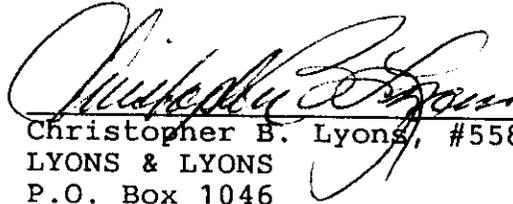
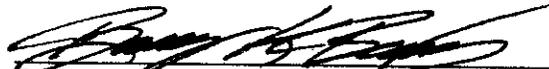




Dated this 10<sup>th</sup> day of May, 1989.



Christopher B. Lyons, #5587  
LYONS & LYONS  
P.O. Box 1046  
Pryor, Oklahoma 74362  
(918) 825-2211  
ATTORNEY FOR PLAINTIFFS



Barry K. Beasley, #11220  
HUFFMAN ARRINGTON KIHLE  
GABERINO & DUNN  
1000 Oneok Plaza  
Tulsa, OK 74103  
(918) 585-8141

ATTORNEYS FOR FEDERAL SAVINGS  
& LOAN INSURANCE CORPORATION  
as Receiver for PHOENIX  
FEDERAL SAVINGS & LOAN  
ASSOCIATION OF MUSKOGEE



Thomas G. Ferguson, Jr., #2878  
KIMBALL, WILSON & WALKER  
6412 North Santa Fe  
P.O. Box 54526  
Oklahoma City, Oklahoma 73154  
(405) 843-8855

ATTORNEY FOR CIMARRON FEDERAL  
SAVINGS AND LOAN

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

**F I L E D**

**MAY 15 1989**

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

KRANTZ COMPUTERS, INC., and  
A DIFFERENT VIEW PROCESSING  
CORPORATION,

Plaintiffs,

v.

STEVE SIMMONS, d/b/a OPTIMUM  
SERVICES,

Defendant.

Case No. 88-C-1211-C

SETTLEMENT AGREEMENT AND ORDER

NOW, on this 4 day of <sup>May</sup>~~March~~, 1989, this matter coming on before me, the undersigned United States District Judge, upon advice from Professor Martin Frey, Adjunct Settlement Judge in this cause, as well as advice for counsel for the parties, wherein the Court is advised that the parties have reached a settlement agreement as respects the issues joined in the above-entitled and numbered cause, and upon being duly advised in the premises, the Court finds as follows:

1. The parties hereto have reached a settlement agreement following negotiations at settlement conference held the fifteenth day of March, 1989, at which all parties were represented by counsel;

2. That the terms of the settlement agreement reached by the parties, although contained herein, are to be kept confidential and not available for public inspection or dissemination

by the parties, their principals, or the United States Court Clerk;

3. The specific terms of the settlement agreement between the parties are as follows:

A. Defendant will immediately cause the corporation known as Optimum Geophysical Services, Inc. to be dissolved;

B. The Defendant will pay to counsel for Plaintiffs, for the benefit of Plaintiffs, a total of \$6,000.00, to be paid as follows: \$1,000.00 immediately upon entry of this Settlement Agreement and Order, and the sum of \$500.00 per month for a total of ten months commencing on May 1, 1989, and continuing every month thereafter until and including February 1, 1990;

C. Defendant will immediately execute a promissory note, security agreement and U.C.C. Financing Statement securing the payment of the above-referenced monthly payments with a certain Phoenix Computer System to be designated by the Defendant and which Phoenix Computer System is now and shall continue to be in the State of Oklahoma until completion of the payment schedule set forth in subparagraph "B" above;

D. The U.C.C. Financing Statement identified in subparagraph "C" above shall be retained in the litigation file of counsel for Plaintiffs and not recorded, except as may be authorized as hereafter set forth;

E. In the event the Defendant fails to make any payment specified in this Settlement Agreement and Order, within five (5) days of the due date thereof, Plaintiffs, through their counsel, are authorized to record the U.C.C. Financing Statement referred to in subparagraphs "C" and "D" above, after counsel for Plaintiff has conferred with counsel for Defendant and afforded Defendant two days' time to cure such default. In the event Plaintiffs are authorized to record the U.C.C. Financing Statement pursuant to the provisions of this subparagraph, Plaintiffs may take any further action available to them under state or federal law, including the Uniform Commercial Code, to affect collection of the promissory note described in subparagraph "B" above.

F. Defendant will supply Plaintiffs with a working 5 volt power supply for the Phoenix Computer System purchased by Plaintiff, Krantz Computers, Inc., and which was the subject of the above-entitled and numbered cause, and Plaintiff, Krantz Computers, Inc., will immediately return to Defendant the existing faulty 5 volt power supply now attached to such Phoenix Computer System.

G. Defendant will immediately deliver to Plaintiffs a working tape drive blower/vacuum/plenum assembly for the Number Four Tape Drive purchased by Plaintiff, Krantz Computers, Inc., from Defendant and

which was the subject of the above-entitled and numbered litigation, and immediately Plaintiff, Krantz Computers, Inc., shall return to Defendant the tape drive blower/vacuum/plenum assembly, currently on such Number Four Tape Drive.

H. Immediately upon completion of the payment schedule as set forth in subparagraph "B" above, counsel for Plaintiffs shall surrender to counsel for Defendant the promissory note described above as well as the U.C.C. Financing Statement, if the same has not then been recorded; or, in the event such U.C.C. Financing Statement has been recorded, then counsel for Plaintiffs shall cause to be prepared, executed and delivered to counsel for Defendant a termination statement relating to such U.C.C. Financing Statement.

I. The parties (and by execution hereof, the principals as to corporate parties) mutually agree that all parties and principals thereof will refrain from disparaging the personality or personal ethics of any party, or principal of corporate parties, to the above-entitled and numbered cause to the customers or potential customers or such party or parties. In the event any party, or principal of corporate parties, violates this agreement, the offended party, or principal of corporate parties, may pursue an action for contempt in this Court, provided that the prevailing

party of any such contempt action, if brought, shall be entitled to reasonable attorney fees and costs, including travel-related expenses, if any.

J. As a condition to the agreement to settle the above-entitled and numbered cause, the parties hereto, and principals of corporate parties, agree to keep the terms hereof confidential and agree not to disclose the contents thereof to any person, except as provided in subparagraph "K" below; provided, however, that violation of this subparagraph by any party, or principal of corporate parties, will subject such person to contempt of this Court for violation of the orders contained herein.

K. Notwithstanding the immediately-preceding subparagraph, the parties, and principals of corporate parties, are authorized to communicate to any person that the above-entitled and numbered cause has been settled, and statements to the effect that any particular party prevailed or "won" such litigation shall not be considered a violation of the provisions of this Settlement Agreement and Order concerning confidentiality.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above findings of the Court are incorporated herein as an Order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant shall cause the dissolution of the corporation, Optimum Geophysical Services, Inc.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, immediately upon entry hereof, pay to counsel for Plaintiffs, for the benefit of Plaintiffs, the sum of \$1,000.00 and will pay to counsel for Plaintiffs, for the benefit of Plaintiffs, the sum of \$500.00 every month for ten consecutive months commencing May 1, 1989.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant have prepared, executed and delivered to counsel for Plaintiffs a promissory note embodying the above set forth payment schedule, a security interest securing such promissory note with a Phoenix Computer System owned by the Defendant and to remain in the State of Oklahoma throughout the life of such security agreement (which Phoenix Computer System is to be identified by Defendant), and a U.C.C. Financing Statement covering such Phoenix Computer System.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the U.C.C. Financing Statement shall be maintained in the litigation file of counsel for Plaintiffs pending prompt and timely payment of the promissory note and payment agreement above set forth; provided, however, that in the event payment is not made by Defendant on such payment schedule and/or promissory note as above set forth for a period of five (5) days following due date thereof, counsel for Plaintiff may cause such financing statement to be recorded after providing two (2) days' telephonic notice to

counsel for Defendant of such non-payment, and Plaintiffs are thereafter authorized to pursue any remedies available to them to collect on such promissory note and/or security interest/

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that immediately upon execution and entry hereof, Defendant shall provide to Plaintiff, Krantz Computers, Inc., a working 5 volt power supply and working tape drive blower/vacuum/plenum assembly upon exchange of similar units now in possession of Plaintiff, Krantz Computers, Inc.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon final payment of the promissory note and/or payment schedule as above set forth, counsel for Plaintiffs shall deliver to counsel for Defendant said promissory note and the U.C.C. Financing Statement covering such Phoenix Computer System as above indicated; provided, however, that in the event such U.C.C. Financing Statement has been filed as authorized herein, counsel for Plaintiffs shall prepare, have executed and deliver to counsel for Defendant a termination statement relating to such financing statement.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties, by mutual consent, are hereby bound, along with principals of corporate parties, to refrain from disparaging the personality or personal ethics of any party hereto or principal of corporate parties, to any customer or potential customer of such party or parties; provided, however, that in the event of violation of this Order, the offended party may pursue relief in this Court by way of contempt; provided, further, however, that

the prevailing party upon such contempt action, if any be brought, shall be entitled to reasonable attorney fees and costs associated with such contempt action, including travel-related expenses, if any.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the contents of this Settlement Agreement and Order shall be confidential and that no party hereto, their attorneys, or principals of corporate parties, may divulge to any person, other than natural persons who participated in the settlement conference herein, the terms embodied in this Settlement Agreement and Order, and the United States court Clerk and his Deputies are hereby ordered to seal this Settlement Agreement and Order, and prevent the same from being disseminated to the public through the official court file in the above-entitled and numbered cause.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that notwithstanding the immediately-preceding paragraph, statements by any party, or principal of corporate parties, to the effect that litigation was settled and that any particular party prevailed or "won" shall not be considered a violation of any requirement of confidentiality or the restrictive covenant not to disparage the personality or personal ethics of any party or principal of corporate parties hereto.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that by execution hereof in their capacities as principals of Plaintiffs, James Helm and James Krantz agree to be bound by the terms contained herein as respects the mutual agreement not to disparage the personality or personal ethics or parties and/or

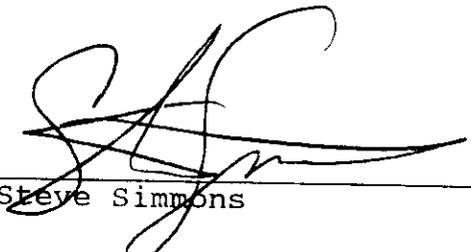
principals hereto, as well as the provisions hereof requiring confidentiality and nondisclosure of the contents of this Settlement Agreement and Order.

151 H. Dale Cook  
UNITED STATES DISTRICT JUDGE

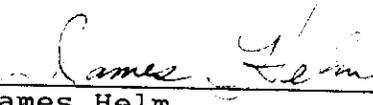
APPROVED AS TO FORM  
AND CONTENT:

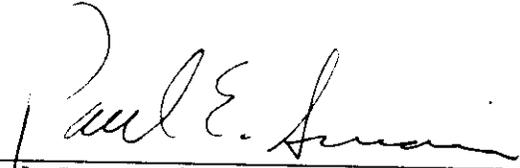
KRANTZ COMPUTERS, INC.

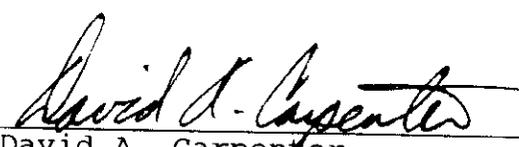
By:   
James Krantz

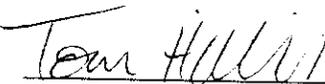
  
Steve Simmons

A DIFFERENT VIEW PROCESSING  
CORPORATION

By:   
James Helm

  
Paul E. Swain, III  
Attorney for Defendant

  
David A. Carpenter  
Attorney for Plaintiffs

  
R. Tom Hillis  
Attorney for Defendant

DATE MAY 4 1989

\rth\simmons.agr

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

MAY 15 1989

JACKSON COUNTY CLERK  
U.S. DISTRICT COURT

LILLIAN A. GRAHAM,

Plaintiff,

vs.

AMERICAN AIRLINES, INC.,

Defendant.

No. 86-C-516-C

ORDER

Now before the Court for its consideration is the motion of the plaintiff for additional discovery allowance.

This non-jury trial concluded on March 23, 1989. Plaintiff asks the Court to permit her to issue process to the Federal Aviation Administration (FAA), requiring that agency to provide all records relating to the Ports of Call engine repaired by American Airlines. Plaintiff apparently intends to compare the Ports of Call engine records over which the FAA has control with those entered in evidence by defendant in this trial. Much testimony was adduced during the trial regarding the Ports of Call records. Both sides rested, and plaintiff gave no indication at that time that any additional discovery was necessary.

The present motion is not an eleventh hour request by plaintiff; it is a thirteenth hour request. An application such as this is addressed to the sound discretion of the Court. Schoenholtz v. Doniger, 112 F.R.D. 110, 112 (S.D.N.Y. 1986). Upon review, the Court finds that it has received sufficient evidence regarding the Ports of Call records. Plaintiff has not demonstrated any significant benefit to the fact-finding process from permitting post-trial discovery. Further, plaintiff has shown no reason that due diligence would not have resulted in an earlier request.

It is the Order of the Court that the plaintiff's application for additional discovery allowance is hereby DENIED.

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

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

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

FILED

MAY 15 1989

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

RALPH JOHN FEUERBORN, SR.,  
ET AL.,

Plaintiffs,

vs.

STOOPS EXPRESS, INC., ET AL.,

Defendants.

No. 87-C-159-C

ORDER

Now before the Court for its consideration is the objection of defendants Paccar and Ozark Kenworth, Inc., to the Report and Recommendation of the U. S. Magistrate (Report), said Report filed on March 30, 1989.

In that portion objected to, the defendants object to the Magistrate's recommendation that the plaintiffs' motion for leave to amend Third Amended Complaint be granted, and that defendants' motion to strike said motion should be denied.

This action arises out of events occurring on October 6, 1986. Plaintiff Ralph Feuerborn was asleep in the sleeper portion of a tractor-trailer rig when the driver, Evan Jones, rear-ended another truck driven by Sam Guy. The original Complaint was filed on March 9, 1987; and on February 5, 1988 a Third Amended Complaint was filed, for the first time naming "Kenworth Corporation" as a party defendant. The Third Amended Complaint contains a third cause of action for products liability against, among others, Kenworth

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Corporation. The allegations of that cause of action focus solely on the "fifth wheel" hitch assembly as defectively designed and manufactured. Liability is asserted against Kenworth Corporation solely based upon its installation of this assembly. (Third Amended Complaint at ¶26). On March 7, 1988 an Order was entered, upon motion, substituting Paccar, Inc. in place of the non-existent Kenworth Corporation. An Amended Third-Party Complaint by defendants Guy and Stoops Express, filed on February 24, 1989, made the same allegation against Paccar. On July 15, 1988, Guy and Stoops Express filed an amendment to their Amended Third Party Complaint which contained the statement that " ... Paccar [and others] in furnishing defective equipment to Jones and Feuerborn were the active primary causes of the injuries for which plaintiffs claim damages ...."

