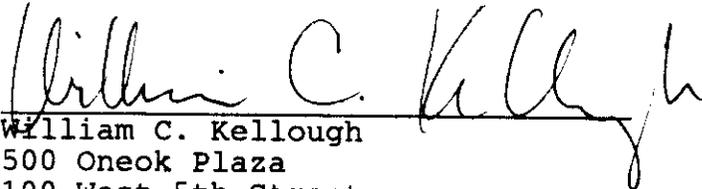
COMES NOW W. SCOTT MARTIN, Trustee and dismisses his Complaint, as amended, in all respects and against all Defendants herein with prejudice. With this Dismissal, he releases the Defendants from any and all claims, obligations or liabilities arising out of any of the facts and circumstances alleged therein. Plaintiff further acknowledges and accepts, in his capacity as Trustee for MID-REGION PETROLEUM, INC., the validity of the unsecured

non-priority claim of APEX OIL COMPANY in the amount of  
\$2,568,142.45.

EXECUTED this 4 day of April, 1989.

Respectfully submitted,

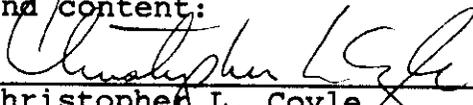
BOONE, SMITH, DAVIS & HURST

  
\_\_\_\_\_  
William C. Kellough  
500 Oneok Plaza  
100 West 5th Street  
Tulsa, Oklahoma 74103  
(918) 587-0000

Attorneys for W. SCOTT MARTIN

  
\_\_\_\_\_  
W. SCOTT MARTIN, Trustee

Approved as to form  
and content:

  
\_\_\_\_\_  
Christopher L. Coyle  
ROBINSON, BOESE, ORBISON  
and LEWIS  
P.O. Box 1046  
Tulsa, Oklahoma 74101  
(918) 583-1232

Attorneys for Defendant,  
APEX OIL COMPANY, AIC S.A.,  
and AIC LTD. (Bermuda)

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

APR -4 1968

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

FREDDIE SCOTT,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL  
SECURITY & DEPARTMENT OF  
HEALTH & HUMAN SERVICES,

Defendant.

No. 88-C-427-C

ORDER

Before the Court is the objection of plaintiff Freddie Scott to the Report and Recommendation of the Magistrate. The Magistrate recommends dismissal of plaintiff's action wherein plaintiff seeks a refund of monies withheld from his wages, as employment taxes under the Federal Insurance Contributions Act (FICA), 26 U.S.C. §§1301 et seq. Plaintiff brings this action after a final decision was rendered by the Commissioner of Social Security denying plaintiff the right to resign from the social security program. Plaintiff alleges that such a denial has deprived him of his property without due process of law in violation of the Fifth Amendment to the United States Constitution.

The Court has independently reviewed the record and finds that the Report and Recommendation of the Magistrate is supported by

clearly established law. The Magistrate's Report and Recommendation of March 13, 1989 is affirmed and adopted as the Findings and Conclusions of this Court.

It is therefore Ordered that the motion to dismiss brought by the defendant is hereby granted.

It is the further Order of the Court that the Discovery Order entered by the Magistrate on February 17, 1989 is hereby stricken and the recommendation for imposition of sanctions is reversed.

*IT IS SO ORDERED* this 3<sup>rd</sup> day of April, 1989.

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

VILLA J. FRIEND, )  
)  
Plaintiff, )  
)  
vs. )  
)  
OTIS R. BOWEN, M.D. )  
Secretary of Health and )  
Human Services, )  
)  
Defendant. )

APR 4 1989 *pw*

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

CIVIL ACTION NO. 88-C-1323-C ✓

O R D E R

Upon the Motion of Otis R. Bowen, Secretary of the Department of Health and Human Services, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and for good cause shown it is hereby ORDERED that the above-styled case be remanded to the Defendant.

Dated this 3rd day of April, 1989.

*Nancy Nesbitt Blevins*  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM  
United States Attorney

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

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

FILED

APR 4 1989

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

BROWNING-FERRIS, INC.,  
Plaintiff,  
vs.  
NICK ROBSON,  
Defendant.

