

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

FILED

APR 28 1989 CB

RONALD W. GREGORY and  
DOROTHY L. GREGORY,

Plaintiffs,

vs.

FIRST FEDERAL SAVINGS BANK  
OF OKLAHOMA,

Defendant.

No. 88-C-1439-E

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

JUDGMENT

This action came on for consideration before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS THEREFORE ORDERED that the Plaintiffs Ronald W. Gregory and Dorothy L. Gregory take nothing from the Defendant First Federal Savings Bank of Oklahoma, that the action be dismissed on the merits, and that the Defendant First Federal Savings Bank of Oklahoma recover of the Plaintiffs Ronald W. Gregory and Dorothy L. Gregory its costs of action.

ORDERED this 28<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

ROBERT MARSEY,

Plaintiff,

vs.

CITY OF SAPULPA, OKLAHOMA, a  
municipal corporation, POLICE  
OFFICER M. HALE, POLICE OFFICER  
JOHN DOE (1), POLICE OFFICER  
JOHN DOE (2), POLICE OFFICER  
JOHN DOE (3), and POLICE OFFICER  
JOHN DOE (4),

Defendants.

No. 88-C-97-B

FILED

APR 28 1989

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

ORDER

This matter comes before the Court on the Motion to Dismiss and the Motion for Summary Judgment of Defendants Sergeant William Ryker, Police Officer Philip Lee Main, and Police Officer Mark Hale. Also before the Court is Defendant City of Sapulpa's Motion for Summary Judgment. Plaintiff Robert Marsey has failed to respond to any of the motions filed. At a status conference on February 16, 1989, counsel for Plaintiff, Earl W. Wolfe, conceded the Motion for Summary Judgment on the 42 U.S.C. §1983 claim in favor of the City of Sapulpa, Oklahoma under Monell v. New York City, 436 U.S. 658 (1979). Counsel for Plaintiff also confessed dismissal as to the individual Defendants on the state tort cause of action under the Oklahoma Political Subdivision Tort Claims Act. Therefore the claims which remain to be addressed by this Court are the state tort claims against the City of Sapulpa and the §1983 claims against the individuals.

This action was originally filed February 2, 1988 against Defendants Hale and the City of Sapulpa alleging that on May 8, 1986 at 2:30 a.m., Plaintiff was arrested and beaten severely by Defendant Hale solely because Plaintiff was deaf. Plaintiff sued under 42 U.S.C. §1983 and §1988 alleging that Plaintiff's Fourth, Fifth, Eighth and Fourteenth Amendments were violated. Plaintiff also sued for false arrest, false imprisonment, assault and battery and negligence. On May 4, 1988, Plaintiff amended his Complaint and added four John Doe police officers contending that they assisted in the beating. On August 31, 1988, Plaintiff amended his Complaint to state Officer John Doe (1) is William Dee Ryker and Officer John Doe (2) is Philip Lee Main.

Officers Main and Ryker's Motion to Dismiss alleges that all claims against them are barred by applicable statute of limitations. The incident occurred May 8, 1986. Plaintiff's federal claims against these individuals have a two-year statute of limitation. Abbitt v. Franklin, 731 F.2d 661 (10th Cir. 1984). Defendants Main and Ryker were not named in this lawsuit until August 31, 1988. The statute of limitations had clearly run. The filing of claims against fictitious defendants prior to the expiration of the statute of limitations does not toll the statute unless the defendant (who is later identified) had actual knowledge of the lawsuit prior to the expiration of the statute of limitations. Fed.R.Civ.P. 15(c); 12 O.S. §2015(c); Watson v. Unipress, Inc., 733 F.2d 1386 (10th Cir. 1984); and Sassi v. Breier, 584 F.2d 234 (7th Cir. 1978). Plaintiff failed to file any

response to Defendants' motion. The Court has searched the record and finds that there is no allegation of tolling in the Complaint, amendments thereto, or in any pleading. The Motions to Dismiss Defendants Ryker and Main are hereby SUSTAINED.

Defendant Hale filed a Motion to Dismiss the claims against him based on failure to serve him within 120 days of filing the Complaint. Fed.R.Civ.P. 4(J) states:

"If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion...."

The Complaint against Defendant Hale was filed February 2, 1988. He was not served until September 12, 1988. Plaintiff orally stated that Defendant Hale was not timely served because he had joined the United States Army and Plaintiff had trouble locating him. As soon as he was discovered at Fort Bragg, North Carolina he was served. The Court finds that the good cause standard has been met under Fed.R.Civ.P. 4(J).

Defendant Hale also argues that he was not served within 120 days of the expiration of the statute of limitations. Defendant Hale cites no authority for this theory of dismissal. Okla. Stat. tit. 12, §2003 and Fed.R.Civ.P. 3 states a civil action is commenced by the filing of the Complaint. The committee comment to §2003 states the purpose of this statute is for "all purposes, including application of the statute of limitations." Defendant

Hale's motion to dismiss the 42 U.S.C. §1983 claim against him is OVERRULED. Plaintiff has conceded the state tort claims are dismissed against Defendant Hale.

The City of Sapulpa requests summary judgment on Plaintiff's state tort cause of action against it. Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Windon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

"The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, Plaintiff "must establish that there is a genuine issue of material facts..." Plaintiff "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

The City suggests once the federal claim against it is dismissed, the Court should refuse to exercise pendent jurisdiction over Plaintiff's state claim. However, Plaintiff's federal cause of action against Defendant Police Officer Hale is still pending.

In the interest of judicial economy the Court will exercise jurisdiction over the state claims against the City.

The City also contends that the Oklahoma Political Subdivision Tort Claims Act, Okla.Stat. tit. 51, §155 bars Plaintiff's claims against it. Section 155(6) states:

"A political subdivision shall not be liable if a loss or claim results from:

\*                   \*                   \*

6. Civil disobedience, riot, insurrection, or the failure to provide, or the method of providing, police, law enforcement or fire protection;..."

The case cited by the City in support of this theory does not discuss section 6 and the case is not applicable. Moreover, subsection 6 is inapplicable because the Plaintiff's allegations do not involve the failure to provide or the method of providing police protection. This Court recently held:

"While the term 'method' of providing police protection might be interpreted broadly enough to include any act done by a police officer within the scope of his employment, the Court does not conclude that such was the intent of the legislature. The Court concludes the legislative intent, in reference to the 'method' of providing police protection relates generally to the quality or quantity of police protection and not the alleged breach of duty of a particular police officer in the conduct of a specific arrest and confinement." Himstreet v. City of Barnsdall, No. 88-C-225-B (N.D.Okla. January 19, 1989).

The City contends in the alternative that if Defendant Hale used excessive force in arresting Plaintiff, such conduct is beyond the scope of his employment and therefore the City is not liable. The Court finds that the argument that in arresting Plaintiff the

officer was not acting within the scope of his employment is without merit. The arrest was certainly within the scope of his employment. Cf. Dill v. Rader, 533 P.2d 650 (Okla. Ct.App. 1975). Therefore, Defendant City's Motion for Summary Judgment is OVERRULED.

This case will proceed against Officer Hale under 42 U.S.C. §1983 and against the City of Sapulpa on state tort theories. All other causes of action are dismissed.

DATED this 28 day of April, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

PLUMBERS AND PIPEFITTERS )  
NATIONAL PENSION FUND, )  
PLUMBERS AND PIPEFITTERS )  
LOCAL 205 HEALTH AND WELFARE )  
FUND, PIPEFITTERS LOCAL 205 )  
VACATION FUND, PLUMBERS AND )  
PIPEFITTERS ANNUITY FUND, )  
TULSA PIPE TRADES TRAINING )  
SCHOOL AND PLUMBERS AND )  
PIPEFITTERS LOCAL UNION 205 )

Plaintiffs, )

vs. )

AMERICAN MECHANICAL, INC., )  
an Oklahoma Corporation, )  
Rt. 1, Box 000 )  
Lahoma, Oklahoma 73754 )

Defendant. )

FILED

APR 28 1989

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

No. 88-C-1473-E

JUDGMENT

In accord with the entry of default judgment filed on the 28 day of April, 1989, the Court hereby enters Judgment in favor of Plaintiffs for the sum of Ten Thousand Five Hundred Forty-seven and no/100 Dollars (\$10,547.00), with postjudgment interest at a rate of 9.5% per annum from this date until paid, against American Mechanical, Inc., said Defendant having failed to plead or otherwise defend.

A reasonable attorney fee and court costs will be considered upon proper application under the local Court Rules.

ENTERED this 28 day of April, 1989.

**S/ JAMES O. ELLISON**

James O. Ellison  
United States District Judge

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

APR 28 1989

BANK OF OKLAHOMA, N.A.,  
GROVE BRANCH, formerly  
Bank of Oklahoma, Grove,

Plaintiff,

v.

THE ISLANDS MARINA, LTD.,  
et al.,

Defendants.

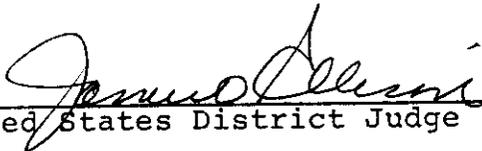
Jack C. Silver, Clerk *if*  
U.S. DISTRICT COURT

No. 88-C-1335-E ✓

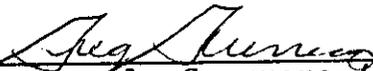
ORDER OF DISMISSAL WITH PREJUDICE  
OF CLAIMS AGAINST FIRST OKLAHOMA SAVINGS BANK

Plaintiff, Bank of Oklahoma, N. A., Grove Branch, and defendants, First National Bank and Trust Company of Vinita and FSLIC as receiver for First Oklahoma Savings Bank, have represented to the Court pursuant to a stipulation for order of dismissal that this order of dismissal may be entered with respect to the claims asserted by plaintiff and defendant, First National Bank and Trust Company of Vinita, as against First Oklahoma Savings Bank. Pursuant to the stipulation of the parties herein the claims asserted against First Oklahoma Savings Bank are hereby dismissed with prejudice.

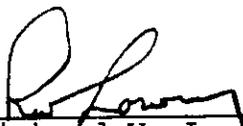
IT IS SO ORDERED this 27<sup>th</sup> day of April, 1989.

  
United States District Judge

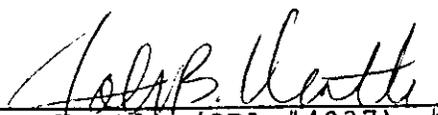
APPROVED FOR ENTRY:

  
Gregory A. Guerrero (OBA #3653)  
Holliman, Langholz, Runnels &  
Dorwart  
Suite 700, Holarud Building  
10 East 3rd Street  
Tulsa, Oklahoma 75103-3695

Attorneys for Plaintiff,  
Bank of Oklahoma, N.A.,  
Grove Branch

  
Richard W. Lowry (OBA #5552)  
Donna L. Smith (OBA #12865)  
Logan, Lowry, Johnston, Switzer,  
West & McGeady  
P. O. Box 558  
Vinita, Oklahoma 74301

Attorneys for Defendant,  
First National Bank and Trust  
Company of Vinita

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

and

Barry Beasley  
Huffman, Arrington, Kihle,  
Gaberino & Dunn  
1000 ONEOK Plaza  
Tulsa, Oklahoma 74103  
(918) 585-8141

Attorneys for FSLIC as Receiver  
for First Oklahoma Savings Bank

Of Counsel:

Jordan Luke, General Counsel  
Richard Gill, Trial Attorney  
Office of General Counsel  
Federal Home Loan Bank Board  
1700 G Street, N.W.  
Washington, D.C. 20552

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

BANK OF OKLAHOMA, N.A. )  
GROVE BRANCH, formerly )  
Bank of Oklahoma, Grove, )  
 )  
Plaintiff, )

v. )

THE ISLANDS MARINA, LTD., )  
an Oklahoma corporation, )  
et al., )

Defendants. )

No. 88-C-1335-E

FILED.  
APR 28 1989

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

ORDER OF DISMISSAL OF GUARANTY  
NATIONAL BANK WITH PREJUDICE

UPON THE JOINT STIPULATION of Plaintiff Bank of Oklahoma, N.A., Grove Branch ("BOKG"), Defendant First National Bank and Trust Company of Vinita ("FNBV"), and Defendant Guaranty National Bank ("Guaranty") that all of BOKG's and FNBV's claims for relief set forth in this case against Guaranty, and all other claims for relief which BOKG or FNBV may have against Guaranty, which are or which may be based in whole or in part on, or related in any way to, the subject matter of this case, be dismissed with prejudice as to Guaranty only; and

UPON THE FURTHER JOINT STIPULATION of BOKG, FNBV and Guaranty that as between FNBV and Guaranty, and as between BOKG and Guaranty, each shall bear its own attorneys' fees, costs, and expenses of litigation; and

238

IT APPEARING TO THE COURT that there is no just reason for delay and that a judgment of dismissal of Guaranty should be entered at this time;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that all of BOKG's and FNBV's claims for relief set forth in this case against Guaranty, and all other claims for relief that BOKG or FNBV may have against Guaranty, which are or may be based in whole or in part on, or related in any way to, the subject matter of this case be, and the same hereby are, dismissed as against Guaranty with prejudice.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that as between BOKG and Guaranty, and as between FNBV and Guaranty, each of them shall bear its own attorneys' fees, costs and expenses of litigation.

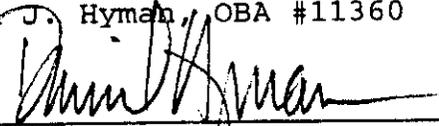
The clerk is directed to enter judgment accordingly.

Dated this 27<sup>th</sup> day of April, 1989.

  
UNITED STATES DISTRICT JUDGE

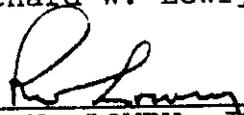
Approved as to form:

James R. Ryan, OBA #7861  
David J. Hyman, OBA #11360

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

Attorneys for Guaranty National  
Bank

Richard W. Lowry, OBA #5552

  
\_\_\_\_\_  
LOGAN, LOWRY, JOHNSTON, SWITZER,  
WEST & MCGEADY  
P.O. Box 558  
Vinita, Oklahoma 74301

Attorneys for First National Bank  
and Trust Company of Vinita

Gregory A. Guerrero, OBA #3653

  
\_\_\_\_\_  
HOLLIMAN, LANGHOLZ, RUNNELS &  
DORWART  
Suite 700  
Holarud Building  
10 E. 3rd Street  
Tulsa, Oklahoma 74103

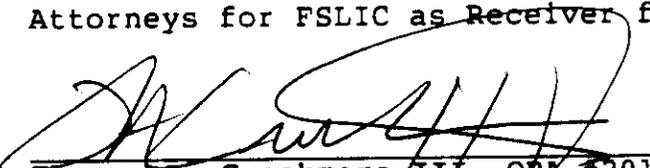
Attorneys for Bank of Oklahoma,  
N.A., Grove Branch



and

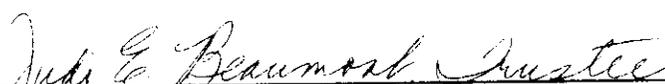
**HUFFMAN, ARRINGTON, KIHLE, GABERINO & DUNN**  
1000 Oneok Plaza  
Tulsa, Oklahoma 74103  
(918) 585-8141

Attorneys for FSLIC as Receiver for First Oklahoma Savings Bank



Thomas A. Creekmore III, OBA #2011  
Jones, Givens, Gotcher, Bogan & Hilborne  
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  
(918) 599-7905

Trustee of the consolidated bankruptcy  
estates of George A. Shipman and Clara J. Shipman



Judi E. Beaumont  
Judi Beaumont, OBA #635  
610 South Main, Suite 215  
Tulsa, Oklahoma 74119  
(918) 599-7905

Attorney for Mary Thetford, Trustee of  
the bankruptcy estate of Diversified  
Resources Corporation

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

FILED

APR 28 1989

CB

SCOTT WILLIAM JOHNSON,

Plaintiff,

v.

No. 86-C-1062-E

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

PACIFIC INTERNATIONAL INSURANCE COMPANY, a  
California corporation and PAXTON NATIONAL  
INSURANCE COMPANY, a Pennsylvania  
corporation,

Defendants.

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 28<sup>th</sup> day of April, 1989, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.

*James O. Ellison*  
United States District Judge

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
vs. )  
 )  
RONALD L. ROBERTSON; LENORA J. )  
ROBERTSON; COUNTY TREASURER, )  
Nowata County, Oklahoma; and )  
BOARD OF COUNTY COMMISSIONERS, )  
Nowata County, Oklahoma, )  
 )  
Defendants. )

FILED

APR 11 1989

J. C. [unclear] Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 89-C-027-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28 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, Nowata County,  
Oklahoma, and Board of County Commissioners, Nowata County,  
Oklahoma, appear by Carl G. Gibson, Assistant District Attorney,  
Nowata County, Oklahoma; and the Defendants, Ronald L. Robertson  
and Lenora J. Robertson, appear not, but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendants, Ronald L. Robertson and  
Lenora J. Robertson, were served Summons and Complaint on  
March 8, 1989; that Defendant, County Treasurer, Nowata County,  
Oklahoma, acknowledged receipt of Summons and Complaint on  
January 17, 1989; and that Defendant, Board of County  
Commissioners, Nowata County, Oklahoma, acknowledged receipt of  
Summons and Complaint on January 17, 1989.

It appears that the Defendant, County Treasurer, Nowata County, Oklahoma, filed its Answer on January 24, 1989; and that the Defendants, Ronald L. Robertson and Lenora J. Robertson, 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 Nowata County, Oklahoma, within the Northern Judicial District of Oklahoma:

The West half of Lot 5; and All of Lot 6, in Block 4, in Marion Addition to the Town of Delaware, Oklahoma.

The Court further finds that on September 16, 1980, the Defendants, Ronald L. Robertson and Lenora J. Robertson, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$24,640.00, payable in monthly installments, with interest thereon at the rate of 8.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Ronald L. Robertson and Lenora J. Robertson, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated September 16, 1980, covering the above-described property. Said mortgage was recorded on September 17, 1980, in Book 519, Page 417, in the records of Nowata County, Oklahoma.

The Court further finds that on February 1, 1983, the Defendants, Ronald L. Robertson and Lenora J. Robertson, executed and delivered to the United States of America, acting through the Farmers Home Administration, a Reamortization and/or Deferral Agreement pursuant to which the payment schedule of the above-described note was modified.

The Court further finds that the Defendants, Ronald L. Robertson and Lenora J. Robertson, made default under the terms of the aforesaid note, mortgage, and reamortization and/or deferral agreement by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Ronald L. Robertson and Lenora J. Robertson, are indebted to the Plaintiff in the principal sum of \$12,993.75, plus accrued interest in the amount of \$2,432.44 as of June 3, 1988, plus interest accruing thereafter at the rate of 8.5 percent per annum or \$3.0259 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Nowata 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 \$29.04 plus \$.44 in penalties for the year 1988. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, County Treasurer, Nowata 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 \$11.45 plus \$.17 in penalties 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, Nowata County, Oklahoma, claims no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Ronald L. Robertson and Lenora J. Robertson, in the principal sum of \$12,993.75, plus accrued interest in the amount of \$2,432.44 as of June 3, 1988, plus interest accruing thereafter at the rate of 8.5 percent per annum or \$3.0259 per day 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, Nowata County, Oklahoma, have and recover judgment in the amount of \$29.04 plus \$.44 in penalties for ad valorem taxes for the year 1988, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Nowata County, Oklahoma, have and

recover judgment in the amount of \$11.45 plus \$.17 in penalties for personal property taxes for the year 1988, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Board of County Commissioners, Nowata County, Oklahoma, has no right, title, or interest in the subject real property.

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

First:

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

Second:

In payment of the Defendant, County Treasurer, Nowata County, Oklahoma, in the amount of \$29.04 plus \$.44 in penalties 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, County Treasurer, Nowata County, Oklahoma, in the amount of \$11.45 plus \$.17 in penalties for personal property taxes which are currently due and owing.

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

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

U.S. DISTRICT COURT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

PETER BERNHARDT, OBA #741  
Assistant United States Attorney

CARL G. GIBSON, OBA # 12304  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Nowata County, Oklahoma

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

**F I L E D**

APR 28 1989 *ds*

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

ORS CORPORATION, et al., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
WALTER L. MAGUIRE a/k/a )  
WALTER L. MAGUIRE, SR., )  
et al., )  
 )  
Defendants and )  
Counterplaintiffs, )  
 )  
vs. )  
 )  
ROBERT A. ALEXANDER, JR., )  
et al., )  
 )  
Additional )  
Counterdefendants. )

No. 87-C-426-E ✓

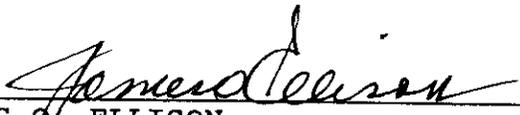
**ADMINISTRATIVE CLOSING ORDER**

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 sixty (60) days that settlement has not been completed and further litigation

is necessary.

ORDERED this 28<sup>th</sup> day of April, 1989.

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

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

FILED  
APR 18 1989

NATIONAL DREDGING & PUMPING CORPORATION, )  
 )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 87-C-116-E  
 )  
 POE & ASSOCIATES, INC., )  
 )  
 )  
 Defendant. )

J. W. C. Smith, Clerk  
U.S. DISTRICT COURT

JOURNAL ENTRY OF JUDGMENT

The above entitled case came on for jury trial at 9:30 a.m. on April 17, 1989. The Plaintiff, National Dredging & Pumping Corporation ("National Dredging"), was present and represented by S. Douglas Dodd of Doerner, Stuart, Saunders, Daniel & Anderson. The Defendant, Poe & Associates, Inc. ("Poe & Associates"), was present and represented by Harry M. Crowe, Jr. of Crawford, Crowe, Bainbridge, Litchfield & Harris.

1. National Dredging and Poe & Associates announced to the Court that they were ready for trial.
2. A jury was questioned by the Court, empaneled and sworn.
3. Counsel for the Plaintiff and the Defendant each presented opening statements, and the Plaintiff presented its case from April 17, 1989, through the morning of April 19, 1989. National Dredging rested on April 19, 1989, and the Defendant moved for a directed verdict on the issue of whether National Dredging had relied upon the sludge samples obtained by Poe & Associates. The Court denied the motion of Poe & Associates.

4. The Defendant, Poe & Associates, presented evidence and rested on April 19, 1989.

5. On April 19, 1989, the jury heard closing arguments by both the Plaintiff and the Defendant and was instructed by the Court as to the law to be applied to the case. After receiving instruction from the Court, the jury commenced its deliberation.

6. Included with the instructions to the jury were two interrogatories which stated as follows:

"1. Do you find that Poe & Associates was negligent in performing the sampling on Northside Sewage Lagoon No. 4?

Yes \_\_\_\_\_ No \_\_\_\_\_

2. Do you find that Poe & Associates breached its contract with National Dredging & Pumping Corporation to perform sampling on Northside Sewage Lagoon No. 4?

Yes \_\_\_\_\_ No \_\_\_\_\_"

7. The jury, having completed its deliberations, returned its answers to the Court's interrogatories and a completed verdict form. The jury answered both of the interrogatories in the affirmative and returned the following verdict:

"We the jury, duly empaneled in the above cause, find as follows . . . in favor of the Plaintiff, National Dredging & Pumping Corporation, and against Defendant, Poe & Associates, and awarding damages in the amount of \$26,304.70."

8. The verdict form and the interrogatories to the jury were dated and duly executed by Harold Harris, as foreman of the jury.

9. The unanimous verdict of the jury, as referenced above, was accepted by the Court.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that judgment should be and hereby is entered on behalf of the Plaintiff, National Dredging & Pumping Corporation, and against the Defendant, Poe & Associates, Inc., for damages in the amount of TWENTY-SIX THOUSAND THREE HUNDRED FOUR AND 70/100 DOLLARS (\$26,304.70), with post judgment interest thereon at the rate of 9.51% per annum until paid, along with Plaintiff's costs of this action as may be taxed by the Court.

IT IS SO ORDERED this 28 day of April, 1989.

*JAMES O. ELLISON*

JAMES O. ELLISON  
United States District Judge

APPROVED AS TO FORM AND CONTENT:

DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

By: *S. Douglas Dodd*  
S. Douglas Dodd, OBA #2389  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
(918) 582-1211  
Attorneys for Plaintiff,  
National Dredging & Pumping  
Corporation

CRAWFORD, CROWE, BAINBRIDGE,  
LITCHFIELD & HARRIS

By: *Harry M. Crowe, Jr.*  
Harry M. Crowe, Jr.  
OBA #02049  
1714 First National Tower  
Tulsa, Oklahoma 74103  
(918) 587-1128  
Attorneys for Defendant,

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

IN RE:  
JERRY MIZE d/b/a GRANDEZA  
RANCH,  
Debtor,  
EM KAY, INC., and VILLAGE  
BANK OF NEW JERSEY,  
Appellants,  
vs.  
JERRY MIZE d/b/a GRANDEZA  
RANCH,  
Appellee.

FILED

APR 28 1989 dt

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

No. 88-C-258-E ✓

O R D E R

NOW on this 28<sup>th</sup> day of April, 1989 comes on for hearing the above styled case and the Court, being fully advised in the premises finds that this Court has conducted a de novo review of all issues raised in this case including the arguments and authorities cited by both Appellants and Appellees, as well as the factual findings made by the Bankruptcy Court, and concludes that the factual findings made by the Bankruptcy Court are correct, but legal conclusions drawn from such facts are clearly erroneous and must be reversed.

This matter comes before the Court on appeal from the Bankruptcy Court. Jerry Mize (hereinafter referred to as "Mize") filed a Chapter 11 Bankruptcy proceeding which was later converted

to a Chapter 7 liquidation. Thereafter, Em Kay, Inc., and Village Bank (hereinafter referred to as "Em Kay and Village Bank") filed an adversary action against Mize claiming that the loan made to Mize from Village Bank was non-dischargeable under §523 of the Bankruptcy code, 11 U.S.C. §101-1330 (1982). The Court found that Mize could discharge this debt and it is from this decision that Em Kay and Village Bank bring this appeal.

A survey of the relevant facts found by the Bankruptcy Court reveals the following:

On March 30, 1983, Village Bank made a loan of \$400,000.00 to Excalabur Energy Corporation (hereinafter referred to as "Excalabur"). Mize, Chairman of the Board of Directors and Stockholder in Excalabur, was able to secure the loan because (1) in applying for the loan he made many false representations on his personal financial statement and that of Excalabur; (2) he used fraud to persuade Mory Kraselnick (hereinafter referred to as "Kraselnick") of Village Bank to accept that his financial ability was valid, thereby influencing the loan; and (3) on January 11, 1983, Mize made false oral assertions to John Bjerke, Executive Vice President of Village Bank, prior to the Board Meeting scheduled to approve the Mize loan. Village Bank did approve the loan of \$400,000.00 largely because of the influence and direction of Kraselnick and not entirely because of the written and oral false representations that Mize made on his financial statement and meeting with John Bjerke.

Appellants Em Kay and Village Bank urge this Court to reverse

the Bankruptcy Court's decision based on an erroneous legal conclusion that resulted in a finding in favor of appellee Mize. The issue before this Court is whether the Bankruptcy Court erred in its legal conclusions based on the facts which resulted in the discharging of Mize's debt to Village Bank.

Sections 523(a)(2)(A) and 523 (a)(2)(B) of the Bankruptcy Code, 11 U.S.C. §101-1330 (1982) set out the standard which allows for a finding that the debt is non-dischargeable if monies are obtained by fraud. The following elements must be met under §523(a)(2)(B):

- (1) The existence of a statement in writing;
- (2) that is materially false;
- (3) respecting the debtors' financial conditions;
- (4) upon which the creditor reasonably relied; and
- (5) that the debtor made the statements with the intent to deceive.

Regency National Bank v. Blutz, 37 Bankr. 401, 403 (E.D. Wisc. 1984).

It is clear from the record that the Bankruptcy Court found that Mize presented a materially false financial statement to the Board with the intent to deceive the Board. The Court did not conclude that the statements submitted by Mize were statements "upon which the debtor reasonably relied." Id. at 403. The Court was not convinced that the Board relied on the falsities of Mize in approving the loan, but rather found that the Board was influenced by Kralsenick in favor of approving the loan.

This Court finds that the law to be applied to the stated facts of this case is broad enough to cover the misrepresentations herein. Liability for misrepresentations is not necessarily limited to the person with whom the misrepresentation deals. See Griffith v. Byers Construction Co. of Kansas, Inc., 510 P.2d 198, 204 (Kan. 1973). The Bankruptcy Court found that both the Board members of Village Bank and Kraselnick were defrauded by Mize. Whether the Board in accepting the loan application gave more weight to the false financial statements or Kraselnick's confidence in the validity of Mize cannot be determined by this Court. The facts as stated by the Bankruptcy Court leave no doubt that the Board made its decision in reliance on the false information presented by Mize. Thus, §523 renders Appellees' debt to Appellate non-dischargeable.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Bankruptcy Court's decision be reversed as to the dischargeability of the debt Appellees owed to the Appellants. Such debt is hereby deemed non-dischargeable.

ORDERED this 28<sup>th</sup> day of April, 1989.

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



4

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

FILED

APR 27 1989

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

MID-AMERICAS PROCESS SERVICES,  
an Oklahoma corporation,

Plaintiff,

vs.

No. 88-C-1088B

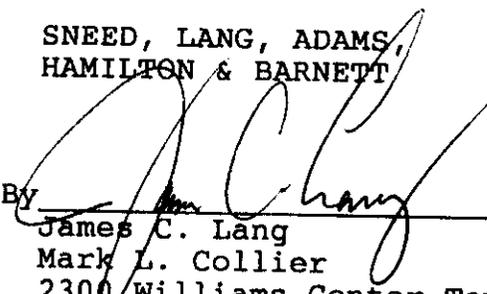
ASSOCIATED ELECTRIC COMPANY,  
INC., a New Hampshire  
corporation,

Defendant.

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the Plaintiff, Mid-Americas Process Services,  
and the Defendant, Associated Electric Company, Inc., and stipulate  
that the above-captioned suit be dismissed with prejudice in  
consideration of a settlement agreement between the parties.

SNEED, LANG, ADAMS,  
HAMILTON & BARNETT

By 

James C. Lang  
Mark L. Collier  
2300 Williams Center Tower II  
Two West Second Street  
Tulsa, Oklahoma 74103  
(918) 583-3145

Attorneys for Plaintiff  
Mid-Americas Process Services

DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

  
\_\_\_\_\_  
James P. McCann  
Scott R. Rowland  
1000 Atlas Life Building  
415 South Boston Avenue  
Tulsa, Oklahoma 74103  
(918) 582-1211

Attorneys for Defendant  
Associated Electric Company, Inc.

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

**FILED**

**APR 27 1989**

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

MICHAEL R. SCHMIDT, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
KENTON DALE WHEELER, )  
 )  
Defendant. )

Case No. 88-C-1422-B

ORDER OF DISMISSAL WITH PREJUDICE

ON this 27<sup>th</sup> day of April, 1989, the joint application of the parties for an order of dismissal with Prejudice came on before the court for hearing. The court finds that the parties have settled all of the issues in the case and that same should be dismissed with prejudice to refiling.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above captioned matter is dismissed with prejudice to refiling.

**S/ THOMAS R. BRETT**

\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

William R. Fix  
WILLIAM R. FIX  
Attorney for Plaintiff  
Michael R. Schmidt

R. Thomas Beadles  
R. THOMAS BEADLES  
Attorney for Plaintiff  
Michael R. Schmidt

Dennis King  
DENNIS KING  
Attorney for Defendant  
Kenton Dale Wheeler

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

**FILED**

**APR 27 1989**

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

BJ-TITAN SERVICES COMPANY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SIOUX PRODUCTION COMPANY, )  
 )  
Defendant. )

Case No. 88-C-1544 B

**JOURNAL ENTRY OF JUDGMENT AND INSTALLMENT ORDER**

THIS MATTER coming on for consideration before me, the undersigned United States District Judge, upon the agreement of Plaintiff and Defendant that judgment be entered for Plaintiff subject to the conditions as set forth below:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff have judgment against Defendant in the amount of NINETY-FIVE THOUSAND TWO HUNDRED THIRTY-TWO AND 75/100 (\$95,232.75) DOLLARS, together with interest at the rate of NINE AND ONE-HALF PERCENT (9.5%) *per annum* from and after January 7, 1987, and additional interest at the rate of TEN PERCENT (10%) *per annum* from and after the date of judgment herein; provided, however, that:

1. Defendant shall pay to Plaintiff monthly installments as described below through the office of Brian S. Gaskill, Plaintiff's attorney, on or before the 10th day of each month and, in any event, no later than the 15th day of each month, commencing June 10, 1989, and continuing each month until the sum of \$98,000.00 be fully paid. The monthly payment shall be in the following amounts:

- (a) June 1989 through May 1990, \$1,000.00 per month;
- (b) June 1990 through May 1991, \$3,000.00 per month;
- (c) June 1991 through March 1992, \$5,000.00 per month.