On December 30, 1988, plaintiffs filed their motion for leave to amend. Plaintiffs sought to add a claim against Paccar, asserting a defective design in the sleeper cab of the Kenworth tractor in which Feuerborn was riding. The Magistrate recommended that the motion to amend be granted.

Paccar objects to the recommendation, because (1) the Scheduling Order in the case established June 17, 1988 as the deadline for amendments, and (2) the proposed amendment seeks to assert a wholly new claim against Paccar, and therefore the "relation back" doctrine should not apply. Of course, relief from the Scheduling Order may be permitted where the equities warrant. Paccar correctly refers to the holding in First City Bank v. Air

Capitol Aircraft Sales, 820 F.2d 1127 (10th Cir. 1987) that untimeliness or undue delay is a sufficient reason to deny a motion to amend. In other words, "a district court acts within the bounds of its discretion" when it does so. Id. at 1133. This does not mean that a district court must deny such a motion on untimeliness grounds. In Bradbury v. Dennis, 368 F.2d 905, 908 (10th Cir. 1966), the court held that a new claim which arose out of the same agreement and related transactions which were set forth, or attempted to be set forth in the original complaint, related back. Leave to amend will be denied if it would be prejudicial to the opposing party. Leaseamerica Corp. v. Eckel, 710 F.2d 1470, 1473 (10th Cir. 1983).

Paccar argues that the only claim raised against it by the existing pleadings is a chain-of-distribution claim for its installation of the hitch assembly. Defendant Holland Hitch had agreed to indemnify Paccar and to take over the defense. Now, Paccar asserts, plaintiffs seek to assert an eleventh hour claim against Paccar based upon a different product and entirely different conduct (i.e., Paccar's design of the sleeper cab) for which Paccar could be directly liable. Wright and Miller note that

the standard for determining whether amendments qualify under Rule 15(c) is not simply an identity of transaction test; although not expressly mentioned in the rule, the courts also inquire into whether the opposing party has been put on notice regarding the claim or defense raised by the amended pleading.

6 C.Wright & A.Miller, Federal Practice and Procedure, §1497 at 495 (1971) (footnote omitted).

Nothing in the first three Complaints filed by plaintiffs could be said to put Paccar on notice of a claim based on design of the

sleeper cab. Plaintiffs do note the statement in the amendment filed by Guy and Stoops Express on July 15, 1988 which alleges that Paccar provided "defective equipment" to Jones and Feuerborn. Arguably, this allegation, filed before the expiration of the statute of limitations, gave Paccar sufficient notice of the claim plaintiffs now seek to add. Some courts "have held that it is sufficient if the opposing party was made aware of the matters to be raised by the amendment from sources other than the pleadings ...." Wright & Miller, supra, at 498. If matters outside the pleadings may give notice, arguably a third-party complaint under certain circumstances might also give notice, although the Court has found no decision so holding.

The Court is not persuaded that a vague allegation of "defective equipment" involved herein is adequate. The Court is aware of the concept of notice pleading, and might well permit an amendment if it were sought by Guy and Stoops Express, the parties who filed the third-party complaint. Here, the amendment is sought by plaintiffs who have never previously alleged, however vaguely, a claim regarding the sleeper cab. The Court is not persuaded that notice pleading permits one party to assert an untimely claim under Rule 15(c) based upon the extremely vague "notice" afforded by another party's pleading.

Plaintiffs have been granted several amendments to their Complaint. They chose to wait to request the most recent until months after plaintiffs should have known that such a claim could be added. Short of scrapping the present discovery schedule and

virtually beginning afresh, the Court would subject Paccar to prejudice by permitting this new claim at this time. See Foman v. Davis, 371 U.S. 178, 182 (1962). For the foregoing reasons, plaintiffs' motion will be denied. In view of this ruling, Paccar's objections to the Magistrate's proposed Scheduling Order and Paccar's motion to strike plaintiffs' motion are moot.

It is the Order of the Court that the motion of the plaintiffs for leave to amend their Third Amended Complaint is hereby DENIED.

It is the further Order of the Court that Paccar's objections to the Magistrate's proposed Scheduling Order and Paccar's motion to strike plaintiffs' motion to amend are hereby DENIED as moot.

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

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

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

MID-AMERICA PIPELINE COMPANY, )

Plaintiff, )

v. )

FEDERAL ENERGY REGULATORY )  
COMMISSION, )

Defendant. )

Civil Action No. 87-C-571-E

STIPULATION OF DISMISSAL

Plaintiff Mid-America Pipeline Company, Defendant Federal Energy Regulatory Commission, and Intervenor/Defendant United States of America, by counsel, hereby stipulate and agree that the instant action be dismissed with prejudice, with each party to bear its respective costs.

Respectfully submitted,

Dated:

May 10, 1989

Richard McMillan, Jr.

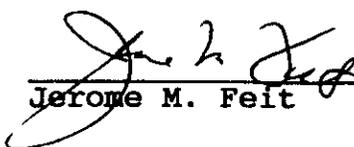
Richard McMillan, Jr.  
Clifton S. Elgarten  
Luther Zeigler  
Crowell & Moring  
1001 Pennsylvania Ave., N.W.  
Washington, D.C. 20004-2505  
(202) 624-2500

Of Counsel:

Kristen E. Cook  
General Counsel  
Mid-America Pipeline Company  
1800 South Baltimore Avenue  
P.O. Box 645  
Tulsa, Oklahoma 74101  
(918) 599-3636

Attorneys for Mid-America Pipeline  
Company

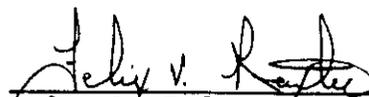
Dated: 5/11/89

  
\_\_\_\_\_  
Jerome M. Feit

Federal Energy Regulatory Commission  
Washington, D.C. 20426  
(202) 357-8177

Attorneys for FERC

Dated: 5/12/89

  
\_\_\_\_\_  
John R. Bolton  
Assistant Attorney General

Tony M. Graham  
United States Attorney

Peter Bernhardt  
Assistant United States Attorney

Sandra M. Schraibman  
Felix Baxter  
Attorneys, Department of Justice  
Civil Division -- Room 3712  
10th & Pennsylvania Ave., N.W.  
Washington, D.C. 20530  
(202) 633-1269

Attorneys for the United States

**FILED**

**MAY 15 1989**

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

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

IN RE: )  
 )  
 AMES OIL AND GAS CORPORATION, )  
 )  
 Debtor. )  
 )  
 BAYSWATER ENERGY COMPANY, )  
 )  
 Plaintiff/Appellant, )  
 )  
 v. )  
 )  
 WILLIAM M. GRAY, Chapter 7 )  
 Trustee for AMES OIL AND GAS )  
 CORPORATION, JY OIL JOINT )  
 VENTURE, )  
 )  
 Defendants/Appellees. )

Bky. No. 86-03369-W  
Chapter 7

V  
88-C-397-B

ORDER

Now before the court are Appellee's Motion to Strike Appellant's Amended Counter Designation of Record (Docket #6)<sup>1</sup>, the Motion to dismiss of Appellee JY Oil Joint Venture ("JY Oil") (#15), and the Motion to Dismiss of Appellee William M. Gray, Chapter 7 Trustee ("Gray") (#19).

The appellant, Bayswater Energy Company ("Bayswater") is appealing the Order of the Bankruptcy Court Approving Sale of Property Free and Clear of Liens, Claims and Encumbrances and Interests of Co-Owners filed April 15, 1988. Bayswater was a co-owner with the debtor's bankruptcy estate in certain oil and gas properties and held a mortgage on a saltwater disposal well owned

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

by the debtor's estate securing the sum of \$600,000.00. On March 4, 1988 the trustee filed a Motion for Order Approving Option to Purchase Properties Free and Clear of Claims and Interests, Granting Super-Priority Lien and Directing Payment of Revenues. The motion sought court approval of an option to purchase and the potential sale of certain oil and gas properties and two related saltwater disposal wells to Energy Production Partners. The motion was heard on April 7, 1988 and Bayswater and another creditor co-owner appeared and objected orally to the proposed sale. The Bankruptcy Court determined that an auction should be held that afternoon without further notice and the auction resulted in a sale of the properties for \$385,000.00 to JY Oil.

Bayswater argues that the Bankruptcy Court erred in allowing a sale of the properties by motion rather than by adversary proceeding under Rule 7001(3), that co-owners were not notified of the sale so that they could exercise their right of first refusal or their right to bid, that it was error to allow a sale free and clear of liens and encumbrances under 11 U.S.C. § 363(f), and that the buyer did not purchase in good faith where it knew the sale did not comply with the bankruptcy rules.

Seeking dismissal, appellee JY Oil contends that Bayswater cannot successfully appeal the sale of the property because JY Oil was a good faith purchaser and Bayswater did not secure a stay of the sale pending appeal under 11 U.S.C. §363(m). Appellee Gray argues that the appeal is moot because no stay was obtained. Gray alleges additionally that Bayswater received

notice of the hearing, participated in it, and never made constitutional objections to the proceedings, and thus cannot now claim the order resulting was void. Gray also claims that JY Oil was a good faith purchaser regardless of its knowledge of procedural irregularities. Both appellees allege that Bayswater has no standing to assert the denial of rights of co-owners to obtain relief for itself, and that Bayswater itself suffered no injury from the notice it received or the motion proceedings and failed to make any objection in writing as the Rules require.

The district court has jurisdiction to hear appeals from final decisions of the bankruptcy court under 28 U.S.C. § 158(a).<sup>2</sup> Orders approving or failing to approve the sale of a debtor's property are considered final decisions and are immediately appealable. In re Sax, 796 F.2d 994 (7th Cir. 1986); Matter of Kaiser, 791 F.2d 73 (7th Cir. 1986).

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). However, this "clearly erroneous" standard does not apply to review of mixed questions of law and fact, which are subject to the de novo standard of review. In re: Ruti-

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<sup>2</sup> 28 U.S.C. § 158(a) reads as follows:

The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title [28 USCS § 157]. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

Sweetwater, Inc., 836 F.2d 1263, 1266 (10th Cir. 1988); In re: Mullett, 817 F.2d 677, 679 (10th Cir. 1987). This appeal challenges the legal conclusion drawn from the facts presented at trial, so de novo review is proper.

Section 363 of the Bankruptcy Code pertains to the use, sale, or lease of property. The parts of the section which apply to this case include:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.

(e) Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if --

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

(h) Notwithstanding subsection (f) of this section, the trustee may sell both the estate's interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if --

(1) partition in kind of such property among the state and such co-owners is impracticable;

(2) sale of the estate's undivided interest in such property would realize significantly less for the estate than sale of such property free of the interests of such co-owners;

(3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and

(4) such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

(k) At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

Bankruptcy Rule 7001(3) states that an adversary proceeding "is a proceeding in a bankruptcy court ... to obtain approval pursuant to § 363(h) for the sale of both the interest of the estate and of a co-owner in property".

Section 102(1) of the Bankruptcy Code defines "notice" in a bankruptcy proceeding:

(1) 'after notice and a hearing', or a similar phrase --

(A) means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances; but

(B) authorizes an act without an actual hearing if such notice is given properly and if --

(i) such a hearing is not requested timely by a party in interest; or

(ii) there is insufficient time for a hearing to be commenced before such act must be done, and the court authorizes such act....

Bankruptcy Rule 2002, which discusses notice to creditors, equity security holders, and the United States, states in part:

Except as provided in subdivisions (h), (i) and (k) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 20 days notice by mail of ... (2) a proposed use, sale, or lease of property other than in the ordinary course of business unless the court for cause shown shortens the time or directs another method of giving notice....

Bankruptcy Rule 6004 states again that notice of a proposed use, sale, or lease of property other than in the ordinary course of business is to be given pursuant to Rule 2002 and goes on to say in (b):

Except as provided in subdivision (c) [pertaining to the sale of property under \$2500] of this rule, an objection to a proposed use, sale, or lease of property shall be filed and served not less than five days before the date set for the proposed action or within the time fixed by the court.

Title 11 U.S.C. § 363(m) requires a stay pending appeal if a sale is made to a "purchaser in good faith". The authority to

sell property of the bankruptcy estate is given to the trustee in 11 U.S.C. § 363. Paragraph (m) of that section reads as follows:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

Courts have held that an appeal of a bankruptcy sale to a purchaser in good faith is moot if the stay required by § 363(m) is not obtained. In re Sax, supra at 997; In re Vetter Corp., 724 F.2d 52, 55-56 (7th Cir. 1983). The Tenth Circuit in In re Bel Air Associates, 706 F.2d 301, 304-305 (10th Cir. 1983), has come to the same conclusion applying Fed.R.Bankr.P. 805, which is now Fed.R.Bankr.P. 8005.<sup>3</sup> The Advisory Committee Note following

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<sup>3</sup> Bankruptcy Rule 8005 reads as follows:

A motion for a stay of the judgment, order, or decree of a bankruptcy court, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be made in the first instance in the bankruptcy court. Notwithstanding Rule 7062 but subject to the power of the district court and the bankruptcy appellate panel reserved hereinafter, the bankruptcy court may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest. A motion for such relief, or for modification or termination of relief granted by the bankruptcy court, may be made to the district court or the bankruptcy appellate panel, but the motion shall show why the relief, modification, or termination was not obtained from the bankruptcy court. The district court or the bankruptcy appellate panel may condition the relief it grants under this rule on the filing of a bond or other appropriate security with the bankruptcy court. When an appeal is taken by a trustee, a bond or other appropriate security may be required, but when an appeal is taken by the United States or an officer or agency thereof or by direction of any department of the Government of the United States

Bankruptcy Rule 8005 refers to and sets forth the language of 11 U.S.C. § 363(m).

The Tenth Circuit in Bel Air Associates, supra, discussed the meaning of "good faith purchaser":

By its own terms, Fed.R.Bankr.P. 805 applies only where the buyer is a 'good faith purchaser.' Neither the rule nor the committee notes attached thereto define a 'good faith purchaser' however. As a result, the courts applying Fed.R.Bankr.P. 805 have turned to the traditional equitable definition of a 'good faith purchaser.' These courts hold that a 'good faith purchaser' is one who buys in 'good faith' and for 'value.' We adopt this standard for purposes of this appeal. (Citations omitted.)

Id. at 305. In footnotes 11 and 12 the court defined "good faith" and for "value":

11. The misconduct which would destroy a buyer's 'good faith purchaser' status at a judicial sale ordinarily 'involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.'

12. In the context of bankruptcy proceedings, a purchaser is deemed to have paid 'value' if he paid at least 75% of the appraised value of the assets. (Citations omitted.)<sup>4</sup>

Id.