No. 88-C-443-B

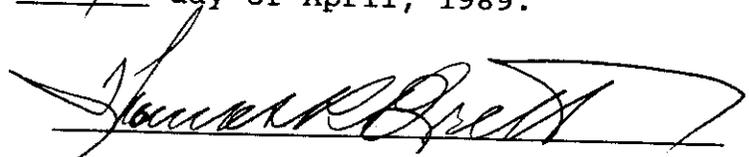
ORDER

Before the Court is Plaintiff's Motion for Order Allowing Voluntary Dismissal Without Prejudice filed pursuant to Rule 41(a)(2), Fed.R.Civ.P., and Defendant's Objection thereto and Request for Attorneys' Fees and Costs as a condition for dismissal without prejudice. These matters came on for hearing before the Court on February 22, 1989, Plaintiff appearing by and through its counsel of record, Joseph R. Farris and Anthony P. Sutton of Feldman, Hall, Franden, Woodard & Farris, and Defendant appearing by and through his counsel of record, John E. Barry and Laurence L. Pinkerton of Conner & Winters. After reviewing the parties' respective pleadings on the issues presented, hearing argument of counsel, and considering the legal authorities presented, the Court concludes that this action was not originally commenced by Plaintiff for "frivolous" reasons or reasons that could be characterized as "bad faith". However, the Court conditions the dismissal without prejudice by requiring Plaintiff to pay to Defendant his attorneys' fees and costs of this present litigation in an amount agreed upon by the parties in the event Plaintiff

refiles its action against Defendant. Based upon the agreement of the parties, the attorneys' fees and costs to be paid by Plaintiff to Defendant in the event of Plaintiff's refiles the action is \$16,000.

IT IS THEREFORE ORDERED that this case be dismissed without prejudice, and that in the event Plaintiff refiles this action, then Plaintiff is ordered to pay to Defendant the sum of \$16,000 as Defendant's attorneys' fees and costs of this present litigation, such sum to be paid within thirty (30) days after the action is filed. It is FURTHER ORDERED that if Plaintiff reasserts the claim as a counterclaim, Plaintiff is ordered to pay to Defendant the sum of \$8,000, such sum to be paid within thirty (30) days after the counterclaim is asserted.

IT IS SO ORDERED, this 4<sup>th</sup> day of April, 1989.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

*entire*

**FILED**

APR 4 1989 *ps*

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

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

VICTOR FEDERAL SAVINGS AND )  
LOAN ASSOCIATION, a federal )  
savings and loan association, )  
et al., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
DAN L. STEFANOFF, an )  
individual, et al., )  
 )  
Defendants. )

Case No. 88-C-1074-C ✓

ORDER OF DISMISSAL

The Court having reviewed the Application for Dismissal of the defendant, First Federal Savings of Arkansas, F.A. ("First Federal"), and having considered the authority cited in the Application, as well as having reviewed the file, and being fully advised in the premises, finds that said Application for Dismissal should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that First Federal is hereby dismissed from the above-captioned action.

Dated this 31 day of March, 1989.

*no objection.*

*H. Dale Cook*  
H. DALE COOK  
UNITED STATES DISTRICT JUDGE

Benjamin C. Faulkner, OBA #2845  
Stephen S. Rankin, OBA #10451  
ENGLISH, JONES & FAULKNER  
1700 Fourth National Bank Bldg.  
Tulsa, Oklahoma 74119  
(918) 582-1564  
ATTORNEYS FOR DEFENDANT  
FIRST FEDERAL SAVINGS OF  
ARKANSAS, F.A.

IN THE UNITED STATES COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FRANK H. MAHAN,  
Plaintiff

v.

UNITED STATES OF AMERICA,  
Defendant

v.

W.E. ROWSEY, III and WILLIAM G.  
PATTERSON,

Additional Defendants  
on Counterclaim,

CIVIL NO. H-87-C-629-B

FILED  
APR 3 1989

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

STIPULATION <sup>OF</sup> ~~FOR~~ DISMISSAL

It is hereby stipulated and agreed that the Counterclaim filed against Additional Defendant William G. Patterson, be dismissed with prejudice, the parties to bear their respective costs, including any possible attorneys' fees or other expenses of litigation.

Charles N. Woodard  
CHARLES N. WOODARD  
LISLE & WOODARD  
6303 Waterford Blvd., Suite 255  
Oklahoma City, Oklahoma 73118  
(405) 842-0876

ATTORNEY FOR WILLIAM G. PATTERSON

Steven Shapiro  
STEVEN SHAPIRO  
Chief, Civil Trial Section  
Southern Region, Tax Division  
Department of Justice  
P.O. Box 14198  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 272-4508

ATTORNEY FOR DEFENDANT

entered

FILED

APR -3 1989

U.S. DISTRICT COURT

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

TURBOTECH, INC., an Oklahoma corporation,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 88-C-1414-C
	)	
BEAR TURBINES INTERNATIONAL,	)	
	)	
Defendant.	)	

**DISMISSAL WITH PREJUDICE**

COMES NOW the Plaintiff, Turbotech, Inc., by and through its attorneys of record, Jones, Givens, Gotcher, Bogan & Hilborne, P.C. by Robert S. Erickson, and hereby dismisses the above styled and numbered action with prejudice to future action.