2. During such time as said payments are made as agreed, Plaintiff shall be stayed from executing upon the judgment through garnishment proceedings or otherwise, and Plaintiff shall not participate with any other creditor in collection activities against Sioux Production Company; but upon the failure of the Defendant to make any payment by the 15th of any month, this stay shall automatically terminate with no further order of this Court, and Plaintiff shall, in that event, be immediately entitled to execute upon the judgment through garnishment proceedings or otherwise.

3. If Defendant has fully complied with the above installment order, and if Defendant pays the total sum of \$98,000.00 in a timely manner by timely making the monthly payments set forth above, the judgment shall be deemed to have been paid in full, and the judgment shall be released and satisfied of record. Should Defendant fail to make any payment by the 15th of any month, the full judgment, including interest and attorneys' fees, will automatically be in effect, and any payments made to the Plaintiff by the Defendant will be credited to the judgment.

DATED this 27<sup>th</sup> day of April, 1989.

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

APPROVED AS TO FORM AND CONTENT:

SNEED, LANG, ADAMS,  
HAMILTON & BARNETT

By Brian S. Gaskill  
Brian S. Gaskill  
2300 Williams Center Tower II  
Two West Second Street  
Tulsa, Oklahoma 74103  
(918) 583-3145  
Attorneys for Plaintiff

M. W. KRIEGEL, P.C.

By Kathleen C. Kriegel  
Kathleen C. Kriegel  
Suite 1007  
420 South Main Street  
Tulsa, Oklahoma 74103  
Attorneys for Defendant

By William H. Parish, III  
William H. Parish, III  
President Sioux Production Company

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

**FILED**

JEFFREY RALEIGH HALL and )  
SUZANNE C. HALL, )  
 )  
Plaintiffs/Appellants, )  
 )  
v. )  
 )  
KATHRYN VANCE, Assistant )  
U. S. Trustee, )  
 )  
Defendant/Appellee. )

Bky. No. 87-02937-C  
(Chapter 11)

APR 27 1989

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

88-C-623-B

ORDER

Now before the court is the appeal from the final judgment of the Bankruptcy Court entered in this case on 6/29/88, in Case No. 87-02937-C, of appellants, Jeffrey and Suzanne Hall. An advisory hearing was held on 4/17/89 and appellants failed to appear. Despite appellants' failure to appear at the hearing on their appeal, the court will consider the case on its merits.

In their brief appellants allege that they were denied due process at the hearing in their case held on 6/24/88, that the facts and evidence did not support the dismissal of the case, that the court abused its discretion in dismissing when other remedies were available, and that the dismissal with prejudice was improper.

Bankruptcy Rule 8013 sets forth a "clearly erroneous" standard for appellate review of bankruptcy rulings with respect to findings of fact. In re: Morrissey, 717 F.2d 100, 104 (3rd Cir. 1983).

The hearing before the bankruptcy judge on 6/24/88 concerned the Trustee's Motions to Dismiss the case because debtors had failed to file a plan or disclosure statement within 120 days,

had not filed six monthly reports on time, had failed to settle any claims or resolve any issues with creditors and determine secured values necessary for reorganization, had failed to ensure that the expenses of administration would be paid and that a reorganization was feasible, and had shown no equity for unsecured creditors.

Appellants admitted that their plan and disclosure statement, claims, objections to claims, and several of their monthly reports had been filed late. Jeffrey Hall admitted that he had improperly handled the escrow account containing tenants' rental security deposits. The judge recommended the appointment of a trustee to value the assets and income of the debtors' estate and manage the income generated:

THE COURT: See I don't know anything about the assets or income of this property. Maybe this case was filed originally, the first day, there should have been a trustee appointed. Somebody who could go in and evaluate each piece of property and come back and report within thirty days, yes, this case is hopeless or no, this man can make it. As far as Mr. Hall is concerned if I appoint a trustee it doesn't mean there is going to be a trustee for the rest of your life. This could be a trustee until a plan is confirmed or until the case is dismissed. If a plan is confirmed the properties would be returned to you. I can tell you this. You have filed your claims, your objections to claims late, you filed your disclosure statement late and you haven't filed your reports on time. You haven't handled the tenants['] deposits properly. All these things would indicate to me that if this case is going to move we are going to have to have an experienced trustee in here.

(Tr. 19, lines 3-18).

Jeffrey Hall objected to the appointment of the trustee and the judge said:

... I have two options here. I can dismiss the case on any of those grounds I have just itemized. You have filed claims late, you filed your disclosure statement late, the disclosure statement doesn't explain anything, the mortgages have been going on since October haven't been paid. There are lots of grounds to dismiss this. On the other hand I can appoint a trustee. There will be expense incurred in that. You need to see to it somehow that he be paid and have him examine and then report back to the Court as to what he thinks ought to be done. Ordinarily there would be an attorney here that would have to be paid but you don't have an attorney here.

(Tr. 20, lines 6-16).

[by Mr. Creekmore, attorney for creditor Sooner Federal] ... I don't feel like there is any possible way from reading the plan in the disclosure statement that any of us know what treatment is proposed for us and whether or not even if we did know what the proposed treatment was what the chances are of the reorganization because I don't know what the income and expenses are. I don't know what the deferred maintenance needs are. I don't know anything about the operation of the debtor in possession as to his own income, his wife's income. The disclosure statement indicated she was potentially being employed soon and what the needs and income from the property is.

THE COURT: I would ask the trustee, if I appoint one, that's my inclination, to fill all that. Then we can take a look and we'll see, Mr. Hall, this is a disaster, get out of it. I want to ask Mr. Hall, you haven't been making payments on your mortgages, where have the rents been going?

(Tr. 24, lines 1-16).

The judge finally dismissed the case:

... You have to have a notice of a hearing and you object to the appointment of the trustee. The appointment of a trustee cannot be done without notice. You haven't been given notice and if you object to it I can't do it. Therefore I will dismiss the case.

(Tr. 29, lines 5-9).

In the Order of Dismissal with Prejudice and Denial of Motion to Reconsider filed 7/5/88, the court presented the findings on which dismissal was based: 1) that debtors had failed to file objections to claims by the date set by the court; 2) that debtors had failed to file their disclosure statement and plan of reorganization by the date set by the court; and 3) that debtors had failed to timely file monthly reports for April and May, 1988. The court cited 11 U.S.C. § 1112(b)(2), (3), and (4) as legal grounds for dismissal. The court found that the debtors had ignored the orders of the court regarding deadlines without giving sufficient reasons for the refusal to follow the orders. Further, debtors had filed a disclosure statement inadequately apprising creditors of their treatment under a proposed reorganization, containing unverifiable assumptions as to income and expenses and the condition and value of assets, and failing to provide a reason for debtors' financial problems, to set out cash requirements for the operation of properties, to identify escrowed funds held on behalf of tenants, to denominate claimants into classes and identify their treatment under the plan, to provide a liquidation analysis, to reveal pending litigation against the debtors or their assets, to disclose the management to be retained by the debtors, and to present tax consequences of the reorganization. These omissions in the disclosure statement were found by the court to constitute unreasonable delay by the debtors that was prejudicial to the creditors, and the case was therefore dismissed with prejudice to its refiling.

Title 11 U.S.C. §§ 1112(b)(2), (3), and (4) state as follows:

(b) Except as provided in subsection (c) of this section, on request of a party in interest or the United States trustee, and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, including --

(2) inability to effectuate a plan;

(3) unreasonable delay by the debtor that is prejudicial to creditors;

(4) failure to propose a plan under section 1121 of this title within any time fixed by the court.

Title 11 U.S.C. § 109(g)(1) states that "... no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if the case was dismissed by the court for willful failure of the debtor to abide by the orders of the court, or to appear before the court in proper prosecution of the case."

The court finds that there is adequate evidence in the record to support the finding of the bankruptcy judge that this case should be dismissed with prejudice and the finding was not "clearly erroneous". The evidence clearly shows repeated failures to follow court orders, unreasonable delay prejudicial to creditors, failure to timely propose a plan, and an inability to effectuate a plan, justifying dismissal under 11 U.S.C. §§

1112(b)(2), (3), and (4). Because the debtors objected to the appointment of a trustee to protect creditors' interests, the court was obligated to dismiss the case for their protection.

Therefore, the final judgment of the bankruptcy court entered in this case on 6/29/88 should be and is affirmed.

Dated this 27 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 27 1989**

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

BANK OF OKLAHOMA, a national  
association, )  
)  
Plaintiff, )

v. )

Case No. 87-C-600-B

ASSOCIATES NATIONAL MORTGAGE  
CORPORATION, a Delaware  
corporation, )  
)  
Defendant and )  
Third Party )  
Plaintiff, )

v. )

POOL MORTGAGE COMPANY, an  
Oklahoma corporation, and )  
CHEMICAL BANK, a bank chartered )  
under the laws of the State of )  
New York, )  
)  
Third Party )  
Defendants. )

ORDER

Upon the joint application of plaintiff, Bank of Oklahoma, N.A., and defendant Associates National Mortgage Corporation for an order of dismissal of their claims against each other with prejudice to the refiling thereof, and for good cause shown,

IT IS HEREBY ORDERED that Bank of Oklahoma's claims against defendant, Associates National Mortgage Corporation, and Associates National Mortgage Corporation's

claims against Bank of Oklahoma are hereby dismissed with prejudice to the refiling thereof, each party to bear its own costs.

S/ THOMAS R. BRETT

---

UNITED STATES DISTRICT JUDGE

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

FILED

APR 27 1989

PRUDENTIAL INSURANCE COMPANY )  
OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
FLORAFAX INTERNATIONAL, INC., )  
et al., )  
Defendants. )

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

Case No. 88-C-166-B

CONSENT ORDER OF DISMISSAL

By Agreement and Stipulation of Prudential Insurance Company of America, Plaintiff, and Florafax International, Inc., The Subscribing Employers' Employee Health Plan, Alice J. Chandler, individually and on behalf of Alice's Flowers, and the Alice's Flowers Employee Health Plan, and as legal guardian for John Benjamin Parkerson II, Defendants, IT IS HEREBY ORDERED:

1. That the Court has previously examined the terms of a Mutual Release and Settlement of Claims agreement in this cause and approves the terms and conditions of such Mutual Release and Settlement of Claims.

2. That all terms and provisions of the Mutual Release and Settlement of Claims and all negotiations and transactions and agreements relating to or arising from settlement conferences held before Magistrate Jeffrey S. Wolfe in this cause are and will remain strictly confidential and such may not be the subject of any written, graphic, electronic or oral statement, communication or report of any kind, with the sole exception of disclosures required by law or confidential business disclosure made in the course of accounting, tax preparations and/or

financial planning. This requirement of confidentiality encompasses the parties to this litigation and all counsel of record in these proceedings; violation of this Order requiring confidentiality shall be punishable by contempt proceedings.

3. Pursuant to the Stipulation to Dismiss, attached as Exhibit "A" to this Consent Order of Dismissal, all pending claims and causes of action by and between Prudential Insurance Company of America, Florafax International, Inc., the Subscribing Employers' Employee Health Plan, Alice Jean Chandler, individually and as legal guardian for John B. Parkerson, II, Alice's Flowers and Alice's Flowers Employee Benefit Plan be and hereby are DISMISSED in their entirety with prejudice, each party to bear its own costs and attorneys' fees.

DONE AND ORDERED in chambers, this 27<sup>th</sup> day of April, 1989.

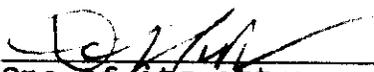
S/ THOMAS R. BRETT

\_\_\_\_\_  
JUDGE, United States  
District Court, Northern  
District of Oklahoma

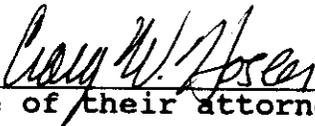
CONSENTED TO:

PRUDENTIAL INSURANCE COMPANY  
AMERICA, Plaintiff

FLORAFAX INTERNATIONAL, INC., OF  
and THE SUBSCRIBING EMPLOYERS'  
EMPLOYEE HEALTH PLAN, Defendants

By:   
One of its attorneys

Donald B. Harden, Esq.  
1500 Resurgens Plaza  
945 East Paces Ferry Road  
Atlanta, Georgia 30326

By:   
One of their attorneys

Frederick K. Slicker, Esq.  
Craig W. Hoster, Esq.  
Baker, Hoster, McSpadden,  
Clark, Rasure & Slicker  
800 Kennedy Building  
Tulsa, Oklahoma 74103  
(918) 592-5555

By:

John R. Paul  
One of its attorneys

John R. Paul, Esq.  
9 East Fourth Street  
Reunion Center, Ste. 400  
Tulsa, Oklahoma 74104  
(918) 584-2583

ALICE J. CHANDLER,  
individually and on behalf of  
ALICE'S FLOWERS and ALICE'S  
FLOWERS EMPLOYEE HEALTH  
PLAN as legal guardian for  
JOHN BENJAMIN PARKERSON, II,  
Defendants

By:

Gary W. Roberts  
One of their attorneys

Gary W. Roberts  
CONE & ROBERTS  
One Clearlake Centre  
250 Australian Avenue, South  
P. O. Box 4178  
West Palm Beach, Fl. 33402

By:

Carol A. Grissom  
One of its attorneys

Frederick N. Schneider, III,  
Carol A. Grissom  
BOONE, SMITH, DAVIS & HURST  
500 ONEOK Plaza  
100 West 5th Street  
Tulsa, Oklahoma 74103

FILED *ct*

APR 27 1989

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

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

BANK OF OKLAHOMA, N.A., )  
Grove Branch, formerly )  
Bank of Oklahoma, Grove, )

Plaintiff, )

vs. )

Case Number 88-C-1335-E ✓

THE ISLANDS MARINA, LTD., )  
et al., )

Defendants. )

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE  
OF FRANK A. JARVIS AND BANK OF THE LAKES

COME NOW, the Defendants Frank A. Jarvis ("Jarvis") and Bank of the Lakes ("BOL") and pursuant to the terms of a Settlement Agreement reached on April 21, 1989, and Fed. R. Civ. P. 41 hereby stipulate and agree as follows:

BOL dismisses with prejudice all claims in the above-referenced action as to Jarvis in their entirety.

Jarvis dismisses with prejudice all claims in the above-referenced action as to BOL in their entirety.

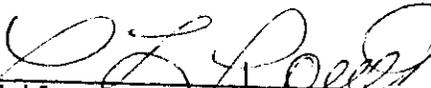
Both parties reserve all of their claims against other parties pursuant to the Settlement Agreement executed on even date herewith.

230

Each party hereto shall bear its own attorneys' fees, costs,  
and expenses of litigation.

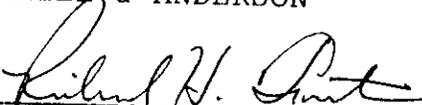
Dated this 27th day of April, 1989.

NEWTON & O'CONNOR

  
\_\_\_\_\_  
Philard L. Rounds, Jr.  
1412 South Boston  
Suite 600  
Tulsa, Oklahoma 74119  
(918) 587-0101

Attorney for Defendant  
Frank A. Jarvis

DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

By:   
\_\_\_\_\_  
Robert F. Biolchini (OBA #800)  
Richard H. Foster (OBA #3055)  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
(918) 582-1211

Attorneys for Defendant  
Bank of the Lakes

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 27th day of April, 1988, a true and correct copy of the above and foregoing instrument was mailed, with proper postage prepaid thereon, to:

Mr. Gregory A. Guerrero  
Holliman, Langholz, Runnels  
& Dorwart  
Suite 700, Holarud Building  
10 East Third Street  
Tulsa, Oklahoma 74103

Mr. Thomas F. Birmingham  
Ungerma, Conner & Little  
P. O. Box 701917  
Tulsa, Oklahoma 74170

Mr. Jon D. Douthitt  
Davis & Thompson  
Whitehead Street  
(Courthouse Square)  
Jay, Oklahoma 74346

Mr. Peter J. Mallers, II  
Mr. James P. Posey  
1100 Fort Wayne Bank Building  
Fort Wayne, Indiana 46802

Mr. Richard W. Lowry  
Logan, Lowry, Johnston,  
Switzer, West & McGeady  
101 South Wilson Street  
Vinita, Oklahoma 74301

Mr. James R. Ryan  
Conner & Winters  
2400 First National Tower  
Tulsa, Oklahoma 74103

Mr. Bruce A. McKenna  
P. O. Box 730  
Sapulpa, Oklahoma 74067

Mr. J. Peter Messler  
16 East 16th Street  
Suite 400  
Tulsa, Oklahoma 74119

Mr. Richard D. James  
P. O. Box 1168  
Miami, Oklahoma 74355

Mr. John B. Heatly  
2400 First National Center  
Oklahoma City, Oklahoma 73102

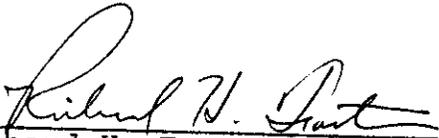
Mr. David R. Frensley  
801 West 47th Street, Suite 105  
Kansas City, Missouri 64112

Mr. William E. Hughes  
320 South Boston, Suite 1020  
Tulsa, Oklahoma 74103

Mr. Phil Frazier  
1424 Terrace Drive  
Tulsa, Oklahoma 74104

Mr. Philard L. Rounds, Jr.  
Newton & O'Conner  
1412 South Boston, Suite 600  
Tulsa, Oklahoma 74119

Mr. B. Jack Smith  
Boston Place Building  
50 East Fifteenth Street  
Tulsa, Oklahoma 74119

  
Richard H. Foster

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

**FILED**

**APR 27 1989**

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

IRENE S. ARNOLD and MARK D. SWISHER, )  
 )  
 Plaintiffs, )  
 )  
 Vs. )  
 )  
 DAMA TRUETT WIMBISH, )  
 )  
 Defendant. )

No. 89-C-146-B

ORDER OF DISMISSAL WITH PREJUDICE

The Stipulation For Dismissal With Prejudice filed herein by Mark D. Swisher, Irene S. Arnold, and Dama Truett Wimbish coming before the Court, and the Court finding that the parties have stipulated to dismissal with prejudice of the Complaint filed herein without assessment of attorneys' fees or costs, and Said stipulation and proposed Order are proper,

IT IS ORDERED that the Complaint filed herein by Mark D. Swisher and Irene S. Arnold be, and it hereby is, dismissed with prejudice without assessment of attorneys' fees or costs.

*S/* THOMAS R. BRETT

United States District Court Judge

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

JERRY WAYNE NOLES  
Petitioner,

v.

RON CHAMPION, WARDEN,  
Respondent.

)  
)  
)  
)  
)  
)  
)

M-1522-C

FILED

APR 27 1989

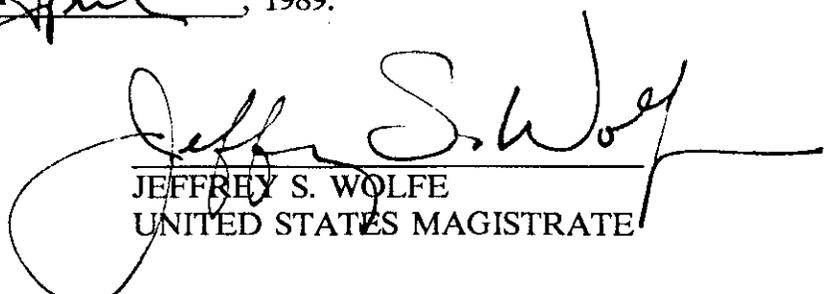
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER DENYING PETITIONER TO PROCEED  
IN FORMA PAUPERIS

In reliance upon the representations and information set forth in the Affidavit of Financial Status, it is Ordered that:

The movant herein, having assets of \$ 411.69, is denied leave to proceed in forma pauperis.

Dated this 27<sup>th</sup> day of April, 1989.

  
JEFFREY S. WOLFE  
UNITED STATES MAGISTRATE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA  
CLERK'S OFFICE  
UNITED STATES COURT HOUSE  
333 West Fourth Street, Room 411  
TULSA, OKLAHOMA 74103

JACK C. SILVER  
CLERK

(918) 581-7796  
(FTS) 745-7796

April 28, 1989

Jerry Wayne Noles  
PO Box 220-94800  
Connor Correctional Center  
Hominy, OK 74035

IN RE: M-1552  
Noles vs. Champion

Dear Sir/Madam:

You are advised that your motion to Proceed in Forma Pauperis has been denied by the Court.

If you wish to pursue your lawsuit, the filing fees in this Court are as follows:

Civil Rights Complaint.....	\$120.00
Habeas Corpus Petition.....	\$ 5.00

Please send the appropriate amount.

We are retaining your papers here in this office, but in the event you want them returned, please let us know.

Very truly yours,

JACK C. SILVER, CLERK

By: *P Wells*  
Deputy Clerk

*Proposed*

FILED

JUN 23 1983 *pw*

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA  
JACK H. SILVER, CLERK  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
CITY OF BARTLESVILLE,  
and the STATE OF OKLAHOMA  
Defendant.

FILED  
APR 25 1983  
JACK H. SILVER, CLERK  
U.S. DISTRICT COURT

89 - C 060 CV

*Proposed*  
CONSENT DECREE

Plaintiff, the United States of America ("United States"), on behalf on the United States Environmental Protection Agency ("EPA"), has filed contemporaneously with filing this Consent Decree, a complaint alleging that Defendant, City of Bartlesville, ("Bartlesville"), had violated the Clean Water Act, 33 U.S.C. § 1251 et seq. ("the Act"), the conditions and limitations of National Pollutant Discharge Elimination System ("NPDES") Permit Number OK0030333, and several Administrative Orders.

The City of Bartlesville, a political subdivision of the State of Oklahoma, owns and operates a publicly owned treatment work (the Bartlesville Plant).

The State of Oklahoma has been joined as a Defendant pursuant to Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e), and shall be liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment entered against the City to the extent that the laws of the State prevent the City from raising the revenues needed to comply with such judgment.

The United States and Bartlesville have consented to the entry of this Decree without trial of any issues, and the United States and Bartlesville hereby stipulate to the Court that in order to resolve the issues stated in the United States' Complaint, this Consent Decree should be entered.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over the subject matter of this action and over the parties pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and 28 U.S.C. § 1345. The Complaint states a claim upon which relief may be granted under Section 309 of the Act, 33 U.S.C. § 1319.

II. BINDING EFFECT

The provisions of this Consent Decree shall apply to and be binding upon the United States and Bartlesville, and

upon Bartlesville's officers, directors, agents, trustees, servants, employees, successors, assigns, and all persons, firms, and corporations acting under the control or direction of Bartlesville. No later than thirty [30] days prior to transfer of ownership, operation, or other interest in the Bartlesville plant, Bartlesville shall give written notice of this Consent Decree to any successors in interest. Upon transfer of ownership, operation, or other interest in the Bartlesville plant, Bartlesville shall provide a copy of this Decree to any successor in interest. Bartlesville shall condition the transfer of ownership, operation, other interest, or any contract related to the performance of the Decree upon the successful execution of the terms and conditions of this Decree. Bartlesville shall notify in writing the United States Environmental Protection Agency, Region 6, the United States Attorney for the Northern District of Oklahoma, and the United States Department of Justice of any successor in interest at least 30 days prior to transfer.

### III. OBJECTIVES

It is the express purpose of the parties in entering this Consent Decree to further the objectives of the Clean Water Act, as enunciated at Section 101 of the

Act, 33 U.S.C. § 1251. All plans, studies, construction, remedial maintenance, monitoring programs, and other obligations in this Decree or resulting from the activities required by this Decree shall have the objectives of causing Bartlesville to come into and remain in full compliance with the Clean Water Act, including compliance with the terms and conditions of NPDES Permit Number OK0030333, renewals or amendments to the Permit, and the provisions of applicable federal and State laws and regulations governing discharges from the Bartlesville plant.

#### IV. REMEDIAL ACTIONS

Bartlesville shall undertake a program to attain and thereafter maintain compliance with its NPDES Permit and the Act, and the agreed compliance program set forth below. The completion of the entire compliance program by July 1, 1989, or the date included in the follow-up plan submitted and approved pursuant to IV A 4 (b), shall be accomplished in accordance with the following schedule:

A. Bartlesville shall submit a Composite Correction Plan ("CCP") that describes how and when Bartlesville will attain and maintain compliance with NPDES Permit No. OK0030333 and the Act, or any amendments thereto. The CCP must be developed without regard to the availability of federal or State construction grant assistance and it must adequately address projected future wastewater flows. Bartlesville

agrees to complete the remedial activities listed below on or before the scheduled dates:

- |   | <u>Due Date</u> |
|---|-----------------|
| 1. Complete Inflow and Infiltration Rehabilitation (I/I)  | 3/1/89          |
| 2. Begin monitoring average and peak flows during completion of I/I reduction and flow equalization facilities  | 12/1/88         |
| 3. Evaluate impact of I/I effort, flow monitoring, and completion of currently on-going construction contracts.   | 5/1/89          |
| 4. Submit either of the following not later than 7/1/89:  |                 |
| a. Verification that I/I rehabilitation has been sufficient to achieve and maintain compliance with the Permit; or  |                 |
| b. A follow-up plan, to be begin implementation within 30 days of its submission, indicating what measures will be taken, in addition to the I/I rehabilitation, to achieve and maintain compliance with the Permit. Such plan shall include due dates for the following: |                 |
| (1) Completion of plans and specifications  |                 |
| (2) Advertising and Bidding contracts   |                 |
| (3) Beginning construction  |                 |
| (4) Completing construction   |                 |
| (5) Compliance with the NPDES Permit and the Clean Water Act  |                 |

V. EFFLUENT LIMITS AND MONITORING REQUIREMENTS

A. Interim Effluent Limits and Monitoring Requirements

Bartlesville shall at a minimum comply with the following interim effluent limits and monitoring requirements at the Bartlesville plant from the date of this decree until July 1, 1989 in case IV A 4(a) applies or until completion of all construction if IV A 4(b) applies.

<u>Parameter</u>	<u>MASS</u>	<u>CONCENTRATION Mg/l</u>	
	<u>lbs/day</u> <u>Mo. Avg.</u>	<u>Mo. Avg.</u>	<u>Week Avg.</u>
Biochemical Oxygen Demand (5-day) (BOD <sub>5</sub> )	2256	25	71
Total Suspended Solids (TSS)	3180	26	98
Ammonia	247	5	10

Monitoring Requirements

Measurement Frequency: Five times per week

Sample Type: Consistent with the NPDES permit

B. Final Effluent Limits

Bartlesville shall comply with the final effluent limits and monitoring requirements as set forth in its NPDES Permit not later than July 1, 1989, unless a follow-up plan has been submitted and approved pursuant to IV.A.4.b. above.

VI. FUNDING

Performance of the terms of this Consent Decree by Bartlesville is not conditioned on the receipt of any Federal

or State grant funds. In addition, Bartlesville's performance is not excused by the failure to obtain or the shortfall of any Federal or State grant funds, or by the processing of any applications for the same.

## VII. REPORTING

A. Beginning with the calendar quarter ending December 31, 1988, and for every calendar quarter thereafter, Bartlesville shall submit in writing to EPA Region 6 a report containing the following information: the status and progress of projects under this Decree; sampling and monitoring results; and information as to compliance or noncompliance with the applicable requirements of this Decree including construction requirements and effluent limitations, and any reasons for non-compliance. Such report shall also include a projection of the work to be performed pursuant to this Decree during the following quarter. Notification to EPA pursuant to this section of any anticipated delay shall not, by itself, excuse the delay.

B. The reports shall be submitted within the first fifteen (15) days of the month immediately following the last month of each calendar quarter. The full report shall be made available for inspection by any person at Bartlesville's offices.

C. In addition, within ten (10) days immediately following the deadline date of any requirement contained in Section IV of this Decree, Bartlesville shall notify EPA Region 6 in writing of compliance or noncompliance with said requirement, the reason(s) for any noncompliance, and a plan for preventing such noncompliance in the future.

VIII. STIPULATED PENALTIES

A. If Bartlesville fails to comply with any of the requirements in this Decree (other than the effluent limitations contained in Section V, for which a penalty is stipulated in sub-section VIII(B), below, and the requirements for which a penalty is stipulated in sub-section VIII(C), below) Bartlesville shall pay stipulated civil penalties as follows:

<u>Period of Failure to Comply</u>	<u>Penalty</u>
1st to 30th day	\$250.00/day per violation
31st to 60th day	\$500.00/day per violation
After 60 days	\$800.00/day per violation

B. Bartlesville shall pay the following stipulated civil penalties for noncompliance with any interim effluent limitation contained in this Consent Decree:

<u>Violation of Each Parameter</u> (e.g., BOD, TSS, Ammonia, Fecal Coliform)	<u>Penalty</u>
Weekly Average Concentration Limit	\$350.00 per wk.
Monthly Average Concentration Limit	\$1,000.00 per mo.
Monthly Average Mass Limit	\$1,000.00 per mo.

C. Notwithstanding the provisions of subsections VIII(A) and VIII(B), above, if Bartlesville fails to complete all remedial construction measures and begin operation of the Bartlesville Plant in compliance with NPDES Permit No. OK0030333 and the Clean Water Act by July 1, 1989, or the date approved in the follow-up plan submitted and approved pursuant to Section IV A 4(b), Bartlesville shall incur a penalty of \$1,000.00 per day for each day of violation. Said penalty is to be in addition to any other penalty that may be incurred. Construction completion means that the plant is operational and capable of treating wastewater.

D. The stipulated penalties herein shall be in addition to other remedies or sanctions available to the United States by reason of Bartlesville's failure to comply with the requirements of this Decree, the NPDES Permit, or the Clean Water Act.

E. Any stipulated penalties incurred by Bartlesville shall be paid by cashiers check payable to "Treasurer of the United States," and are to be tendered to the United States Attorney for the Northern District of Oklahoma, U.S. Courthouse Room 3600, 333 West Fourth St., Tulsa, OK 74103, by the 15th day of the month following the month in which the violations occurred, together with

a letter describing the basis for the penalties. A copy of the letter and the check shall be sent to the United States and the U.S. Environmental Protection Agency, Region 6, Allied Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202-2733; Attn: Mr. Robert E. Layton Jr., Regional Administrator, and to the Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, Washington, D.C. 20530, Re: DOJ Case No. 90-5-1-1-3055.

IX. DELAYS OR IMPEDIMENTS TO PERFORMANCE

A. If any event occurs which causes or may cause Bartlesville to violate any provision of this Decree, Bartlesville shall notify in writing the Court, the United States Attorney for the Northern District of Oklahoma, and EPA Region 6 within ten (10) days of the event. The notice shall specifically reference this section of the Decree and describe in detail the anticipated length of time the violation may persist, the precise cause or causes of the violation, the measures taken or to be taken by Bartlesville to prevent or minimize the violation as well as to prevent future violations, and the timetable by which those measures will be implemented. Bartlesville shall adopt all reasonable measures to avoid or minimize any such violation. Failure by Bartlesville to comply with the notice requirements of this section shall render this section void and of no effect as to the particular

incident involved, and shall constitute a waiver of Bartlesville's right to obtain an extension of time for its obligations under this section based on such incident.