The court in Matter of EDC Holding Co., 676 F.2d 945, 947 (7th cir. 1982), found it impossible to define "good faith" on the part of a purchaser, but said "knowledge that there are

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a bond or other security shall not be required.

<sup>4</sup> No "appraisal" as such is reflected in the record. However, it is clear that JY Oil paid \$385,000.00 for the properties, and appellant Bayswater does not assert that value was not paid, but only that JY Oil did not buy the properties in good faith.

objections to the transaction is not enough to constitute bad faith", but the purchaser may not merely rely on the court's order unless stayed "no matter how obviously erroneous".

Some courts have required the bankruptcy court to make an explicit finding of good faith (In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3rd Cir. 1986)), but some have not required the explicit finding of the court (In re Onouli-Kona Land Co., 846 F.2d 1170 (9th Cir. 1988)).

It is alleged that Bayswater lacks standing to bring this action. The courts have found that "a plaintiff must allege personal injury fairly traceable to be defendant's allegedly unlawful conduct and likely to be redressed by the requested relief". Allen v. Wright, 468 U.S. 737, 751 (1984); American Mining Congress v. Thomas, 772 F.2d 640, 650 (10th Cir. 1985).

The court determines that § 363 of the Bankruptcy Code is applicable to the sale of property that occurred in this case. Bankruptcy Rule 7001 states that an adversary proceeding is required to obtain approval under § 363(h) of such a sale of both the interest of the estate and of a co-owner in property.

Appellee Gray alleges that Bayswater cannot object to the sale because it did not file written objections, as required by Rule 9014.<sup>5</sup> However, the court notes that this rule only applies

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<sup>5</sup> Rule 9014 states in part:

In a contested matter in a case under the Code not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court orders an answer to a motion....

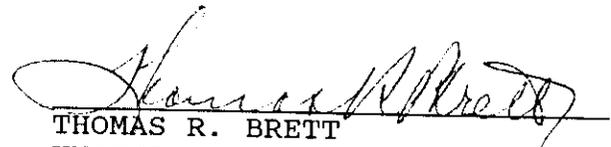
to matters in a case under the Code not governed by other rules and the court finds that Bankruptcy Rule 7001 applies to the sale in this case.

The court determines that Bayswater has failed to secure a stay of the sale which it appeals and, under 11 U.S.C. § 363(m), the sale to JY Oil cannot be reversed or modified, as JY Oil was a good faith purchaser. There is no evidence that JY Oil was involved in any fraud, collusion with other bidders or the trustee, or any attempt to take grossly unfair advantage of the other bidders. While it had knowledge that Bayswater had "two relative minor problems with the sale" and "one fairly significant problem" (Tr. 10), its reliance on the propriety of the sale did not constitute bad faith, as the proceedings were not obviously erroneous. It was unnecessary for the court to make a formal finding that JY Oil purchased in good faith.

Bayswater had notice of the proceedings and an opportunity to participate in them and it chose not to bid at the auction of the properties. JY Oil was the only bidder at the auction and no misconduct on its part, only that it was "aware of the problems" in the sale, has been alleged. The court finds that the good faith rule of § 363(m) is applicable in view of the fact that Bayswater had notice of the proceedings and an opportunity to be heard and therefore was not denied its procedural due process rights. Bayswater lacks standing to assert the denial of rights of co-owners to obtain relief for itself.

The court concludes therefore that the Motions to Dismiss of JY Oil and Gray should be and are hereby granted. The court also finds that there has been no response to Appellee's Motion to Strike Appellant's Amended Counter Designation of Record, so it should be and is granted under Rule 15A of the Rules of the United States District Court for the Northern District of Oklahoma.

Dated this 15<sup>th</sup> day of May, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 15 1989

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

LEONARD BARRECA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THE OHIO CASUALTY INSURANCE )  
 COMPANY, a foreign )  
 insurance company, )  
 )  
 Defendant. )

No. 89-C-235 E

ORDER OF DISMISSAL WITH PREJUDICE

This cause came on for hearing upon Application of the Parties to Dismiss With Prejudice, at which time the Court finds that said Application should be sustained and that this action should be dismissed with prejudice and that each party should bear its own costs.

NOW, THEREFORE, BE IT ORDERED, ADJUDGED AND DECREED by the Court that this cause be and the same is hereby and by these presents dismissed with prejudice and that each party shall pay its own costs.

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

  
UNITED STATES DISTRICT JUDGE

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

DEBRA BARLOW, as wife of  
Dennis Barlow, now deceased,  
individually, and as next  
friend guardian of Blake  
Barlow and Erin Barlow, the  
minor children of Dennis  
Barlow,

PLAINTIFFS,

vs.

LITTON INDUSTRIES, INC., a  
foreign corporation; and  
LITTON SYSTEMS, INC., its  
subsidiary, a foreign  
corporation,

DEFENDANTS.

FILED

MAY 15 1989 at

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

CIV 89-C-289-E ✓

ORDER

On this 12<sup>TH</sup> day of May, 1989, came on for  
hearing Litton Industries, Inc. and Litton Systems, Inc.'s  
Application to Transfer the above-entitled and numbered cause  
to the United States District Court for the Eastern District  
of Oklahoma. Upon reviewing the file, this Court finds the  
Defendants' Application meritorious and thereby grants the  
same.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the  
above-entitled and numbered cause be transferred from the  
United States District Court for the Northern District of  
Oklahoma to the United States District Court for the Eastern  
District of Oklahoma.

SIGNED THIS 12<sup>TH</sup> day of May, 1989.

James D. [Signature]  
UNITED STATES DISTRICT JUDGE

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

ROBERT E. COTNER,

Plaintiff,

v.

CLIFFORD HOPPER, DAVID MOSS,  
AND THE TULSA COUNTY SHERIFF,

Defendants,

89-C-186-B

**FILED**

MAY 12 1989

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

ORDER

Now before the Court is the Motion of Plaintiff for Emergency Order of Access. Having reviewed the motion, the Court finds that the allegations contained therein concerning conditions at the Tulsa County Jail have been examined by the Magistrate in his Report and Recommendation of May 8, 1989 and found to be frivolous and without merit.

Therefore, the Motion for Emergency Order of Access is denied.

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

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

~~FILED~~ FILED

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SUN BANK CERTIFICATE OF DEPOSIT )  
 # 006216, et al., )  
 Defendants. )

MAY 12 1989 MAY 3 1989

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

89-C-373 B

CIVIL ACTION NO.

AGREED JUDGMENT OF FORFEITURE

IT NOW APPEARS that the forfeiture proceeding herein has been fully compromised and settled. Such settlement more fully appears by the written Stipulation entered into between Francisco Bernardo Palmero and Rosemary Palmero and the United States of America on April 24, 1989, and filed herein, to which Stipulation reference is hereby made and is incorporated herein.

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

Now, therefore, on motion of Catherine J. Depew, Assistant United States Attorney, and with the consent of Francisco Bernardo Palmero and Rosemary Palmero, it is

ORDERED AND DECREED that the following properties:

- (1) Sun Bank Certificate of Deposit # 0006216, issue dated 5-13-87, in the amount of \$19,000.00.

(2) Stock Certificates

- A. 10,000 shares Teletek, Inc. Stock Certificate # 17935, dated 7-26-83, in the name of Frank Palmero.
- B. 9,000 shares Tosco Corp. Stock Certificate dated 10-17-84, in the name of Frank Palmero.
- C. 10,000 shares The Charter Co., Stock Certificate MN71811 in the name of Frank Palmero.
- D. 200 shares Halliburton Co. Stock Certificate NX193473, dated 3-17-83.
- E. 100,000 shares Exar Communications, Inc. dated 8-5-83.
- F. 10,000 shares Flasher Corp., d/b/a Vestec Corp. Stock Certificate U6656, dated 6-21-83.

(3) Electronic equipment found on boat FL-1787-EJ on September 16, 1987.

- A. Raytheon Color depth finder sounder, Serial #LF-61678.
- B. Uniden VHF radio, Serial # 33003391.
- C. Sitech Loran, Serial # 0336.
- D. Cybernet marine radio, Serial # 31104870.
- E. Cybernet Equalizer, Serial # 40300465.
- F. Kenwood ZM FM Transceiver, Serial # 5090372.
- G. Daiwa Linear AMP, Serial # E-011911.

(4) Electronic equipment found at 1815 Bayshore Drive, Ft. Pierce, Florida on September 16, 1987.

- A. Astron amplifier, Serial # 503247.
- B. Marine radio, Serial # 43565.
- C. Kenwood Transceiver, Serial # 4060486.
- D. Debug transmitter locator.

- E. Kenwood power supply, Serial # 4050425.
  - F. Kenwood radio, Serial # 4051049.
  - G. Realistic Scanner, Serial # 553288.
  - H. Comm M5 Radio.
  - I. Kenwood automatic antenna tuner.
  - J. Com Air Band Transceiver, Serial # 3042.
  - K. Kenwood Transceiver, Serial # 4071560.
- (5) Weapons, found at 1815 Bayshore Drive, Ft. Pierce, Florida, on September 16, 1987.
- A. Baretta rifle, Serial # 001720.
  - B. Winchester rifle with scope, Serial # G1378640.
  - C. Compact police pistol, Serial # 007959.
  - D. Walter PPK pistol, Serial # 245270.
  - E. Remington pistol, Serial # 2134.
  - F. Browning .22 caliber pistol, Serial # 35199T3.
  - G. S & W .357 caliber revolver, Serial # 8278.
  - H. Baretta shotgun, Serial # D66787B.
  - I. Winchester rifle, Serial # 421929.
  - J. Colt MP 5.66, Serial # SP319169.
  - K. Browning rifle, Serial # 05 377 PT 197.
  - L. Ruger model 77 with scope, Serial # 74-68610.
  - M. Eastan Arms Co. double barrel shotgun.
  - N. Auto pistol Selestlader, Serial # 625264.
  - O. Desert Eagle .44 caliber, Seral # 7134.
  - P. 9 mm luger with clip, Serial # 02954.
  - Q. Ruger mini 14, Serial # 183 20125.

- R. Remington Model 700 rifle with scope  
Serial # A6895378.
- S. Colt Commander pistol, Serial # 41674.
- V. UZI, Serial # SA05023.
- W. Colt AR15, Serial # SP133402.
- X. Winchester Pump Shotgun, Serial # L1768129.
- Y. Mossberg model 185K-A 20 gauge shotgun.
- Z. Ruger Mini 14, Serial # 184-20567.
- AA. Service master auto pistol, Serial # GRM-3009.
- BB. One black ammunition pouch with silencer and  
380A-1, RPB Industries, Serial # 3806505.
- CC. Colt AR15, Serial # 141436.
- DD. Weatherby 20 gauge shotgun.
- EE. Remington 870 shotgun, Serial # V651243V.
- FF. Remington Shotgun, Serial #690460.
- GG. Colt combat .45 caliber pistol, Serial #  
70SC77357.

(6) Jewelry and coins found at 1815 Bayshore Drive,  
Fort Pierce, Florida on September 16, 1987.

- A. Brown/black leather jewelry case with one (1) 9"  
gold chain, (2) Rolex watch, (3) Corum gold watch.
- B. (1) 3 small spoons.
- C. Brown felt case with (1) 24" gold chain.
- D. Twenty-six gold chain.
- E. Felt case with gold chain and bracelet.
- H. Three gold colored chains.
- I. Felt case with 2 gold chains.
- J. Felt case with 2 gold chains.

- K. Felt case with gold chain and necklace.
  - M. Man's Rolex watch.
  - N. (1) one \$250 gold Bahamian coin, (2) two \$100 gold Bahamian coins.
  - O. (1) one \$50 gold Bahamian coin, (2) one \$10 gold Bahamian coin, (3) two \$150 gold Bahamian coins, (4) One \$200 Bahamian gold coin.
- (7) \$45,099 in cash found at 1815 Bayshore Drive, Fort Pierce, Florida on September 16, 1987.

hereby are condemned as forfeited to the United States for disposition according to law, and that claimant G. Bertrand Hester shall be paid \$14,877.00 from the proceeds of the sale of the Exar Communications, Inc. Stock.

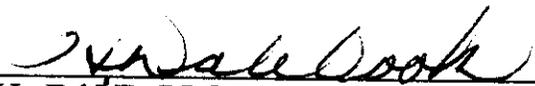
  
UNITED STATES DISTRICT JUDGE



to a failure to learn of an entry of judgment. Plaintiff herein has not made this assertion.

It is the Order of the Court that the motion of the plaintiff for leave to appeal out of time is hereby DENIED.

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

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

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

MAY 12 1989

VICTOR SAVINGS AND LOAN )  
ASSOCIATION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
SHERIDAN CHASE, LTD., et al., )  
 )  
Defendants. )

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

Case No. 88-C-1068 B

DISMISSAL WITH PREJUDICE

Upon consideration of the Disclaimer and Request for Dismissal with Prejudice filed herein by Defendant Sooner Federal Savings and Loan Association, and for good cause shown, IT IS HEREBY ORDERED that Defendant Sooner Federal Savings and Loan Association is hereby dismissed from this action, with prejudice to a future action against said Defendant, and with said Defendant to bear its own costs and fees.

DATED this 12<sup>th</sup> day of May, 1989.

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

~~DTC 45~~ APR 14 1989

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 12 1989

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 LEON THOMPSON, JR.; KATHERINE )  
 THOMPSON; LORENE BEHN MINER; )  
 STATE OF OKLAHOMA ex rel. )  
 OKLAHOMA TAX COMMISSION; )  
 COUNTY TREASURER, Tulsa County, )  
 Oklahoma; and BOARD OF COUNTY )  
 COMMISSIONERS, Tulsa County, )  
 Oklahoma, )  
 )  
 Defendants. )

CIVIL ACTION NO. 88-C-516-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 12<sup>th</sup> day  
of May, 1989. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by Carl Robinson, Assistant District Attorney,  
Tulsa County, Oklahoma; the Defendant, State of Oklahoma ex rel.  
Oklahoma Tax Commission, appears by its attorney Lisa Haws; and  
the Defendants, Leon Thompson, Jr., Katherine Thompson, and  
Lorene Behn Miner, appear not, but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, Leon Thompson, Jr., was  
served with Summons and Complaint on October 31, 1988; the  
Defendant, Katherine Thompson, was served with Summons and  
Complaint on November 17, 1988; the Defendant, State of Oklahoma  
ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons

and Complaint on June 9, 1988; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 9, 1988; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 7, 1988.

The Court further finds that the Defendant, Lorene Behn Miner, was served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning February 13, 1989, and continuing to March 20, 1989, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, Lorene Behn Miner, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, Lorene Behn Miner. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of

Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to her present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on June 27, 1988; the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer and Cross-Petition on June 27, 1988; and that Defendants, Leon Thompson, Jr., Katherine Thompson, and Lorene Behn Miner, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on July 20, 1988, Leon Thompson, Jr. d/b/a Leon Thompson, Jr. and Katherine Thompson filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 88-02097-C. On October 12, 1988, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtors by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described below.