Respectfully submitted,

JONES, GIVENS, GOTCHER, BOGAN & HILBORNE, P.C.

By: Robert S. Erickson  
 Robert S. Erickson, OBA #11825  
 3800 First National Tower  
 Tulsa, Oklahoma 74103  
 (918) 581-8200

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of March, 1989, a true and correct copy of the above and foregoing instrument was mailed to **Patrick McGettigan, Jr.**, 1220 First City National Bank Building, Houston, Texas 77002-6599, with proper postage thereon fully prepaid.

Robert S. Erickson  
 Robert S. Erickson

IN THE NORTHERN UNITED STATES DISTRICT COURT

Alan J. McDonald,

PETITIONER

v.

Ron Champion and

The Attorney General

of Oklahoma,

DEFENDANT

\*\*\*\*\*

CASE NO. 89-C-97-E

FILED  
MAR 16 1989  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

NOTICE OF DISMISSAL

Comes now, Alan J. McDonald, and moves this honorable court to dismiss the writ of Habeas Corpus 89-C-97-E without prejudice.

This court has mistakenly two identical Habeas Corpus' filed; 89-C-90-E has been reviewed by a Magistrate and an order was entered on March 2, 1989.

For the above stated reason, Plaintiff prays this court will dismiss without prejudice case 89-C-97-E.



Alan J. McDonald, #115742  
PRO SE, March 16, 1989

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

CHARLES GREGORY RITTER and  
CAROL JEAN RITTER,

Plaintiffs,

vs.

KAWASAKI HEAVY INDUSTRIES,  
LTD., KAWASAKI MOTORS  
MANUFACTURING COMPANY, and  
KAWASAKI MOTOR COPORATION,

Defendants.

No. 88-C-236-B

**FILED**

APR 5 1989

Jack C. Silver,  
U. S. DISTRICT COURT

ORDER OF DISMISSAL

The above cause comes on for hearing upon the Application of the plaintiffs and their attorney of record for a dismissal of the above and foregoing action as to the defendant, Kawasaki Motors Corp., U.S.A., Kawasaki Heavy Industries, Ltd., and Kawasaki Motors Manufacturing Corp., U.S.A., and the Court, being well advised in the premises, FINDS that the Order Of Dismissal should issue.

IT IS THEREFORE ORDERED that the above entitled cause, and each claim thereof, be and the same is hereby dismissed upon the

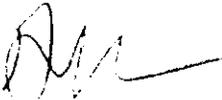
merits and with prejudice to a future action as to the defendant,  
Kawasaki Motors Corp., U.S.A., Kawasaki Heavy Industries, Ltd.,  
and Kawasaki Motors Manufacturing Corp., U.S.A. each party to  
bear its own costs.

DATED this 3<sup>rd</sup> day of February, 1989.

S/ THOMAS R. BRETT

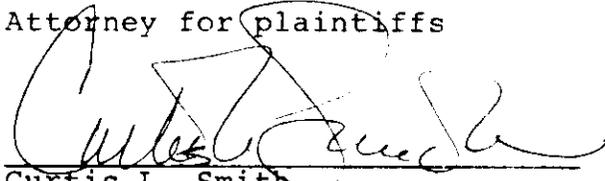
Thomas R. Brett  
United States District Judge

APPROVED:



Greg A. Morris  
201 W. Fifth, Suite 520  
Tulsa, Oklahoma 74103  
918/587-5514

Attorney for plaintiffs



Curtis L. Smith  
2140 Liberty Tower  
Oklahoma City, Oklahoma 73102  
405/232-3487

Attorney for defendants

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

FILED  
APR 3 1989 K

ROY L. JACKSON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MILLIE OTEY, )  
 )  
 Defendant. )

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

No. 88-C-575-E ✓

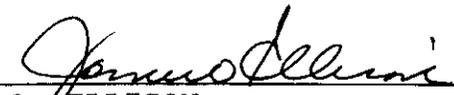
A M E N D E D  
O R D E R

The Court has for consideration the Report and Recommendations of the Magistrate filed January 5, 1989.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendations of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss should be and is hereby granted.

ORDERED this 3<sup>rd</sup> day of April, 1989.

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