B. If EPA Region 6 agrees that the violation has been or will be caused entirely by circumstances beyond the control of Bartlesville or any entity controlled by Bartlesville, including Bartlesville's consultants and contractors, and that Bartlesville could not have foreseen and prevented such violation, the time for performance of such requirement may be extended for a period not to exceed the actual delay resulting from such circumstance, and stipulated penalties shall not be due for said delay. In the event the EPA Region 6 does not so agree, Bartlesville may submit the matter to the Court for resolution pursuant to Section XI of this Decree. EPA shall notify Bartlesville in writing of EPA's agreement or disagreement with Bartlesville's claim of a delay or impediment to performance within 45 days of receipt of Bartlesville's notice under paragraph A of this section. If Bartlesville submits the matter to the Court for resolution and the Court determines that the violation was caused entirely by circumstances beyond the control of Bartlesville or any entity controlled by Bartlesville, including Bartlesville's consultants

and contractors, Bartlesville shall be excused as to that violation, but only for the period of time the violation continues due to such circumstances.

C. Unanticipated or increased costs or expenses associated with the implementation of this Decree, changed financial circumstances, or technical infeasibility of meeting NPDES effluent limitations shall not, in any event, serve as a basis for changes in this Decree or extensions of time under this Decree.

D. Compliance with any requirement of this Decree by itself, shall not constitute compliance with any other requirement. An extension of one compliance date based on a particular incident does not necessarily result in an extension of a subsequent compliance date or dates. Bartlesville must make an individual showing of proof regarding each delayed incremental step or other requirement for which an extension is sought.

E. Bartlesville shall bear the burden of proving that any delay or violation of any requirement of this Consent Decree was caused entirely by circumstances beyond the control of Bartlesville or any entity controlled by Bartlesville, including Bartlesville's consultants and

contractors. Bartlesville shall also bear the burden of proving the duration and extent of any delay or violation attributable to such circumstances.

X. JUDGMENT FOR PAST VIOLATIONS

Bartlesville shall pay an agreed judgment in the amount of seventy-two thousand dollars (\$72,000.00) in full satisfaction of the United States' claims for Bartlesville's violations of the Clean Water Act, the NPDES Permit, and the EPA Administrative Order as set forth in the Complaint filed herein through the date of lodging this Decree. Payment upon entry of this Decree by delivering a cashiers check in the sum stated above payable to the "Treasurer of the United States" to the United States Attorney for the Northern District of Oklahoma. A copy of the check and the letter tendering such check shall be mailed to EPA, Office of Regional Counsel, Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202-2733 and to the Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, 10th and Pennsylvania Avenue, N.W., Washington, D.C. 20530. Such payment shall not be deductible for federal taxation purposes.

## XI. DISPUTE RESOLUTION

If the parties are unable to agree upon any plan, procedure, standard, requirement, or other matter described herein, or in the event a dispute should arise among the parties regarding the implementation of the requirements of this Decree, Bartlesville shall follow the position of the United States unless it files a petition with the Court for resolution of the dispute within 30 days of receipt of the United States' final position. The petition shall set out the nature of the dispute with a proposal for its resolution. The United States shall have 30 days to file a response with an alternate proposal for resolution. In any such dispute, Bartlesville shall have the burden of proving that EPA's proposal is arbitrary and capricious and not in accord with the objectives of this Decree, and will achieve compliance with the terms and conditions of its permit and the Act in an expeditious manner.

## XII. RIGHT OF ENTRY

Until termination of this Consent Decree, EPA or its representatives, contractors, and consultants, and attorneys for the United States shall have the authority to enter any facility covered by this Decree, at all times, upon proper presentation of credentials to the manager or managers

of the facility or, in the manager's absence, to the highest ranking employee present on the premises, for the purposes of:

1. monitoring the progress of activities required by this Decree;
2. verifying any data or information submitted to EPA in accordance with the terms of the Decree;
3. obtaining samples, and, upon request, splits of any samples taken by Bartlesville or its consultants; and
4. assessing Bartlesville's compliance with this Decree.

#### XIII. NOT A PERMIT

This Consent Decree is not and shall not be interpreted to be a permit, or a modification of an existing permit, issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, nor shall it in any way relieve Bartlesville of its obligation to obtain a permit and comply with the requirements of an NPDES permit or with any other applicable Federal or State law or regulation. Any new permit, or modification of existing permits, must be complied with in accordance with applicable Federal and State laws and regulations. The pendency or outcome of any proceeding concerning the issuance, reissuance, or modification of an NPDES permit shall neither affect nor postpone Bartlesville's duties and liabilities as set forth in this Consent Decree.

#### XIV. FAILURE OF COMPLIANCE

The United States does not, by its consent to the entry of this Decree, warrant or aver in any manner that Bartlesville's complete compliance with this Decree will result in compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 et seq., or NPDES Permit Number OK0030333. Notwithstanding EPA's review and approval of any plans formulated pursuant to this Consent Decree, Bartlesville shall remain solely responsible for compliance with the terms of the Act, this Decree and it's NPDES permit.

#### XV. NON-WAIVER PROVISIONS

A. This Consent Decree in no way affects or relieves Bartlesville of responsibility to comply with any Federal, State, or local law or regulation. Nothing contained in this Decree shall be construed to prevent or limit the United States' rights to obtain penalties or injunctive relief under the Act or other federal statutes or regulations except as expressly specified herein.

B. The parties agree that Bartlesville is responsible for achieving and maintaining complete compliance with all applicable Federal and State laws, regulations, and permits, and that compliance with this Decree shall

be no defense to any actions commenced pursuant to said laws, regulations, or permits.

C. This Consent Decree does not limit or affect the rights of Bartlesville or of the United States as against any third parties, nor does it limit the rights of third parties, not parties to this Consent Decree, against Bartlesville.

D. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Decree.

#### XVI. COSTS OF SUIT

Each party shall bear its own costs and attorney's fees in this action. Should Bartlesville subsequently be determined to have violated the terms and conditions of this Decree, then Bartlesville shall be liable to the United States for any costs and attorney's fees incurred by the United States in any actions against Bartlesville for noncompliance with this Decree.

#### XVII. CONTINGENT LIABILITY OF STATE OF OKLAHOMA

This Decree does not resolve the contingent liability of the State of Oklahoma under Section 309(e) of the Act, 33 U.S.C. § 1319(e). The United States specifically reserves its claims against the State, and the State reserves its defenses.

XVIII. FORM OF NOTICE

Except as specified otherwise, when written notification to or communication with the United States, EPA Region 6, Defendant, or the State is required by the terms of this Consent Decree, it shall be addressed as follows:

As to the United States:

Roger J. Marzulla  
Assistant Attorney General  
Land and Natural Resources Division  
U. S. Department of Justice  
Post Office Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
Reference Case No. 90-5-1-1-3055

As to EPA Region 6:

Robert E. Layton Jr.  
U.S. Environmental Protection Agency  
Region 6  
First Interstate Bank Tower at Fountain Place  
1445 Ross Avenue  
Dallas, Texas 75202-2733

As to the Defendant:

City of Bartlesville  
P.O. Box 699  
Bartlesville, OK 74005

Notifications to or communications with EPA or the United States shall be deemed submitted on the date they are postmarked and sent by certified mail, return receipt requested.

#### XIX. MODIFICATION

Except as provided for herein, there shall be no modification of this Consent Decree without written approval of all the parties to this Consent Decree and the Court.

#### XX. PUBLIC COMMENT

The parties agree and acknowledge that final approval by the United States and entry of this Decree is subject to the requirements of 28 C.F.R. § 50.7 which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments.

#### XXI. CONTINUING JURISDICTION OF THE COURT

The Court shall retain jurisdiction to enforce the terms and conditions of this Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Decree.

#### XXII. TERMINATION

This Decree shall terminate when Bartlesville has paid all penalties due, has completed all remedial measures specified herein, and EPA has in the exercise of its non-reviewable discretion determined that Bartlesville has satisfactorily achieved compliance with its

NPDES permit for a period of six (6) consecutive months as indicated by a letter to the Court from the United States.

Dated and entered this 25 day of April, 1988<sup>9</sup>.

*Russell Book*  
UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of this Decree,  
subject to the public notice requirements of 28 C.F.R. § 50.7.

FOR THE UNITED STATES OF AMERICA:

JAN - 9 1989  
DATE

*Donald A. Carr*  
DONALD A. CARR  
Acting Assistant Attorney General  
Land and Natural Resources Division  
United States Department of Justice  
Washington, D.C. 20530

1.19.89  
DATE

*Kalyn Free*  
KALYN FREE, Attorney  
Environmental Enforcement Section  
Land and Natural Resources Section  
United States Department of Justice  
Washington, D.C. 20530

1/26/89  
DATE

TONY M. GRAHAM  
United States Attorney  
Northern District of Oklahoma  
BY: *Nancy Blevins*  
NANCY BLEVINS  
Assistant United States Attorney  
Northern District of Oklahoma

\_\_\_\_\_  
DATE

*Thomas Adams*  
THOMAS ADAMS  
Assistant Administrator for  
Enforcement and Compliance  
Monitoring  
U.S. Environmental Protection Agency  
Washington, D.C. 20460

FOR THE CITY OF BARTLESVILLE:

November 15, 1988  
DATE

BY: *Jay W. Caldwell*  
TITLE: City Attorney

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

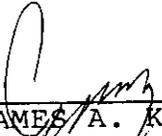
FILED  
APR 25 1988  
CLERK  
DISTRICT COURT

SAMSON RESOURCES COMPANY, )  
an Oklahoma corporation, )  
 )  
Plaintiff, )  
 )  
v. ) Case No. 88-C-686-B  
 )  
ARKLA, INC., d/b/a ARKLA )  
ENERGY RESOURCES, )  
 )  
Defendant and )  
Third-Party Plaintiff, )  
 )  
KERR-McGEE CORPORATION, )  
an Oklahoma corporation, )  
 )  
Third-Party Defendant. )

STIPULATION OF DISMISSAL WITHOUT  
PREJUDICE OF THE COMPLAINT,  
COUNTERCLAIM AND THIRD-PARTY COMPLAINT

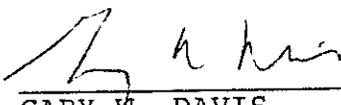
Pursuant to Rule 41(a)(1), Fed.R.Civ.P., the parties hereby stipulate to dismissal without prejudice of the Complaint, Counterclaim and Third-Party Complaint in this matter. Each party will bear its own costs and attorneys' fees. It is further understood that counterclaimant and third-party plaintiff, Arkla, Inc. will be joined as a defendant in a related action between plaintiff Samson Resources Company and third-party defendant Kerr-McGee Corporation currently pending in Oklahoma County, State of Oklahoma, Case No. CJ-89-248. Arkla will assert its

counterclaim against Samson Resources and its third-party complaint as a cross claim against Kerr-McGee in that proceeding.

  
\_\_\_\_\_  
JAMES A. KIRK, OBA No. 5046  
JAMES M. CHANEY, OBA No. 1606  
-of-  
KIRK & CHANEY  
1300 Midland Center  
134 Robert S. Kerr Avenue  
Oklahoma City, OK 73102-6695  
(405) 235-1333

  
\_\_\_\_\_  
WILLIAM D. CURLEE, OBA No. 2111

LYTLE SOULE & CURLEE  
1200 Robinson Renaissance  
119 North Robinson  
Oklahoma City, Oklahoma 73102  
(405) 235-7471

  
\_\_\_\_\_  
GARY W. DAVIS

CROWE & DUNLEVY  
1800 Mid-America Tower  
20 North Broadway  
Oklahoma City, Oklahoma 73102

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

PRINCIPAL MUTUAL LIFE INSURANCE  
COMPANY, an Iowa Corporation,

Plaintiff,

vs.

PRINCIPAL CONSULTANTS, INC.,  
an Oklahoma Corporation,  
CHRISTOPHER D. GRISEL, an  
individual, and NOEL E. WATKINS,  
an individual,

Defendants.

No. 88-C-1383C

**F I L E D**

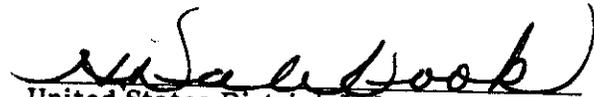
**APR 25 1989**

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

ORDER OF DISMISSAL WITHOUT PREJUDICE

Pursuant to Stipulation of Dismissal Without Prejudice under Rule 41(a)(1) of the Federal Rules of Civil Procedure, and based upon the terms of a Settlement Agreement, a copy of which is attached to and incorporated in said Stipulation,

IT IS HEREBY ORDERED that this action be and it hereby is dismissed without prejudice.

  
United States District Judge

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

FILED

MAR 25 1989

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

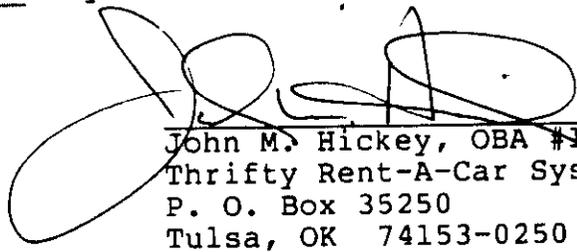
THRIFTY RENT-A-CAR SYSTEM, INC., )  
a corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
HOUSTON WINDOWS, INC., a )  
corporation, WARREN J. LUTWIN, )  
TED PULSIFER and ROBERT MALESK, )  
 )  
Defendant. )

Case No. 89-C-179-B

PARTIAL DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, Thrifty Rent-A-Car System, Inc., Plaintiff in the above-styled action, by and through its attorneys of record, hereby dismisses WITH PREJUDICE its causes of action against Warren J. Lutwin and Robert Malesk in the above-styled action. This Partial Dismissal with Prejudice does not affect Plaintiff's action against Houston Windows, Inc. or Ted Pulsifer.

Dated this 25<sup>th</sup> day of <sup>April</sup> ~~March~~, 1989.



John M. Hickey, OBA #11100  
Thrifty Rent-A-Car System, Inc.  
P. O. Box 35250  
Tulsa, OK 74153-0250  
(918) 665-3930

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

Attorneys for Thrifty Rent-A-Car  
System, Inc.

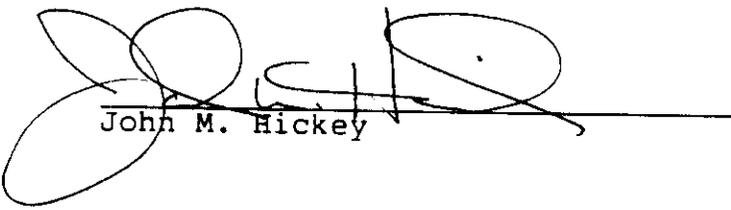
CERTIFICATE OF MAILING

I hereby certify that on the 25<sup>th</sup> day of April, 1989, a true and correct copy of the above and foregoing Partial Dismissal With Prejudice was mailed by first class mail, postage prepaid, to:

Robert Malesk  
c/o Michael J. Greenfeld, Esquire  
One Fulton Avenue  
Hempstead, NY 11550

Warren J. Lutwin  
c/o Michael J. Greenfeld, Esquire  
One Fulton Avenue  
Hempstead, NY 11550

Houston Windows, Inc.  
c/o G. Hughel Harrison, agent  
151 Pike Street  
Lawrenceville, GA 30245

  
John M. Hickey



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

FILED

APR 25 1989

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

AT&T INFORMATION SYSTEMS INC.,

Plaintiff,

v.

SATELCO INCORPORATED,

Defendant.

CASE NO. 88-C-1453 B

ORDER

It appearing to the Court that the parties have entered a Stipulation of Dismissal with prejudice,

It is therefore ORDERED, ADJUDGED AND DECREED that the complaint and the counterclaim in the above cause be and the same hereby are dismissed, with prejudice, with each party to bear its own costs.

Entered this 25<sup>th</sup> day of April, 1989.

S/ THOMAS R. BRETT

\_\_\_\_\_  
Judge

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

JOHN F. KEENER and PATSY ANN )  
KEENER, husband and wife, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
ANDREW JAMES DUNCAN and )  
STACEY SOMERS, )  
 )  
Defendants. )

**F I L E D**

APR 25 1989

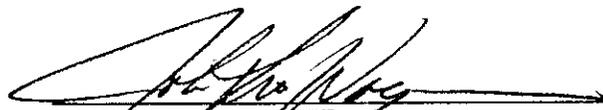
89-C-80-C

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

ORDER OF DISMISSAL

Pursuant to the Stipulation of Dismissal filed in this action on 3/17/89, it is hereby ordered that this action is dismissed with prejudice as to defendant Stacey Somers.

Dated this 24<sup>th</sup> day of April, 1989.

  
JOHN LEO WAGNER  
UNITED STATES MAGISTRATE

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

**F I L E D**

APR 25 1989 *dt*

CLARENCE WHITTINGTON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 RON CHAMPION and THE ATTORNEY )  
 GENERAL OF THE STATE OF )  
 OKLAHOMA, )  
 )  
 Defendants. )

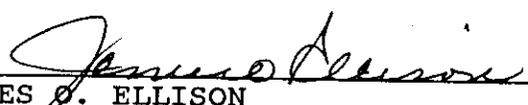
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 88-C-1287-E✓

O R D E R

The Court has for consideration the Report and Recommendation of the Magistrate filed January 9, 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 is adopted by the Court, that the HC Petition be denied.

It is so ORDERED this 24<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**

APR 25 1989

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

KENNETH W. POLLY, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 JAMES E. COY, et al, )  
 )  
 Defendants. )

88-C-200-E

ORDER

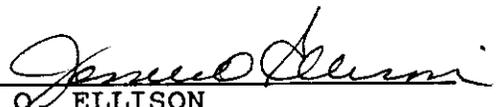
The Court has for consideration the Report and Recommendation of the United States Magistrate filed February 16, 1989 in which the Magistrate recommended that Plaintiff's civil rights action herein should be considered frivolous under 28 U.S.C. §1915(d) and dismissed, at this time, with prejudice.

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 Plaintiff's civil rights action herein is considered frivolous under 28 U.S.C. §1915(d) and dismissed, at this time, with prejudice.

Dated this 24<sup>th</sup> day of April, 1989.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

14

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

FILED

APR 25 1989 dt

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

KWB, INC., DON ADAMS, )  
THE BOVAIRD SUPPLY COMPANY, )  
C. ARNOLD BROWN, BRUCE )  
GALBIERZ, JEFF HENNING, )  
OWEN HENNING, CHARLES )  
MOUNTFORD, MICHAEL H. )  
VAUGHN, WILLIAM T. VAUGHN, )  
C. JOSEPH MOUNTFORD, VENUCOT )  
RESOURCES, INC., BILL O. )  
ANDRESS, ROBERT L. BLUBAUGH, )  
DAN L. DILLINGHAM, C. E. )  
DINSMORE, DOUGLAS R. FAULKNER, )  
HENRY H. GUNGOLL ASSOCIATES, )  
B P. HALL, RONALD E. PETTY, )  
URSULA M. L. ANDRESS, )  
OKLAHOMA PRODUCTION RESOURCES )  
INC., AND PETRO-VENTURES, INC. )

Plaintiffs, )

v. )

ARKLA, INC., )

Defendant. )

Case No. 88-C-602-E ✓

ADMINISTRATIVE CLOSING ORDER

IT APPEARING that these proceedings should be held in abeyance pursuant to the settlement and compromise affected by the parties, it is ordered that the Clerk administratively terminate this action in his records without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation. If within 45 days hereof, the parties have not

reopened for the purpose of obtaining such a final determination, this action will be deemed to be dismissed with prejudice.

IT IS SO ORDERED this 24<sup>th</sup> day of April, 1989.

  
UNITED STATES DISTRICT JUDGE

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

FILED

APR 25 1989

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

BANK OF OKLAHOMA, N.A., )  
Grove Branch, formerly Bank of )  
Oklahoma, Grove, )

Plaintiff, )

vs. )

Case No. 88-C-1335-E

THE ISLANDS MARINA, LTD., )  
an Oklahoma corporation, )  
et al., )

Defendant. )

GENERAL RELEASE AND JOINT STIPULATION  
OF DISMISSAL WITH PREJUDICE OF DEFENDANTS  
CHRYSLER FIRST WHOLESALE CREDIT, INC. AND  
DONZI CREDIT CORPORATION

In accordance with the terms and mutual covenants in the settlement reached in the above-referenced matter, each of the undersigned, their successors, assigns, subsidiaries, affiliates, divisions, partners, present or former officers, directors, controlling persons, employees, or agents do hereby remise, release, and forever discharge Chrysler First Wholesale Credit, Inc. and Donzi Credit Corporation and its successors, assigns, subsidiaries, affiliates, divisions, partners, present or former officers, directors, controlling persons, employees, or agents from each and every right, claim, debt, demand, action, cause of action, suit, and proceeding of every kind, either at law or in equity, whether known or unknown, actual or contingent, which the undersigned have, either now or in the future, arising from the transactions which are the subject of the above-referenced matter, including, but not limited to, any security interest the undersigned may have in the boat inventory of The Islands Marina, Ltd. The

parties further agree to dismiss with prejudice ~~the above-referenced matter~~ <sup>Chrysler and Donzi</sup> and this document shall further serve as a Joint Stipulation of Dismissal

With Prejudice.

This release is executed without reliance upon any statement or representation by either Chrysler First Wholesale Credit, Inc. or Donzi Credit Corporation, or their representatives, concerning the nature, extent, or cause of any damages or injuries, or legal liability therefor, and acceptance of the consideration set forth herein is in full accord and satisfaction of disputed claims, for which liability is not admitted but is expressly denied by the undersigned.

This release shall be binding on each of the parties hereto, their successors, assigns, subsidiaries, affiliates, divisions, partners and any of their present or former officers, directors, controlling persons, employees, or agents.

AGREED AND EXECUTED this 21 day of April, 1989.

DONZI CREDIT CORPORATION and  
CHRYSLER FIRST WHOLESALE CREDIT, INC.

By 

Thomas F. Birmingham, Their Attorney

BANK OF OKLAHOMA, N.A. GROVE BRANCH

By *Greg Guerrero*  
Gregory A. Guerrero

FIRST NATIONAL BANK AND TRUST COMPANY  
OF VINITA

By   
Richard W. Lowry

BANK OF THE LAKES, LANGLEY

By Richard H. Foster  
Richard H. Foster

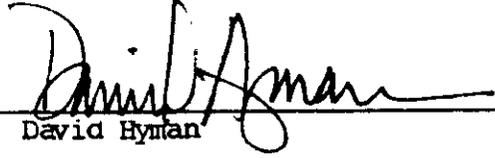
ROBERT (BOB) WILLIAMS, Defendant

By



Bruce A. McKenna

GUARANTY NATIONAL BANK

By  \_\_\_\_\_  
David Hyman

CERTIFICATE OF MAILING

I hereby certify that on the 25 day of April, 1989, a true and correct copy of the foregoing Application to Authorize Transfer of Property was mailed with sufficient postage thereon fully prepaid to:

Gregory A. Guerrero  
Holliman, Langholtz, Runnels & Dorwart  
Ten East Third Street, Suite 700  
Tulsa, Oklahoma 74103  
Attorney for Plaintiff, Bank of  
Oklahoma, N.A., Grove Branch,  
formerly Bank of Oklahoma, Grove

Richard H. Foster  
Doerner, Stuart, Saunders, Daniel  
and Anderson  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
Attorney for the Bank of Lakes  
of Langley, Oklahoma

Richard W. Lowry  
Logan, Lowry, Johnston, Switzer,  
West & McGeady  
P.O. Box 558  
Vinita, Oklahoma 74301  
Attorney for First National Bank  
and Trust Company of Vinita

Bruce McKenna  
Jack B. Sellers Law Assoc.  
P.O. Box 730  
Sapulpa, Oklahoma 74067  
Attorney for Defencant  
Bob Williams

David J. Hyman  
Conner & Winters  
2400 First National Tower  
Tulsa, Oklahoma 74103  
Attorney for Defendant  
Guaranty National Bank

  
Thomas F. Birmingham

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

APR 21 1989

United States of America, )  
Plaintiff, )

v. )

Four "D" Energy, Inc., )  
Defendant. )

Civil Action NO.  
87-C-969-E

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

AMENDED JUDGMENT

After reviewing the pleadings, briefs, and exhibits of the parties and based upon this Court's order filed October 13, 1988, as modified pursuant to Plaintiff's application to amend judgment, the Court enters the following findings and amended judgment, as a matter of law, in favor of the Plaintiff, United States of America, as follows:

This Court has jurisdiction of this action under 30 U.S.C. § 1268(d), 28 U.S.C. § 1345, and 28 U.S.C. § 1355. Venue is proper under 28 U.S.C. § 1391(b), 1395(a).

The Defendant, Four "D" Energy, Inc., at all times relevant hereto, conducted a surface coal mining and reclamation operation in Rogers County, Oklahoma, which is within the jurisdiction of this Court.

The Court further finds that following the issuance of notice of violation (NOV) 81-4-9-4 against the Defendant, the Secretary sent to the Defendant a proposed assessment of civil

penalty on February 23, 1981. The Court further finds that following the issuance of NOV 84-3-259-3 against the Defendant, the Secretary sent the Defendant a proposed assessment of civil penalty on June 27, 1984, and a modified proposed assessment was sent to the Defendant on August 9, 1984. The Court further finds that following the issuance of cessation order (CO) 84-3-9-1 against the Defendant, the Secretary sent to the Defendant a proposed assessment of civil penalty on April 2, 1984, and a modified assessment on April 25, 1984.

The Court further finds that the Defendant has failed to pay the above-described proposed civil penalties and has failed to deposit into escrow the above-described proposed assessments. The Court finds that the Defendant, therefore, has waived all legal right to contest the existence of the notices of violation and cessation order and the amount of the penalties assessed thereon.

The Court further finds that with respect to NOV 81-4-9-4 the office of Surface Mining Reclamation and Enforcement, United States Department of the Interior (OSM), acting on behalf of the Secretary, issued a final order requiring the payment of a penalty in the amount of \$440.00. The Court further finds that interest, late payment penalty, and administrative costs with respect to this penalty should be

imposed and calculated based upon Plaintiff's Exhibit "2R" which was filed in this action in support of Plaintiff's motion for summary judgment.

The Court further finds that with respect to NOV 84-3-259-3 OSM issued a final order requiring the payment of a penalty in the amount of \$1,800.00. The Court further finds that interest, late payment penalty, and administrative costs with respect to this penalty should be imposed and calculated based on Plaintiff's Exhibit "3S" filed herein.

The Court further finds that in regard to CO 84-3-9-1 OSM issued a final order requiring the payment of a penalty in the amount of \$22,500.00. The Court further finds that interest, late payment penalty, and administrative costs with respect to this penalty should be imposed and calculated based on Plaintiff's Exhibit "4L" filed herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, United States of America, be granted judgment, as a matter of law, against the Defendant in the following amounts:

a) Citation N81-4-9-4 (DCA letter sent 7/15/85)	Penalty.....\$440.00 Interest amount at 9% from 7/15/85 to 10/30/88...\$130.43 Penalty amount at 6% from 7/15/85 to 10/30/88...\$ 86.95 Administrative Costs..... <u>\$585.00</u> TOTAL.....\$1,242.38
b) Citation N84-3-259-3 (DCA letter sent 10/4/85)	Civil Penalty .....\$1,800.00 Interest amount at 9% from 10/4/85 to 10/30/88...\$497.61 Penalty amount at 6% from 10/4/85 to 10/30/88...\$331.74 Administrative Costs..... <u>\$540.00</u> TOTAL.....\$3,169.35
c) Citation C84-3-9-1 (DCA letter sent 7/15/85)	Civil Penalty amount....\$22,500.00 Interest amount at 9% from 7/15/85 to 10/30/88.\$6,669.57 Penalty amount at 6% from 7/15/85 to 10/30/88.\$4,446.38 Administrative Costs.....\$585.00 TOTAL.....\$38,612.68

d) Total amount owed (3 citations).....\$38,612.68

This amended judgment will carry with it a post-judgment interest rate of 9.51 %.

DATED this 24 day of April, 1988.

S/ JAMES O. ELISON

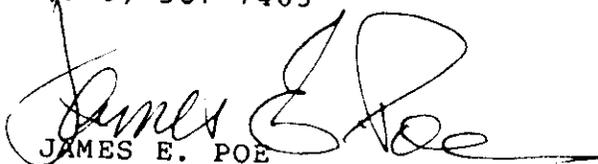
APPROVED AS TO FORM:

UNITED STATES DISTRICT JUDGE

TONY M. GRAHAM  
United States Attorney



PHIL PINNELL, OBA # 7169  
Assistant United States Attorney  
3600 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463



JAMES E. POE  
Covington & Poe  
740 Grantson Building  
5th & Boulder  
Tulsa, Oklahoma 74103

Attorney for Defendant  
Four "D" Energy, Inc.

FILED

APR 25 1989 dt

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

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

ARBIE J. PRICE II, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 EASTERN STATE HOSPITAL, )  
 et al., )  
 )  
 Respondents. )

No. 88-C-685-EV ✓

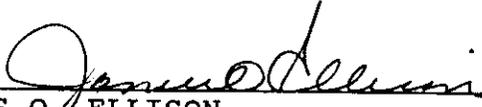
ORDER

The Magistrate has submitted a Report and Recommendation on January 9, 1989 in which he recommends that Petitioner's petition for habeas corpus relief be denied for the failure to exhaust state remedies. Nevertheless on January 30, 1989 the Magistrate has supplemented his Report and Recommendation in which he notes the absence in the record of any evidence that the State had submitted the requisite annual reports to the committing court which are required by 22 O.S. 1161 and 43A O.S. §5-107. The Magistrate changed his recommendation, recommending that Respondents' motion to dismiss be denied in the event that the annual reports required by statute had not been filed in the two and one-half years since Petitioner's commitment. Respondents have objected to the Magistrate's supplemental Report and Recommendation and have attached to their objection the annual reports submitted to the Tulsa County District Judge Sharron Bubenik on June 18, 1986, June 10, 1986, July 9, 1987 and August 3, 1988.

The Court declines to adopt the Magistrate's Report and Recommendation in which he recommends that Respondents' motion to dismiss be denied. Although the Magistrate was concerned that Respondents had not complied with state law, the supplementation of the record before the Court reveals that Respondents have indeed annually complied with state reporting requirements. Therefore state law has not been violated and Petitioner's petition should be dismissed on the grounds that he has failed to exhaust his state remedies.

IT IS THEREFORE ORDERED that the petition of Petitioner for federal habeas corpus relief be denied.

ORDERED this 24<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

APR 25 1989

MAPCO FRACTIONATOR INC.,

Plaintiff.

vs.

BURKE ENERGY CORPORATION,

Defendant.

No. 86-C-629-E

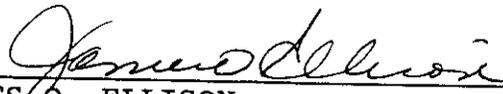
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

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

If, within 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 24<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

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. )

Case No. 88-C-1340-B

**FILED**  
APR 25 1988  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JUDGMENT AND DECREE OF FORECLOSURE

This matter came on for decision before the Court, the Honorable Thomas R. Brett, District Judge, presiding, upon the Motion for Summary Judgment filed by the defendant, the Fourth National Bank of Tulsa ("Fourth"), against the defendants, Robert Lee Shepler and Deborah Jo Shepler ("Sheplers"). Fourth appears through its attorneys of record, Rosenstein, Fist & Ringold, by Jerry A. Richardson. Sheplers appear through their attorneys of record, Comfort, Lipe & Green, by Richard E. Comfort and Timothy T. Trump. Having reviewed Fourth's Motion for Summary Judgment, the pleadings contained in the file, and the relevant legal authority, the Court finds as follows:

1. This Court has jurisdiction over the subject matter and all the parties to this cause of action.

2. There are no material facts in dispute in relation to Fourth's claim against the Sheplers.

3. The Sheplers were personally served with a summons and they voluntarily entered an appearance in this action.

4. This action was instituted in the District Court of Tulsa County by MidAmerica Federal Savings & Loan Association ("MidAmerica") to collect upon a promissory note and to foreclose a mortgage. Fourth was named as a party defendant, and filed an answer and cross-claim asserting the existence of a promissory note and seeking foreclosure of a mortgage superior to that of MidAmerica's. Home Savings & Loan Association also filed an answer and cross-claim, asserting the existence of a promissory note and mortgage superior to all other mortgages.

5. On September 21, 1988, prior to the removal of this action to federal court, Fourth filed a Motion for Summary Judgment seeking to foreclose its second mortgage against the Sheplers. The FSLIC was subsequently appointed receiver of MidAmerica and this action was removed to federal court before a ruling was made on Fourth's Motion.