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

Lot Four (4), Block Fourteen (14), VALLEY VIEW ACRES ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on November 4, 1985, the Defendants, Leon Thompson, Jr. and Katherine Thompson, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$25,000.00, payable in monthly installments, with interest thereon at the rate of 11.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Leon Thompson, Jr. and Katherine Thompson, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated November 4, 1985, covering the above-described property. Said mortgage was recorded on November 7, 1985, in Book 4904, Page 1918, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Leon Thompson, Jr. and Katherine Thompson, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which

default has continued, and that by reason thereof the Defendants, Leon Thompson, Jr. and Katherine Thompson, are indebted to the Plaintiff in the principal sum of \$25,015.46, plus interest at the rate of 11.5 percent per annum from April 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action by virtue of Tax Warrant No. ITI87009131 in the amount of \$97.71, plus penalties and interest, dated November 25, 1987, and recorded on December 2, 1987, in Book 5067, Page 1301 in the records of Tulsa County, Oklahoma. Said lien is inferior to the interest of the Plaintiff, United States of America.

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

The Court further finds that the Defendant, Lorene Behn Miner, is in default and has no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Leon Thompson, Jr. and Katherine Thompson, in the principal sum of \$25,015.46, plus interest at the rate of 11.5 percent per annum from April 1, 1987 until judgment, plus interest thereafter at the current legal rate of 9.15 percent per annum until paid,

plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover judgment in the amount of \$97.71, plus penalties and interest, for Tax Warrant No. ITI87009131 dated November 25, 1987, and recorded on December 2, 1987, in Book 5067, Page 1301 in the records of Tulsa County, Oklahoma.

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

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

First:

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

Second:

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

Third:

In payment of the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, in the amount of \$97.71, plus penalties and interest.

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

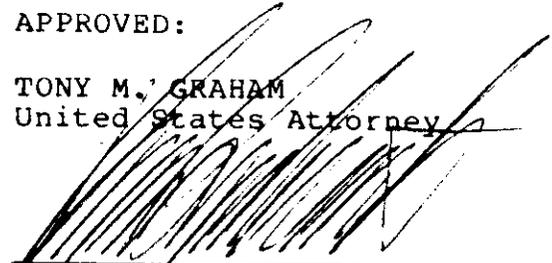
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
PETER BERNHARDT, OBA #741  
Assistant United States Attorney

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

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

PB/css

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

**F I L E D**

KENNETH R. MARSHALL, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 DAN REYNOLDS, et al, )  
 )  
 Respondents. )

✓ *[Signature]* MAY 12 1989

89-C-16-B Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER

Now before the Court is Respondent's Motion to Dismiss for Failure to exhaust State Remedies. Petitioner has filed a Traverse to Respondent's motion.

Petitioner pled guilty to Murder in the First Degree in Nowata County District Court, Case No. CRF-80-10. Although Petitioner never moved to withdraw his guilty plea, he twice pursued post-conviction relief in the courts of Oklahoma. (Case Nos. PC 80-490 and PC 86-206.) Petitioner previously filed for habeas corpus relief in this Court; however, the case was dismissed without prejudice for failure to prosecute when the Court learned Petitioner had escaped from custody. (Case No. 87-C-965-B.) Petitioner is apparently now back in custody and desires once again to pursue his freedom.

Petitioner thus raises five grounds for habeas relief: (1) that a District Attorney investigator used threats of the "Lord's punishment" to manipulate Petitioner; (2) that counsel misadvised Petitioner about a quicker route out of incarceration; (3) that a mental competency hearing was not afforded Petitioner prior to his plea; (4) that the court lacked jurisdiction to sentence

Petitioner under First Degree Murder: and (5) that counsel ineffectively advised Petitioner of the elements of First Degree Murder.

Respondents allege ground one was never presented to the state's highest court. Upon review of Petitioner's two attempts at post-conviction relief, it is clear that Petitioner has never presented grounds one, three, or four to Oklahoma's Court of Criminal Appeals (the state's highest criminal court).

In order to satisfy the exhaustion requirement of 28 U.S.C. §2254 a Petitioner is ordinarily required to show "that a state appellate court has had an opportunity to rule on the same claim presented in federal court" or that he has "no available state avenue of redress". White v. Meachum, 838 F.2d 1137, 1138 (10th Cir. 1988). Petitioner here has done neither with respect to claims one, three, or four. The result is a mixed petition, containing both exhausted and unexhausted claims which cannot be entertained by this Court. Rose v. Lundy, 12 S.Ct. 1198, 1205 (1982) ("In sum, because a total exhaustion rule promotes comity and does not unreasonably impair the prisoner's right to relief, we hold that a district court must dismiss habeas petition containing both unexhausted and exhausted claims").

Accordingly, Marshall's Petition is hereby dismissed. Marshall may resubmit his habeas petition after deleting the unexhausted claims within thirty days, or file a new application after his unexhausted claims have been fully and fairly presented to the Oklahoma Court of Criminal Appeals.

SO ORDERED this 12 day of May, 1989.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

**FILED**

LUC J. VAN RAMPELBERG )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 UNITES STATES OF AMERICA, )  
 )  
 Defendants. )

MAY 12 1989

✓  
89-C-357-B  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER

Plaintiff's Motion to Proceed in Forma Pauperis was granted and Plaintiff's Complaint was filed on the 4th day of May, 1989. Plaintiff brings this action pursuant to 28 U.S.C. §1361

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

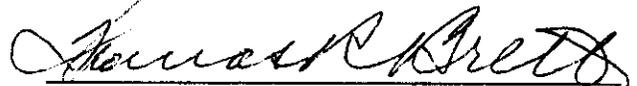
Plaintiff claims that by virtue of taking and passing an examination for suitability as an "Electronics Technical Level 08" given by the U.S. Postal Service, a contract for future employment is created. Plaintiff's assertion is totally without basis. No federal court has ever found that a contract is created merely by the applicant's taking and passing a screening

examination.

Plaintiff also claims that the United States Postal Service's failure to hire him constitutes a violation of 5 U.S.C. §2302(b)(6) (the Civil Service Reform Act). However, the Civil Service Reform Act neither provides a private right of action to prevent prohibited personnel actions (Cutts v. Fowler, 692 F.2d 138 (D. D.C. 1982)), nor does it govern the United States Postal service. Section 2302(a)(2)(C) specifically excludes Government corporations from the Act's coverage.

Therefore, Plaintiff's Complaint is obviously without merit and shall be dismissed as frivolous.

So ORDERED this 17 day of May, 1989.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

**F I L E D**

MAY 12 1989

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

JAMES PACK,  
Plaintiff,  
v.  
DR. BARNES,  
Defendant.

89-C-297-B

ORDER

Plaintiff's Motion to Proceed in Forma Pauperis was granted and Plaintiff's Complaint was filed on the 4th day of May, 1989. Plaintiff brings this action pursuant to 42 U.S.C. §1983.

The Complaint is now to be tested under the standard set forth in 28 U.S.C. §1915(d). If the Complaint is found to be obviously without merit, it is subject to summary dismissal. Henriksen v. Bentley, 644 F.2d 852, 853 (10th Cir. 1981). The test to be applied is whether or not the Plaintiff can make a rational argument on the law or the facts to support his claim. Van Sickle v. Holloway, 791 F.2d 1431, 11434 (10th Cir. 1986). Applying the test to Plaintiff's claims, the Court finds that the instant action should be dismissed as obviously without merit for the following reasons.

Plaintiff brings his action for one million dollars in damages alleging a "Denile (sic) of proper medical treatment". The claim arises out of an examination by Defendant in October 1988. Apparently, Defendant examined an X-ray of Plaintiff's leg and determined that it was not broken. When in March, 1989, Plaintiff again hurt his leg, an X-ray revealed the presence of

4

an old break. As a result, Plaintiff claims Defendant denied him proper medical treatment in October, 1988.

Based on these facts, Plaintiff's claim is frivolous.

As the Tenth Circuit explained in Smart v. Villar, 547 F.2d 112, 114 (10th Cir. 1976),

We have consistently held that the existence of such a difference [of opinion as to treatment or diagnosis between the prisoner and the medical staff] cannot alone give rise to a course of action, and if the complaint indicates that such is the case, it must be dismissed. (Emphasis added.)

The Smart decision was based on the U.S. Supreme Court opinion in Estelle v. Gamble, 429 U.S. 97 (1976), wherein the court stated:

[A] complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment ... Medical malpractice does not become a constitutional violation merely because the victim is a prisoner.

... The question whether an X-ray - or additional diagnostic techniques or forms of treatment is indicated is a classic example of a matter for medical judgment.

(At 1-6-107.)

Therefore, it is clear that Plaintiff has not stated a claim cognizable under 42 U.S.C. §1983. It is hereby ordered that the action be dismissed as frivolous.

SO ORDERED this 18 day of May, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

**FILED** ORIGINAL

UNITED STATES DISTRICT COURT MAY 12 1989

NORTHERN DISTRICT OF OKLAHOMA  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ELIZABETH DOLE, Secretary of  
Labor, United States Department  
of Labor, )

Plaintiff, )

v. )

BEST SHOT, INC., BEST SHOT  
WATERBEDS, INC., UNITED  
STATES WATERBEDS, INC.  
Corporations; CHRISTOPHER J.  
KLIBER, CANDACE A. KLIBER,  
BRUCE E. KIRALY, DWIGHT P.  
KIRALY, JOHNITA A. DUYKERS,  
and CYNTHIA J. SHIELDS,  
Individuals; BEST SHOT VENTURES,  
A Partnership, )

Defendants. )

Civil Action

File No. 87-C-266-B

~~FILED~~

~~MAY 11 1989~~

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

CONSENT JUDGMENT

Plaintiff has filed her complaint and Defendants without admitting they have violated any provision of the Fair Labor Standards Act of 1938, have agreed to the entry of judgment without contest.

The parties have stipulated and agreed, and it is hereby ORDERED, ADJUDGED and DECREED, that plaintiff's complaint shall be dismissed with prejudice in its entirety as to Defendants Candace A. Kliber, Dwight P. Kiraly, Johnita A. Duykers and Cynthia J. Shields based upon the averments of Defendants that these persons did not actively manage, supervise and direct the business affairs and operations of the Defendant Corporations or partnership and did not act directly or indirectly in the interest of said corporations or partnership in relation to their employees and, therefore, were not employers of said employees within the

meaning of the Act. Accordingly, "Defendants" as referenced herein shall mean Defendants Best Shot, Inc; Best Shot Waterbeds, Inc.; United States Waterbeds, Inc.; Christopher J. Kliber; Bruce E. Kiraly; and Best Shot Ventures, a Partnership.

It is further ORDERED, ADJUDGED and DECREED that Defendants, their officers, agents, servants, employees and all persons in active concert or participation with them be and they hereby are permanently enjoined and restrained from violating the provisions of sections 6, 7, 11(c), 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq., hereinafter referred to as the Act, in any of the following manners:

(1) Defendants shall not, contrary to Sections 6 and 15(a)(2) of the Act, 29 U.S.C. §§ 206 and 215(a)(2), pay any employee who is engaged in commerce or in the production of goods for commerce, or who is employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, wages at a rate less the minimum hourly rates required by Section 6 of the Act.

(2) Defendants shall not, contrary to Sections 7 and 15(a)(2) of the Act, 29 U.S.C. §§ 207 and 215(a)(2) employ any employee in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, for workweeks longer than forty (40) hours, unless the employee receives compensation for his employment in excess of forty (40) hours at a rate not less than one and one-half times the regular rate at which he is employed.

(3) Defendants shall not, contrary to Sections 11(c) and 15(a)(5) of the Act, 29 U.S.C. §§ 211(c) and 215(a)(5), fail to make, keep and preserve adequate and accurate records of the persons employed by them, and the wages, hours and other conditions and practices of employment maintained by them as prescribed by regulations issued by the Administrator of the Employment Standards Administration, United States Department of Labor (29 C.F.R. Part 516).

It is further ORDERED ADJUDGED and DECREED that the Defendants be and they hereby are enjoined and restrained from withholding minimum wages and overtime compensation in the total amount of \$27,500.00 (including prejudgment interest in an amount of \$2,500, pursuant to 26 U.S.C. § 6621) which the Court finds is due under the Act to Defendants' employees named in Exhibit "A" attached hereto, in the amounts stated for the period April 15, 1984 through February 28, 1986. To comply with this provision of this Judgment Defendants shall deliver to the Plaintiff a cashier's or certified checks payable to "Employment Standards Administration-Labor" in the amounts and at the times herein set forth:

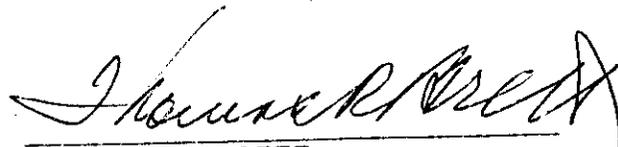
Payment of the aforesaid amount shall be made in a total of 24 consecutive monthly installments. The first installment shall be in the amount of \$2,000.00. The first installment is due and payable on May 15, 1989. Each subsequent installment shall be in the amount of no less than \$1062.50 and will be due and payable on or before the 15th day of each succeeding month thereafter until all installments have been paid.

From the proceeds of said payments, Plaintiff shall make appropriate distribution to the employees named herein or to their estate if necessary, in the respective amounts due said employees, less income tax and social security deductions. In the event that any of said money cannot be distributed and paid over by Plaintiff within the period of one (1) year after payment in full pursuant to this judgment because of inability to locate the proper persons or because of their refusal to accept such sums, the money shall be deposited with the Clerk of this Court who shall forthwith deposit such money with the Treasurer of the United States pursuant to 28 U.S.C. § 2041.

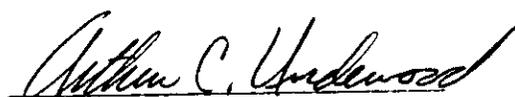
It is further ORDERED, that in the event of default by the Defendants in the payment of any of the above-recited installments, the total balance remaining unpaid shall then become due and payable and interest shall be assessed against such remaining unpaid balance at the rate provided by 26 U.S.C. §6621 from the date of this judgment until the total amount is paid in full.

It is further ORDERED, that each of the parties shall bear his or her own costs.

Signed and entered this 17<sup>th</sup> day of May, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

Defendants consent to  
the entry of this judgment:

  
ARTHUR UNDERWOOD  
Attorney for Defendants

Plaintiff moves for entry of  
this judgment:

JERRY G. THORN  
Solicitor of Labor

JAMES E. WHITE  
Regional Solicitor

BOBBIE J. GANNAWAY  
Counsel for Employment  
Standards

By:

  
REBECCA A. SIEGEL  
Trial Attorney

Attorneys for Plaintiff.

Case No. 86-00740-86-00756

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SALLY ANN FISHER a/k/a SALLY A. )  
 FISHER; BRIERCROFT SERVICE )  
 CORPORATION; COUNTY TREASURER, )  
 Rogers County, Oklahoma; and )  
 BOARD OF COUNTY COMMISSIONERS, )  
 Rogers County, Oklahoma, )  
 )  
 Defendants. )

**F I L E D**

MAY 12 1989

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

CIVIL ACTION NO. 89-C-066-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 12<sup>th</sup> day of May, 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, Rogers County, Oklahoma, and Board of County Commissioners, Rogers County, Oklahoma, appear by Ernest E. Haynes, Jr., Assistant District Attorney, Rogers County, Oklahoma; and the Defendants, Sally Ann Fisher a/k/a Sally A. Fisher and Briercroft Service Corporation, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Sally Ann Fisher a/k/a Sally A. Fisher, acknowledged receipt of Summons and Complaint on February 6, 1989; that Defendant, Briercroft Service Corporation, acknowledged receipt of Summons and Complaint on March 22, 1989; that Defendant, County Treasurer, Rogers County, Oklahoma,

The Court further finds that on April 19, 1985, Sally Ann Fisher executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, her mortgage note in the amount of \$54,500.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half percent (12.5%) per annum.

The Court further finds that as security for the payment of the above-described note, Sally Ann Fisher executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated April 19, 1985, covering the above-described property. Said mortgage was recorded on April 19, 1985, in Book 701, Page 649, in the records of Rogers County, Oklahoma.

The Court further finds that the Defendant, Sally Ann Fisher a/k/a Sally A. Fisher, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Sally Ann Fisher a/k/a Sally A. Fisher, is indebted to the Plaintiff in the principal sum of \$53,894.39, plus interest at the rate of 12.5 percent per annum from April 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Rogers County,

acknowledged receipt of Summons and Complaint on January 31, 1989; and that Defendant, Board of County Commissioners, Rogers County, Oklahoma, acknowledged receipt of Summons and Complaint on January 30, 1989.

It appears that the Defendants, County Treasurer, Rogers County, Oklahoma, and Board of County Commissioners, Rogers County, Oklahoma, filed their Answer and Cross-Petition on February 1, 1989; and that the Defendants, Sally Ann Fisher a/k/a Sally A. Fisher and Briercroft Service Corporation, 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 Rogers County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot 10 in Block 6 of ROLLINGS MEADOWS PARK, a Subdivision in Section 6, Township 21 North, Range 15 East of the I.B. & M., Rogers County, Oklahoma, according to the recorded Plat thereof.

The Court further finds that on June 13, 1988, Sally Ann Fisher filed her voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 88-01689-W. On September 29, 1988, the Discharge of Debtor was entered in the United States Bankruptcy Court for the Northern District of Oklahoma releasing the debtor of all dischargeable debts.

Rogers County, Oklahoma, have and recover judgment in the amount of \$358.30, plus penalties and interest, for ad valorem taxes for the year 1988, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Rogers County, Oklahoma, have and recover judgment in the amount of \$57.75 for the year 1986 and \$58.08 for the year 1987 for personal property taxes, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Briercroft Service Corporation, has no right, title, or interest in the subject real property.

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

First:

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

Second:

In payment of Defendants, County Treasurer and Board of County Commissioners, Rogers County, Oklahoma, in the amount of \$358.30, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Oklahoma, have a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$358.30, plus penalties and interest, for the year 1988. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Rogers County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$57.75 for the year 1986 and \$58.08 for the year 1987. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Briercroft Service Corporation, is in default and has no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendant, Sally Ann Fisher a/k/a Sally A. Fisher, in the principal sum of \$53,894.39, plus interest at the rate of 12.5 percent per annum from April 1, 1988 until judgment, plus interest thereafter at the current legal rate of 9.15 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners,

Third:

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

Fourth:

In payment of Defendantd, County Treasurer and Board of County Commissioners, Rogers County, Oklahoma, in the amount of \$57.75 for the year 1986 and \$58.08 for the year 1987, personal property taxes which are currently due and owing.

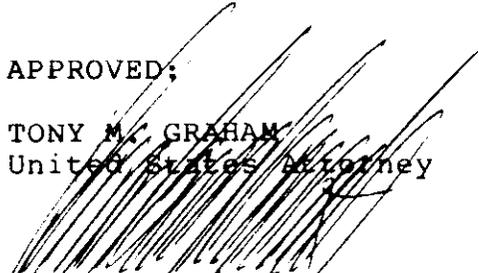
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

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

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED;

  
TONY M. GRAHAM  
United States Attorney

---

PETER BERNHARDT, OBA #741  
Assistant United States Attorney

---

ERNEST E. HAYNES, JR.  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Rogers County, Oklahoma

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

GERALD GRIMES, Insurance Commissioner of )  
the State of Oklahoma, Receiver for )  
MERCURY NATIONAL LIFE INSURANCE COMPANY, )  
NATIONAL ASSURANCE LIFE INSURANCE )  
COMPANY and SOUTHWEST CAPITAL LIFE )  
INSURANCE COMPANY, )

Plaintiff, )

vs. )

FEDERAL DEPOSIT INSURANCE CORPORATION, )  
as Receiver of FIRST NATIONAL BANK OF )  
SAPULPA, )

Defendant. )

FILED

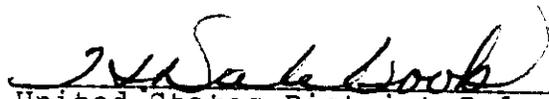
MAY 11 1989

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

Case No. 88-C-228-C

ORDER DISMISSING CASE WITH PREJUDICE

This matter comes on before the Court this 10<sup>th</sup> day of May, 1989, upon the Stipulation of the Plaintiff and Defendant herein for an Order dismissing the above case with prejudice. Pursuant to said Stipulation, it is ordered, adjudged and decreed that the above-referenced case be and is hereby dismissed with prejudice with all parties to bear their own costs and fees herein.

  
United States District Judge

Approved as to Form:



---

R. Kevin Layton, OBA #11900  
BOESCHE, McDERMOTT & ESKRIDGE  
800 ONEOK Plaza  
100 West Fifth Street  
Tulsa, Oklahoma 74103  
(918) 583-1777

ATTORNEYS FOR FEDERAL DEPOSIT  
INSURANCE CORPORATION

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

F I L E D

MAY 11 1989

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

JAMES R. LONG,

Plaintiff,

vs.

EDWIN GORDON, et al.,

Defendants.

)  
)  
)  
)  
)  
)  
)

No. 88-C-252-E

O R D E R

By Order of this court plaintiff was given until May 1, 1989 to either advise the court that he would proceed in propria persona or to cause new counsel to enter an appearance in his behalf. Plaintiff has failed to comply with that Order.

IT IS THEREFORE ORDERED that this action is dismissed with prejudice. Defendants are awarded the costs of this action.

ORDERED this 11<sup>th</sup> day of May, 1989.



JAMES C. ELLISON  
UNITED STATES DISTRICT JUDGE



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

**FILED**

MAY 10 1989

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

EMMITT ALLEN CHITWOOD, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 L. E. MORRIS, )  
 )  
 Defendant. )

No. 87-C-736-B

**FINDINGS OF FACT**  
**AND**  
**CONCLUSIONS OF LAW**

The Plaintiff, Emmitt Allen Chitwood ("Chitwood"), commenced this action alleging violations of 42 U.S.C. §1983 in that Plaintiff states excessive physical force was employed against his person by the Defendant, deputy sheriff L. E. Morris, while he was under arrest and in the custody of the Tulsa County Sheriff's Department on May 7, 1987. The case was tried to the Court without a jury on May 1, 1989. After considering the issues presented by the evidence, hearing statements of the parties, and considering the applicable legal authority, the Court enters the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. The events giving rise to Plaintiff's alleged 42 U.S.C. §1983 cause of action occurred in the Tulsa City/County Jail on May 7, 1987.

2. Chitwood was arrested along with one Kevin Lynn Ford on May 7, 1987 by the Tulsa Police Department for alleged public intoxication and Chitwood was further placed under arrest as an

escapee from the Oklahoma Department of Corrections where he was under sentence for a prior felony conviction.

3. Chitwood was taken to the Tulsa City/County Jail where he was booked in to be placed in the county jail under the Tulsa County Sheriff's custody and jurisdiction.

4. After being placed in a holding cell, Chitwood requested to use the restroom and was permitted by a jailer to do so. Upon coming out of the restroom Chitwood for some inexplicable reason sustained a fall and hit his head on the floor causing a laceration at Plaintiff's eyebrow or forehead. The Plaintiff was then transported to the Oklahoma Osteopathic Hospital nearby where he received emergency treatment for the suturing of the forehead laceration.

5. The Plaintiff has not established by the preponderance of the evidence that the Defendant L. E. Morris was in any way responsible for or the cause of his fall and resulting forehead laceration.

#### CONCLUSIONS OF LAW

1. The Court has subject matter jurisdiction under 42 U.S.C. §1983 and 28 U.S.C. §1343(3).

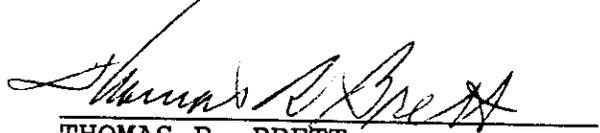
2. Any Finding of Fact above which might be properly characterized a Conclusion of Law is incorporated herein.

3. Under 42 U.S.C. §1983 Plaintiff has failed to establish by a preponderance of the evidence the Defendant L. E. Morris deprived Plaintiff of some right, privilege or immunity secured by the Constitution or the laws of the United States. The more

convincing evidence before the Court establishes that the Defendant L. E. Morris was not the producing cause of Plaintiff's fall and resulting head injury.

4. A Judgment should be entered herein in favor of L. E. Morris and against the Plaintiff Chitwood in keeping with the Findings of Fact and Conclusions of Law herein.

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

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

FILED

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

MAY 10 1989

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

CLYDE GUFFEY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 TRW, INC., d/b/a REDA PUMP )  
 DIVISION, )  
 )  
 Defendant. )

No. 88-C-278-B ✓

O R D E R

This matter comes before the Court upon Defendant's Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56. Defendant filed its motion on February 22, 1989. After being granted an extension of time, Plaintiff's Response was due March 29, 1989. Plaintiff has yet to file his Response to the Motion for Summary Judgment.

Local Rule 15(A) provides that a party opposing a motion for summary judgment shall file its brief in opposition within 15 days. Failure to comply with this Rule will constitute a waiver of the objection, and such failure to comply will constitute a confession of the matters raised by the motion. The undisputed facts in the Motion establish the Plaintiff was an exempt salaried employee and was terminated for legitimate, nondiscriminatory business reasons. Plaintiff's failure to rebut these facts constitutes an admission pursuant to local Rule 15(A).

It is therefore ORDERED that Defendant's Motion for Summary Judgment be SUSTAINED and the case dismissed.

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

A handwritten signature in cursive script, reading "Thomas R. Brett", is 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

MAY 10 1989

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

UNITED CAPITOL INSURANCE COMPANY, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
DYKON SERVICES, INC., JAMES REDYKE, AND )  
MICHAEL JOLLEY )  
 )  
Defendants. )

No. 88-C-556-B

COMPROMISE AND SETTLEMENT AGREEMENT

Agreement made this 2 day of May, 1989, between United Capitol Insurance Company, Inc., (hereinafter "United"), the Plaintiff, and Dykon Services, Inc., (hereinafter "Dykon"), James ReDyke and Michael Jolley, the Defendants.

RECITALS

- A. Dykon entered into an insurance contract with United in June, 1987. The insurance contract provided that United would provide general liability insurance coverage for Dykon. In consideration for said insurance coverage, Dykon agreed to pay premiums as set forth in the terms and conditions of the insurance contract.
- B. On June 15, 1988, United filed a lawsuit against Dykon in the United States District Court for the Northern District of Oklahoma, Case Number 88-C-556-B. In said lawsuit, United alleged that Dykon was indebted to it for premium due under the insurance contract. Dykon filed its Answer and denied any indebtedness to United.
- C. Since the filing of this suit, and solely to facilitate this settlement and compromise and for no other reason, James ReDyke and Michael Jolley have been added as parties defendant to this action by joint stipulation of United, Dykon, and Messrs. ReDyke and Jolley.
- D. United, Dykon, James ReDyke and Michael Jolley are willing to compromise and settle the above-noted lawsuit upon the terms and conditions set forth in this Settlement Agreement.

## AGREEMENT

In consideration of the above premises and the mutual covenants set forth below, the parties agree as follows:

### TERMS OF SETTLEMENT

- a. PARTIES: The parties to this Settlement Agreement are United, Dykon, James ReDyke and Michael Jolley.
- b. The parties agree that James ReDyke and Michael Jolley have been added as individual Defendants in the above-noted lawsuit, Case Number 88-C-556-B.
- c. TAKING OF JUDGMENT: Dykon, James ReDyke and Michael Jolley agree that United may proceed to take judgment against them, jointly and severally, in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) under the terms and conditions of this Agreement and the Stipulated Judgment entered into contemporaneously herewith.
- d. UNITED TO REFRAIN FROM EXECUTION: United agrees that it will not take any action to execute on the above-noted judgment provided the terms of this Agreement are complied with by the Defendants. In the event of non-compliance with the terms and conditions of this Settlement Agreement, it is understood and agreed that United will execute on said judgment.
- e. PAYMENT TO UNITED: In consideration for United's promise not to execute on said judgment as set forth in paragraph "d" above, Dykon, James ReDyke and Michael Jolley, jointly and severally agree to pay to United the judgment amount of One Hundred Fifty Thousand Dollars (\$150,000.00), in twelve consecutive monthly payments in the amount of Twelve Thousand Five Hundred Dollars (\$12,500.00) per payment until said judgment amount is paid in full. The monthly payments will commence on May 1, 1989, and continue thereafter for eleven consecutive months until the judgment amount is paid in full.