6. On October 21, 1988, Fourth re-urged its Motion for Summary Judgment and attached a copy of an assignment of the first mortgage on the property at issue in this litigation from Home Savings & Loan Association to Fourth. At this point, Fourth became the holder of both the first and second mortgages on the property.

7. The FSLIC and Community Federal Savings & Loan Association ("Community"), successor in interest to the assets of

MidAmerica, filed responses to Fourth's motion advising the Court that they had no objection to Fourth's motion. The Sheplers have not responded to Fourth's motion. Pursuant to Local Rule 15(B), all material facts set forth in a motion for summary judgment are deemed admitted unless specifically controverted. Accordingly, the Sheplers have confessed Fourth's claim of a superior interest to the property. On April 11, the Court entered an Order granting Fourth summary judgment against the Sheplers.

8. As holder of the promissory note secured by the first mortgage, Fourth is entitled to judgment against the Sheplers in the principal amount of \$51,937.57, plus interest thereon at the rate of 8.75% per annum from the date of default through April 11, 1989, in the amount of \$3,862.23 and thereafter at a per diem of \$12.62 plus judgment for \$37.60 in late charges, plus a reasonable attorney fee as provided in the promissory note originally executed in favor of Home Savings & Loan Association by Russell Calava and Verline F. Calava and subsequently assumed by Sheplers. As holder of the promissory note secured by the second mortgage, Fourth is entitled to judgment against the Sheplers in the principal amount of \$43,125.63, plus interest thereon at the rate of 8.75% per annum from the date of default through April 11, 1989, in the amount of \$4,979.63 and thereafter at a per diem of \$10.48 plus judgment for \$579.85 in late charges, plus a reasonable attorney fee as provided in the promissory note originally executed by the Sheplers and delivered to Fourth on December 15, 1977.

9. Fourth has valid first and prior mortgage liens on the improvements and real estate described below by virtue of the above-described mortgages. The real estate is described as follows:

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

10. Any interest that Sheplers, Local America Bank of Tulsa, the successor in interest to Community and MidAmerica, or the FSLIC claim in the Property is inferior, subsequent and subordinate to Fourth's claim.

11. The Court finds that Fourth elects to have the Property sold with appraisal and such election is approved and the sale shall be with appraisal.

IT IS THEREFORE ORDERED that Fourth recover from Sheplers, an in personam judgment on the promissory note secured by the first mortgage in the principal amount of \$51,937.57, plus interest thereon at the rate of 8.75% per annum from the date of default through April 11, 1989, in the amount of \$3,862.23 and thereafter at a per diem of \$12.62 plus judgment for \$37.60 in late charges, plus a reasonable attorney fee as set forth herein, and an in personam judgment on the promissory note secured by the second mortgage in the principal amount of \$43,125.63, plus interest thereon at the rate of 8.75% per annum from the date of default through April 11, 1989, in the amount of \$4,979.63 and thereafter at a per diem of \$10.48 plus judgment for \$579.85 in late charges, plus a reasonable attorney fee in the amount of \$4,350.

IT IS FURTHER ORDERED that Fourth has first and prior mortgages on the Property and improvements described herein. The mortgage liens of Fourth are adjudged and established to be good and valid liens upon the Property and Fourth's judgment indebtedness is secured by the liens. Any and all right, title and interest which Sheplers, Local America Bank of Tulsa, or the FSLIC have or claim to the property is subsequent, junior, subordinate and inferior to the mortgage liens of Fourth.

IT IS FURTHER ORDERED that upon the failure of Sheplers to satisfy the judgment and lien described herein, Fourth may proceed to levy upon the property, after having the Property appraised as provided by law, and advertise and sell the Property according to law. The proceeds of this sale shall be turned over to the clerk of the court from which the execution has issued, who shall apply the proceeds as follows: first, to payment of costs of this action and costs of the sale, including attorney fees of Fourth's counsel; second, to satisfy the judgment of Fourth as set forth herein; third, the residue, if any, shall be deposited with the clerk of such court to await further order of the Court.

IT IS FURTHER ORDERED that from and after the sale of the Property, all of the parties to this action and each of them, and all persons claiming under them or any of them shall be and are forever barred and foreclosed from any and every lien upon, right, title, estate and equity of redemption, in or to the Property, or any portion thereof.

IT IS FURTHER ORDERED that upon confirmation of the sale ordered, an appropriate officer of the court confirming such sale shall execute and deliver a good and sufficient deed to the Property to the purchaser, which shall convey all the right, title, interest, estate and equity of redemption, of all the parties and all the persons claiming under them and each of them, since the filing of this action, and upon application of the purchaser, the Court shall issue a writ of assistance to the appropriate court official who shall place the purchaser in full and complete possession and enjoyment of the Property.

DATED April 25, 1989

S/ THOMAS R. BRETT

Thomas R. Brett,  
United States District Judge

APPROVED FOR ENTRY:

---

Richard E. Comfort  
Timothy Trump  
Comfort, Lipe & Green  
2100 Mid-Continent Tower  
401 South Boston Avenue  
Tulsa, OK 74103

Attorneys for the Sheplers

---

Lewis N. Carter  
Doerner, Stuart, Saunders,  
Daniel & Anderson  
1000 Atlas Life Building  
Tulsa, OK 74103

Attorneys for Local America Bank of Tulsa

IT IS FURTHER ORDERED that upon confirmation of the sale ordered, an appropriate officer of the court confirming such sale shall execute and deliver a good and sufficient deed to the Property to the purchaser, which shall convey all the right, title, interest, estate and equity of redemption, of all the parties and all the persons claiming under them and each of them, since the filing of this action, and upon application of the purchaser, the Court shall issue a writ of assistance to the appropriate court official who shall place the purchaser in full and complete possession and enjoyment of the Property.

DATED \_\_\_\_\_

\_\_\_\_\_  
Thomas R. Brett,  
United States District Judge

APPROVED FOR ENTRY:

  
\_\_\_\_\_  
Richard E. Comfort  
Timothy Trump  
Comfort, Lipe & Green  
2100 Mid-Continent Tower  
401 South Boston Avenue  
Tulsa, OK 74103

Attorneys for the Sheplers

\_\_\_\_\_  
Lewis N. Carter  
Doerner, Stuart, Saunders,  
Daniel & Anderson  
1000 Atlas Life Building  
Tulsa, OK 74103

Attorneys for Local America Bank of Tulsa

IT IS FURTHER ORDERED that upon confirmation of the sale ordered, an appropriate officer of the court confirming such sale shall execute and deliver a good and sufficient deed to the Property to the purchaser, which shall convey all the right, title, interest, estate and equity of redemption, of all the parties and all the persons claiming under them and each of them, since the filing of this action, and upon application of the purchaser, the Court shall issue a writ of assistance to the appropriate court official who shall place the purchaser in full and complete possession and enjoyment of the Property.

DATED \_\_\_\_\_

\_\_\_\_\_  
Thomas R. Brett,  
United States District Judge

APPROVED FOR ENTRY:

\_\_\_\_\_  
Richard E. Comfort  
Timothy Trump  
Comfort, Lipe & Green  
2100 Mid-Continent Tower  
401 South Boston Avenue  
Tulsa, OK 74103

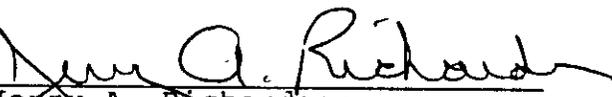
Attorneys for the Sheplers

  
\_\_\_\_\_  
Lewis N. Carter  
Doerner, Stuart, Saunders,  
Daniel & Anderson  
1000 Atlas Life Building  
Tulsa, OK 74103

Attorneys for Local America Bank of Tulsa

  
Julius M. Roffers  
Barry K. Beasley  
Huffman, Arrington, Kihle,  
Gaberino & Dunn  
1000 Oneok Plaza  
Tulsa, OK 74103

Attorneys for FSLIC

  
Jerry A. Richardson  
Rosenstein, Fist & Ringold  
525 South Main, Suite 300  
Tulsa, OK 74103

Attorneys for the Fourth National Bank

---

Juley M. Roffers  
Barry K. Beasley  
Huffman, Arrington, Kihle,  
Gaberino & Dunn  
1000 Oneok Plaza  
Tulsa, OK 74103

Attorneys for FSLIC

---

Jerry A. Richardson  
Rosenstein, Fist & Ringold  
525 South Main, Suite 300  
Tulsa, OK 74103

Attorneys for the Fourth National Bank

FILED

APR 24 1989

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

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

ROBERT E. COTNER,

Plaintiff,

vs.

STATE OF OKLAHOMA, and the  
U.S. SECRET SERVICE et al.,

Defendants.

Case No. M-1506-E

ORDER

NOW on this 21<sup>ST</sup> day of April, 1989, comes on for consideration the above styled matter and the Court, being fully advised in all premises finds that Plaintiff Cotner has moved this Court to grant him an immediate release on his own recognizance or, in the alternative, an immediate detention hearing. Plaintiff Cotner is currently detained in the Tulsa County Jail, pending the outcome of State v. Cotner, CRF-88-4539. As State v. Cotner involves state court charges against Mr. Cotner, and no resolution of the case has as yet been obtained, the power of this federal Court is limited. See Whittington v. Bray, 623 F.2d 681 (10th Cir. 1980). This Court having determined, pursuant to 28 U.S.C. §2254, that it has no jurisdiction over this matter, the matter must be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, this Court having no jurisdiction over this matter, it is hereby deemed dismissed without prejudice.

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

**FILED**

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

APR 24 1989

FEDERAL DEPOSIT INSURANCE CORPORATION,  
  
Plaintiff,  
  
v.  
  
JAN S. MIRSKY,  
  
Defendant.

Jack C. Silver, Clerk  
U.S. DISTRICT COURT  
  
Case No. 88-C-289-E

ORDER

Comes now for consideration the Joint Motion for Administrative Closure, and for good cause shown, the Court FINDS AND ORDERS as follows:

1. The Mirsky Settlement Agreement, which is attached to the Joint Motion is hereby approved.
2. This action is administratively closed until July 1, 1991, without prejudice to the FDIC's right to reopen this action on or before that date and in accordance with the Mirsky Settlement Agreement; and,
3. If no motion to reopen or motion to extend the administrative closure is filed on or before July 1, 1991, the FDIC's claims against Mirsky herein are hereby dismissed with prejudice on that date, with each party to bear his or its own attorney's fees and costs and expenses.

DATED this 21<sup>st</sup> day of April, 1988.

JAMES O. ELISON  
\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT



So Ordered this 24<sup>th</sup> day of April, 1989.

W. Dale Cook

United States District Judge

F I L E D

APR 24 1989 *dt*

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

BANK OF OKLAHOMA, N.A., )  
Grove Branch, formerly Bank )  
of Oklahoma, Grove, )

Plaintiff, )

vs. )

Case No. 88-C-1335-E ✓

THE ISLANDS MARINA, LTD., )  
an Oklahoma corporation; )  
et al., )

Defendants. )

JOINT STIPULATION OF DISMISSAL WITH  
PREJUDICE OF THE FIRST NATIONAL BANK  
AND TRUST COMPANY OF VINITA AND DONZI MARINE

COME NOW, Defendants The First National Bank and Trust  
company of Vinita ("FNBV") and Donzi Marine ("Donzi") and,  
pursuant to Fed. R. Civ. P. 41 hereby, stipulate and agree  
as follows:

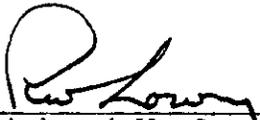
Donzi dismisses with prejudice all claims in the above-  
captioned action as to Defendant FNBV in their entirety,  
hereafter disclaiming all interest and claim in and to the  
boat inventory of The Islands Marina, Ltd.

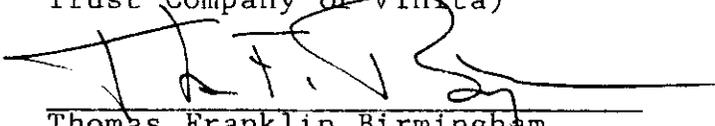
FNBV dismisses with prejudice all claims in the above-  
captioned action as to Donzi, reserving all rights arising

out of the transaction which is the subject of this action and which FNBV may have against the remaining Defendants, (i) Harris-Kayot, Inc., (ii) Roger King, (iii) Emery Urfer, (iv) Jerry Courtney, (v) Genmar Industries, Inc., (vi) Charles Gary James (vii) Patricia K. James, and (viii) The Islands Marina, Ltd.

Each party hereto shall bear its own attorneys' fees, costs, and expenses of litigation.

Dated this 21 day of April, 1989.

  
Richard W. Lowry  
O.B.A. #5552  
Logan, Lowry, Johnston,  
Switzer, West & McGeady  
P. O. Box 558  
Vinita, Oklahoma 74301  
(918) 256-7511  
(Attorneys for Defendant  
The First National Bank and  
Trust Company of Vinita)

  
Thomas Franklin Birmingham  
O.B.A. #811  
Ungerman, Conner and Little  
P. O. Box 701917  
Tulsa, Oklahoma 74170-1917  
(Attorneys for Defendants  
Donzi Credit Corporation)

FILED

APR 28 1989

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

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes on before the Court upon the above Joint Stipulation of Dismissal With Prejudice and THE COURT FINDS:

That the above Joint Stipulation of Dismissal With Prejudice should be and is hereby allowed.

That there is no just reason for delay and that a judgment of dismissal of The First National Bank and Trust Company of Vinita and Donzi Marine as set forth in the Joint Stipulation of Dismissal with Prejudice should be entered at this time.

AND IT IS SO ORDERED.

The Clerk is directed to enter judgment accordingly.

Dated this 27<sup>th</sup> day of April, 1989.

  
JAMES O. ELLISON, UNITED STATES  
DISTRICT COURT JUDGE

APPROVED AS TO FORM:



Richard W. Lowry  
Logan, Lowry, Johnston,  
Switzer, West & McGeady  
P. O. Box 558  
Vinita, Oklahoma 74301  
(918) 256-7511  
(Attorneys for Defendant  
The First National Bank and  
Trust Company of Vinita)



Thomas Franklin Birmingham  
Ungerman, Conner and Little  
P. O. Box 701917  
Tulsa, Oklahoma 74170-1917  
(Attorneys for Defendant  
Donzi Marine)

CERTIFICATE OF MAILING

I, Richard W. Lowry, do hereby certify that on this 21st day of April, 1989, I mailed a true and correct copy of the above and foregoing "Joint Stipulation of Dismissal With Prejudice of The First National Bank and Trust Company of Vinita and Donzi Marine and Order of Dismissal with Prejudice" to:

Gregory A. Guerrero, Esquire  
Robert Alan Rush, Esquire  
Holliman, Langholtz, Runnels & Dorwart  
Suite 700 Holarud Building  
Ten East Third Street  
Tulsa, Oklahoma 74103-3695  
(Attorneys for Plaintiff Bank of Oklahoma, N.A.,  
Grove Branch, formerly Bank of Oklahoma, Grove)

Jon D. Douthitt, Esquire  
Davis & Thompson  
P. O. Drawer 487  
Jay, Oklahoma 74346  
(Attorneys for Defendants The Islands Marina,  
Ltd., Charles Gary James and Patricia K. James)

William E. Hughes, Esquire  
320 South Boston Avenue  
Suite 1020  
Tulsa, Oklahoma 74103  
(Attorney for Defendant Wellcraft Marine,  
a division of Genmar, Inc.)

Richard Foster, Esquire  
Doerner, Stuart, Saunders,  
Daniel & Anderson  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
(Attorneys for Defendant Bank of the Lakes)

Thomas Franklin Birmingham, Esquire  
Ungerman, Conner and Little  
P. O. Box 701917  
Tulsa, Oklahoma 74170-1917  
(Attorneys for Defendants Chrysler First  
Wholesale Credit, Inc. and Donzi Credit  
Corporation)

Thomas L. Vogt, Esquire  
Jones, Givens, Gotcher,  
Bogan & Hilborne  
3800 First National Tower  
Tulsa, Oklahoma 74103  
(Attorneys for Defendant First Oklahoma  
Savings Bank)

John Joseph Snider, Esquire  
John B. Heatly, Esquire  
Ms. Barbara G. Bowerson  
Ms. Janie A. Simms  
Fellers, Snider, Blankenship,  
Bailey & Tippens  
2400 First National Center  
Oklahoma City, Oklahoma 73102  
(Attorneys for Defendant Federal Savings and  
Loan Insurance Corporation, as Receiver for  
First Oklahoma Savings Bank)

Huffman, Arrington, Kihle,  
Gaberino & Dunn  
1000 Oneok Plaza  
Tulsa, Oklahoma 74103  
(Attorneys for Defendant Federal Savings and  
Loan Insurance Corporation, as Receiver for  
First Oklahoma Savings Bank)

David J. Hyman, Esquire  
James R. Ryan, Esquire  
Joseph J. McCain, Jr., Esquire  
Conner & Winters  
2400 First National Tower  
Tulsa, Oklahoma 74103  
(Attorney for Defendant Guaranty National Bank)

William W. Bailey, Esquire  
Bailey & Fry, Inc.  
P. O. Box 276  
Vinita, Oklahoma 74301-0276  
(Attorneys for Defendant First State Bank of  
Ketchum, Oklahoma)

Phil Frazier, Esquire  
Frazier, Smith & Phillips, P.A.  
1424 Terrace Drive  
Tulsa, Oklahoma 74104  
(Attorneys for Defendant Emery Urfer)

Philard L. Rounds, Jr., Esquire  
Newton & O'Connor  
1412 South Boston  
Suite 600  
Tulsa, Oklahoma 74119  
(Attorneys for Defendant Frank A. Jarvis)

Richard D. James, Esquire  
Wallace, Owens, Landers,  
Gee, Morrow, Wilson,  
Watson, James & Coiner, P.C.  
P. O. Box 1168  
Miami, Oklahoma 74355  
(Attorneys for Defendant Jerry Courtney)

David Frensley, Esquire  
Frensley, Towerman & Willis  
801 West 47th Street  
Suite 105  
Kansas City, Missouri 64112  
(Attorney for Defendant Jerry Courtney)

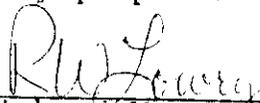
Bruce A. McKenna, Esquire  
Jack B. Sellers Law Associates, Inc.  
P. O. Box 730  
Sapulpa, Oklahoma 74067  
(Attorney for Defendant Robert Williams)

Peter G. Mallers, II, Esquire  
James P. Posey, Esquire  
1100 Fort Wayne Bank Building  
Fort Wayne, Indiana 46802  
(Attorneys for Harris-Kayot, Inc., d/b/a  
Harris Flotebote)

B. Jack Smith, Esquire  
Works, Lentz & Pottorf, Inc.  
Boston Place Building  
50 East 15th Street  
Tulsa, Oklahoma 74119  
(Attorneys for Harris-Kayot, Inc., d/b/a  
Harris Flotebote)

J. Peter Messler, Esquire  
16 East 16th Street  
Suite 404  
Tulsa, Oklahoma 74119  
(Attorney for Defendant Roger King)

with proper postage thereon fully prepaid.

  
Richard W. Lowry

**F I L E D**

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

APR 24 1989 *dx*

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

BANK OF OKLAHOMA, N.A., )  
Grove Branch, formerly Bank )  
of Oklahoma, Grove, )

Plaintiff, )

vs. )

THE ISLANDS MARINA, LTD., )  
an Oklahoma corporation; )  
et al., )

Defendants. )

Case No. 88-C-1335-E ✓

JOINT STIPULATION OF DISMISSAL  
WITH PREJUDICE OF THE FIRST NATIONAL  
BANK AND TRUST COMPANY OF VINITA AND  
BOB WILLIAMS AND ORDER OF DISMISSAL  
WITH PREJUDICE

COME NOW, The First National Bank and Trust Company of Vinita ("FNBV") and Bob Williams ("Williams") and, pursuant to the terms of a Settlement Agreement reached on March 20, 1989, and to Fed. R. Civ. P. 41, hereby stipulate and agree as follows:

Williams dismisses with prejudice all claims in the above-referenced action as to FNBV in their entirety.

FNBV dismisses with prejudice all claims in the above-referenced action as to Defendant Williams, reserving all

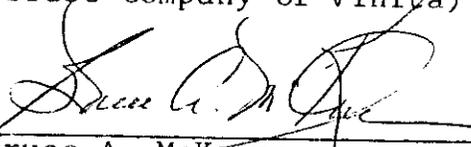
*22d*

its rights arising out of the transaction which is the subject of this action and which Defendant FNBV may have against Defendants (i) Harris-Kayot, Inc., (ii) Roger King, (iii) Emery Urfer, (iv) Jerry Courtney, (v) Genmar Industries, Inc., (vi) Charles Gary James, (vii) Patricia K. James and (viii) The Islands Marina, Ltd.

Each party hereto shall bear its own attorneys' fees, costs, and expenses of litigation.

Dated this 21<sup>st</sup> day of April, 1989.

  
Richard W. Lowry  
O.B.A. #5552  
Logan, Lowry, Johnston,  
Switzer, West & McGeady  
P. O. Box 558  
Vinita, Oklahoma 74301  
(918) 256-7511  
(Attorneys for Defendant  
The First National Bank and  
Trust Company of Vinita)

  
Bruce A. McKenna  
O.B.A. #6021  
Jack B. Sellers Law Associates,  
Inc.  
P. O. Box 730  
Sapulpa, Oklahoma 74067  
(Attorneys for Bob Williams)

FILED

APR 27 1989

*JK*

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

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes on before the Court upon the above Joint Stipulation of Dismissal with Prejudice and THE COURT FINDS:

That the above Joint Stipulation of Dismissal with Prejudice should be and is hereby allowed.

That there is no just reason for delay and that a judgment of dismissal of The First National Bank and Trust Company of Vinita and Bob Williams as set forth in the above Joint Stipulation of Dismissal with Prejudice should be entered at this time.

AND IT IS SO ORDERED.

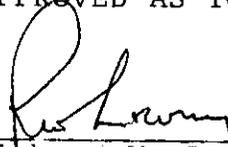
The Clerk is directed to enter judgment accordingly.

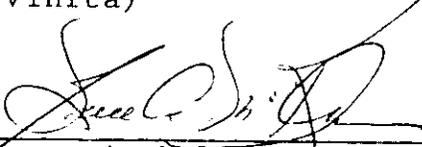
Dated this 27<sup>th</sup> day of April, 1989.

*James O. Ellison*

JAMES O. ELLISON, UNITED STATES  
DISTRICT COURT JUDGE

APPROVED AS TO FORM:

  
Richard W. Lowry  
Logan, Lowry, Johnston,  
Switzer, West & McGeady  
P. O. Box 558  
Vinita, Oklahoma 74301  
(918) 256-7511  
(Attorneys for Defendant  
The First National Bank  
and Trust Company of  
Vinita)

  
Bruce A. McKenna  
Jack B. Sellers Law  
Associates, Inc.  
P. O. Box 730  
Sapulpa, Oklahoma 74067  
(Attorneys for Bob Williams)

CERTIFICATE OF MAILING

I, Richard W. Lowry, do hereby certify that on this 21st day of April, 1989, I mailed a true and correct copy of the above and foregoing "Joint Stipulation of Dismissal With Prejudice" and "Order of Dismissal with Prejudice" to:

Gregory A. Guerrero, Esquire  
Robert Alan Rush, Esquire  
Holliman, Langholtz, Runnels & Dorwart  
Suite 700 Holarud Building  
Ten East Third Street  
Tulsa, Oklahoma 74103-3695  
(Attorneys for Plaintiff Bank of Oklahoma, N.A.,  
Grove Branch, formerly Bank of Oklahoma, Grove)

Jon D. Douthitt, Esquire  
Davis & Thompson  
P. O. Drawer 487  
Jay, Oklahoma 74346  
(Attorneys for Defendants The Islands Marina,  
Ltd., Charles Gary James and Patricia K. James)

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(Attorney for Defendant Wellcraft Marine,  
a division of Genmar, Inc.)

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Daniel & Anderson  
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(Attorneys for Defendant Bank of the Lakes)

Thomas Franklin Birmingham, Esquire  
Ungerma, Conner and Little  
P. O. Box 701917  
Tulsa, Oklahoma 74170-1917  
(Attorneys for Defendants Chrysler First  
Wholesale Credit, Inc. and Donzi Credit  
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(Attorneys for Defendant First Oklahoma  
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John B. Heatly, Esquire  
Ms. Barbara G. Bowerson  
Ms. Janie A. Simms  
Fellers, Snider, Blankenship,  
Bailey & Tippens  
2400 First National Center  
Oklahoma City, Oklahoma 73102  
(Attorneys for Defendant Federal Savings and  
Loan Insurance Corporation, as Receiver for  
First Oklahoma Savings Bank)

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Gaberino & Dunn  
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Tulsa, Oklahoma 74103  
(Attorneys for Defendant Federal Savings and  
Loan Insurance Corporation, as Receiver for  
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2400 First National Tower  
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(Attorney for Defendant Guaranty National Bank)

William W. Bailey, Esquire  
Bailey & Fry, Inc.  
P. O. Box 276  
Vinita, Oklahoma 74301-0276  
(Attorneys for Defendant First State Bank of  
Ketchum, Oklahoma)

Phil Frazier, Esquire  
Frazier, Smith & Phillips, P.A.  
1424 Terrace Drive  
Tulsa, Oklahoma 74104  
(Attorneys for Defendant Emery Urfer)

Philard L. Rounds, Jr., Esquire  
Newton & O'Connor  
1412 South Boston  
Suite 600  
Tulsa, Oklahoma 74119  
(Attorneys for Defendant Frank A. Jarvis)

Richard D. James, Esquire  
Wallace, Owens, Landers,  
Gee, Morrow, Wilson,  
Watson, James & Coiner, P.C.  
P. O. Box 1168  
Miami, Oklahoma 74355  
(Attorneys for Defendant Jerry Courtney)

David Frensley, Esquire  
Frensley, Towerman & Willis  
801 West 47th Street  
Suite 105  
Kansas City, Missouri 64112  
(Attorney for Defendant Jerry Courtney)

Bruce A. McKenna, Esquire  
Jack B. Sellers Law Associates, Inc.  
P. O. Box 730  
Sapulpa, Oklahoma 74067  
(Attorney for Defendant Robert Williams)

Peter G. Mallers, II, Esquire  
James P. Posey, Esquire  
1100 Fort Wayne Bank Building  
Fort Wayne, Indiana 46802  
(Attorneys for Harris-Kayot, Inc., d/b/a  
Harris Flotebote)

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Works, Lentz & Pottorf, Inc.  
Boston Place Building  
50 East 15th Street  
Tulsa, Oklahoma 74119  
(Attorneys for Harris-Kayot, Inc., d/b/a  
Harris Flotebote)

J. Peter Messler, Esquire  
16 East 16th Street  
Suite 404  
Tulsa, Oklahoma 74119  
(Attorney for Defendant Roger King)

with proper postage thereon fully prepaid.

  
\_\_\_\_\_  
Richard W. Lowry

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

**FILED**

APR 24 1989 *dt*

BANK OF OKLAHOMA, N.A.,  
Grove Branch, formerly Bank  
of Oklahoma, Grove,

Plaintiff,

vs.

THE ISLANDS MARINA, LTD.,  
an Oklahoma corporation;  
et al.,

Defendants.

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

Case No. 88-C-1335-E ✓

**FILED**

APR 25 1989

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

JOINT STIPULATION OF DISMISSAL  
WITH PREJUDICE OF THE FIRST NATIONAL  
BANK AND TRUST COMPANY OF VINITA AND  
CHRYSLER FIRST WHOLESALE CREDIT, INC.  
AND ORDER OF DISMISSAL WITH PREJUDICE

COME NOW, The First National Bank and Trust Company of Vinita ("FNBV") and Chrysler First Wholesale Credit, Inc. ("CFWC") and pursuant to the terms of a Settlement Agreement reached on March 20, 1989, and to Fed. R. Civ. P. 41, hereby stipulate and agree as follows:

FNBV dismisses with prejudice all claims in the above-referenced action as to CFWC reserving all rights arising out of the transaction which is the subject of this action and which Defendant FNBV may have against remaining Defendants, (i) Harris-Kayot, Inc., (ii) Roger King, (iii)

221

Emery Urfer, (iv) Jerry Courtney, (v) Genmar Industries, Inc., (vi) Charles Gary James, (vii) Patricia K. James and (viii) The Islands Marina, Ltd.

CFWC dismisses with prejudice all claims in the above-referenced action as to Defendant FNBV in their entirety, hereafter disclaiming all interest and claim in and to the boat inventory of The Islands Marina, Ltd.

Each party hereto shall bear its own attorneys' fees, costs, and expenses of litigation.

Dated this 21 day of April, 1989.

  
Richard W. Lowry  
O.B.A. #5552  
Logan, Lowry, Johnston,  
Switzer, West & McGeady  
P. O. Box 558  
Vinita, Oklahoma 74301  
(918) 256-7511  
(Attorneys for Defendant  
The First National Bank and  
Trust Company of Vinita)



Thomas Franklin Birmingham  
O.B.A. #811  
Ungerma, Conner and Little  
P. O. Box 701917  
Tulsa, Oklahoma 74170-1917  
(Attorneys for Defendants  
Chrysler First Wholesale  
Credit, Inc.)

*jc*  
**FILED**

APR 28 1989

ORDER OF DISMISSAL WITH PREJUDICE

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

This matter comes on before the Court upon the above Joint Stipulation of Dismissal with Prejudice and THE COURT FINDS:

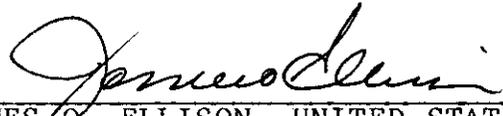
That the above Joint Stipulation of Dismissal with Prejudice should be and is hereby allowed.

That there is no just reason for delay and that a judgment of dismissal of The First National Bank and Trust Company of Vinita and Chrysler First Wholesale Credit, Inc. as set forth in the above Joint Stipulation of Dismissal with Prejudice should be entered at this time.

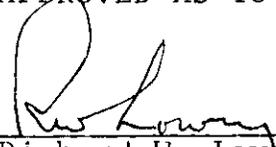
AND IT IS SO ORDERED.

The Clerk is directed to enter judgment accordingly.

Dated this 27<sup>th</sup> day of April, 1989. ✓

  
JAMES O. ELLISON, UNITED STATES  
DISTRICT COURT JUDGE

APPROVED AS TO FORM:

  
Richard W. Lowry  
Logan, Lowry, Johnston  
Switzer, West & McGeady  
P. O. Box 558  
Vinita, Oklahoma 74301  
(918) 256-7511  
(Attorneys for Defendant  
The First National Bank and  
Trust Company of Vinita)

  
Thomas Franklin Birmingham  
Ungerma, Conner and Little  
P. O. Box 701917  
Tulsa, Oklahoma 74170-1917  
(Attorneys for Defendant  
Chrysler First Wholesale  
Credit, Inc.)

CERTIFICATE OF MAILING

I, Richard W. Lowry, do hereby certify that on this 21st day of August, 1989, I mailed a true and correct copy of the above and foregoing "Joint Stipulation of Dismissal With Prejudice" and "Order of Dismissal with Prejudice" to:

Gregory A. Guerrero, Esquire  
Robert Alan Rush, Esquire  
Holliman, Langholtz, Runnels & Dorwart  
Suite 700 Holarud Building  
Ten East Third Street  
Tulsa, Oklahoma 74103-3695  
(Attorneys for Plaintiff Bank of Oklahoma, N.A.,  
Grove Branch, formerly Bank of Oklahoma, Grove)

Jon D. Douthitt, Esquire  
Davis & Thompson  
P. O. Drawer 487  
Jay, Oklahoma 74346  
(Attorneys for Defendants The Islands Marina,  
Ltd., Charles Gary James and Patricia K. James)

William E. Hughes, Esquire  
320 South Boston Avenue  
Suite 1020  
Tulsa, Oklahoma 74103  
(Attorney for Defendant Wellcraft Marine,  
a division of Genmar, Inc.)