1. PAYMENT DUE DATE: It is understood and agreed that each payment will be due on the first business day, (i.e., non-Federal Holidays, Monday - Friday) of each month. There will be no grace period. With the exception of the May 1, 1989, payment, payments will be considered received by United when the payment is received by United at its corporate office or when payment is received by the depository as set forth in the following paragraph if payment is made by wire transfer. The May 1, 1989, payment will be considered received by United when received by United's attorney, Galen L. Brittingham.
2. MANNER OF MAKING PAYMENT: All payments shall (except as otherwise provided below) be made by cashier's or certified check and made payable to United Capitol Insurance company. Each check shall (except as otherwise provided in this paragraph and in paragraph 1 herein) be mailed by certified mail, return receipt requested. Any such payments shall be mailed to United Capitol Insurance Company, 1400 Lake Hearn Drive, Suite 1400, Atlanta, Georgia 30319. In the alternative, payments may be made by wire transfer to Trust Company Bank, Atlanta, Georgia, account number 8800 594 064, routing number 061 000 104, any such payment to be deemed made when received by such depository. Checks should be addressed to the attention of Lorraine Esselborne and checks should state that the payment represents partial (or full and final, as the case may be) payment for premium audit due under policy number GLOM 2000 231.
3. DEFAULT: Failure to pay the total amount due on any single payment when due shall constitute default.
4. ACCELERATION: In the event of default, all remaining unpaid payments due under this Agreement shall become immediately due and payable. Upon default, the total accelerated amount shall begin to bear interest at the maximum rate permitted by law, which, at the date of execution of this Agreement, is 10.92% per annum pursuant to the law of the State of Oklahoma.
- f. PRO-RATA RELEASE: In consideration of the payments agreed to be made, United agrees to execute and deliver to the judgment debtors, Dykon, James ReDyke and Michael Jolley, from time to time and as and when requested by them, pro rata releases of their liability in direct proportion to the payments made. In any such case, a payment made by one or more of such judgment debtors shall inure to the benefit of all.
- g. It is understood that this Agreement is not to be considered a release of the judgment debtors but is to be construed as a conditional agreement between the

parties which may result in partial release from time to time as set forth above and a full and final release upon final compliance with the payment terms and conditions set forth in this Agreement.

h. In further consideration of the promises set forth herein, Dykon agrees to dismiss, with prejudice, the counter-claim asserted against United in this action, that is, Case Number C-88-556-B, which is currently pending in the United States District Court for the Northern District of Oklahoma.

i. Each party shall bear and pay its own respective attorneys' fees and costs of suit and/or defense in this action, that is, Case Number C-88-556-B, and, by appending their signatures hereto, each party and its respective attorneys hereby release, remise and discharge each and every other party to this action and their respective attorneys of and from any and all attorneys' fees and costs of suit and/or defense incurred in this action, that is, Case Number C-88-556-B. This paragraph does not apply to attorneys' fees and costs incurred in any legal action resulting from or arising out of a default or other breach of terms and conditions of this Settlement Agreement. In any subsequent action, the right to the recovery of attorneys' fees and costs will be governed by applicable federal and state law.

j. With the exception of the reservation of rights set forth in paragraphs "i" and "k" of this Agreement and in paragraph 9 of the judgment and except for the duties and liabilities expressly undertaken in this judgment and in the Compromise and Settlement Agreement entered into contemporaneously herewith, United hereby fully releases, remises and forever discharges all other claims, demands, actions, causes of action, suits, losses, liabilities, costs and expenses, including but not limited to attorneys' fees, past, present and future (with the exception of the above-noted reserved rights) known and unknown, of whatever nature which United has, had or may ever have (with the exception of the above-noted reserved rights) against

Dykon, any of its related or affiliated entities, including but not limited to Dykon, Inc., and/or any officer, director, shareholder, employee and/or other representative of any of the foregoing, including but not limited to James ReDyke, Michael Jolley, Don Jolley, and Edward Sharrer. It is further understood and agreed that Dykon, James ReDyke and Michael Jolley are not released from their obligation to pay the judgment amount of \$150,000.00 as set forth herein and in the judgment. (See paragraph "f" herein; and paragraph 7 of the Stipulated Journal Entry of Judgment.)

k. United specifically reserves and retains any and all rights against Dykon, James ReDyke and Michael Jolley, which it might have or here after have against them as a result of the breach of the terms and conditions of this "Compromise and Settlement Agreement" and any and all rights against said parties which may arise upon default of any payment as set forth in this "Compromise and Settlement Agreement" and as set forth in the judgment.

l. Except as otherwise provided in the proviso below in this paragraph, it is agreed that Dykon, Dykon, Inc., James ReDyke, Michael Jolley and Edward Sharrer, and all other affiliated entities of Dykon or Dykon, Inc., hereby release and forever discharge United, and its related or affiliated entities, and any officers, directors, shareholders, employees and/or other representatives of United and its related or affiliated entities, from all other claims, demands, actions, causes of action, suits, losses, liabilities, costs and other expenses, including but not limited to attorney's fees, of whatever nature now existing or which may here after arise, provided, however, Dykon, James ReDyke and Michael Jolley specifically reserve and retain any and all rights against United Capitol Insurance Company which they might have or here after have against it as a result of its (United's) breach, if any, of the terms and conditions of this Agreement or the judgment.

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the day and year first above written.

APPROVED AS TO FORM AND CONTENT:

UNITED CAPITOL INSURANCE COMPANY

By: Steve Zeitman  
STEVE ZEITMAN, Senior Vice  
President

DYKON SERVICES, INC.

By: James Redyke  
JAMES REDYKE, President

James Redyke  
JAMES REDYKE

Mike Jolley  
MIKE JOLLEY

Galen L. Brittingham  
GALEN L. BRITTINGHAM, attorney  
for United Capitol Insurance  
Company

Don E. Wiechmann  
DON E. WIECHMANN, attorney for  
Defendants, Dykon Services, Inc.,  
James ReDyke, and Michael Jolley

FOR THE PURPOSE OF PARAGRAPH "1" HEREIN:

DYKON, INC.

By: James Redyke  
JAMES REDYKE, President

Edward Sharrer  
EDWARD SHARRER

372-43.1/GLB/mh

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

MAY 12 1989

UNITED CAPITOL INSURANCE  
COMPANY,

Plaintiff,

vs.

DYKON SERVICES, INC., JAMES  
REDYKE, and MICHAEL JOLLEY,

Defendants.

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

Case No. 88-C-556-B

DISMISSAL WITH PREJUDICE

COMES NOW the Defendant, Dykon Services, Inc., by its undersigned attorney, and hereby dismisses with prejudice its Counterclaim (filed in the above-captioned lawsuit on July 22, 1988) against Plaintiff pursuant to and in material consideration of the Stipulated Journal Entry of Judgment and Compromise and Settlement Agreement between Plaintiff and Defendants filed contemporaneously herewith.

McCORMICK & WIECHMANN, P.A.



DON E. WIECHMANN  
1516 South Boston, Suite 205  
Tulsa, Oklahoma 74119  
(918) 582-3655

Attorney for Defendant  
Dykon Services, Inc.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8th day of May, 1989, a copy of the foregoing was mailed, with prepaid postage thereon, to the following:

Galen Brittingham, Esq.  
525 South Main, Suite 1500  
Tulsa, OK 74103



DON E. WIECHMANN

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

*entered*

MAY 19 1989

JAMES EARL COOK  
U.S. DISTRICT COURT

FEDERAL SAVINGS AND LOAN	}
INSURANCE CORPORATION, in its	}
capacity as receiver for	}
VICTOR FEDERAL SAVINGS AND	}
LOAN ASSOCIATION and VICTOR	}
SAVINGS AND LOAN ASSOCIATION,	}
	}
Plaintiffs,	}
	}
vs.	}
	}
DAN STEFANOFF; SIMMONS BUILDING	}
PARTNERSHIP; WILDWOOD, LTD.;	}
STEVEN PARKHURST; THEODORE	}
SACK; DON GIBBONS, ET AL.,	}
	}
Defendants.	}

No. 88-C-1074-C

JUDGMENT

This matter came before the Court for consideration of the motion for summary judgment as originally filed by plaintiff Victor Federal Savings and Loan Association. 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 the current plaintiff, Federal Savings and Loan Association and against defendant Theodore Sack.

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

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

*58*

FILED

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

MAY 10 1989

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

CLYDE GUFFEY,

Plaintiff,

vs.

TRW, INC., d/b/a REDA PUMP  
DIVISION,

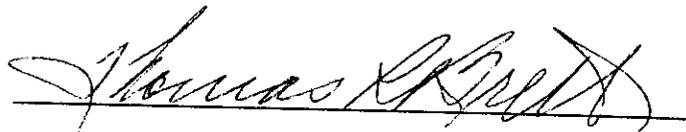
Defendant.

No. 88-C-278-B

J U D G M E N T

In accord with the Order filed this date sustaining the Defendant's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendant, TRW, Inc., d/b/a Reda Pump Division, and against the Plaintiff, Clyde Guffey. Plaintiff shall take nothing of his claim. Costs are assessed against the Plaintiff and each party is to pay its respective attorney's fees.

DATED this 10<sup>th</sup> day of May, 1989.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

FILED

MAY 19 1988

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

CLERK OF DISTRICT COURT

LEWIS D. PRUETT, JUANITA J.	)	
PRUETT and BERT PRUETT,	)	
	)	Plaintiffs,
	)	
v.	)	No. 88-C-933-B
	)	
AETNA CASUALTY & SURETY	)	
COMPANY, a corporation,	)	
	)	Defendants.

JOINT APPLICATION FOR OF  
DISMISSAL WITH PREJUDICE

COME NOW the Plaintiffs and Defendant herein and move the Court for an Order of Dismissal of this matter with prejudice for the reason that the issues have been fully compromised and settled.

*Lewis D. Pruett*  
\_\_\_\_\_  
LEWIS D. PRUETT

*Juanita J. Pruett*  
\_\_\_\_\_  
JUANITA J. PRUETT

*Bert Pruett*  
\_\_\_\_\_  
BERT PRUETT

*Patrick E. Carr*  
\_\_\_\_\_  
PATRICK E. CARR, Attorney for Plaintiffs  
4520 S. Harvard, Suite 135  
Tulsa, OK 74135

*John H. Tucker*  
\_\_\_\_\_  
JOHN H. TUCKER (OBA #9110)  
Attorney for Defendant  
2800 Fourth National Bldg.  
Tulsa, Oklahoma 74119  
918-582-1173

FILED

MAY 10 1989

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

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

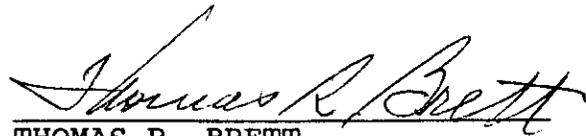
EMMITT ALLEN CHITWOOD, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 L. E. MORRIS, )  
 )  
 Defendant. )

No. 87-C-736-B

J U D G M E N T

Pursuant to the Findings of Fact and Conclusions of Law entered contemporaneously herewith, Judgment is hereby entered in favor of the Defendant L. E. Morris and against the Plaintiff Emmitt Allen Chitwood, the Plaintiff is to take nothing against the Defendant L. E. Morris, and the action is dismissed on the merits.

DATED this 10<sup>th</sup> day of May, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

JUN 10 1987

JAMES H. HARRIS, CLERK  
U.S. DISTRICT COURT

FEDERAL SAVINGS AND LOAN }  
INSURANCE CORPORATION, in its }  
capacity as receiver for }  
VICTOR FEDERAL SAVINGS AND }  
LOAN ASSOCIATION and VICTOR }  
SAVINGS AND LOAN ASSOCIATION, }  
Plaintiffs, }  
vs. }  
DAN STEFANOFF; SIMMONS BUILDING }  
PARTNERSHIP; WILDWOOD, LTD.; }  
STEVEN PARKHURST; THEODORE }  
SACK; DON GIBBONS, ET AL., }  
Defendants. }

No. 88-C-1074-C

ORDER

Before the Court is the motion for summary judgment originally filed by plaintiff Victor Federal Savings and Loan Association (Victor) on April 8, 1987 in the District Court of Tulsa County, Oklahoma. Plaintiff Federal Savings and Loan Insurance Corporation (FSLIC) was substituted as plaintiff, in its receivership capacity, and the case was removed to federal court.

On June 20, 1984, defendant Dan Stefanoff executed in favor of Victor a promissory note in the sum of \$500,010.00 plus interest. Stefanoff secured payment of the note with various forms of collateral, including assignment of a \$75,000.00 promissory note dated December 10, 1983 from Theodore Sack to Stefanoff (Sack Note).

On May 31, 1986, Stefanoff defaulted on his note obligation to Victor. Victor brought this action on February 9, 1987 seeking to enforce the promissory note. In plaintiff's fourth cause of action, payment was demanded in accordance with the terms of the promissory note or alternatively foreclosure of Victor's security interest in the Sack Note.

On April 6, 1987, defendant Sack filed an answer alleging as affirmative defenses, that there existed a contemporaneous oral agreement which modified and limited the terms of the written agreement; that the Sack Note was not assignable; and that Victor lacked holder in due course status.

On April 8, 1987, Victor filed its motion for summary judgment against Sack seeking a determination of its right to foreclose on the Sack Note as a matter of law.

Sack's defense: Contemporaneous Oral Agreement

As one of his defenses, Sack alleges that contemporaneously with execution of the Sack Note, an oral agreement was entered with Stefanoff which modified and limited its effectiveness. In support of this defense Sack alleges that in 1983 Stefanoff was promoting an investment for an interest in a complex known as "The Summit, Ltd.". Upon recommendation of his accountant Tom Herrman (whom Sack asserts also did accounting work for Stefanoff) Sack agreed to invest in Stefanoff's limited partnership. Sack had known Stefanoff for approximately ten years. In consideration for his interest in The Summit, Ltd., Sack executed in favor of Stefanoff a promissory note in the sum of \$75,000.00.

Sack contends he had a conversation with Stefanoff in which he informed Stefanoff that he didn't have the cash to pay the note. Sack asserts Stefanoff represented to him that the note would be paid off from the proceeds of the sale of The Summit, Ltd., either through syndication or otherwise. Ultimately The Summit, Ltd. went into foreclosure.

Sack also contends that the parties orally agreed the note was not assignable.

Sack defense: Lack of Holder In Due Course Status

Sack asserts that some time during 1982 or 1983 Stefanoff bought stock in Victor and eventually became an advisory board member, later serving on the Executive Committee. Sack asserts that one of Stefanoff's responsibilities as a board member was to solicit potential borrowers to "bail out bad loans". As examples, Sack points out that Stefanoff actively solicited purchasers for a Muskogee shopping center for the purpose of replacing a bad loan with a new borrower. Stefanoff also allegedly introduced Tink Wilkerson to an officer of Victor to encourage Wilkerson to take over a bad loan on a Tulsa duplex.

Through these illustrations, Sack draws the conclusion that Victor in its transactions with Stefanoff could not have been acting in good faith, nor dealing at arm's length and therefore as a matter of law, Victor could not be a holder in due course.

The Court has carefully considered the issues raised and applicable law and being fully advised finds and concludes as follows.

Under the circumstances of this case, parol evidence cannot be used to vary, modify or contradict the express language contained in a written instrument. In Oklahoma, the parol evidence rule is codified at 15 O.S. §137, which states:

The execution of a contract in writing, whether the law requires it to be written or not supercedes all the oral negotiations or stipulations concerning its matter, which preceded or accompanied the execution of the instrument.