Richard Foster, Esquire  
Doerner, Stuart, Saunders,  
Daniel & Anderson  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
(Attorneys for Defendant Bank of the Lakes)

Thomas Franklin Birmingham, Esquire  
Ungerma, Conner and Little  
P. O. Box 701917  
Tulsa, Oklahoma 74170-1917  
(Attorneys for Defendants Chrysler First  
Wholesale Credit, Inc. and Donzi Credit  
Corporation)

Thomas L. Vogt, Esquire  
Jones, Givens, Gotcher,  
Bogan & Hilborne  
3800 First National Tower  
Tulsa, Oklahoma 74103  
(Attorneys for Defendant First Oklahoma  
Savings Bank)

John Joseph Snider, Esquire  
John B. Heatly, Esquire  
Ms. Barbara G. Bowerson  
Ms. Janie A. Simms  
Fellers, Snider, Blankenship,  
Bailey & Tippens  
2400 First National Center  
Oklahoma City, Oklahoma 73102  
(Attorneys for Defendant Federal Savings and  
Loan Insurance Corporation, as Receiver for  
First Oklahoma Savings Bank)

Huffman, Arrington, Kihle,  
Gaberino & Dunn  
1000 Oneok Plaza  
Tulsa, Oklahoma 74103  
(Attorneys for Defendant Federal Savings and  
Loan Insurance Corporation, as Receiver for  
First Oklahoma Savings Bank)

David J. Hyman, Esquire  
James R. Ryan, Esquire  
Joseph J. McCain, Jr., Esquire  
Conner & Winters  
2400 First National Tower  
Tulsa, Oklahoma 74103  
(Attorney for Defendant Guaranty National Bank)

William W. Bailey, Esquire  
Bailey & Fry, Inc.  
P. O. Box 276  
Vinita, Oklahoma 74301-0276  
(Attorneys for Defendant First State Bank of  
Ketchum, Oklahoma)

Phil Frazier, Esquire  
Frazier, Smith & Phillips, P.A.  
1424 Terrace Drive  
Tulsa, Oklahoma 74104  
(Attorneys for Defendant Emery Urfer)

Philard L. Rounds, Jr., Esquire  
Newton & O'Connor  
1412 South Boston  
Suite 600  
Tulsa, Oklahoma 74119  
(Attorneys for Defendant Frank A. Jarvis)

Richard D. James, Esquire  
Wallace, Owens, Landers,  
Gee, Morrow, Wilson,  
Watson, James & Coiner, P.C.  
P. O. Box 1168  
Miami, Oklahoma 74355  
(Attorneys for Defendant Jerry Courtney)

David Frensley, Esquire  
Frensley, Towerman & Willis  
801 West 47th Street  
Suite 105  
Kansas City, Missouri 64112  
(Attorney for Defendant Jerry Courtney)

Bruce A. McKenna, Esquire  
Jack B. Sellers Law Associates, Inc.  
P. O. Box 730  
Sapulpa, Oklahoma 74067  
(Attorney for Defendant Robert Williams)

Peter G. Mallers, II, Esquire  
James P. Posey, Esquire  
1100 Fort Wayne Bank Building  
Fort Wayne, Indiana 46802  
(Attorneys for Harris-Kayot, Inc., d/b/a  
Harris Flotebote)

B. Jack Smith, Esquire  
Works, Lentz & Pottorf, Inc.  
Boston Place Building  
50 East 15th Street  
Tulsa, Oklahoma 74119  
(Attorneys for Harris-Kayot, Inc., d/b/a  
Harris Flotebote)

J. Peter Messler, Esquire  
16 East 16th Street  
Suite 404  
Tulsa, Oklahoma 74119  
(Attorney for Defendant Roger King)

with proper postage thereon fully prepaid.

  
\_\_\_\_\_  
Richard W. Lowry

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

**F I L E D**

APR 24 1989 *dt*

BANK OF OKLAHOMA, N.A., )  
Grove Branch, formerly Bank )  
of Oklahoma, Grove, )

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

Plaintiff, )

vs. )

Case No. 88-C-1335-E ✓

THE ISLANDS MARINA, LTD., )  
an Oklahoma corporation; )  
et al., )

Defendants. )

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE  
OF THE FIRST NATIONAL BANK AND TRUST  
COMPANY OF VINITA AND BANK OF THE LAKES  
AND ORDER OF DISMISSAL WITH PREJUDICE

COME NOW, the Defendants The First National Bank and Trust Company of Vinita ("FNBV") and Bank of the Lakes ("BOL") and pursuant to the terms of a Settlement Agreement reached on March 20, 1989, and Fed. R. Civ. P. 41 hereby stipulate and agree as follows:

BOL dismisses with prejudice all claims in the above-referenced action as to FNBV in their entirety.

FNBV dismisses with prejudice all claims in the above-referenced action as to BOL, <sup>only, in their entirety.</sup> ~~reserving all rights arising out of the transaction which is the subject of this action~~

*RHF*  
*dlv*

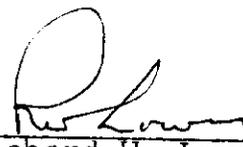
220

~~and which Defendant ENRV may have against remaining Defendants (i) Harris-Kayot, Inc., (ii) Roger King, (iii) Emory Urfer, (iv) Jerry Courtney, (v) Cenmar Industries, Inc., (vi) Charles Gary James, (vii) Patricia K. James, and (viii) The Islands Marina, Ltd.~~

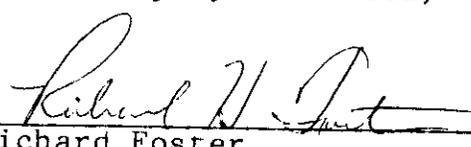
R-2  
RHF

Each party hereto shall bear its own attorneys' fees, costs, and expenses of litigation.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1989.



Richard W. Lowry  
O.B.A. #5552  
Logan, Lowry, Johnston,  
Switzer, West & McGeady  
P. O. Box 558  
Vinita, Oklahoma 74301  
(918) 256-7511  
(Attorneys for Defendant  
The First National Bank and  
Trust Company of Vinita)



Richard Foster  
O.B.A. #3055  
Doerner, Stuart, Saunders,  
Daniel & Anderson  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
(Attorneys for Defendant  
Bank of the Lakes)

FILED

APR 28 1989

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

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes on before the Court upon the above Joint Stipulation of Dismissal With Prejudice and THE COURT FINDS:

That the above Joint Stipulation of Dismissal With Prejudice should be and is hereby allowed.

That there is no just reason for delay and that a judgment of dismissal of The First National Bank and Trust Company of Vinita and Bank of the Lakes as set forth in the above Joint Stipulation of Dismissal with Prejudice should be entered at this time.

AND IT IS SO ORDERED.

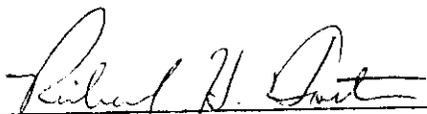
The Clerk is directed to enter judgment accordingly.

Dated this 27<sup>th</sup> day of April, 1989.

  
JAMES Q. ELLISON, UNITED STATES  
DISTRICT COURT JUDGE

APPROVED AS TO FORM:

  
Richard W. Lowry  
Logan, Lowry, Johnston,  
Switzer, West & McGeady  
P. O. Box 558  
Vinita, Oklahoma 74301  
(918) 256-7511  
(Attorneys for The First  
National Bank and Trust  
Company of Vinita)

  
Richard Foster  
Doerner, Stuart, Saunders,  
Daniel & Anderson  
100 Atlas Life Building  
Tulsa, Oklahoma 74103  
(Attorneys for Defendant  
Bank of the Lakes)

CERTIFICATE OF MAILING

I, Richard W. Lowry, do hereby certify that on this 21st day of April, 1989, I mailed a true and correct copy of the above and foregoing "Joint Stipulation of Dismissal With Prejudice of The First National Bank and Trust Company of Vinita and Bank of the Lakes and Order of Dismissal With Prejudice" to:

Gregory A. Guerrero, Esquire  
Robert Alan Rush, Esquire  
Holliman, Langholtz, Runnels & Dorwart  
Suite 700 Holarud Building  
Ten East Third Street  
Tulsa, Oklahoma 74103-3695  
(Attorneys for Plaintiff Bank of Oklahoma, N.A.,  
Grove Branch, formerly Bank of Oklahoma, Grove)

Jon D. Douthitt, Esquire  
Davis & Thompson  
P. O. Drawer 487  
Jay, Oklahoma 74346  
(Attorneys for Defendants The Islands Marina,  
Ltd., Charles Gary James and Patricia K. James)

William E. Hughes, Esquire  
320 South Boston Avenue  
Suite 1020  
Tulsa, Oklahoma 74103  
(Attorney for Defendant Wellcraft Marine,  
a division of Genmar, Inc.)

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Doerner, Stuart, Saunders,  
Daniel & Anderson  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
(Attorneys for Defendant Bank of the Lakes)

Thomas Franklin Birmingham, Esquire  
Ungerman, Conner and Little  
P. O. Box 701917  
Tulsa, Oklahoma 74170-1917  
(Attorneys for Defendants Chrysler First  
Wholesale Credit, Inc. and Donzi Credit  
Corporation)

Thomas L. Vogt, Esquire  
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Bogan & Hilborne  
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(Attorneys for Defendant First Oklahoma  
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John B. Heatly, Esquire  
Ms. Barbara G. Bowerson  
Ms. Janie A. Simms  
Fellers, Snider, Blankenship,  
Bailey & Tippens  
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(Attorneys for Defendant Federal Savings and  
Loan Insurance Corporation, as Receiver for  
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Joseph J. McCain, Jr., Esquire  
Conner & Winters  
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Tulsa, Oklahoma 74103  
(Attorney for Defendant Guaranty National Bank)

William W. Bailey, Esquire  
Bailey & Fry, Inc.  
P. O. Box 276  
Vinita, Oklahoma 74301-0276  
(Attorneys for Defendant First State Bank of  
Ketchum, Oklahoma)

Phil Frazier, Esquire  
Frazier, Smith & Phillips, P.A.  
1424 Terrace Drive  
Tulsa, Oklahoma 74104  
(Attorneys for Defendant Emery Urfer)

Philard L. Rounds, Jr., Esquire  
Newton & O'Connor  
1412 South Boston  
Suite 600  
Tulsa, Oklahoma 74119  
(Attorneys for Defendant Frank A. Jarvis)

Richard D. James, Esquire  
Wallace, Owens, Landers,  
Gee, Morrow, Wilson,  
Watson, James & Coiner, P.C.  
P. O. Box 1168  
Miami, Oklahoma 74355  
(Attorneys for Defendant Jerry Courtney)

David Frensley, Esquire  
Frensley, Towerman & Willis  
801 West 47th Street  
Suite 105  
Kansas City, Missouri 64112  
(Attorney for Defendant Jerry Courtney)

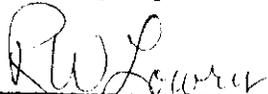
Bruce A. McKenna, Esquire  
Jack B. Sellers Law Associates, Inc.  
P. O. Box 730  
Sapulpa, Oklahoma 74067  
(Attorney for Defendant Robert Williams)

Peter G. Mallers, II, Esquire  
James P. Posey, Esquire  
1100 Fort Wayne Bank Building  
Fort Wayne, Indiana 46802  
(Attorneys for Harris-Kayot, Inc., d/b/a  
Harris Flotebote)

B. Jack Smith, Esquire  
Works, Lentz & Pottorf, Inc.  
Boston Place Building  
50 East 15th Street  
Tulsa, Oklahoma 74119  
(Attorneys for Harris-Kayot, Inc., d/b/a  
Harris Flotebote)

J. Peter Messler, Esquire  
16 East 16th Street  
Suite 404  
Tulsa, Oklahoma 74119  
(Attorney for Defendant Roger King)

with proper postage thereon fully prepaid.

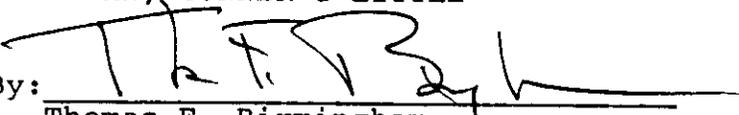
  
Richard W. Lowry



Each party hereto shall bear its own attorneys' fees, costs,  
and expenses of litigation.

Dated this 21 day of April, 1989.

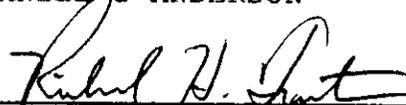
UNGERMAN, CONNER & LITTLE

By: 

Thomas F. Birmingham  
P. O. Box 701917  
Tulsa, Oklahoma 74170  
(918) 495-0550

Attorneys for Defendant Chrysler  
First Wholesale Credit, Inc.

DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

By: 

Robert F. Biolchini (OBA #800)  
Richard H. Foster (OBA #3055)  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
(918) 582-1211

Attorneys for Defendant  
Bank of the Lakes

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 24<sup>th</sup> day of April, 1988, a true and correct copy of the above and foregoing instrument was mailed, with proper postage prepaid thereon, to:

Mr. Gregory A. Guerrero  
Holliman, Langholz, Runnels  
& Dorwart  
Suite 700, Holarud Building  
10 East Third Street  
Tulsa, Oklahoma 74103

Mr. Thomas F. Birmingham  
Ungerma, Conner & Little  
P. O. Box 701917  
Tulsa, Oklahoma 74170

Mr. Jon D. Douthitt  
Davis & Thompson  
Whitehead Street  
(Courthouse Square)  
Jay, Oklahoma 74346

Mr. Peter J. Mallers, II  
Mr. James P. Posey  
1100 Fort Wayne Bank Building  
Fort Wayne, Indiana 46802

Mr. Richard W. Lowry  
Logan, Lowry, Johnston,  
Switzer, West & McGeady  
101 South Wilson Street  
Vinita, Oklahoma 74301

Mr. James R. Ryan  
Conner & Winters  
2400 First National Tower  
Tulsa, Oklahoma 74103

Mr. Bruce A. McKenna  
P. O. Box 730  
Sapulpa, Oklahoma 74067

Mr. J. Peter Messler  
16 East 16th Street  
Suite 400  
Tulsa, Oklahoma 74119

Mr. Richard D. James  
P. O. Box 1168  
Miami, Oklahoma 74355

Mr. John B. Heatly  
2400 First National Center  
Oklahoma City, Oklahoma 73102

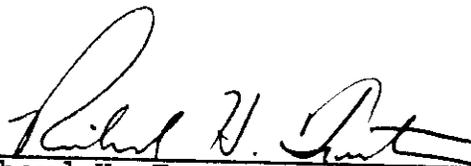
Mr. David R. Frensley  
801 West 47th Street, Suite 105  
Kansas City, Missouri 64112

Mr. William E. Hughes  
320 South Boston, Suite 1020  
Tulsa, Oklahoma 74103

Mr. Phil Frazier  
1424 Terrace Drive  
Tulsa, Oklahoma 74104

Mr. Philard L. Rounds, Jr.  
Newton & O'Conner  
1412 South Boston, Suite 600  
Tulsa, Oklahoma 74119

Mr. B. Jack Smith  
Boston Place Building  
50 East Fifteenth Street  
Tulsa, Oklahoma 74119

  
Richard H. Foster

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

FILED  
APR 24 1988

BANK OF OKLAHOMA, N.A., )  
Grove Branch, formerly )  
Bank of Oklahoma, Grove, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
THE ISLANDS MARINA, LTD., )  
et al., )  
 )  
Defendants. )

Case Number 88-C-1335-E

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE  
OF BANK OF OKLAHOMA, N.A., GROVE BRANCH  
AND BANK OF THE LAKES

COME NOW, the Plaintiff Bank of Oklahoma, N.A., Grove Branch ("BOK") and Defendant Bank of the Lakes ("BOL") and pursuant to the terms of a Settlement Agreement reached on April 21, 1989, and Fed. R. Civ. P. 41 hereby stipulate and agree as follows:

BOL dismisses with prejudice all claims in the above-referenced action as to BOK in their entirety.

BOK dismisses with prejudice all claims in the above-referenced action as to BOL in their entirety.

Both parties reserve all of their claims against other parties pursuant to the Settlement Agreement executed on even date herewith.

Each party hereto shall bear its own attorneys' fees, costs, and expenses of litigation.

Dated this 2<sup>nd</sup> day of April, 1989.

HOLLIMAN, LANGHOLZ, RUNNELS  
& DORWART

By: *Greg Guerrero*  
Gregory A. Guerrero  
Suite 700, Holarud Building  
10 East Third Street  
Tulsa, Oklahoma 74103  
(918) 584-1471

Attorneys for Plaintiff  
Bank of Oklahoma, N.A.,  
Grove Branch

DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

By: *Richard H. Foster*  
Robert F. Biolchini (OBA #800)  
Richard H. Foster (OBA #3055)  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
(918) 582-1211

Attorneys for Defendant  
Bank of the Lakes

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 24<sup>th</sup> day of April, 1988, a true and correct copy of the above and foregoing instrument was mailed, with proper postage prepaid thereon, to:

Mr. Gregory A. Guerrero  
Holliman, Langholz, Runnels  
& Dorwart  
Suite 700, Holarud Building  
10 East Third Street  
Tulsa, Oklahoma 74103

Mr. Thomas F. Birmingham  
Ungerma, Conner & Little  
P. O. Box 701917  
Tulsa, Oklahoma 74170

Mr. Jon D. Douthitt  
Davis & Thompson  
Whitehead Street  
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Mr. Peter J. Mallers, II  
Mr. James P. Posey  
1100 Fort Wayne Bank Building  
Fort Wayne, Indiana 46802

Mr. Richard W. Lowry  
Logan, Lowry, Johnston,  
Switzer, West & McGeady  
101 South Wilson Street  
Vinita, Oklahoma 74301

Mr. James R. Ryan  
Conner & Winters  
2400 First National Tower  
Tulsa, Oklahoma 74103

Mr. Bruce A. McKenna  
P. O. Box 730  
Sapulpa, Oklahoma 74067

Mr. J. Peter Messler  
16 East 16th Street  
Suite 400  
Tulsa, Oklahoma 74119

Mr. Richard D. James  
P. O. Box 1168  
Miami, Oklahoma 74355

Mr. John B. Heatly  
2400 First National Center  
Oklahoma City, Oklahoma 73102

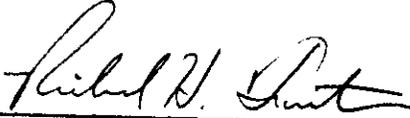
Mr. David R. Frensley  
801 West 47th Street, Suite 105  
Kansas City, Missouri 64112

Mr. William E. Hughes  
320 South Boston, Suite 1020  
Tulsa, Oklahoma 74103

Mr. Phil Frazier  
1424 Terrace Drive  
Tulsa, Oklahoma 74104

Mr. Philard L. Rounds, Jr.  
Newton & O'Conner  
1412 South Boston, Suite 600  
Tulsa, Oklahoma 74119

Mr. B. Jack Smith  
Boston Place Building  
50 East Fifteenth Street  
Tulsa, Oklahoma 74119

  
\_\_\_\_\_  
Richard H. Foster

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

FILED

APR 24 1989

BANK OF OKLAHOMA, N.A., )  
Grove Branch, formerly )  
Bank of Oklahoma, Grove, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
THE ISLANDS MARINA, LTD., )  
et al., )  
 )  
Defendants. )

MARK G. SIMON, CLERK  
U.S. DISTRICT COURT

Case Number 88-C-1335-E

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE  
OF DONZI CREDIT CORPORATION AND BANK OF THE LAKES

COME NOW, the Defendants Donzi Credit Corporation ("Donzi") and Bank of the Lakes ("BOL") and pursuant to the terms of a Settlement Agreement reached on April 21, 1989, and Fed. R. Civ. P. 41 hereby stipulate and agree as follows:

BOL dismisses with prejudice all claims in the above-referenced action as to Donzi in their entirety.

Donzi dismisses with prejudice all claims in the above-referenced action as to BOL in their entirety.

Both parties reserve all of their claims against other parties pursuant to the Settlement Agreement executed on even date herewith.

Each party hereto shall bear its own attorneys' fees, costs,  
and expenses of litigation.

Dated this 21 day of April, 1989.

UNGERMAN, CONNER & LITTLE

By: 

Thomas F. Birmingham  
P. O. Box 701917  
Tulsa, Oklahoma 74170  
(918) 495-0550

Attorneys for Defendant  
Donzi Credit Corporation

DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

By: 

Robert F. Biolchini (OBA #800)  
Richard H. Foster (OBA #3055)  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
(918) 582-1211

Attorneys for Defendant  
Bank of the Lakes

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 24th day of April, 1988, a true and correct copy of the above and foregoing instrument was mailed, with proper postage prepaid thereon, to:

Mr. Gregory A. Guerrero  
Holliman, Langholz, Runnels  
& Dorwart  
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Tulsa, Oklahoma 74103

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Davis & Thompson  
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Fort Wayne, Indiana 46802

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Switzer, West & McGeady  
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Mr. James R. Ryan  
Conner & Winters  
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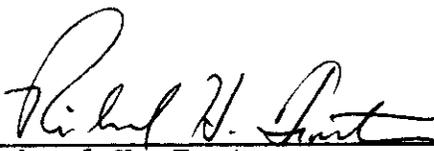
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Newton & O'Conner  
1412 South Boston, Suite 600  
Tulsa, Oklahoma 74119

Mr. B. Jack Smith  
Boston Place Building  
50 East Fifteenth Street  
Tulsa, Oklahoma 74119

  
Richard H. Foster

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

**FILED**

**APR 24 1989**

HILTI OF AMERICA, INC., AND  
SUBSIDIARIES,

Plaintiff

v.

UNITED STATES OF AMERICA,

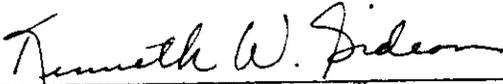
Defendant

CIVIL NO. 88-C-459-E

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

STIPULATION <sup>OF</sup> FOR DISMISSAL

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

  
\_\_\_\_\_  
Kenneth W. Gideon, Esq.  
Fried, Frank, Harris,  
Shriver & Jacobson  
1001 Pennsylvania Ave., N.W.  
Suite 800  
Washington, D. C. 20006

ATTORNEY FOR PLAINTIFF

  
\_\_\_\_\_  
STEVEN SHAPIRO  
Chief, Civil Trial Section  
Department of Justice  
Tax Division  
P. O. Box 14198  
Ben Franklin Station  
Washington, D. C. 20044

ATTORNEY FOR UNITED STATES

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

NOV 24 1988

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

CLYDE A. MELTON,  
Plaintiff,

vs.

No. 88-C-471-C

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

ORDER

Now before the Court for its consideration is the appeal by the defendant, Otis R. Bowen, Secretary of Health and Human Services, of the United States Magistrate's Findings and Recommendation, the latter filed on October 24, 1988. The Magistrate's recommendation is that plaintiff, Clyde A. Melton, be granted disability benefits pursuant to 20 C.F.R. Pt. 404, Subpt. P, App. 1 §10.10 A and D.

Defendant's objection is based on his claim that the Magistrate's findings do not point to any part of the medical record which would support a finding that plaintiff's medical condition meets all elements of listing §10.10 A or D. The Listing of Impairments under §10.10 requires the following medical findings for a disability resulting from obesity:

§10.10 Obesity. Weight equal to or greater than values specified in Table I for males...(100% above desired level) and one of the following:

A. History of pain and limitation of motion in any weight bearing joint or spine (on physical examination)

associated with X-ray evidence of arthritis in a weight bearing joint or spine; or

D. Chronic venous insufficiency with superficial varicosities in a lower extremity with pain on weight bearing and persistent edema.

The Magistrate correctly states the scope of review as limited by 42 U.S.C. §405(g). He acknowledges that "the Secretary's findings stand if they are supported by 'such relevant evidence as a reasonable mind might accept to support a conclusion.'" Richardson v. Perales, 402 U.S. 389, 401 (1971) citing Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229 (1938). Further, the Magistrate acknowledges that the court must consider the record as a whole to determine whether the Secretary's findings are supported by substantial evidence. Hephner v. Mathews, 574 F.2d 359 (6th Cir. 1978).

In a recent Tenth Circuit case, the Court examined the Social Security Act and enumerated the elements necessary to establish impairments of the spine.

Impairments of the musculoskeletal system, including disorders of the spine, are established through detailed history, physical examination, X-rays, 20 C.F.R. pt. 404, Subpt. P, App. 1, §1.00(b) (1986), and the use of specific findings, such as "pain, muscle spasm, and significant limitation of motion in the spine" and "appropriate radicular distribution of significant motor loss with muscle weakness and sensory and reflex loss." *Id.* at § 1.05(C).

Williams v. Bowen, 844 F.2d 748, 755. The Magistrate found that the plaintiff has met this burden and proved his disability, and the Administrative Law Judge (ALJ) found that he had not.

The Magistrate found that the ALJ ignored the medical evidence of causes for disabling pain in the plaintiff when he found that the plaintiff's personal accounts of pain lacked credibility. However the ALJ recited the plaintiff's medical history, which included his personal accounts of pain, in great detail in his Decision. He pointed out that in plaintiff's file there is no X-ray evidence of any arthritis, only notations of some degenerative changes of the dorsal spine (Tr. 119 and 197). Plaintiff 's only X-rays are of his chest and abdomen. He has never complained of symptoms caused by arthritis or degenerative joint disease.

The ALJ emphasized the fact that although repeated physical examinations have revealed stasis dermatitis of both lower extremities, no objective evidence suggests claimant ever had chronic venous insufficiency in the lower extremities. Physical examinations completed on October 10, 1985, specifically noted there was mild pretibial edema, with no limitation of motion or pain on movement of back or lower extremities, no varicositis, spider angiomas, or other vascular disturbances (Exhibit 21). The ALJ found that the multiple diagnoses of Gerald D. Wooten, D.O., are not supported by objective medical evidence, which the ALJ finds casts doubt on his opinion that a blow to the abdomen might result in plaintiff's death. To support that doubt, the ALJ noted plaintiff's testimony that in April 1987 he fell off a ladder and hit the floor on his stomach and Dr. Wooten's treatment notes, which show plaintiff suffered no residual problems.

Another item in the file which casts doubt on the credibility of plaintiff's physicians is a letter dated October 6, 1987, in which David F. Hitzeman, D.O., stated that after careful review of the medical records made available to him, he has determined that a typographical error was made on plaintiff's hospital records as to his weight on October 10, 1985. Dr. Hitzeman wrote "Mr. Melton's weight should have been recorded as 372 pounds on these records and not the stated 272 pounds" (Exhibit 30). Plaintiff was hospitalized on October 10, 1985, with complaints of fatigue, night sweats, and weight loss of approximately sixty pounds since April 1985 (Exhibit 21). On April 7, 1985, when he was admitted to the hospital, his weight was recorded as 315 pounds and he reported a fifteen-pound weight loss over the previous three months. Clearly Dr. Hitzeman's letter does not reflect a careful review of the medical records. Instead it suggests an attempt to fall within the requirements of §10.10.

In short, the ALJ found that Dr. Wooten's opinion is based on the Social Security Listing of Impairments and is not supported by medical evidence in plaintiff's file. Additionally, the fact that plaintiff does not meet or equal a listing is the opinion of two physicians authorized to make such determinations for the Secretary.

The ALJ's review of the file reveals that the plaintiff suffers from a history of alcohol abuse and morbid obesity, with associated diseases. However, he pointed out that the plaintiff rarely seeks medical treatment for musculoskeletal complaints and

that he continues to drive an automobile. He recognized the fact that the record establishes that the plaintiff cannot perform his past relevant work. However after considering the plaintiff's residual functional capacity, his age at the time of 48 years, his education which included one and one-half years of college, and past work experience, the ALJ concluded that there are other jobs which the plaintiff can perform and that such jobs exist in significant numbers in the national economy.

The Tenth Circuit has considered the weight which should be given the conclusion of the treating physician. The Court stated that

(s)ubstantial weight is afforded the opinion of the claimant's treating physician. While the conclusion of a treating physician does not direct a finding of 'disabled' or 'nondisabled,' 20 C.F.R. §§ 404.1527, 416.927 (1986), it cannot be disregarded absent a showing of 'specific, legitimate reasons.'

Williams v. Bowen, 844 F.2d 748, 758 (10th Cir. 1988) citing Byron v. Heckler, 742 F.2d 1232, 1235 (10th Cir. 1984). Here the ALJ gave a careful and thorough review. He has stated "specific, legitimate reasons" for giving the treating physician's opinion less than substantial weight. He has considered the record as a whole, citing from Exhibits on twenty-four occasions in his eleven-page decision. He has pointed to relevant and substantial evidence.

The Tenth Circuit has found that the "treating physician's opinion might be rejected if it is brief, conclusory, and unsupported by medical evidence." Frey v. Bowen, 816 F.2d 508, 513 (10th Cir. 1987); Allison v. Heckler, 711 F.2d 145, 148 (10th Cir.

1983). The Administrative Law Judge's decision to reject Dr. Wooten's opinion on these grounds is supported by relevant evidence.

Plaintiff objects to the ALJ's application of the medical vocational guidelines (grids), claiming that he ignored the plaintiff's "nonexertional impairments, pain, effect of medications, and avoidance of any blow to the body". However, the Administrative Law Judge addressed each of these issues before he applied the grids. The ALJ found that the claimant's subjective complaints, to include severe continuous pain, are not credible to the extent alleged and that there are no nonexertional limitations when the plaintiff is not under the influence of alcohol. The Tenth Circuit has stated that the "use of grids is foreclosed only 'to the extent that nonexertional impairments further limit the range of jobs available to the claimant.'" Channel v. Heckler, 747 F.2d 577, 582 n. 6, (10th Cir. 1984) citing Grant v. Schweiker, 699 F.2d 189, 192 (4th Cir. 1983). The findings of the ALJ verify the fact that he considered plaintiff's nonexertional impairments and found that they did not further limit the range of jobs available to the plaintiff in the ALJ's application of the grids.

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 Secretary be reversed and that the plaintiff be found to be disabled and entitled to disability insurance benefits should be overruled.

It is therefore ordered that the decision of the Secretary is affirmed and that the plaintiff, Clyde A. Melton, is denied disability insurance benefits under 42 U.S.C. §423.

*IT IS SO ORDERED* this 24<sup>th</sup> day of April, 1989.

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

Entered

Brazeal9  
MRC/cel

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

JAMES BRAZEAL, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 J. H. MARTIN, individually, )  
 and as a police officer, )  
 Tulsa, Oklahoma; CITY OF )  
 TULSA, )  
 )  
 Defendants. )

No. 87-C-533-C

**F I L E L**

APR 24 1989

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

CONSENT DECREE

The above-named Plaintiff presents his civil rights action against Defendant John H. Martin and Defendant City of Tulsa alleging violations of his constitutional rights and seeking compensatory damages, punitive damages, and attorney fees. The Plaintiff, by and through his attorney of record, Greg Morris, Defendant John H. Martin, by and through his attorney of record, Michael Carson, and Co-Defendant City of Tulsa, the statutory indemnitor for Defendant John H. Martin, by and through its attorneys of record, Martha Rupp Carter and David L. Pauling, have each executed a Memorandum of Agreement which has been duly filed in this case, pertaining to the entry of this consent decree. Pursuant to the terms and conditions therein presently identified, this Consent Decree is operative to resolve all issues of fact or law pertaining to actions or conduct by Defendant John H. Martin, individually and in his personal and official capacity as a police officer of the City of Tulsa.

The Court, having considered the matter and being fully advised in the premises, orders, adjudges, and decrees as follows.

1. The Court has jurisdiction over the subject matter of this action and the parties hereto. Plaintiff's amended complaint properly states claim for relief against the consenting Defendant John H. Martin pursuant to 42 U.S.C. §1983.

2. The terms and conditions of the Memorandum of Agreement filed herein pertaining to this consent decree are hereby adopted and approved by the Court and made a part of this order.

3. Defendant City of Tulsa, Oklahoma, the statutory indemnitor for Defendant John H. Martin, shall pay Plaintiff on behalf of Defendant John H. Martin the sum of \$100,000, said sum representing full, final, and complete settlement upon all Plaintiff's sustained damages from the incident of July 4, 1985, all attorney fees and court costs incurred by Plaintiff prior to and in the course of this litigation, and all interest with regard to each and all of Plaintiff's claims against Defendant John H. Martin acting in his official, personal and individual capacity as a police officer.

4. This consent decree does not constitute and shall not be represented by any party as constituting an admission of liability or fault on the part of the consenting defendant, John H. Martin.