Parol evidence cannot vary or extend the terms of a writing. Where a contract is complete in itself and, viewed in its entirety, is unambiguous, its language controls as to the parties' intentions. See Ollie v. Rainbolt, 669 P.2d 275, 279 (Okla. 1983). In the absence of accident, fraud or mistake of fact, the execution of a written instrument supercedes oral negotiations or stipulations which preceded or accompanied the execution of the instrument. Posey v. Citizens' State Bank, 220 P.628 (Okla. 1923).

Defendant Sack relies on a line of cases in Oklahoma which hold that parol evidence is admissible when the writing is merely a part of a broader and more comprehensive oral agreement, citing Spradlin v. American Travelers Ins. Co., 376 P.2d 323 (Okla. 1962) and Edwards v. City Nat'l Bank, 201 P.233 (Okla. 1921). Spradlin was an action by a corporation to foreclose a mortgage and recover on a promissory note. As a defense, the Spradlins alleged they executed the promissory note as part of a scheme to help the image of the corporation. No money exchanged hands, rather the corporation wanted Mr. Spradlin as a stockholder so it could represent to others that Mr. Spradlin was one of its stockholders. The court held that parol evidence could be admitted in that the promissory

note was executed merely as a part of the parties' broader, and more comprehensive, oral agreement for the issuance of stock in plaintiff corporation to the Spradlins.

In the case sub judice, there is no dispute that Sack owed the debt. Had The Summit, Ltd. proved profitable, Sack would have paid off his promissory note and made money from his investment. Naturally, this was the expectation, but in any investment there is a downside risk. There is no indication from the record of a broader scheme between these parties which was not reflected in the written instrument. Rather, Sack is attempting to modify the terms of the instrument by asserting that it was effective and enforceable only if the project proved profitable. Sack is also attempting to vary the written instrument by adding a term that the Note was non-transferable.

In reference to the rule announced in Edwards v. City Nat'l Bank, supra. the court has stated:

Actually a close look at these cases discloses the Edwards principle is not an "exception" to the general parol evidence rule at all, namely, that one can "prove" an oral contract by parol evidence (as distinguished from attempting to contradict or vary the terms of one). So the specific question posed by the facts of this case is: Do the answers of defendants allege a larger comprehensive oral agreement as a part performance of which the note in question was executed? If they do then the court erred in granting summary judgment, otherwise not.

Lampkin v. Hawks, 532 P.2d 483, 484 (Okla.App. 1975).

The Court concludes that Sack provided no evidence that the execution of the promissory note was only part of a much larger business scheme entered into by these parties.

Plaintiff offers evidence that Victor sent Sack an Acknowledgement of Assignment letter, dated June 20, 1984, which Sack

executed and returned to Victor. The letter clearly and unambiguously gives Sack notice of the assignment of the promissory note and obligates Sack to pay the amount owed under the terms of the Sack Note to both Dan Stefanoff and Victor, jointly. If an extrinsic agreement existed between Sack and Stefanoff which modified the terms of the Sack Note, Sack should have advised Victor at the time he received notice of the assignment. Instead, he executed the Acknowledgement of Assignment and returned it to Victor. Such conduct constitutes waiver, and Sack is now estopped from asserting against Victor issues of assignability or modification.

As his second defense, Sack alleges that Victor (and now FSLIC) are not good faith holders of the Sack Note for the reason that the relationship between Stefanoff and Victor was not at arm's length and Victor is charged with the "knowledge, information, duties, burdens and agreements made by [d]efendant Stefanoff" with regard to Stefanoff's business transactions. Sack provides no authority for this assertion.

The law regarding holder in due course status is codified under 12A O.S. §3-302 which defines a holder in due course as one who takes the instrument for value, in good faith, and without notice that it is overdue or has been dishonored or of any defense against it on the part of any person.

Sack portrays a substantially irrelevant scenario of activities allegedly engaged in by Stefanoff as an advisor to the members of Victor's board of directors. Then he makes a tenuous

argument that since Stefanoff was allegedly responsible for "tying bad loans into new loans" he could not have been dealing at arm's length when he signed the \$500,010.00 promissory note in favor of Victor. Sack makes only conclusory allegations regarding this issue and fails to provide any factual evidence of bad faith regarding the \$500,010.00 promissory note. Under 12A O.S. §3-302, the rule is that only actual notice of default or other defense can preclude holder in due course status, constructive notice (even if shown) is not sufficient. If the document itself does not give notice of suspicious circumstances, Victor is under no duty to conduct an independent investigation. In Bricks Unlimited v. Ages, 672 F.2d 1255, 1259 (5th Cir. 1982) the court concisely set forth the law:

The rule under the UCC is that, in the absence of anything to warn him to the contrary, one who takes a negotiable instrument may assume that the persons with whom he deals are acting honestly and in good faith. The imposition of a duty to make inquiry as to all possible claims "would so burden such transactions as to create insuperable impediments to the free exchange of negotiable paper, an indispensable part of modern business."

Id. citing Jaeger & Branch, Inc. v. Pappas, 433 P.2d 605, 607-08 (Utah 1967).

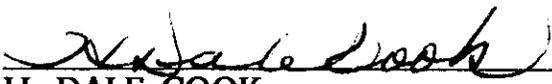
In the Security Agreement executed by Stefanoff to Victor, Stefanoff warranted to Victor that the collateral assigned (the Sack Note) was free of liens or defects. Further, by executing the Acknowledgement of Assignment, Sack acknowledged to Victor his approval of the transaction. Victor was without any notice of defect or default and therefore qualifies as a holder in due course.

In that this Court has found and concluded that Victor was a holder in due course the FSLIC, as successor and receiver, would retain the status as a holder in due course. Further, the Court finds that federal regulatory authorities, like the FSLIC, are offered extended protection under 12 U.S.C. §1823(e) which provides:

No agreement which tends to diminish or defeat the right, title or interest of the [Regulatory Authority] in any asset acquired by it under this section, either as security for loan or by purchase, shall be valid against the [Regulatory Authority] unless such agreement (1) shall be in writing, (2) shall have been executed by the bank and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the bank, (3) shall have been approved by the board of directors of the bank or its loan committee, which approval shall be reflected in the minutes of said board or committee, and (4) shall have been continuously, from the time of its execution, an official record of the bank.

Wherefore, premises considered, it is the Order of the Court that the motion for summary judgment as originally filed by Victor Federal Savings and Loan Association is hereby granted. Judgment will be filed of record in favor of the current plaintiff, Federal Savings and Loan Association and against defendant Theodore Sack.

*IT IS SO ORDERED* this 10~~th~~ day of May, 1989.

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

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

FILED

MAY 10 1989

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

ROBERT JOHANSEN,  
  
Plaintiff,  
  
vs.  
  
CITY OF BARTLESVILLE,  
  
Defendant.

}  
}  
}  
}  
}  
}  
}  
}  
}  
}

No. 84-C-238-C ✓

ORDER OF DISMISSAL

Pursuant to the Judgment and directives of the United States Court of Appeals for the Tenth Circuit, Case No. 84-2753, it is the Order of this Court with respect to plaintiff's claim for injunctive and declaratory relief under 42 US.C. §1983 that any judgment, findings and conclusions are vacated and said cause is dismissed as moot.

IT IS SO ORDERED this 8th day of May, 1989.

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

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

MAY -9 1989

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

HESS OIL VIRGIN ISLANDS CORP., )  
et al., )  
)  
)  
)  
Plaintiff, )  
)  
vs. )  
)  
UOP, INC., a Delaware )  
corporation, )  
)  
)  
Defendant. )

No. 75-C-383-C

ORDER

Now before the Court for its consideration is the motion of the plaintiffs to seek discovery of attorney fees.

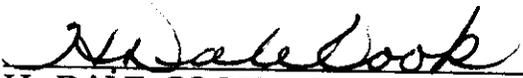
The United States Court of Appeals for the Tenth Circuit has remanded this case for, among other things, a determination of whether plaintiffs are entitled to attorney fees and in what amount. Hess Oil Virgin Islands Corp. v. UOP, Inc., 861 F.2d 1197 (10th Cir. 1988).

Plaintiffs now move for discovery regarding attorney fees incurred by defendant, as this information is "relevant to and will assist the Court in ascertaining the reasonableness of fees incurred and sought by plaintiffs." Plaintiffs have cited no authority in support of their motion, and defendant objects

thereto. The Court has determined that any such information would not be significantly helpful to the Court.

It is the Order of the Court that the motion of the plaintiffs to seek discovery of attorney fees is hereby DENIED.

*IT IS SO ORDERED* this 9<sup>th</sup> day of May, 1989.

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

FILED

MAY 8 1989

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

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

ROGER HIMSTREET and SHARON  
HIMSTREET, formerly Husband  
and Wife,

Plaintiffs,

v.

CITY OF BARNSDALL, a munici-  
pality within the State of  
Oklahoma, and JESSE GARRETT,  
an individual,

Defendants.

No. 88-C-225-B

ORDER

This matter comes before the Court on Plaintiff Roger Himstreet's Motion for New Trial. On January 19, 1989 this Court sustained Defendants' Motion for Summary Judgment. The Motion for New Trial was filed pursuant to Fed.R.Civ.P. 59 contending there are material issues of fact to be litigated.

Plaintiff submits an affidavit of Dr. Steven Langarten in support of his Motion for New Trial that states "there is a reasonable possibility that substantial delay in the initiation of therapy in the course of a 'stroke in evolution' could have contributed to the extensive progression of Mr. Himstreet's stroke." In the Court's Order filed January 19, 1989, the Court referred to a letter from Dr. Langarten with the identical language. The Court noted that the letter was not under oath and therefore did not conform to the requirements of Fed.R.Civ.P. 56. More importantly, the Court held and re-affirms herein that the standard is one of reasonable probability, not reasonable

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possibility. Plaintiff therefore has failed to establish a question of material fact. Celotex Corp. v. Catrett, 447 U.S. 317 (1986); Commercial Standard Insurance Co. v. Feaster, 259 F.2d 210 (10th Cir. 1958).

All other issues raised by Plaintiff were considered by the Court on January 19, 1989. No new issues of fact have been urged.

Plaintiff argues the Court has failed to address his claim for false arrest and that the arrest was without probable cause in violation of the United States Constitution. The Court has studied Plaintiff's "Amended Complaint After Removal" and finds no such cause of action pled. Moreover, the Court herein finds that there is no factual dispute as to probable cause for the arrest. Although the officers were mistaken about Plaintiff driving under the influence of drugs or alcohol, there was probable cause to arrest Plaintiff. Plaintiff failed to establish an issue of fact that there was no probable cause for the arrest and detention or that any injury was a result of a violation of 42 U.S.C. §1983.

The Motion for New Trial is OVERRULED.

DATED this 8<sup>th</sup> day of May, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

MAY -8 1989 K

MACK C. SILVY, CLERK  
U.S. DISTRICT COURT

BOB F. HENNING, JR., ROCKY D. WOOD, )  
and CITY FINANCE OF OKLAHOMA, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
AMERICAN GENERAL FIRE AND CASUALTY )  
CO., a foreign insurance company; )  
and NATIONAL STANDARD INSURANCE )  
COMPANY, a foreign insurance )  
company, )  
 )  
Defendants. )

No. 87-C-547-C ✓

ORDER OF JUDGMENT

This matter came on for jury trial before this Court on Monday, April 24, 1989, on a complaint filed by Rocky Wood against American General Fire and Casualty Company and National Standard Insurance Company, wherein the Plaintiffs sought damages in the amount of \$24,500.00 for alleged loss of personal property in a fire which occurred on June 25, 1986. Defendants, American General and National Standard, stipulated that a policy of insurance was in full force and effect at the time of the loss between the parties but denied any liability under the policy alleging that Plaintiff Rocky Wood set the fire or caused the fire to be set which destroyed the contents and further alleged Rocky Wood submitted false and fraudulent proof of loss in support of Plaintiff's claim.

Defendants cross-petitioned against Plaintiff Rocky Wood alleging arson and false swearing on the proof of loss and seeking

44

\$47,500.00 damages which Defendants were required to pay under their policy to loss payees City Finance Company and Bob Henning.

After a two day trial, the jury on April 25, 1989, returned a verdict on the complaint against the Plaintiff and in favor of Defendants. On Defendants' cross-complaint, the jury found in favor of the Plaintiff and against the Defendants.

WHEREFORE, this Court finds and it is so ordered that for their cause of action against Defendants, Plaintiff Rocky D. Wood take nothing. It is further ordered that for their cross-complaint against Plaintiff Rocky D. Wood, Defendants take nothing, and that both parties shall bear their own costs and attorney's fees.

ENTERED this 8<sup>th</sup> day of May 1989.

  
\_\_\_\_\_  
JUDGE H: DALE COOK

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

MAY 8 1989

PEOPLES FEDERAL SAVINGS & )  
LOAN ASSOCIATION OF )  
BARTLESVILLE, OKLAHOMA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MIDAMERICA FEDERAL SAVINGS )  
AND LOAN ASSOCIATION OF )  
TULSA, OKLAHOMA, )  
 )  
Defendant. )

U.S. DISTRICT COURT

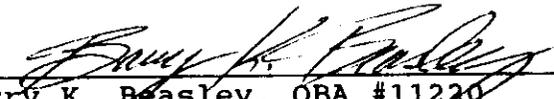
No. 88-C-1343-E

STIPULATION OF DISMISSAL

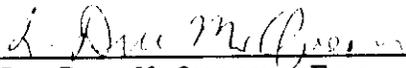
The Federal Savings and Loan Insurance Corporation, as Receiver for MidAmerica Federal Savings and Loan Association (the "FSLIC"), by and through its counsel of record, Barry K. Beasley, Local America Bank of Tulsa ("Local America") as Successor in Interest to MidAmerica Federal Savings and Loan Association,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

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

APPROVED AS TO FORM:

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

By:   
J. Sanaad Titus, Esq.  
BOONE, SMITH, DAVIS & HURST  
500 ONEOK Plaza  
100 West 5th Street  
Tulsa, Oklahoma 74103  
(918) 587-0000  
Attorney for PEOPLES FEDERAL  
SAVINGS & LOAN ASSOCIATION OF  
BARTLESVILLE, OKLAHOMA

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

FILED

MAY 8 1989

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

W. L. Silver, Clerk  
U.S. DISTRICT COURT

SALLY J. McDANIEL, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THE CITY OF TULSA, OKLAHOMA, )  
 LARRY J. BAYLES, JR., and )  
 RAY LAMAR BEACH, )  
 )  
 Defendants. )

No. 88-C-1582-B

ORDER

This matter comes before the Court on Defendant City of Tulsa's Motion to Dismiss Plaintiff Sally J. McDaniel's second cause of action. At the status conference held May 8, 1989 Plaintiff's counsel Rabon Martin conceded that the second cause of action should be dismissed.

Therefore, the Motion to Dismiss Plaintiff's second cause of action is hereby SUSTAINED.

IT IS SO ORDERED this 8<sup>th</sup> day of May, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

MARY E. JEFFRIES,

Plaintiff,

v.