Dated this 24<sup>th</sup> day of April, 1989.

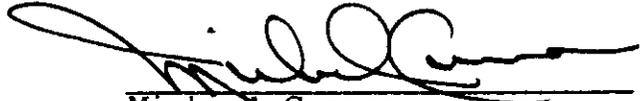
(Signed) H. Dale Cook

H. Dale Cook  
U.S. District Judge

We, the undersigned, hereby consent to the entry of the foregoing consent decree as a final judgment herein and state to the court that we are acting with full authority granted by our respective clients.



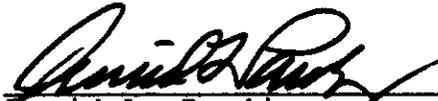
Greg Morris  
Attorney for Plaintiff



Michael Carson  
Attorney for Defendant  
John H. Martin



Martha Rupp Carter  
Martha Rupp Carter  
Attorney for Co-Defendant  
City of Tulsa  
statutory indemnitor



David L. Pauling  
David L. Pauling  
Attorney for Co-Defendant  
City of Tulsa  
statutory indemnitor



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

FILED

APR 21 1989

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

IN RE: VERN O. LAING, )  
Debtor. ) No. 89-C-238-C

ORDER

Now before the Court for its consideration is the motion for leave to appeal of Lawrence A. G. Johnson and Don Bradshaw.

28 U.S.C. §158(a) provides jurisdiction to district courts over appeals from final orders of the bankruptcy court. If the order in question is a final order, the aggrieved party may appeal as of right.<sup>1</sup> If the order is deemed an interlocutory order, the decision to grant appeal rests with this Court. See also Bankruptcy Rules 8001 and 8003.

Movant admits that the order in question (denying movant's motion to dismiss) is not a final order. Therefore, no appeal as of right may be taken. Regarding interlocutory appeal, the movant has made no attempt to show that the order in question falls within the generally formulated grounds for granting leave to appeal. See, e.g., In re Chandler, 66 B.R. 334, 336 (N.D.Ga. 1986). Therefore, the Court will deny the motion.

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<sup>1</sup>Movant has filed an amended notice of appeal to cover this eventuality.

6

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

It is the further order of the Court that the notice of appeal is hereby dismissed.

*IT IS SO ORDERED* this 21 day of April, 1989.

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

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

**F I L E D**

RAILHEAD FREIGHT SYSTEMS, INC., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 UNITED STATES FIRE INSURANCE )  
 COMPANY, )  
 )  
 Defendant, )  
 )  
 and )  
 )  
 UNITED STATES FIRE INSURANCE )  
 COMPANY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THE INTEGRAL INSURANCE COMPANY, )  
 )  
 Defendant. )

APR 21 1989  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

✓  
Case No. 88-C-370-B  
(Consolidated with  
88-C-420-E)

**J U D G M E N T**

1. In keeping with the Findings of Fact and Conclusions of Law filed herein on March 20, 1989, and the Court's hearing on March 8, 1989, the Court hereby declares and adjudges that United States Fire Insurance Company as the primary insurance carrier is obligated to pay the entire \$860,000.00 settlement sum of the state court actions and that Integral Insurance Company, as the excess carrier, had no obligation to contribute therein.

2. IT IS FURTHER ORDERED AND THE COURT DETERMINES AND ADJUDGES that The Integral Insurance Company is entitled to be reimbursed its cost in the amount of \$391.75 and legal expenses in the amount of \$3,548.75 expended in providing a defense to John Sexton in the Oklahoma state court actions.

Further, Integral is to have judgment against United States Fire Insurance Company in the amount of \$15,431.75 for attorneys fees herein, plus costs in the amount of \$133.00.

Judgment is hereby entered in favor of The Integral Insurance Company and against the United States Fire Insurance Company for said sums in Paragraph 2, plus interest at the rate of 9.51% per annum from this date.

DATED this 21<sup>st</sup> day of April, 1989.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

BAM/jh

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

BANK OF OKLAHOMA, N.A., GROVE )  
BRANCH, formerly Bank of )  
Oklahoma, Grove, )  
 )  
Plaintiff, )  
v. )  
 )  
THE ISLANDS MARINA, LTD., an )  
Oklahoma corporation, et al., )  
 )  
Defendants. )

FILED

APR 21 1989

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

Case No. 88-C-1335-E *dt*

JOINT STIPULATION FOR DISMISSAL WITH PREJUDICE

The plaintiff, Bank of Oklahoma, N.A., Grove Branch, by its counsel Greg Guerrero of Holliman, Langholz, Runnels & Dorwart, and the defendant Bob Williams, by his counsel Bruce A. McKenna of Jack B. Sellers Law Assoc., Inc., stipulate that all matters in controversy between Bank of Oklahoma, N.A., Grove Branch, and Bob Williams have been fully compromised and settled and the plaintiff's action against the defendant Bob Williams should be dismissed with prejudice.

Dated: April 21, 1989.

FILED

APR 28 1989

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

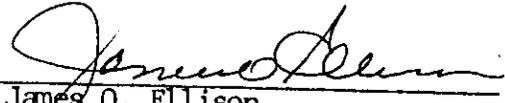
*Greg Guerrero*  
\_\_\_\_\_  
Greg Guerrero  
*Bruce A. McKenna*  
\_\_\_\_\_  
Bruce A. McKenna

ORDER OF DISMISSAL

On the foregoing stipulation of the parties herein, it is ordered that the above-entitled action be, and is, dismissed with

prejudice as against the defendant Bob Williams.

Dated: April 21, 1989.

A handwritten signature in cursive script, appearing to read "James O. Ellison", written over a horizontal line.

Hon. James O. Ellison  
United States District Judge

BAM/jh

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

**FILED**

BANK OF OKLAHOMA, N.A., GROVE )  
BRANCH, formerly Bank of )  
Oklahoma, Grove, )  
 )  
Plaintiff, )  
v. )  
THE ISLANDS MARINA, LTD., an )  
Oklahoma corporation, et al., )  
 )  
Defendants. )

APR 21 1989 *dt*

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

Case No. 88-C-1335-E✓

JOINT STIPULATION FOR DISMISSAL WITH PREJUDICE

The defendant Chrysler First Wholesale Credit, Inc., by its counsel Thomas F. Birmingham of Ungerman and Iola, and the defendant Bob Williams, by his counsel Bruce A. McKenna of Jack B. Sellers Law Assoc., Inc., stipulate that all matters in controversy between Chrysler First Wholesale Credit, Inc., and Bob Williams have been fully compromised and settled and that the action should be dismissed with prejudice as to the defendant Bob Williams.

Dated: *April 21* 1989.

**FILED**

APR 28 1989

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

*Thomas F. Birmingham*  
Thomas F. Birmingham

*Bruce A. McKenna*  
Bruce A. McKenna

ORDER OF DISMISSAL

On the foregoing stipulation of the parties herein, it is ordered that the above-entitled action be, and is, dismissed with

prejudice with respect to the cross-claim filed by Chrysler First  
Wholesale Credit, Inc., against Bob Williams.

Dated: April 21, 1989.

  
Hon. James O. Ellison  
United States District Judge

FILED

APR 21 1989

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA  
U.S. DISTRICT COURT

LEONARD ARABIA, MARVIN BASIL )  
CAROL CHISHOLM WEINER, and )  
ARTHUR ARAKELIAN, individuals, )

Plaintiffs, )

vs. )

Case No. 89-C-091B

GIANT PETROLEUM, INC., an )  
Oklahoma Corporation, GEORGE )  
ELIAS, JR., and CATHY ELIAS, )  
individuals; CIMARRON CRUDE )  
CO., an Oklahoma Corporation, )  
and AMERICAN PETROLEUM )  
TRADING, INC., an Oklahoma )  
corporation, and KERR-McGEE )  
CORPORATION, a Delaware )  
Corporation, )

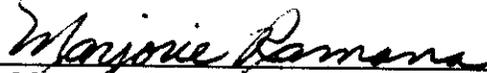
Defendants. )

STIPULATION OF PARTIAL DISMISSAL

COME NOW the plaintiffs and the defendant Kerr-McGee Corporation, and pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure stipulate to the dismissal of plaintiffs' claim for relief against Kerr-McGee Corporation as it relates to the Giant-Arabia #5 and #7 programs for drilling the Arabia #5 and #7 wells located in the W/2 of the SW/4 of Section 18, T13N, R8E, Okfuskee County, Oklahoma. The dismissal is

without prejudice.

Respectfully submitted,

  
Allan DeVore  
Marjorie Ramana  
The DeVore Law Firm,  
A Professional Corporation  
1318 North Robinson  
Oklahoma City, Oklahoma 73103  
(405) 232-4997  
Attorneys for Plaintiffs

  
Mark Vanlandingham  
~~Edward Fowler~~  
James C. Peck  
Kerr-McGee Center  
P.O. Box 205861  
Oklahoma City, OK 73125  
Attorneys for Defendant Kerr-McGee  
Corporation

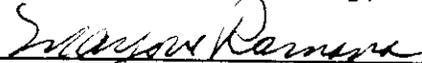
CERTIFICATE OF MAILING

This is to certify that on the 19<sup>th</sup> day of April, 1989, a true and correct copy of the above and foregoing was mailed, postage prepaid, to the following:

James A. Williamson  
1736 South Carson  
Tulsa, OK 74119  
Attorney for Defendants George Elias, Jr., and Giant Petroleum, Inc.

Clifford Archer  
P.O. Box 35769  
Tulsa, OK 74153  
Appearing Pro Se on behalf of Cimarron Crude, Inc.

Wesley R. Thompson  
15 South Park Street  
Sapulpa, OK 74066  
Attorney for Defendant American Petroleum Trading, Inc.

  
Marjorie Ramana

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

FILED

APR 20 1989

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

C & H NATIONWIDE, INC., d/b/a )  
C & H TRANSPORTATION, )  
a Texas corporation, )  
 )  
Plaintiff, )

vs. )

No. 88-C-654-B

RALPH GARDNER AND SUE GARDNER, )  
Individuals, d/b/a AMERICAN )  
ESCORT SERVICES, et al., )  
 )  
Defendants. )

ORDER

It appearing to the satisfaction of this Court that all matters and controversies have been compromised by and between the parties, as evidenced by the signatures of their attorneys on the stipulation filed herein on 14<sup>th</sup> day of April, 1989, therefore,

IT IS SO ORDERED that the Plaintiff's suit be, and the same is hereby dismissed with prejudice.

Dated this 20<sup>th</sup> day of April, 1989.

W. EDWARD R. BRETT

JUDGE

040589f:kl

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

**FILED**

APR 20 1989

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

THE FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity and as Receiver of Citizens National Bank and Trust Company,

Plaintiff,

v.

Case No. 88-C-184-B

GEORGE SHIPMAN, a/k/a GEORGE A. SHIPMAN; CLARA SHIPMAN, a/k/a CLARA J. SHIPMAN; et al.,

Defendants.

JOURNAL ENTRY OF JUDGMENT

NOW, on this 20<sup>th</sup> day of April, 1989, this matter comes on for consideration, Plaintiff appearing by and through its attorney of record, J. Mark Lovelace of Phillips McFall McVay Sheets & Lovelace, P.C.; Defendants, Valley Capital Corporation and Western Financial Affiliates, Inc., appearing not, having been dismissed without prejudice; Defendants, George Shipman, a/k/a George A. Shipman and Clara Shipman, a/k/a Clara J. Shipman, appearing not, having filed their Disclaimer herein; Defendants, Fern Karraker, County Treasurer of Pawnee County, Oklahoma, and Board of County Commissioners of Pawnee County, Oklahoma, appearing by and through their counsel of record, Lawrence A. Martin, Assistant District Attorney; Defendant, Lakeshore Bank, N.A., appearing not, being in default; Defendant, Western National Bank, appearing not, having filed its Disclaimer herein; and Defendant, SHC Enterprises, Inc. appearing not, being in default.

The Court, having examined the pleadings, process and file in this case, and being fully advised in the premises, finds:

1. That it has jurisdiction of the parties hereto and the subject matter herein.

2. That the Defendants, George Shipman a/k/a George A. Shipman ("George Shipman") and Clara Shipman a/k/a Clara J. Shipman ("Clara Shipman"), were personally served with Summons and Complaint by private process or certified mail as provided by law, and that said summons and service is legal and regular in all respects. That said Defendants have heretofore filed their Answer and subsequent Amended Answer and Disclaimer to the Complaint and First Amended Complaint of the Plaintiff on file herein, thereby waiving further appearance in this action. Therefore, the allegations and averments of Plaintiff's First Amended Complaint should be taken as true and the lien or other right, title, lien, estate, encumbrance, claim, assessment or interest of said Defendants in the real and personal property hereinafter described should be adjudged subject and inferior to the security interest and Mortgage lien, respectively, in favor of the Plaintiff.

3. That the Defendant, Lakeshore Bank, N.A., was served with Summons and First Amended Complaint by certified mail, as provided by law, and that said summons and service is legal and regular in all respects. The time for filing an answer or pleading herein has expired and none has been filed. Therefore, the Defendant, Lakeshore Bank, N.A. is in default, and the

allegations and averments of Plaintiff's First Amended Complaint should be taken as true, and the lien or other right, title, lien estate, encumbrance, claim, assessment or interest of said Defendant in the property hereinafter described should be adjudged subject and inferior to the Mortgage lien in favor of the Plaintiff.

4. That the Defendant, Western National Bank, was served with Summons and First Amended Complaint by certified mail, as provided by law, and that said summons and service is legal and regular in all respects. That said Defendant has filed its Disclaimer herein as to the real property at issue herein. Therefore, the allegations and averments of Plaintiff's First Amended Complaint should be taken as true, and the lien or other right, title, lien, estate, encumbrance, claim, assessment or interest of said Defendant in the property hereinafter described should be adjudged subject and inferior to the Mortgage lien in favor of the Plaintiff.

5. That the Defendant, SHC Enterprises, Inc., was served with Summons and First Amended Complaint by certified mail as provided by law, and that said summons and service is legal and regular in all respects. The time for filing an answer or pleading herein has expired and none has been filed. Therefore, the Defendant, SHC Enterprises, Inc., is in default, and the allegations and averments of Plaintiff's First Amended Complaint should be taken as true, and the lien or other right, title, lien, estate, encumbrance, claim, assessment or interest of said

Defendant in the property hereinafter described should be adjudged subject and inferior to the Mortgage lien in favor of the Plaintiff.

6. That the Defendants, Fern Karraker, County Treasurer of Pawnee County, Oklahoma and The Board of County Commissioners of Pawnee County, Oklahoma, were duly served with Summons and First Amended Complaint by certified mail as provided by law, and that said summons and service is legal and regular in all respects. That said Defendants have heretofore filed their Answer to the First Amended Complaint of the Plaintiff on file herein.

7. That the cause of action set forth in Count III of the First Amended Complaint brought by Plaintiff in its capacity as Receiver of Citizens National Bank and Trust Company, Oklahoma City, Oklahoma, has been dismissed without prejudice.

COUNT I

8. That on January 15, 1984, Valley Capital Corporation ("Valley Capital") executed and delivered its Promissory Note No. 40045, payable to the order of First City Bank, N.A. ("First City"), in the principal amount of \$315,000.00, and bearing interest at First City Bank base rate plus 2%. Note No. 40045 provided that it was due on demand, but no later than January 15, 1987.

9. That on October 27, 1982, George Shipman executed and delivered his Guaranty Agreement to First City, whereby he unconditionally guaranteed to pay all sums owing by Valley Capital to First City.

10. That on March 21, 1984, Western Financial Affiliates, Inc. ("Western Financial") executed and delivered its Promissory Note No. 40323, payable to the order of First City, in the principal amount of \$1,450,000.00, and bearing interest at Chase New York prime. Note No. 40323 provided that it was due on demand, but no later than April 27, 1985.

11. That on March 21, 1984, George Shipman executed and delivered his Guaranty Agreement to First City, whereby he unconditionally guaranteed to pay all sums owing by Western Financial to First City.

12. That on May 15, 1984, George Shipman executed and delivered his Promissory Note No. 40477, payable to the order of First City in the principal amount of \$90,050.00, and bearing interest at First City Bank base plus 1%, with a 12% minimum. Note No. 40477 provided that it was due on demand, but no later than November 15, 1988.

13. That as security for his obligations to First City under the aforesaid Guaranty Agreements and Note, George Shipman also executed and delivered a Security Agreement to First City on May 15, 1984. The Security Agreement granted First City a first and prior security interest in the following collateral, including all additions, accessions and substitutions thereto and therefor, all accessories, parts and equipment then or thereafter affixed thereto or used in connection therewith and all proceeds thereof:

Super Six Pettiebone Forklift, Serial No. 1040  
1957 Rolls Royce Silver Wraith 4-door,  
Serial No. FLW-75  
1977 Auburn Bobtail Roadster, Serial No. CCC761006

1975 Ford Van, Serial No. E01HHX42399  
1978 Ford Bronco, Serial No. U15HLAE0451  
1981 Datsun 2-door, Serial No. JN1CZ04SBX279527

The security interest in the 1981 2-door Datsun was subsequently released.

14. That on June 21, 1985, First City was declared insolvent by the United States Comptroller of the Currency and FDIC was appointed as Receiver of First City. Subsequent thereto, FDIC, as Receiver, assigned to FDIC, in its corporate capacity, all of its right, title and interest in and to the Notes, Guaranty Agreements and Security Agreement referred to in paragraphs 8 through 13 herein. FDIC, in its corporate capacity, is the present owner and holder of such Notes, Guaranty Agreements and Security Agreement.

15. That Valley Capital, Western Financial and George Shipman each have defaulted in the performance of their respective obligations under the Notes, Guaranty Agreements and Security Agreement referred to in paragraphs 8 through 13. In particular, Valley Capital, Western Financial and George Shipman have failed and refused to pay the amounts owing on Notes No. 40045, 40323 and 40477, and the following amounts are due and owing to FDIC on such Notes and Guaranty Agreements:

<u>Note No.</u>	<u>Principal Amt. Owing</u>	<u>Accrued Interest as of September 10, 1987</u>
40035	\$ 144,344.04	\$ 26,314.33
40323	1,450,000.00	237,481.95
40477	32,981.64	2,303.48

In addition, interest subsequent to September 10, 1987, continues to accrue on each of the Notes and Guaranty Agreements as provided under the terms of the Notes.

16. That as a result of such defaults, Plaintiff, FDIC, is entitled to judgment as aforesaid.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff, FDIC, have judgment in rem against the Defendant, George Shipman in the following sums:

a. \$144,344.03 principal, plus interest accrued on Note No. 40045, the Guaranty Agreement dated October 27, 1982 and the Security Agreement through the date of judgment, post-judgment interest at the legal rate plus the costs and attorney's fees incurred by the FDIC in recovering such judgment;

b. \$1,450,000.00 principal, plus interest accrued on Note No. 40323, the Guaranty Agreement dated March 21, 1984 and the Security Agreement through the date of judgment, post-judgment interest at the legal rate plus the costs and attorney's fees incurred by the FDIC in recovering such judgment; and

c. \$32,981.64 principal, plus interest accrued on Note No. 40477 and the Security Agreement through the date of judgment, plus the costs and attorney's fees incurred by FDIC in recovering such judgment,

for which amounts the security interest of Plaintiff, FDIC, is a first, prior and superior loan upon the 1978 Ford Bronco 1977 Auburn Roadster, 1957 Rolls Royce and Super Six Pettiebone Forklift.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the security interest of the Plaintiff, FDIC, in and to said vehicles be, and the same is hereby, foreclosed and the vehicles are hereby ordered to be sold by the Plaintiff pursuant to the provisions of the Uniform Commercial Code to satisfy the judgment herein and apply the proceeds arising from the sale as follows:

FIRST: To the payment of costs of sale and court costs herein.

SECOND: To the payment of the judgment and lien of the Plaintiff, FDIC, in the amounts set forth herein; and

THIRD: The remainder, if any, to be held until further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that upon such sale, under and by virtue of this judgment and decree, that said property shall be free and clear of the claims of all Defendants and that all persons claiming under said Defendants since the filing of the Complaint and First Amended Complaint herein shall have no right, title, interest, claim lien or demand in or to said property.

#### COUNT II

17. That the Defendant, George Shipman, made, executed, and delivered a certain Promissory Note payable to the order of The First National Bank, Marlow, Oklahoma ("FNB/Marlow"), in the principal amount of \$130,000.00 and bearing interest at the rate of 15% per annum. The maturity date of this Note was October 25, 1986.

18. As security for the aforesaid Note, George Shipman and Clara Shipman, husband and wife, also executed and delivered a Real Estate Mortgage to FNB/Marlow, whereby they mortgaged the following described property and all improvements thereon and appurtenances thereto:

The East 340.00 feet of the West 1431.83 feet of the North One-Half (N/2) of the Southeast Quarter (SE/4) of Section 26, Township 21 North, Range 8 East, Pawnee County, Oklahoma, according to the U.S. Government Survey thereof,

The mortgage tax on said Mortgage was duly paid to the County Treasurer of Pawnee County, Oklahoma, and the Mortgage was filed of record at Book 350, Page 573 of the Office of the Pawnee County Clerk on November 1, 1984.

19. On January 24, 1985, FNB/Marlow was declared insolvent by the United States Comptroller of the Currency and FDIC was appointed as Receiver thereof. Subsequent thereto, FDIC, as Receiver, assigned to FDIC, in its corporate capacity, all of its right, title and interest in and to the Note and Real Estate Mortgage referred to in paragraphs 17 and 18 above. FDIC, in its corporate capacity, is the present owner and holder of such Note and Real Estate Mortgage.

20. That the Defendant, Western National Bank, claims some right, title, or interest in and to the subject property by virtue of a judgment arising out of Tulsa County District Court Case No. CJ-86-3253, filed in Book 385 at Page 173 on the 8th day of September, 1986, in the office of the Pawnee County Clerk, Oklahoma. That said Defendant has filed its Disclaimer herein

owing for the year 1985 and all preceding years have been paid in full; that personal property taxes for the year 1986 in the amount of \$335.28 and ad valorem taxes for the year 1986 in the amount of \$146.70, plus interest and penalty, have not been paid; that personal property taxes for the year 1987 in the amount of \$333.70 and ad valorem taxes for the year 1987 in the amount of \$146.08, plus interest and penalty, have not been paid, which unpaid ad valorem taxes are a first and prior lien on the premises and which unpaid personal property taxes constitute a lien which is subsequent, junior and inferior to the Mortgage and lien of the Plaintiff, FDIC.

24. That the Mortgage herein sued upon provides that appraisement of said premises is waived or not waived at the option of the Mortgagee, and the Court finds that the Plaintiff, FDIC, has stated its election, under the terms of said Mortgage, to have said real estate sold with appraisement.

25. That the Defendants, George Shipman and Clara Shipman, are in default on the Note and Mortgage and that there is now due, owing and unpaid to Plaintiff, FDIC, upon said Note and Mortgage the sum of \$79,226.19; together with accrued interest to the 10th day of September, 1987, in the sum of \$10,255.99 and additional interest at the default rate set forth in the Note from the 10th day of September, 1987, to the date of judgment; post-judgment interest thereafter at the legal rate until paid; a reasonable attorney's fees in the sum of \$7,922.62; abstract expenses; costs; late charges, if any; advances for taxes and insurance; and all

recorded in Book 160 at Page 94 and re-filed in Book 161 at Page 165 in the office of the Pawnee County Clerk.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, by the Court that any and all right, title, or interest which the Defendants, George Shipman, Clara Shipman and Western National Bank, have or claim to have in or to said real estate or premises, is hereby extinguished by virtue of the Disclaimers filed herein of such Defendants.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, by the Court that any and all right, title, or interest which the Defendant, Lakeshore Bank, N.A., and SHC Enterprises, Inc., have or claims to have in or to said real estate or premises, is subsequent, junior and inferior to the Mortgage and lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Defendants, Fern Karraker, County Treasurer of Pawnee County, Oklahoma, and The Board of County Commissioners of Pawnee County, Oklahoma, have judgment against the Defendants, George Shipman and Clara Shipman, in the sum of \$146.70 for unpaid 1986 ad valorem taxes, plus interest and penalty, and \$146.08 for unpaid 1987 ad valorem taxes, plus interest and penalty, for which amounts the lien in favor of such Defendants is superior to the Mortgage and lien of Plaintiff, FDIC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Defendants, Fern Karraker, County Treasurer of Pawnee County, Oklahoma, and The Board of County Commissioners of Pawnee County,

Oklahoma, have judgment against the Defendants, George Shipman and Clara Shipman, in the sum of \$335.28 for unpaid 1986 personal property taxes, plus interest and penalty, and in the sum of \$333.70 for unpaid 1987 personal property taxes, plus interest and penalty, for which amounts the lien in favor of such Defendants is junior and inferior to the Mortgage and lien of Plaintiff, FDIC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Mortgage of Plaintiff, FDIC, be, and the same is hereby, foreclosed and the premises are hereby ordered to be sold to satisfy the judgment herein; that a Writ of Execution for Sale with Appraisement shall issue, commanding the Sheriff of Pawnee County, Oklahoma, to levy upon the above-described real estate, and after having the same appraised as provided by law, proceed to advertise and sell the same, as provided by law and apply the proceeds arising from the sale as follows:

FIRST: To the payment of costs of sale and court costs herein.

SECOND: To the payment of the judgment and lien for unpaid ad valorem taxes, if any, of Defendants, Fern Karraker, County Treasurer of Pawnee County, Oklahoma, and The Board of County Commissioners of Pawnee County, Oklahoma;

THIRD: To the payment of the judgment and lien of the Plaintiff in the amounts set forth herein; and

FOURTH: The remainder, if any, to be held until further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that upon confirmation of the sale and delivery of Sheriff's Deed, under and by virtue of this judgment and decree, that said property shall be free and clear of the claims of all Defendants and that all persons claiming under said Defendants since the filing of the Complaint and First Amended Complaint herein shall have no right, title, interest, claim, lien or demand in or to said property.

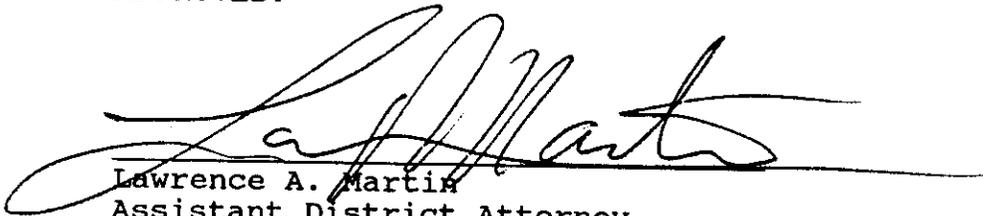
  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
J. Mark Lovelace, OBA No. 5539  
Robert N. Sheets, OBA No. 8152  
PHILLIPS McFALL McVAY  
SHEETS & LOVELACE, P.C.  
1001 N.W. 63rd, Suite 205  
Oklahoma City, Oklahoma 73116  
(405) 848-1684

Attorneys for Plaintiff

APPROVED:

A large, stylized handwritten signature in black ink, appearing to read 'L. A. Martin', is written over a horizontal line.

Lawrence A. Martin  
Assistant District Attorney  
Pawnee County Courthouse  
Pawnee, Oklahoma 74058

Attorney for Defendants,  
Fern Karraker, Pawnee County Treasurer  
and The Board of County Commissioners  
of Pawnee County, Oklahoma

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

**FILED**

APR 20 1989

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

No. 80-C-401-LB

ROBERT EUGENE COTNER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DAVE FAULKNER, )  
 )  
 Defendant. )

O R D E R

This matter comes before the Court on a request from the Tenth Circuit Court of Appeals for a determination on whether Plaintiff Robert Eugene Cotner should be allowed to proceed *in forma pauperis* and whether a certificate of probable cause should be issued.

Petitioner has appealed this Court's Order of January 3, 1989 denying him leave to re-open this 1980 case. The Court ordered Petitioner to exhaust available administrative and state judicial remedies concerning his current complaints.

"Unless the issues raised are so frivolous that the appeal would be dismissed in the case of a nonindigent litigant . . . the request of an indigent for leave to appeal *in forma pauperis* must be allowed." Ellis v. United States, 356 U.S. 674, 78 S.Ct. 974, 975, 2 L.Ed.2d 1060 (1958). This standard, developed in criminal cases, applies as well to habeas corpus appeals. Gardner v. Pogue, *supra*. Fed. R. App. P. 22(b) provides in a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court, an appeal by the applicant for the writ may not

proceed unless a district or a circuit judge issues a certificate of probable cause.

The test for granting a certificate of probable cause is stricter than for allowing an appeal *in forma pauperis*. The test appears to be a certificate of probable cause should be granted as long as the issue raised is "not frivolous" and more recently it has required a question of some "substance" before issuing a certificate. Gardner v. Poque, *supra*, 558 F.2d at 551. In Clements v. Wainwright, 648 F.2d 979, 981 (5th Cir. 1981), the Court said:

"... The test for granting a certificate of probable cause is stricter. Justice (then Judge) Blackmun has stated:

"My own reaction is that the cases [of] the several circuits], taken as a whole, do indicate that the standard of probable cause requires something more than the absence of frivolity and that the standard is a higher one than the 'good faith' requirement of §2925."

"Blackmun, Allowance of In Forma Pauperis Appeals in §2255 and Habeas Corpus Cases, 8 Cir., 43 F.R.D. 343, 352 (1967), quoted in Gardner v. Poque, 558 F.2d 548 (9th Cir. 1977) ..."

This Court has applied these tests and finds such certificate should not issue pursuant to Fed.R.App.P. 22(b), the issue raised

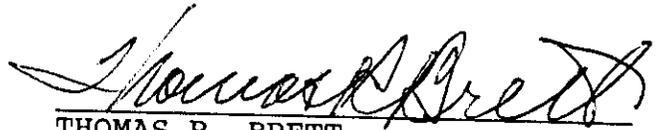
by Petitioner being frivolous and not of some substance.'  
Plaintiff therefore is also denied leave to proceed *in forma pauperis*.

IT IS, THEREFORE, ORDERED as follows:

1. Leave is denied Petitioner to prosecute his appeal *in forma pauperis*.

2. A certificate of probable cause is not hereby issued pursuant to Fed.R.App.P. 22(b).

ENTERED this 20<sup>th</sup> day of April, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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'The Plaintiff is a perennial state and federal prisoner who has earned the reputation of filing numerous frivolous and specious claims in both the state and federal courts. For instance, in the United States District Court for the Northern District of Oklahoma in the last ten years Plaintiff has filed 33 claims.

FILED

APR 20 1989 *pw*

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

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

BOB F. HENNING, JR., ROCKY D. WOOD,  
and CITY FINANCE COMPANY OF OKLAHOMA, INC.,

Plaintiffs,

v.

AMERICAN GENERAL FIRE AND CASUALTY  
CO., a foreign insurance company;  
and NATIONAL STANDARD INSURANCE CO.,  
a foreign insurance company,

Defendants.

No. 87-C-547-G ✓

ORDER

FOR GOOD CAUSE SHOWN, and by agreement between the parties, City Finance Company of Oklahoma, Inc., and Bob F. Henning, Jr. and the defendants American General Fire and Casualty Co. and National Standard Insurance Company, the parties having settled their differences, upon the application of said plaintiffs, the Court finds that the said Plaintiffs', City Finance Company of Oklahoma, Inc. and Bob F. Henning, Jr., action against the defendants should be and is hereby dismissed with prejudice, with each party liable for its attorney fees and other costs, leaving remaining open only the action of Rocky D. Wood, plaintiff, v. American General Fire and Casualty Co. and National Standard Insurance Co., defendants. Dated this 20<sup>th</sup> day of April, 1989.

*[Signature]*  
UNITED STATES DISTRICT JUDGE

**FILED**

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

APR 20 1989

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

MARSHA LEE KENNEDY and )  
STEPHEN MICHAEL KENNEDY, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
ROBERT G. FREEMAN, M.D., and )  
ROBERT G. FREEMAN, M.D., P.A. )  
 )  
Defendants. )

No. 88-C-1466-B

O R D E R

This matter comes before the Court on a Motion to Dismiss of Defendants Robert G. Freeman, M.D. and Robert G. Freeman, M.D. P.A. Defendants contend the Court lacks *in personam* jurisdiction over them. The precise issue before the Court is: Does this Court have *in personam* jurisdiction over a nonresident physician and his professional association when the cause of action is for negligent diagnosis and analysis of skin cancer rendered in a foreign state (Texas) and the errors are reported back to the forum state (Oklahoma) where the wrong treatment is administered. Under the facts disclosed in the record the Court finds Defendants' contacts with the State of Oklahoma are insufficient to confer personal jurisdiction over them.

The facts are as follows: On July 1, 1982, Dr. Freeman received in Texas an unsolicited specimen slide for evaluation sent by Plaintiff Marsha Lee Kennedy's Oklahoma treating physician, Dr. Doss. Dr. Freeman supervises the operation of a special service

pathology laboratory in Dallas, Texas. The laboratory has a highly specialized micrometer attached to a microscope. The specialized services performed are not otherwise available to Oklahoma residents. (Freeman Depo. p. 44). On July 6, 1982, Defendants mailed a report to Oklahoma advising Dr. Doss that the specimen sent measured 0.2 mm. thick. In fact, this report was incorrect and the specimen measured 1.2 mm. The thickness of a lesion, like the one sent, determines the treatment to be administered to the patient. Plaintiff alleges that due to the measurement error, no treatment or follow-up care occurred. Four years later Plaintiff discovered malignant melanoma had spread over her body. Plaintiff asserts that had the correct measurement been reported to Dr. Doss in 1982, Dr. Doss would have administered the proper treatment which would have stopped the spread of her cancer. Plaintiffs, Marsha Lee Kennedy and Stephen Michael Kennedy, brought suit for malpractice against the Texas physician and his professional association in Oklahoma where Plaintiffs reside.

"Whether a federal court has personal jurisdiction over a nonresident defendant in a diversity action is determined by the law of the forum state." Yarbrough v. Elmer Bunker and Associates, 669 F.2d 614 (10th Cir. 1982). Oklahoma's law, 12 O.S. §2004(f) provides:

"A court of this state may exercise jurisdiction on any basis consistent with the Constitution of the United States."

The United States Supreme Court held that before jurisdiction can be exercised, the Due Process Clause of the Fourteenth

Amendment requires minimum contacts between the state exercising personal jurisdiction and the defendant. International Shoe Co. v. State of Washington, et al., 326 U.S. 310, 90 L.Ed.2d 95 (1945). It is critical to due process that "defendant's conduct and connection with the forum state are such that he would reasonably anticipate being haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S.Ct. 559 (1980); Burger King v. Rudzewicz, 471 U.S. 462 (1985). A minimum contacts inquiry must focus on the totality of the relationship between the Defendant and the forum state. Colwell v. Triple T, 785 F.2d 1330 (5th Cir. 1986); All American Car Wash v. NPE, 550 F.Supp. 166 (W.D.Okla. 1981). "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum state." Hanson v. Denckla, 357 U.S. 235 (1958). Further, contracting with an out-of-state party alone cannot automatically "establish sufficient minimum contacts in the other party's home forum." Burger King v. Rudzewicz, 471 U.S. 462 (1985).

Defendants show that Dr. Freeman is a citizen and resident of the State of Texas. The professional association is incorporated in the State of Texas. Defendants do not have a certificate of authority to do business in the State of Oklahoma. Defendants are not licensed to do business in the State of Oklahoma. Defendants have never maintained an office, owned or rented any property in Oklahoma. Defendants do not have telephone listings in the State of Oklahoma. Defendants have not conducted any business or

performed services within the State of Oklahoma. Defendants have no employees or agents in Oklahoma. Defendants have never solicited business in Oklahoma. (Robert G. Freeman Affidavit).

In Rambo v. American Southern Ins. Co., 839 F.2d 1415 (10th Cir. 1988), the Tenth Circuit explained that Plaintiffs have the burden of establishing that the nonresident defendants have the necessary minimum contacts with the forum. Plaintiffs must show that bringing the suit in Oklahoma does not offend traditional notions of fair play and substantial justice. International Shoe v. State of Washington, 326 U.S. 310 (1945).

Plaintiffs argue that even though the medical services Defendants provide are performed completely within the State of Texas, the connection with Oklahoma is so continuous and substantial that jurisdiction does lie in Oklahoma. Perkins v. Banquet Mining, 342 U.S. 437 (1952). Plaintiffs state that of the 45,000 slides examined by Defendants each year, at least 450 are sent by Oklahoma doctors. Doctors sending slides then receive back in Oklahoma a diagnostic report concerning the slide measurement. The deposition testimony submitted to the court states that the slides received from Oklahoma were "less than 1%" of the total slides examined. (Freeman Depo. p. 26). Although Plaintiffs calculate this to mean 450 slides, the record does not conclusively establish this fact. Dr. Freeman testified that over a thirty-year period, he could remember only three different Oklahoma doctors who had sent him slides from time to time. (Freeman Depo. p. 27). The record before the Court does not specifically reflect how many

slides from Oklahoma were received yearly. Plaintiffs also argue that because this is a specialized service which is not widely available, Defendants received slides from Arizona, Georgia, Missouri, South Carolina, Kentucky, Florida, Mississippi, Tennessee, California, New York, Illinois, Louisiana and Arkansas, and therefore they should reasonably anticipate being haled into court in Oklahoma. Plaintiff cites no authority for this theory. The "proper focus" is whether the contacts of the Defendants with the forum state, Oklahoma, "represent an effort by the Defendant to purposefully avail itself of the privilege of conducting activities within the forum state." Rambo v. American Southern Ins. Co., 839 F.2d 1415 (10th Cir. 1988). Defendants' contacts with other states are not relevant in this situation.<sup>1</sup>

Plaintiffs also contend that since these services are not available in Oklahoma, the report directed to Oklahoma is similar to a product placed in the stream of commerce. "Cases involving medical services are quite different from those involving other commercial activity." Hume v. Durwood Medical Clinic, 318 S.E.2d 119 (Ct.App. S.C. 1984); Soares v. Roberts, 417 F.Supp. 304 (D.R.I. 1976). "Unlike a case involving voluntary interstate or international economic activity ... the residence of a recipient of personal services rendered elsewhere is irrelevant and totally

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<sup>1</sup>Plaintiffs also state Defendant Freeman's name and address appears in national publications and that he is an officer of American Society of Dermatopathology. This is insufficient to confer personal jurisdiction. Beh v. Ostergard, 657 F.Supp. 173 (D.N.M. 1987).

incidental to the benefits provided by the defendant at his own location." Gelineau v. New York University Hospital, 375 F.Supp. 661, 667 (D.N.J. 1974). The fact Defendants knew Plaintiff would be treated in Oklahoma is not sufficient to confer jurisdiction. Glover v. Wagner, 462 F.Supp. 308 (D.Neb. 1978); Hume v. Durwood Medical Clinic, 318 S.E.2d 119 (S.C. 1984); Ballard v. Rawlins, 428 N.E.2d 532 (Ill. 1981). Foreseeability alone has never been a sufficient benchmark for personal jurisdiction. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980). The report sent in the present case was only incidental to the services rendered in Texas. See, Kennedy v. Ziesmann, 526 F.Supp. 1328 (E.D.Ky. 1981).<sup>2</sup>

Accepting an out-of-state patient is not doing business within the foreign state. Jackson v. Shepard, 609 F.Supp. 205 (D.Az. 1985); Nicholas v. Ashraf, 655 F.Supp. 1418 (W.D.Pa. 1987). The unilateral action of the Plaintiff in seeking and obtaining the services of the Texas Defendants cannot serve to satisfy jurisdictional requirements. Chancellor v. Lawrence, 501 F.Supp. 997 (N.D.Ill. 1980); Hanson v. Denckla, 357 U.S. 235 (1958).<sup>3</sup>

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<sup>2</sup>But see, McGee v. Riekhof, 442 F.Supp. 1276 (D.Mont. 1978). But Cf. Wright v. Yackley, 459 F.2d 287 (9th Cir. 1972), n. 4.

<sup>3</sup>The Court recognizes that the communications with Defendants were actually made by Plaintiff Marsha Lee Kennedy's Oklahoma treating physician not by Plaintiff herself. The analysis does not change, however, because the focus is on Defendants and what contacts they had with Oklahoma.

The Court also finds that even if Defendants have accepted a significant number of slides from Oklahoma it would still not have personal jurisdiction over these Defendants. Other jurisdictions have addressed the issue whether personal jurisdiction lies when a nonresident medical physician or medical facility has accepted many patients from the forum state. Unless there is some form of solicitation from the nonresident defendant aimed at the forum,<sup>4</sup> jurisdiction does not lie if all the services are rendered outside the forum state. Walters v. St. Elizabeth Hospital, 543 F.Supp. 559 (W.D.Pa. 1982); Wolfe v. Richmond County Hospital, 526 F.Supp. 1328 (E.D.Ky. 1981); Ballard v. Rawlins, 428 N.E.2d 532 (Ill. 1981); Ursini v. Menninger, 384 F.Supp. 158 (E.D.Cal. 1974).

Restrictions on personal jurisdiction of state courts are more than a guarantee of immunity from inconvenient or distant litigation; they are a "consequence of territorial limitations on the power of the respective states." Hanson v. Denckla, 357 U.S. 235 (1958). The Court finds that exercising personal jurisdiction over these Defendants would offend traditional notions of fair play and substantial justice. International Shoe v. Washington, 326 U.S. 310 (1945). Moreover, although the forum state's interest<sup>5</sup> in

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<sup>4</sup>For cases involving solicitation, refer to Lemke v. St. Margaret Hospital, 552 F.Supp. 833 (N.D.Ill. 1982); Cubbage v. Merchant, 744 F.2d 665 (9th Cir. 1984); Pijanowski v. Cleveland Clinic, 635 F.Supp. 1435 (E.D.Mich. 1986).

<sup>5</sup>Another factor relevant to a due process inquiry is state interest. Wright v. Yackley, 459 F.2d 287 (9th Cir. 1972).

detering negligent interstate medical service is substantial,<sup>6</sup> the principal state interest is that forum state residents have access to adequate, if not the best available medical services regardless of state lines. If Oklahoma asserts jurisdiction over every out-of-state doctor who accepts unsolicited patients from Oklahoma, one foreseeable result is that Oklahoma residents would be denied medical treatment in highly specialized fields. Kennedy v. Ziesmann, 526 F.Supp. 1328 (E.D.Ky. 1981).

Therefore, Defendants' Motion to Dismiss is hereby SUSTAINED for want of *in personam* jurisdiction.

IT IS SO ORDERED this 20<sup>th</sup> day of April, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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<sup>6</sup>Wright v. Yackley, 459 F.2d 287 (9th Cir. 1972), n. 4.

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

FILED

APR 20 1989

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

DWAYNE GARRETT, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
WILLIAM CODY, )  
 )  
Defendant. )

Case No. 88-C-568-B

ORDER OF DISMISSAL

NOW ON this 13th day of April, 1989, comes on before this Court the Pre-Trial Conference in the above entitled cause as set by Order of this Court on the 28th day of December, 1988. The Plaintiff, DWAYNE GARRETT, appears not and there does not appear in the record any appearance of counsel on behalf of Plaintiff. The Defendant appears by and through KEVIN D. BUCHANAN, on behalf of Defendant's counsel, STEVE LIEB. The Court, after having reviewed the record herein and finding that notice of this hearing was properly given to the Plaintiff, DWAYNE GARRETT, and upon said Plaintiff's failure to appear for the Pre-Trial Conference, the Court finds that the above entitled action should be dismissed without prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the above entitled action is dismissed based upon the failure of the Plaintiff, DWAYNE GARRETT, to appear at the previously scheduled Pre-Trial Conference, and for his failure to prosecute the above entitled action and that said dismissal is without prejudice to refiling.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that in the event the Plaintiff, DWAYNE GARRETT, seeks to refile the above entitled action in this Court, that he shall first cause to be paid to the Defendant, WILLIAM CODY, the Defendant's reasonable expenses and attorney's fees for the defense of this action to the date of this Order.

S/ THOMAS R. BRETT

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THOMAS R. BRETT,  
United States District Judge

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FILED

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

APR 20 1989

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

AERNI-LEUCH AG, a Swiss company,  
-ael-ADVANCED GRAPHICS SYSTEMS,  
INC., an Oklahoma corporation,  
-ael-ADVANCED GRAPHICS SYSTEMS,  
AG, a Swiss company, GREGORY  
POTTEBAUM, DANIEL FORTHMAN,  
RICHARD MATTHEWS, PATRICK KURKS,  
SAMUEL WILBURN, DANIEL LAEDERACH,  
GEORGE WAIBEL, TIM JOHNSTON, DALE  
QUAYLE and BRUCE N. FEUSTEL,

Plaintiffs,

v.

ACCUGRAPH CORPORATION, a Texas  
corporation, and HECTOR HOLGUIN,

Defendants.

No. 88-C-543-E

BRUCE N. FEUSTEL, an individual,  
and -ael-ADVANCED GRAPHICS SYSTEMS,  
INC., an Oklahoma corporation,

Plaintiffs,

v.

ACCUGRAPH CORPORATION, a Texas  
corporation,

Defendant.

CONSOLIDATED WITH

No. 88-C-~~542~~<sup>652</sup>-E

ACCUGRAPH CORPORATION, a Texas  
corporation,

Plaintiff,

v.

AERNI-LEUCH GROUP OF SWITZERLAND,  
a Swiss company, -ael-ADVANCED  
GRAPHICS SYSTEMS, AG, a Swiss

CONSOLIDATED WITH

NO. 89-C-033-RE

copy to  
Co.

company, -ael-ADVANCED GRAPHICS )  
SYSTEMS, INC., an Oklahoma cor- )  
poration, DANIEL LAEDERACH, GEORGE )  
WAIBEL, GREGORY POTTEBAUM, DANIEL )  
FORTHMAN, RICHARD MATTHEWS, BRUCE )  
FEUSTEL, SAMUEL WILBURN, TIM )  
JOHNSTON, PATRICK KURKS, and DALE )  
QUAYLE, )

Defendants. )

---

DALE QUAYLE, an individual, and )  
-ael-ADVANCED GRAPHICS SYSTEMS, )  
INC., an Oklahoma corporation, )

Plaintiffs, )

v. )

ACCUGRAPH CORPORATION, a Texas )  
corporation, )

Defendant. )

CONSOLIDATED WITH

No. 89-C-034-BE

**STIPULATION OF DISMISSAL WITH PREJUDICE**

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereby stipulate that all claims of Aerni-Leuch, AG, -ael-Advanced Graphics Systems, Inc., -ael-Advanced Graphics Systems, AG, Daniel Laederach, George Waibel, Gregory Pottebaum, Samuel Wilburn, Tim Johnston, Patrick Kurks, Dale Quayle, Bruce Feustel, Daniel Forthman, and Richard Matthews (the "AEL Parties"), in any of the above-titled litigations are dismissed with prejudice, with each party to bear its own costs and attorneys' fees.

The parties further stipulate pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure that all claims of Accugraph Corporation in the above-titled litigations are dismissed with prejudice, with each part to bear its own costs and attorneys' fees.

BOONE, SMITH, DAVIS & HURST

By: 

J. Schaad Titus  
500 ONEOK Plaza  
100 West Fifth Street  
Tulsa, Oklahoma 74103  
(918) 587-0000

NELSON & RUSSO

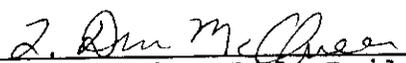
Jack Russo  
Tim C. Hale

706 Cowper Street  
Palo Alto, California 94301  
(415) 327-9800

Attorneys for Accugraph  
Corporation

DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

Richard P. Hix  
Charles S. Plumb  
L. Dru McQueen

By: 

1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
(918) 582-1211

Attorneys for the AEL Parties

\\stip-dis.acc

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

CLARK O. BREWSTER,  
Plaintiff,

vs.

JOEL H. FARKAS,  
and

ACQUISITION INDUSTRIES,  
INC., a Colorado  
corporation,

Defendants.

No. 87-C-967-E

**ORDER OF DISMISSAL WITH PREJUDICE**

COMES NOW the Court on this 20<sup>th</sup> day of ~~February~~ <sup>April</sup>, 1989,  
upon the Joint Application for Order of Dismissal With  
Prejudice. The Court having reviewed said Application and being  
informed of the parties' settlement of this matter and mutual  
desire for dismissal with prejudice,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that  
Plaintiff's cause of action be dismissed with prejudice to his  
rights to bring any future claim or action.

**S/ JAMES O. ELLISON**

James O. Ellison  
United States District Court Judge

**F I L E D**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA **APR 20 1989**

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

AUTOMATION TECHNIQUES, INC., )  
et al., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
NOW PRECISION CO., LTD., )  
et al., )  
 )  
Defendants. )

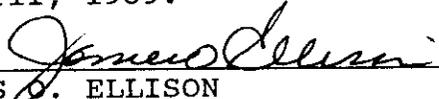
No. 86-C-893-E

**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 forty-five (45) days that settlement has not been completed and further litigation is necessary.

ORDERED this 20<sup>th</sup> day of April, 1989.

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

**F I L E D**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA 1989

THE S.A. LONG COMPANY, INC., a )  
corporation, and S.A. LONG COMPANY ) Jack C. Silver, Clerk  
OF OKLAHOMA, INC., a corporation, ) U.S. DISTRICT COURT  
)  
Plaintiffs, )  
)  
vs. ) Case No. 86-C-784-E  
)  
ZENITH ELECTRONICS CORPORATION, )  
)  
Defendant. )

J U D G M E N T

This action came on for trial before the Court and a jury, the Honorable James O. Ellison, District Judge, presiding. The following claims by Plaintiffs against Defendant were tried:

<u>Number</u>	<u>Claims for Relief</u> */
First	Robinson-Patman Act, 15 U.S.C. §13
Third	Unfair Trade Laws of the State of Kansas, K.S.A. §50-149
Fourth	Discriminatory Pricing, 79 O.S. 1980, §2(B)
Fifth	Tortious Interference With Business Relationships
Sixth	Common Law Fraud
Seventh	Breach of Implied Covenant of Good Faith and Fair Dealing

---

\*/ Plaintiffs' second claim for relief under the Sherman Act, 15 U.S.C. §1, and claims under its Kansas and Oklahoma analogs, K.S.A. §50-101 and 79 O.S. 1980, §1, were withdrawn prior to trial.

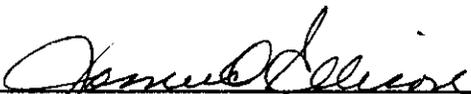
At the close of Plaintiffs' evidence, Defendant moved for a directed verdict in favor of Defendant on all claims for relief alleged in the Complaint. It appeared to the Court, having considered all of the evidence in the case, and the reasonable inferences flowing therefrom, in the light most favorable to Plaintiffs, that the evidence was insufficient as a matter of law to entitle Plaintiffs to recover against Defendant on Plaintiffs' fifth, sixth and seventh claims for relief. Accordingly, the Court directed a verdict for Defendant on those claims.

At the close of all the evidence, Defendant moved for a directed verdict in favor of Defendant on all remaining claims for relief alleged in the Complaint. It appeared to the Court, having considered all the evidence in the case, and the reasonable inferences flowing therefrom, in the light most favorable to Plaintiffs, that the evidence was insufficient as a matter of law to entitle Plaintiffs to recover against Defendant on Plaintiffs' third and fourth claims for relief. Accordingly, the Court directed a verdict for Defendant on those claims.

Plaintiffs' first claim for relief having been duly tried, and the jury having rendered its verdict thereon for the Defendant,

IT IS ORDERED AND ADJUDGED that Plaintiffs take nothing, that the action be dismissed on the merits, and that Defendant recover of Plaintiffs its costs of action.

Dated at Tulsa, Oklahoma, this 20<sup>th</sup> day of April, 1989.

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

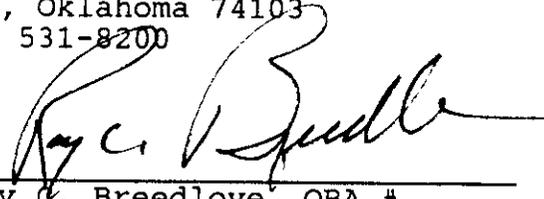
APPROVED AS TO FORM:

James P. Linn  
Drew Neville  
B.J. Rothbaum  
Russell Cook  
LINN & HELMS  
1200 Bank of Oklahoma Plaza  
Oklahoma City, Oklahoma 73102

and

Roy C. Breedlove  
JONES GIVENS GOTCHER BOGAN  
& HILBORNE  
3800 First National Tower  
Tulsa, Oklahoma 74103  
(918) 531-8200

By

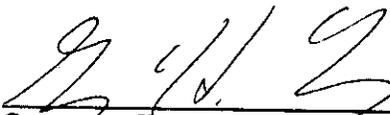
  
\_\_\_\_\_  
Roy C. Breedlove, OBA #

Attorneys for Plaintiffs  
THE S.A. LONG COMPANY, INC. and  
S.A. LONG COMPANY OF OKLAHOMA,  
INC.

H. Blair White, P.C.  
Charles W. Douglas  
Thomas F. Bush, Jr.  
Kenneth P. Quinn  
SIDLEY & AUSTIN  
One First National Plaza  
Chicago, Illinois 60603

and

James L. Kincaid  
George H. Lowrey  
Tony W. Haynie  
CONNER & WINTERS  
2400 First National Tower  
Tulsa, Oklahoma 74103  
(918) 586-5711

By   
George H. Lowrey, OBA #10888

Attorneys for Defendant  
ZENITH ELECTRONICS CORPORATION

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FOURTH & BOULDER, LTD., an )  
Oklahoma Limited Partnership, )  
URBAN PROPERTIES, LTD., an )  
Oklahoma Limited Partnership, )  
and JAMES W. DILL, an )  
individual general partner, )

Plaintiffs, )

vs. )

ROSENBERG & ROSENBERG, P.C., )  
a New York Professional )  
Corporation, )

Defendant. )

No. 83-C-99-E

FILED

APR 20 1989

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

ORDER *and Dismissal*  
*with Prejudice*

Upon the parties' stipulated MUTUAL RELEASE AND VOLUNTARY DISMISSAL WITH FULL PREJUDICE, it appears that the parties' settlement agreement has been performed. Accordingly, this action is hereby dismissed with full prejudice against all parties, all as more particularly set forth in Paragraph (7)(f) of that certain STIPULATED COMPROMISE having an Effective Date of November 1, 1986.

Date: 4/20/89

*James A. ...*  
United States District Judge

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

FILED

APR 20 1988

CLERK  
U.S. DISTRICT COURT

DANNY CLARENCE CAIN, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CARNATION COMPANY, a corporation )  
 existing under the laws of the )  
 State of Delaware, )  
 )  
 Defendant. )

Civil Action No.  
88-C-549-B

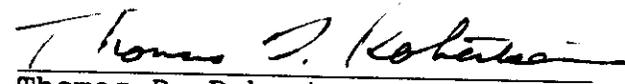
STIPULATION OF DISMISSAL WITH PREJUDICE

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

For Plaintiff,  
DANNY CLARENCE CAIN,

For Defendant,  
CARNATION COMPANY,

  
James Garland, III, OBA #12104  
FRASIER & FRASIER  
1700 Southwest Boulevard  
Suite 100  
Tulsa, Oklahoma 74101

  
Thomas D. Robertson, OBA #7665  
NICHOLS, WOLFE, STAMPER,  
NALLY & FALLIS, INC.  
124 East Fourth Street  
Suite 400  
Tulsa, Oklahoma 74103-4004

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

FILED  
APR 20 1989 *dt*

TAMARA MICHELLE FIELDS, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 J.C. PITMAN COMPANY, INC., )  
 et al., )  
 )  
 Defendants. )

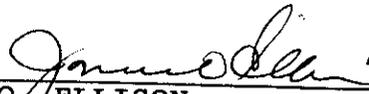
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 86-C-939-E ✓

AMENDED JOURNAL ENTRY OF JUDGMENT

This Court amends the Journal Entry of Judgment previously ordered on February 22, 1989. The Court finds that the plaintiff is entitled to recover judgment against the defendants in the sum of \$175,000.00 and also finds that the plaintiff is entitled to recover prejudgment interest in the sum of \$33,343.50, both as of the date of the jury verdict rendered hereon on August 22, 1988. Plaintiff is awarded her costs of this action.

ORDERED this 20<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

LUC J. VANRAMPENBERG,  
Plaintiff,

vs.

UNITED STATES OF AMERICA,  
UNITED STATES DEPARTMENT OF  
JUSTICE and THE HONORABLE  
JUDGE THOMAS R. BRETT,

Defendants.

No. 89-C-288-C

FILED  
APR 19 1989

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

ORDER

This action was filed by plaintiff against the Honorable Thomas R. Brett, incorrectly asserting that Judge Brett is an employee of the United States Department of Justice. The plaintiff asserts that Judge Brett is acting improperly in failing to enter an order on a pending motion for summary judgment in Case No. 88-C-379-B. Plaintiff is requesting this Court to enter an order compelling Judge Brett to render a decision in 88-C-379-B.

This action was improperly filed by plaintiff in that a Judge of a United States District Court lacks jurisdiction to enter orders compelling action by any other United States District Judge.

Therefore, plaintiff's case is hereby dismissed with prejudice. The Court Clerk is directed to close the file.

IT IS SO ORDERED this 19<sup>th</sup> day of April, 1989.

  
H. DALE COOK

Chief Judge, U. S. District Court

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

*entire*

**F I L E L**

**APR 19 1989**

PATRICIA L. FISHER and )  
GREGORY B. FISHER, wife )  
and husband, )

Plaintiffs, )

vs. )

ALLIED CHEMICAL CORPORATION, )  
a Delaware corporation, et )  
al., )

Defendants. )

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

Case No. 88-C-1043-C ✓

ORDER OF DISMISSAL WITH PREJUDICE

WHEREAS, the Plaintiff, Patricia L. Fisher, and the Defendant, Rockwell International Corporation, has stipulated and agreed that all issues have been settled between Patricia L. Fisher and Rockwell International Corporation and they have requested the entrance of an Order of Dismissal with Prejudice of Patricia Fisher's Complaint insofar as it relates to Rockwell International Corporation, which order shall dispose of this matter fully, finally and completely between them.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that Patricia Fisher's Complaint is hereby dismissed with prejudice as to Defendant, Rockwell International Corporation, and that all matters are fully, finally and completely disposed of between them.

Dated this <sup>26</sup>19 day of April, 1989.

*W. S. Silver*  
UNITED STATES DISTRICT JUDGE

FILED

APR 19 1989

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

LEONARD ARABIA, MARVIN BASIL )  
CAROL CHISHOLM WEINER, and )  
ARTHUR ARAKELIAN, individuals, )

Plaintiffs, )

vs. )

Case No. 89-C-091B

GIANT PETROLEUM, INC., an )  
Oklahoma Corporation, GEORGE )  
ELIAS, JR., and CATHY ELIAS, )  
individuals; CIMARRON CRUDE )  
CO., an Oklahoma Corporation, )  
and AMERICAN PETROLEUM )  
TRADING, INC., an Oklahoma )  
corporation, and KERR-McGEE )  
CORPORATION, a Delaware )  
Corporation, )

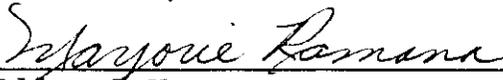
Defendants. )

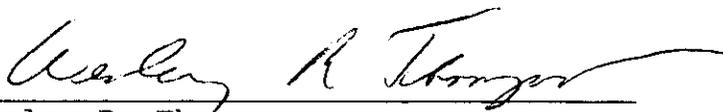
STIPULATION OF PARTIAL DISMISSAL

COME NOW the plaintiffs and the defendant American Petroleum Trading, Inc., and pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure stipulate to the dismissal of plaintiffs' claim for relief against American Petroleum Trading, Inc., as it relates to the Giant-Arabia #1 and #3 programs for drilling the Arabia #1 and #3 wells located in the E/2 of the SW/4 of Section 18, T13N, R8E, Okfuskee County, Oklahoma. The

dismissal is without prejudice.

Respectfully submitted,

  
Allan DeVore  
Marjorie Ramana  
The DeVore Law Firm,  
A Professional Corporation  
1318 North Robinson  
Oklahoma City, Oklahoma 73103  
(405) 232-4997  
Attorneys for Plaintiffs

  
Wesley R. Thompson  
15 South Park Street  
Sapulpa, OK 74066  
Attorney for Defendant American  
Petroleum Trading, Inc.

CERTIFICATE OF MAILING

This is to certify that on the 18<sup>th</sup> day of April, 1989, a true and correct copy of the above and foregoing was mailed, postage prepaid, to the following:

James A. Williamson  
1736 South Carson  
Tulsa, OK 74119  
Attorney for Defendants George Elias, Jr., and Giant Petroleum, Inc.

Mark Vanlandingham  
James C. Peck  
Kerr-McGee Center  
P.O. Box 205861  
Oklahoma City, OK 73125  
Attorneys for Defendant Kerr-McGee Corporation

Clifford Archer  
P.O. Box 35769  
Tulsa, OK 74153  
Appearing Pro Se on behalf of Cimarron Crude, Inc.

  
Marjorie Ramana

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.

JAMES E. LARMORE, JR., a/k/a  
J. E. LARMORE, JR., a/k/a  
JAMES EARL LARMORE, JR.,  
Defendant.

**F I L E D**

**APR 17 1989**

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

) CIVIL ACTION NO. 88-C-473-C

DEFAULT JUDGMENT

This matter comes on for consideration this 19 day  
of April, 1989, the Plaintiff appearing by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Phil Pinnell, Assistant United States  
Attorney, and the Defendant, James E. Larmore, Jr., a/k/a J. E.  
Larmore, Jr., a/k/a James Earl Larmore, Jr., appearing not.

The Court being fully advised and having examined the  
court file finds that Defendant, James E. Larmore, Jr., a/k/a  
J. E. Larmore, Jr., a/k/a James Earl Larmore, Jr., was served  
with Summons and Complaint on November 25, 1988. The time  
within which the Defendant could have answered or otherwise  
moved as to the Complaint has expired and has not been extended.  
The Defendant has not answered or otherwise moved, and default  
has been entered by the Clerk of this Court. Plaintiff is  
entitled to Judgment as a matter of law.

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

James E. Larmore, Jr., a/k/a J. E. Larmore, Jr., a/k/a James Earl Larmore, Jr., for the principal amount of \$6,595.46, plus accrued interest of \$4,756.89 as of April 14, 1988, plus interest thereafter at the rate of 7 percent per annum until judgment, plus interest thereafter at the current legal rate of 9.51 percent per annum until paid, plus costs of this action.

*(Signed) H. Dale Clark*

---

UNITED STATES DISTRICT JUDGE

cen

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

APR 19 1989

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

IN RE: VERN O. LAING,  
Debtor.

No. 89-C-151-C

ORDER

Now before the Court for its consideration is the motion of Don Bradshaw and Lawrence A. G. Johnson to withdraw a case from the bankruptcy court and to dismiss it.

The federal district courts have original jurisdiction over all cases arising under the Bankruptcy Code. 28 U.S.C. §1334(b). The district courts are allowed to refer bankruptcy cases to the bankruptcy court. 28 U.S.C. §157(a). Section 157(d) permits the district court to withdraw its reference to the bankruptcy court. That section provides:

The district court may withdraw, in whole or in part, any case or proceeding under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

(emphasis added).

As the emphasized words indicate, the section provides for both permissive and mandatory withdrawal. Movants have merely stated that their motion is pursuant to 28 U.S.C. §157. The mere recitation of a section from the U. S. Code with the bald assertion that somehow it applies is insufficient to maintain the burden of proof on a request for mandatory withdrawal. In re Mich. Real Estate

Ins. Trust, 87 B.R. 447, 459 (E.D.Mich. 1988). From a review of movants' brief, it does not appear that this is the course they seek in any event. As for permissive withdrawal, this may be granted upon "cause shown". This test is amorphous, "a chameleon within the legal lexicon whose definition is created by its application." In re DeLorean Motor Co., 49 B.R. 900, 912 (Bankr. E.D.Mich. 1985). The "cause shown" test

creates a presumption that the legislature intended bankruptcy proceedings to be adjudicated by bankruptcy courts absent the existence of some other contravening policy that the withdrawal of reference is necessary to preserve a more significant interest.

In re Amer. Solar King Corp., 92 B.R. 207, 209 (W.D.Tex. 1988).

Essentially, movants argue that the debtor herein has abused the bankruptcy process through successive filings, and that the bankruptcy judge has erred in failing to dismiss the case. Movants have cited no authority that such a situation, in its present posture, rises to the level of "cause shown". The Court is not persuaded that it does.

It is the Order of the Court that the motion of Don Bradshaw and Lawrence A. G. Johnson to withdraw reference and to dismiss is hereby DENIED.

IT IS SO ORDERED this 18<sup>th</sup> day of April, 1989.

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

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

FILED

APR 10 1989

CALUMET FARM, INC., a Kentucky )  
corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DAVID E. BILLINS, )  
 )  
Defendant. )

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

Case No. 88-C-359-C

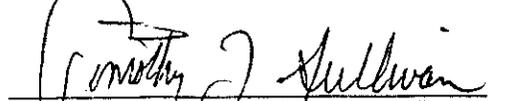
ORDER OF DISMISSAL

The Plaintiff and Defendant having filed their Stipulation of Dismissal pursuant to F.R.C.P. 41, it is

ORDERED AND ADJUDGED that the Complaint of the Plaintiff and the counterclaims of the Defendant, respectively, are hereby dismissed, with prejudice, each party to bear its own costs and attorneys fees.

  
(CHIEF) UNITED STATES  
DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

  
Timothy J. Sullivan, #8759  
1443 S. Norfolk  
Tulsa, Oklahoma 74120  
(918) 592-3100

Attorney for Plaintiff

GASAWAY & LEVINSON

  
Lee I. Levinson, OBA #5395  
16 East 16th  
Tulsa, Oklahoma 74119

Attorneys for Defendant

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

FILED

APR 19 1989

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

ROBERT E ROSTECK	)	
	)	
Plaintiff(s),	)	
	)	
vs.	)	No. 88-C-999-C
	)	
	)	
Court of Criminal Appeals	)	
	)	
Defendant(s).	)	

ORDER

Rule 35(A) of the Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

(a) In any case in which no action has been taken by the parties for six (6) months, it shall be the duty of the Clerk to mail notice thereof to counsel of record or to the parties, if their post office addresses are known. If such notice has been given and no action has been taken in the case within thirty (30) days of the date of the notice, an order of dismissal may in the Court's discretion be entered.

In the action herein, notice pursuant to Rule 36(a) was mailed to counsel of record or to the parties, at their last address of record with the Court, on February 7, 1989. No action has been taken in the case within thirty (30) days of the date of the notice.

Therefore, it is the Order of the Court that this action is in all respects dismissed.

Dated this 14 day of April, 1989.

*W. C. Book*  
UNITED STATES DISTRICT JUDGE

*Entered  
A United  
order*

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

RONNY G. ALTMAN, an individual, )  
and )  
PAUL J. WOODUL, an individual, )  
 )  
 ) Plaintiffs, )  
 )  
v. )  
 )  
PENNZOIL EXPLORATION AND )  
PRODUCTION COMPANY, )  
a Delaware corporation, and )  
UNITED GAS PIPE LINE COMPANY, )  
a Delaware corporation, )  
 )  
 ) Defendants. )

CASE NO. 88-C-1559-C

**F I L E D**

APR 19 1989

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

ORDER

Upon motion of the parties,  
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion for Dismissal With Prejudice filed by plaintiffs, Ronny G. Altman and Paul J. Woodul and defendant, United Gas Pipe Line Company, be granted and that this action, including all claims, counter-claims and demands which have been asserted or could have been asserted in this cause by plaintiffs Ronny G. Altman and Paul J. Woodul against United Gas Pipe Line Company are dismissed with prejudice to any further action, each party to bear its own attorneys' fees and costs.

  
H. DALE COOK  
UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

LARRY WELDON,  
466920026

Defendant,

CIVIL NUMBER 89-C-077 E

**FILED**

**APR 18 1989**

DEFAULT JUDGMENT

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

A Default having been entered against the Defendant and counsel for the Plaintiff having requested Judgment against the defaulted Defendant and having filed a proper Affidavit, all in accordance with Rule 55(a) and (b)(1) of the Federal Rules of Civil Procedure and Rule 7 of the Rules of the District Court for the NORTHERN District of Oklahoma, now, therefore;

JUDGMENT is rendered in favor of the Plaintiff, United States of America, and against the Defendant, LARRY WELDON, in the principal sum of \$2046.37, plus pre-judgment interest and administrative costs, if any, as provided by Section 3115 of Title 38, United States Code, together with service of process costs of \$21.44. Future costs and interest at the legal rate of 9.51 %, will accrue from the entry date of this judgment and continue until this judgment is fully satisfied.

DATED this 18<sup>th</sup> day of April, 1989.

U.S. DISTRICT COURT CLERK  
NORTHERN DISTRICT OF OKLAHOMA

By: *H. Zesterman*  
Deputy Clerk

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 STEVEN W. WELLMAN, )  
 122504578 )  
 )  
 Defendant, )

CIVIL NUMBER 89-C-078 E ✓

**FILED**  
APR 18 1989 *dt*

DEFAULT JUDGMENT

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

A Default having been entered against the Defendant and counsel for the Plaintiff having requested Judgment against the defaulted Defendant and having filed a proper Affidavit, all in accordance with Rule 55(a) and (b)(1) of the Federal Rules of Civil Procedure and Rule 7 of the Rules of the District Court for the NORTHERN District of Oklahoma, now, therefore;

JUDGMENT is rendered in favor of the Plaintiff, United States of America, and against the Defendant, STEVEN W. WELLMAN, in the principal sum of \$907.73, plus pre-judgment interest and administrative costs, if any, as provided by Section 3115 of Title 38, United States Code, together with service of process costs of \$17.36. Future costs and interest at the legal rate of 9.51%, will accrue from the entry date of this judgment and continue until this judgment is fully satisfied.

DATED this 18<sup>th</sup> day of April, 1989.

U.S. DISTRICT COURT CLERK  
NORTHERN DISTRICT OF OKLAHOMA

By: *H. Zesterman*  
Deputy Clerk

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

FILED

APR 18 1989

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

JAMES BRAZEAL,

Plaintiff,

vs.

J. H. MARTIN, individually,  
and as a police officer,  
Tulsa, Oklahoma; CITY OF TULSA,

Defendants.

No. 87-C-533-C

ORDER

Now before the Court for its consideration is the objection of defendant City of Tulsa (the City) to the Report and Recommendation of the United States Magistrate, the latter filed on January 20, 1989.

This action under 42 U.S.C. §1983 arises from the following facts. Plaintiff alleges that on July 4, 1985, he was stopped by defendant Martin, a police officer employed by the City, supposedly because plaintiff's automobile safety inspection sticker had expired. Plaintiff then alleges that ultimately he was arrested, handcuffed and transported to the downtown police station, suffering serious injury as a result.

A settlement has been reached between plaintiff and Martin. Thus, the only issues remaining are as to the City's liability vel

87

non. The Magistrate recommended denial of the City's motion for summary judgment, on the basis that there exists a question of fact as to the existence of a municipal policy. The City objects.

The United States Supreme Court has recently reiterated the basic principles in this area:

[In *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, (1978),] we decided that a municipality can be found liable under §1983 only where the municipality itself causes the constitutional violation at issue. *Respondeat superior* or vicarious liability will not attach under §1983. "It is only when the 'execution of the government's policy or custom ... inflicts the injury' that the municipality may be held liable under §1983."

Thus, our first inquiry in any case alleging municipal liability under §1983 is the question of whether there is a direct causal link between a municipal policy or custom, and the alleged constitutional deprivation.

Canton, Ohio v. Harris, 109 S.Ct. 1197, 1203 (1989) (citations omitted).

A single decision by municipal policymakers may constitute such a policy under appropriate circumstances. Pembaur v. Cincinnati, 475 U.S. 469 (1986). The "guiding principles" on this point are as follows:

First, a majority of the Court agreed that municipalities may be held liable under §1983 only for acts for which the municipality itself is actually responsible, "that is, acts which the municipality has officially sanctioned or ordered." Second, only those municipal officials who have "final policymaking authority" may by their actions subject the government to §1983 liability. Third, whether a particular official has "final policymaking authority" is a question of *state law*. Fourth, the challenged action must have been taken pursuant to a policy adopted by the official or officials responsible under state law for making policy in *that area* of the city's business.

St. Louis v. Praprotnik, 108 S.Ct. 915, 924 (1988) (citations omitted).

Plaintiff does not argue that a City official having final policymaking authority has officially sanctioned or ordered the actions of Martin in the case at bar. Plaintiff, and the Magistrate, focus on the alternative theory of municipal custom, as opposed to policy.

[T]he Court has long recognized that a plaintiff may be able to prove the existence of a widespread practice that, although not authorized by written law or express municipal policy, is "so permanent and well settled as to constitute a 'custom or usage' with the force of law."

Praprotnik, 108 S.Ct. at 926 (citation omitted).

The Magistrate identified district customs which make up plaintiff's claim. First, that the City has a custom of having police officers handcuff all arrested persons, regardless of circumstance or harm caused. An interrogatory directed to the City's Chief of Police, and his answer are as follows:

INTERROGATORY NO. 6: Does the City of Tulsa have any policy with respect to the use of handcuffs during the arrest of citizens?

ANSWER TO INTERROGATORY NO. 6: The Defendant City of Tulsa does not have a policy relating to the use of handcuffs during arrests. As a custom which originates in the training of City of Tulsa police officers, and which existed during the training provided to Defendant J. H. Martin, officers are trained to handcuff all persons they arrest in the absence of compelling circumstances which would suggest, in the reasonable discretion and common sense of Tulsa's police officers, that handcuffs cannot be used or are unnecessary under the fact situation then facing the officer; training as to the application of handcuffs on all persons arrested is in compliance with the course data on handcuffing techniques prepared by the Council of Law Enforcement Education and Training.

(Exhibit I to Plaintiff's Brief Opposing Summary Judgment).

In his deposition, defendant Martin testified that the City had a custom of handcuffing all persons arrested regardless of the situation. (Exhibit A to Plaintiff's Brief). Plaintiff relies solely on Martin's testimony. The Magistrate found that this conflict between the Chief of Police and Martin created a genuine issue of material fact, precluding summary judgment. The Court disagrees. A single incident, in order to give rise to municipal liability must flow from a decision by an official having final

policymaking authority. "[A]n unjustified shooting by a police officer cannot, without more, be thought to result from official policy." Praprotnik, 108 S.Ct. at 923. Further, "[i]f the mere exercise of discretion by an employee could give rise to a constitutional violation, the result would be indistinguishable from respondeat superior liability." Id. at 925.<sup>1</sup>

Following the Supreme Court decisions in Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986) and Celotex Corp. v. Catrett, 477 U.S. 317 (1986), some courts have used rather loose language about the non-movant's "burden of proof". The Tenth Circuit Court of Appeals recently cautioned against such language in Lake Hefner Open Space Alliance v. Dole, \_\_\_ F.2d \_\_\_ (10th Cir.) (Mar. 28, 1989). The court noted that "in resisting defendants' motion for summary judgment, [plaintiff] only has a "burden, if that be the appropriate word, to identify specific facts posing genuine issues of material fact." Id. (slip.op. at 6). The Court has concluded that the Police Chief's answers to interrogatories establish no policy or custom of the City regarding handcuffing caused plaintiff's alleged constitutional infringement. Plaintiff's sole reliance on Martin's testimony that he perceives such a custom is insufficient. Necessarily, to prove the existence of a "widespread practice", which is "permanent and well settled", the conclusory testimony of a single police officer cannot submit a city to liability.

---

<sup>1</sup>As a subsidiary point, the Court finds a serious question of causation. In the Complaint, plaintiff alleges Martin's actions caused plaintiff's shoulders to be dislocated, as well as other injuries. The mere act of handcuffing could not cause such injuries; excessive force on Martin's part would be the cause.

In Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986), the United States Supreme Court stated:

In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

This is such a case.

The second custom or policy identified by the Magistrate involves arrest (i.e., detention and jailing) of traffic violators.

The Magistrate's reasoning was as follows:

While Officer Martin testifies as to absolute discretion to arrest, Chief Diamond articulates a policy standard authorizing arrest (i.e., detention and jailing) only upon unsatisfactory evidence of identity "or when the officer had reasonable or probable grounds to believe the person will disregard the citation". (See, Plaintiff's Brief in Response to Defendants' Motion for Summary Judgment, at pp.7-8).

Thus, even if "official policy" is recorded to be as stated by Chief Diamond, the existence of a "Widespread practice" to the contrary, approved de jure or de facto by Martin's policymaking superiors (i.e., the Chief of Police and/or the Police and Fire Commissioners and/or the City Commission) will render the municipality liable. A question of fact thus remains as to what the policy of arrest is, and, if a "custom or practice", whether same was known to the Chief of Police or his superiors, and, if known, approved.

(Report and Recommendation at 7).

Again, the Court does not believe that Officer Martin's testimony, standing alone, raises a genuine issue of material fact as to the existence of such a policy or custom. By definition, a "widespread practice" involves more than a single police officer. No evidence appears in this record of other incidents, or of even tacit approval by the City's policymakers in this area. The Court believes that summary judgment is appropriate on this point as well.

The Magistrate recommended that summary judgment be granted on plaintiff's claim that the City should be held liable for its

failure to submit its police officers to periodic psychological evaluation. Plaintiff has not objected to the Report and Recommendation and, upon independent review, the Court finds that it should be affirmed on this point.

It is the Order of the Court that the Report and Recommendation of the Magistrate is affirmed in part and reversed in part. The motion of defendant City of Tulsa for summary judgment is hereby GRANTED.

*IT IS SO ORDERED* this 18<sup>th</sup> day of April, 1989.

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

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

FILED

APR 18 1989

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

JAMES BRAZEAL,  
  
Plaintiff,  
  
vs.  
  
J. H. MARTIN, CITY OF TULSA,  
  
Defendants.

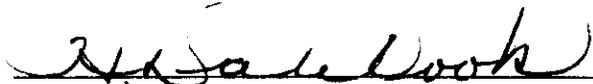
No. 87-C-533-C

JUDGMENT

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered for defendant City of Tulsa, and against plaintiff.

IT IS SO ORDERED this 18<sup>th</sup> day of April, 1989.

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

ff

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

VERNON O. HOLLAND, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CITY OF BROKEN ARROW; DANNY CLYMER; )  
 CHUCK DAY; M. MARTIN; L ROBERT )  
 PERUGINO; NICK HOOD, JR.; CHARLES )  
 WILLIAMS d/b/a WILLIAMS WRECKER )  
 SERVICE, )  
 )  
 Defendants. )

No. 89-C-145-B

**FILED**  
**APR 18 1989**  
**Jack C. Silver, Clerk**  
**U. S. DISTRICT COURT**

O R D E R

This matter came before the Court for a hearing on April 14, 1989, on Plaintiff's Motion for a Temporary Restraining Order to enjoin Defendant Williams Wrecker Service from selling Plaintiff's auto for accrued storage fees. Based upon the uncontroverted evidence presented, the temporary restraining order is DENIED.

The undisputed evidence establishes the 1979 GMC van was in violation of state laws requiring current license tags and inspection stickers.<sup>1</sup> Forty-eight hours after the police affixed a notice on the van, the police impounded the vehicle as abandoned because the owner did not show any intent of moving the vehicle. 47 O.S. § 901.<sup>2</sup> Plaintiff has failed to exhaust his administrative remedies to secure the release of his van pursuant to 47 O.S. §

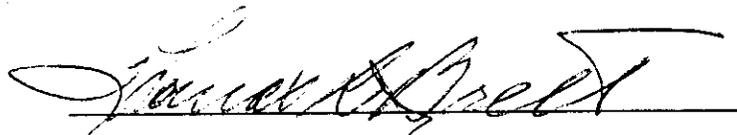
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<sup>1</sup>The license tag expired May 1986 and the inspection sticker expired November 1985.

<sup>2</sup>The registered owner of the van was "NQH Irrevocable Trust" at an address other than at the place where the van was parked.

903A. As the Plaintiff has failed to exhaust the available state procedure to reclaim his van, there are no issues of constitutional dimension under 42 U.S.C. §§ 1983 or 1985. Therefore, Plaintiff's Motion for a Temporary Restraining Order is DENIED and the case is DISMISSED for lack of subject matter jurisdiction.

IT IS SO ORDERED, this 18<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

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

**FILED**

APR 18 1989

DAKOTA FIRE INSURANCE COMPANY )  
 )  
Plaintiff, )

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

vs. )

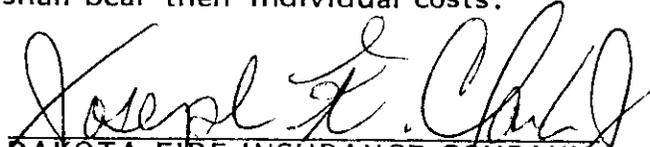
Case No. : 88-C1531C

THOMAS BERNARD MARSHALL and )  
ELLEN TIGER MOORE d/b/a SHOWPLACE )  
LOUNGE, and JERRY WAYNE ROBINSON )  
SR., as Personal Representative of )  
the Estate of JERRY WAYNE ROBINSON, )  
JR., )

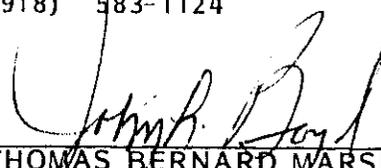
Defendants.

OF  
STIPULATION FOR DISMISSAL (FRCP) 41 (a) (1) (ii)

It is hereby stipulated by Dakota Fire Insurance Company, Tiger Bernard Marshall and Ellen Tiger Moore, d/b/a Showplace Lounge, and Jerry Wayne Robinson, Sr., as Personal Representative of the Estate of Jerry Wayne Robinson, Jr., that the above entitled action be dismissed without prejudice and that all parties shall bear their individual costs.



DAKOTA FIRE INSURANCE COMPANY  
By: Joseph F. Clark Jr., OBA #1706  
WILLIAMS, CLARK, BAKER, HOWARD  
& EARL, P.A.  
1605 South Denver  
Tulsa, OK 74119  
(918) 583-1124



THOMAS BERNARD MARSHALL and  
ELLEN TIGER MOORE, d/b/a Showplace  
Lounge By: John L. Boyd, OBA #1021  
111 W. 5th Street, Suite 800  
Tulsa, OK 74103

  
JERRY WAYNE ROBINSON, SR. as  
Personal Representative of the Estate  
of Jerry Wayne Robinson, Jr. By:  
Thomas H. Williams, OBA 9689  
501 W. First Street  
P.O. Box 99  
Claremore, OK 74018  
(918) 341-2657



UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA  
CLERK'S OFFICE  
UNITED STATES COURT HOUSE  
333 West Fourth Street, Room 411  
TULSA, OKLAHOMA 74103

(918) 581-7796  
(FTS) 745-7796

JACK C. SILVER  
CLERK

April 19, 1989

Roy Jackson  
PO Box 691306  
Tulsa, OK 74169

IN RE: 89-C-200-C  
Jackson vs. Tulsa Motels

Dear Sir/Madam:

You are advised that your motion to Proceed in Forma Pauperis has been denied by the Court.

If you wish to pursue your lawsuit, the filing fees in this Court are as follows:

Civil Rights Complaint.....	\$120.00
Habeas Corpus Petition.....	\$ 5.00

Please send the appropriate amount.

We are retaining your papers here in this office, but in the event you want them returned, please let us know.

Very truly yours,

JACK C. SILVER, CLERK

By:   
Deputy Clerk

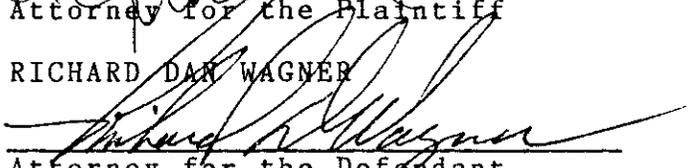


APPROVALS AS TO FORM:

A. CRAIG ABRAHAMSON

  
\_\_\_\_\_  
Attorney for the Plaintiff

RICHARD DAN WAGNER

  
\_\_\_\_\_  
Attorney for the Defendant

**FILED**

**APR 18 1989**

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

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

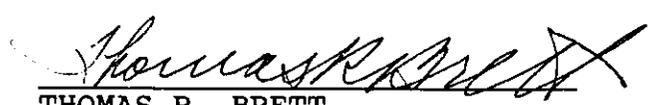
ROBERT EUGENE COTNER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DAVE FAULKNER, )  
 )  
 Defendant. )

No. 80-C-401-B

**ORDER**

This matter comes before the Court on Plaintiff Robert Eugene Cotner's second motion to re-open this case. The Court addressed and denied a similar motion on January 3, 1989. This matter has been appealed to the Tenth Circuit Court of Appeals and therefore this Court lacks jurisdiction. Plaintiff also requests leave to proceed as a class action. The motion is DENIED.

IT IS SO ORDERED this 18<sup>th</sup> day of April, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

10

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

**FILED**

**APR 18 1989**

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

BELL ATLANTIC-TRICON LEASING )  
CORPORATION, a Delaware )  
corporation, )

Plaintiff, )

vs. )

CLARK COUNTRY CHEVROLET, INC., )  
an Oklahoma corporation; JAMES )  
F. CLARK; and PHYLLIS CLARK, )

Defendants. )

Case No. 88-C-362-B

ORDER OF DISMISSAL WITH PREJUDICE

THIS MATTER, having come before this Court by way of plaintiff and defendants having filed a "Joint Motion For Order Of Dismissal With Prejudice", it is the finding of the Court that the parties' Motion be granted.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the plaintiffs' action against the defendants be, and is hereby, dismissed with prejudice, and that defendants' counterclaim against the plaintiff be and is hereby dismissed with prejudice.

DATED this 18 day of April, 1989.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

F I L E D

APR 18 1989

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

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

LEONARD ARABIA, MARVIN BASIL )  
CAROL CHISHOLM WEINER, and )  
ARTHUR ARAKELIAN, individuals, )  
 )  
Plaintiffs, )

vs. )

Case No. 89-C-091B

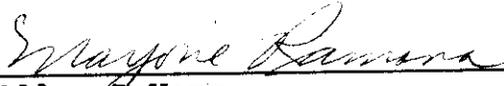
GIANT PETROLEUM, INC., an )  
Oklahoma Corporation, GEORGE )  
ELIAS, JR., and CATHY ELIAS, )  
individuals; CIMARRON CRUDE )  
CO., an Oklahoma Corporation, )  
and AMERICAN PETROLEUM )  
TRADING, INC., an Oklahoma )  
corporation, and KERR-McGEE )  
CORPORATION, a Delaware )  
Corporation, )  
 )  
Defendants. )

NOTICE OF PARTIAL DISMISSAL

COME NOW, the plaintiffs and pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure dismiss plaintiffs' second claim for relief against defendants Giant Petroleum, Inc., George Elias, Jr., and Cathy Elias (the "Giant defendants") which includes all of plaintiffs' claims related to their investments in the Giant-Arabia #5 & #7 programs for drilling of the Arabia #5 & #7 wells located in the W/2 of the SW/4 of Section 18, Township 13 North, Range 8 East, Okfuskee County, Oklahoma. The

dismissal is without prejudice.

Respectfully submitted,

  
Allan DeVore  
Marjorie Ramana  
The DeVore Law Firm,  
A Professional Corporation  
1318 North Robinson  
Oklahoma City, Oklahoma 73103  
(405) 232-4997  
Attorneys for Plaintiffs

CERTIFICATE OF MAILING

This is to certify that on the 14<sup>th</sup> day of April, 1989, a true and correct copy of the above and foregoing was mailed, postage prepaid, to the following:

James A. Williamson  
1736 South Carson  
Tulsa, OK 74119  
Attorney for Defendants George Elias, Jr., and Giant Petroleum, Inc.

Wesley R. Thompson  
15 South Park Street  
Sapulpa, OK 74066  
Attorney for Defendant American Petroleum Trading, Inc.

Mark Vanlandingham  
James C. Peck  
Kerr-McGee Center  
P.O. Box 205861  
Oklahoma City, OK 73125  
Attorneys for Defendant Kerr-McGee Corporation

Clifford Archer  
P.O. Box 35769  
Tulsa, OK 74153  
Appearing Pro Se on behalf of Cimarron Crude, Inc.

  
Marjorie Ramana

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

FILED  
1/18/89  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

THE FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity and as Receiver of Citizens National Bank and Trust Company,

Plaintiff,

vs.

Case No. 88-C-184-B

GEORGE SHIPMAN, a/k/a GEORGE A. SHIPMAN; CLARA SHIPMAN, a/k/a CLARA J. SHIPMAN; VALLEY CAPITAL CORP.; WESTERN FINANCIAL AFFILIATES, INC.; LAKESHORE BANK, N.A.; WESTERN NATIONAL BANK; SHC ENTERPRISES, INC., an Oklahoma corporation; FERN KARRAKER, County Treasurer of Pawnee County, Oklahoma and THE BOARD OF COUNTY COMMISSIONERS OF PAWNEE COUNTY, OKLAHOMA,

Defendants.

PARTIAL DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, Federal Deposit Insurance Corporation, in its corporate capacity and as Receiver of Citizens National Bank and Trust Company of Oklahoma City, and hereby dismisses without prejudice its cause of action against Defendants, Valley Capital Corporation and Western Financial Affiliates, Inc., as set forth in Count I of the First Amended

Complaint filed herein and dismisses without prejudice its cause of action as set forth in Count III against Defendants, George Shipman and Clara Shipman.

Respectfully submitted,

By: J. Mark Lovelace  
J. Mark Lovelace, OBA No. 5539  
Robert N. Sheets, OBA No. 8152  
OF  
PHILLIPS MCFALL MCVAY  
SHEETS & LOVELACE  
1001 N.W. 63rd, Suite 205  
Oklahoma City, Oklahoma 73116  
Telephone: (405) 848-1684

Attorneys for Plaintiff

CERTIFICATE OF MAILING

This is to certify that on the 13th day of April, 1989, a true and correct copy of the above and foregoing instrument was mailed, postage prepaid, to:

John M. Freese, Sr., Esq.  
Mary Lynn Farmer  
Freese & March  
4510 East 31st Street  
Tulsa, Oklahoma 74135

Sam Fullerton  
Herrold, Herrold, Craige & Horgan  
520 Galleria Tower I  
7130 South Lewis Avenue  
Tulsa, Oklahoma 74136

Lawrence A. Martin  
Assistant District Attorney  
Pawnee County Courthouse  
Pawnee, Oklahoma 74058

J. Mark Lovelace  
J. Mark Lovelace

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

IN RE:	)	
EDWARD J. ADAMS a/k/a	)	Case No. 89-C-043-E
EDDIE ADAMS,	)	
	)	
Debtor,	)	Case No. 88-01316-C
	)	(Chapter 7)
BROKEN ARROW FEDERAL SAVINGS	)	
AND LOAN ASSOCIATION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adversary No. 88-0210-C
	)	
EDWARD J. ADAMS a/k/a	)	
EDDIE ADAMS,	)	
	)	
Defendant.	)	

---

**STIPULATION OF DISMISSAL**

Come now the Plaintiff, Broken Arrow Federal Savings and Loan Association and Defendant, Edward J. Adams a/k/a Eddie Adams by and through their respective attorneys of record, and subject to approval of Court, and stipulate as follows:

1. Broken Arrow Federal Savings and Loan Association commenced its adversary proceeding by complaint filed August 12, 1988, in the Northern District of Oklahoma, Adversary No. 88-0210-C.

2. On January 3, 1989, an Order Denying Defendant's Motion for Summary Judgment was entered.

3. On January 18, 1989, Defendant filed an Application for Leave to Appeal.

4. The parties have now agreed to compromise and settle the issues herein involved, and accordingly, the parties request this Court enter its Order of Dismissal with prejudice.

5. Each of the parties hereto should be ordered and directed to bear their own respective attorney fees and costs incurred in connection with this appeal.

DATED this 3rd day of April, 1989.



Sidney K. Swinson  
Julie Hird Thomas  
HUFFMAN ARRINGTON KIHLE  
GABERINO & DUNN  
1000 ONEOK Plaza  
Tulsa, Oklahoma 74103  
(918) 585-8141

Attorneys for Edward J. Adams  
a/k/a Eddie Adams



John L. Shafer, III  
SUBLETT & SUBLETT  
320 South Boston, Suite 805  
Tulsa, Oklahoma 74103  
(918) 582-8815

Attorneys for Broken Arrow Federal  
Savings and Loan Association

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

*Introduced  
A. Brown*

**F I L E D**

APR 17 1988

GARY SCHOOLEY, et al., )  
 )  
 Plaintiffs, )  
 v. )  
 )  
 GOLDCOR, INC., et al., )  
 )  
 Defendants. )

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

No. 88-C-400 C and  
consolidated cases

STIPULATION OF DISMISSAL

COME NOW the parties in the above consolidated actions, Gary and Gayle Schooley, Schooley and Company, Inc., Michael L. Jones, James W. and Shirley J. Concannon, Edward D. and Janet K. Robson, Jack B., Dolores, and Jeffrey Hamrick, and Bruce West, (collectively "Plaintiffs"), and James Chisholm, Charles Culp, Richard D. Brown, Keith R. Fitzgerald, Roger Remillard, and W. Fred Carlisle, (collectively "Defendants"), pursuant to Fed. R. Civ. P.41(a), for their stipulation of dismissal and state as follows:

1. Each of the consolidated actions were filed separately between May and September, 1988 against each of the Defendants, and consolidated by order of this Court on December 5, 1988.

2. Also named as defendants were Fitzgerald, DeArman & Roberts, Inc., Goldcor, Inc., Robert Bell, John Thomas, and Rudi Fickert, each of which has now received the protection of various United States Bankruptcy Courts, thus staying their involvement in these actions, and Carl W. Martin, who has never been found and served by Plaintiffs.



By \_\_\_\_\_ Date \_\_\_\_\_  
Gene Buzzard  
Gable & Gotwals  
2000 Fourth National Bank Bldg.  
Tulsa, Oklahoma 74119

ATTORNEY FOR W. FRED CARLISLE  
AND JAMES CHISHOLM

PRO SE

By  \_\_\_\_\_ Date \_\_\_\_\_  
Richard D. Brown  
957 Pelican Bay Drive  
Daytona Beach, Florida 32019

PRO SE

By \_\_\_\_\_ Date \_\_\_\_\_  
Keith R. Fitzgerald  
6400 South Lewis  
Tulsa, Oklahoma 74136

PRO SE

By \_\_\_\_\_ Date \_\_\_\_\_  
James Chisholm  
2640 W. El Paso  
Broken Arrow, OK 74012

PRO SE

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of April, 1989, a true and correct copy of the above and foregoing document was mailed with proper postage prepaid thereon to the following:

James Chisholm  
2640 W. El Paso  
Broken Arrow, OK 74012

Gerald W. Wright  
Attorney for Charles Culp  
707 South Houston, Suite 308  
Tulsa, Oklahoma 74127

Richard D. Brown  
108 Merganser Circle  
Daytona Beach, Florida 32019

Carl W. Martin  
590 E. 900 South  
Mapleton, Utah 84663

Keith R. Fitzgerald  
c/o Anderson, Bryant & Co.  
6400 S. Lewis  
Tulsa, OK 74136

William E. Hughes  
Attorney for Roger Remillard  
320 S. Boston Avenue  
Suite 1020  
Tulsa, OK 74103

Gene Buzzard  
Attorney for W. Fred Carlisle  
Gable & Gotwals  
2000 Fourth National Bank Building  
Tulsa, OK 74119

Cheryl Wasson

**F I L E D**

APR 17 1989

*dt*

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

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

DONALD KINZEY, et al.,            )  
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vs.                                    )  
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  )  
VALLEY FEEDS, INC., et al.,    )

No. 86-C-1064-E✓

**ORDER OF DISMISSAL WITH PREJUDICE**

Pursuant to the Joint Stipulation For Dismissal With Prejudice  
filed by the Plaintiffs and the Defendant Ciba-Geigy Corporation,

**IT IS ORDERED** that all of Plaintiffs' claims against Ciba-  
Geigy Corporation are hereby dismissed with prejudice, with each  
party to bear its respective costs and attorney's fees.

  
UNITED STATES DISTRICT JUDGE