HARDEE'S FOOD SYSTEMS, INC.

Defendant.

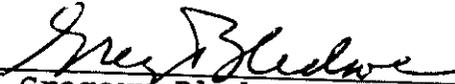
Civil Action No.  
88-C-465-E

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,  
MARY E. JEFFRIES

For Defendant,  
HARDEE'S FOOD SYSTEMS, INC.

  
D. Gregory Bledsoe  
1515 South Denver  
Tulsa, Oklahoma 74119-3828

  
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 COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
MAY -8 1988

FRANK H. MAHAN,

Plaintiff

v.

UNITED STATES OF AMERICA,

Defendant

v.

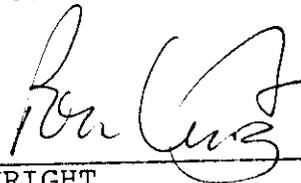
W.E. ROWSEY, III and WILLIAM G.  
PATTERSON,

Additional Defendants  
on Counterclaim,

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

STIPULATION FOR DISMISSAL

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



RON WRIGHT  
P.O. Box 707  
Muskogee, Oklahoma 74002-0707

ATTORNEY FOR W.E. ROWSEY



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

ATTORNEY FOR DEFENDANT

FILED

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

MAY 5 1989

GORDON C. UPSHAW, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 LEMKE WHOLESale, INC., an )  
 Arkansas corporation, )  
 )  
 Defendant. )

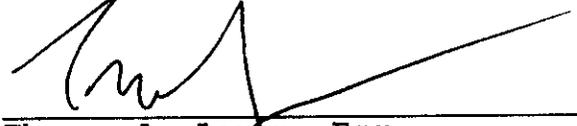
John M. S. Voss, Clerk  
U.S. DISTRICT COURT

No. 88-C-813-B

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW Plaintiff Gordon Upshaw, by and through his attorney of record, and Defendant Lemke Wholesale, Inc., by and through its attorney of record, and pursuant to Rule 41(a) of the Federal Rules of Civil Procedure do herein stipulate that the above cause of action, and all claims asserted therein, is dismissed with prejudice to the refiling thereof.

Respectfully submitted,



Thomas A. Layon, Esq.

ATTORNEY FOR PLAINTIFF  
GORDON C. UPSHAW

OF COUNSEL:

LAYON, CRONIN & TRUSTER  
1850 South Boulder, Ste. 200  
Tulsa, OK 74119  
(918) 583-5538



Phil R. Richards, OBA #10457

ATTORNEY FOR DEFENDANT  
LEMKE WHOLESALE, INC.

OF COUNSEL:

RICHARDS, PAUL, RICHARDS  
& SIEGEL  
9 East 4th Street, Suite 400  
Tulsa, OK 74103  
(918) 584-2583

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

INTERNAL REVENUE SERVICE AND )  
JAY C. GROOMS, REVENUE OFFICER, )  
INTERNAL REVENUE SERVICE, )  
 )  
Petitioners, )  
 )  
vs. )  
 )  
LARRY EADES and )  
BEVERLY A. EADES, )  
 )  
Respondents. )

MAY 4 1989

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

Civil Action No. 89-C-031-E

ORDER DISCHARGING RESPONDENTS AND DISMISSAL

ON THIS 3<sup>rd</sup> day of May, 1989, Petitioner's Motion to Discharge Respondents and for Dismissal came for hearing and the Court find that Respondents have now complied with the Internal Revenue Service Summonses served upon them September 28, 1988, that further proceedings herein are unnecessary and that the Respondents, Larry Eades and Beverly A. Eades, should be discharged and this action dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the Respondents, Larry Eades and Beverly A. Eades be and they are hereby discharged from any further proceedings herein and this action is hereby dismissed.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

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

FILED

MAY 4 1989

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

IN RE HOME-STAKE PRODUCTION  
COMPANY SECURITIES LITIGATION

M.D.L. DOCKET NO. 153

-----  
LELAND L. LEACHMAN, ET AL.

Plaintiffs,

Civil Action  
No. 74-C-178

v.

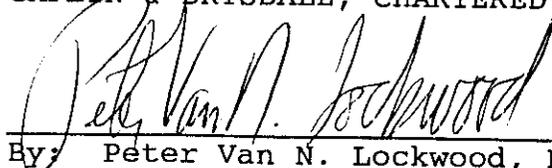
DRYFOOS & CO. AND  
KENT M. KLINEMAN,

Defendants.

STIPULATION FOR DISMISSAL

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, that all claims asserted against defendant Kent M. Klineman are hereby dismissed with prejudice and without costs to either party.

CAPLIN & DRYSDALE, CHARTERED



By: Peter Van N. Lockwood, Esq.  
Suite 1100  
One Thomas Circle, N.W.  
Washington, D.C. 20005  
(202) 862-5000

DATED: April 5, 1989

Attorneys for Plaintiffs

2653

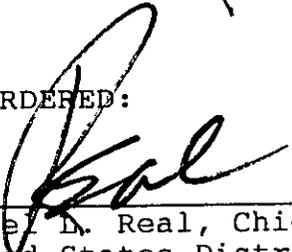
STEIN, ZAUDERER, ELLENHORN,  
FRISCHER & SHARP

By:   
David N. Ellenhorn, Esq.  
45 Rockefeller Plaza  
New York, New York 10111

DATED: New York, New York  
May 1, 1989

Attorneys for Kent M. Klineman

SO ORDERED:

  
Manuel D. Real, Chief Judge  
United States District Court  
Central District of California

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

**F I L E D**

**MAY 4 1989**

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

AMERICAN CLASSICS, INC., )  
 an Oklahoma corporation, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BARBARA "SUNNY" HOPPE, )  
 f/k/a BARBARA "SUNNY" FIAT, )  
 )  
 Defendant. )

No. 88-C-639-E

ORDER OF DISMISSAL

THIS cause came to be heard on Plaintiff's Motion for Voluntary Dismissal of said cause, and due deliberation has been had thereon, it is

ORDERED that this cause be and the same is hereby dismissed with prejudice, with each party to bear their own costs.

Dated this 3<sup>rd</sup> day of May, 1989.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

FILED

MAY 4 1989 dt

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

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

ELIZABETH A. BLANCHARD, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 OTIS R. BOWEN )  
 )  
 Defendant. )

87-C-927-E ✓

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate filed April 7, 1989 in which the Magistrate recommended that the case be remanded to the Secretary to (1) receive further testimonial evidence from Dr. Katz and a vocational expert concerning the effect of Plaintiff's rheumatoid arthritis as same affected her ability to do substantial gainful activity between May 20, 1983 and March 4, 1986, and (2) complete the sequential evaluation process and determine whether Plaintiff's impairments precluded her from engaging in substantial gainful activity during the same period.

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

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

It is, therefore, Ordered that the case is remanded to the Secretary to (1) receive further testimonial evidence from Dr. Katz and a vocational expert concerning the effect of Plaintiff's rheumatoid arthritis as same affected her ability to do

substantial gainful activity between May 20, 1983 and March 4, 1986, and (2) complete the sequential evaluation process and determine whether Plaintiff's impairments precluded her from engaging in substantial gainful activity during the same period.

Dated this 3<sup>rd</sup> day of May, 1989.

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

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

FILED

MAY - 11 1988

CLERK OF DISTRICT COURT

FRANKS & SON, INC.,  
an Oklahoma corporation,

Plaintiff,

vs.

INFORMATION SOLUTIONS,  
a foreign corporation,

Defendant.

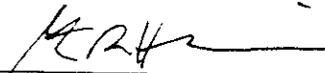
Case No. 88 C 1474E

STIPULATION <sup>of</sup> FOR DISMISSAL WITHOUT PREJUDICE

COME NOW Plaintiff and Defendant and stipulate to the dismissal of all claims and counterclaims herein without prejudice, with each party to pay its own respective costs and attorneys fees.

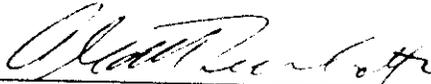
FRASIER & FRASIER

By

  
Steven R. Hickman, OBA #4172  
Attorneys for Plaintiff  
1700 S.W. Boulevard  
P.O. Box 799  
Tulsa, Oklahoma 74101  
Phone: (918) 584-4724

BUCHOLTZ, BULL & EWING, P.C.

By

  
Alan H. Bucholtz, #1590  
Attorneys for Defendant  
1666 South University Boulevard  
Denver, Colorado 80210-2890  
Phone: (303) 778-8822

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

**FILED**

MAY 14 1989

THOMAS VERDEL and SHARON VERDEL, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 CIGNA INSURANCE COMPANY, formerly, )  
 INA UNDERWRITERS INSURANCE COMPANY, )  
 )  
 Defendant.)

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

Case No. 88-C-376-E

DISMISSAL WITH PREJUDICE

Come now the Plaintiffs and hereby dismiss the above cause with prejudice.

Dated this 3rd day of May, 1989.

LASORSA, WEBER & MILES, P.C.

By: T. L. Weber  
Terry L. Weber, OBA No. 10149  
Bank of Oklahoma Tower  
1710 One Williams Center  
Tulsa, OK 74172  
(918) 583-1818

Attorneys for Plaintiffs, Thomas Verdel and Sharon Verdel

CERTIFICATE OF MAILING

THIS IS TO CERTIFY that I have this 3rd day of May, 1989, served a copy of the above and foregoing instrument upon Anthony P. Sutton, Feldman, Hall, Franden, Woodard & Farris, 525 S. Main, Suite 1400, Tulsa, OK 74103-4409, by placing same in the U. S. Mail, first-class postage prepaid.

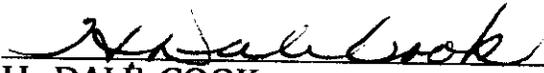
T. L. Weber  
Terry L. Weber



Had the plaintiff filed a notice of appeal, the Court would have inherent discretionary authority as to the setting of a supersedeas bond. Miami Int'l Realty Co. v. Paynter, 807 F.2d 871 (10th Cir. 1986). However, the Court is aware of no authority under Rule 60 (the rule plaintiff cites) or Rule 62 (dealing with stays of execution) which would permit the relief requested.

It is the Order of the Court that the motion of the plaintiff for relief from order is hereby DENIED.

IT IS SO ORDERED this 4<sup>TH</sup> day of May, 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**

**MAY 4 1988**

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

ROGER E. SUSI,  
Plaintiff,

vs.

THE FIRST NATIONAL BANK AND  
TRUST COMPANY OF VINITA,  
Oklahoma, a national  
banking association,

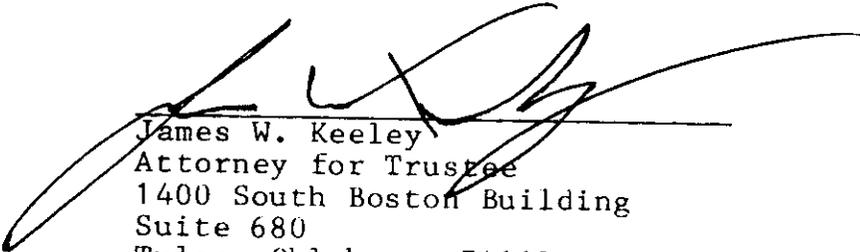
Defendant.

No. 86-833-C

VOLUNTARY DISMISSAL WITH PREJUDICE

COMES NOW, James W. Keeley, attorney for Fred W. Woodson, Bankruptcy Trustee of the Plaintiff Roger E. Susi, and hereby voluntarily dismisses the within action with prejudice pursuant to F.R.C.P.(a)(1).

Respectfully submitted,



James W. Keeley  
Attorney for Trustee  
1400 South Boston Building  
Suite 680  
Tulsa, Oklahoma 74119  
(918) 587-1988

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

FILED

MAY 4 1989

JAMES J. SYKORA, ET AL., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 JILL ZINK TARBEL, ET AL., )  
 )  
 Defendants. )

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

Case No. 88-C-553-E

**DISMISSAL WITH PREJUDICE**

COME NOW Plaintiffs, James J. Sykora; James J. Sykora, as Trustee of the James J. Sykora Money Purchase Pension Plan; James J. Sykora as Custodian of the James J. Sykora IRA; and, James J. Sykora as a Representative of Market Exchange Index Limited, an Oklahoma Limited Partnership ("Plaintiffs"), and pursuant to Rule 41(a) of the Federal Rules of Civil Procedure dismisses with prejudice Count XIV of Plaintiffs' First Amended Complaint for Money Had and Received against Defendants Brook D. Tarbel Revocable Intervivos Trust; Swannie Zink Tarbel (also known as Jill Zink Tarbel); Eddie M. Abbott, M.D.; Eddie M. Abbott, IRA; Nancy Norman; Doris D. Palmer; Terrell D. Palmer; Suzanne C. Palmer; Miles N. Carmichael; Noel L. Welsh; James Petroleum Trust U-A 2-2-74; Charlotte D. James Trust U-A 8-29-69; Glenn A. Nofsinger, Fields-Downs Randolph Employees Pension Trust; Elenore L. Roberts; Byron

B. Roberts; Beverly Trager; Park Lane Shopping Center, Inc.;  
Elliott W. Schwartz; and Ethel Cohen.

Respectfully submitted,

By:



Kerry L. Bocock  
McKENZIE & SYKORA  
210 West Park Avenue  
Oklahoma City, Oklahoma 73102  
Telephone: (405) 232-3722

and

Patrick M. Ryan  
RYAN, HOLLOMAN, CORBYN & GEISTER  
119 North Robinson, Suite 900  
Oklahoma City, Oklahoma 73102  
Oklahoma City, Oklahoma 73102  
Telephone: (405) 239-6041

Attorneys for Plaintiffs.

CERTIFICATE OF MAILING

This is to certify that on this 4th day of May, 1989, a true and correct copy of the above and foregoing was mailed, postage prepaid thereon, to the following parties:

Stan P. Doyle  
P. O. Box 1679  
Tulsa, Oklahoma 74101

W. Thomas Finley  
Nichols, Wolfe, Stamper, Nally & Fallis  
124 East Fourth Street  
Suite 400  
Old City Hall Building  
Tulsa, Oklahoma 74103

Donald R. Bradford  
Blackstock, Joyce, Pollard & Montgomery  
515 S. Main Mall, Suite 300  
Tulsa, Oklahoma 74103

Patrick M. Ryan  
Charles Geister  
Ryan, Holloman, Corbyn & Gesiter  
119 North Robinson  
Suite 900  
Oklahoma City, Oklahoma 73102

Alfred K. Morlan  
Jones, Givens  
3800 First National Tower  
Tulsa, Oklahoma 74103

Baker & Baker  
1850 South Boulder  
Tulsa, Oklahoma 74119

William J. Nissen  
Jo Lynn Haley  
Sidley & Austin  
One First National Plaza  
Chicago, Illinois 60603

Harry Parrish  
Knight, Wagner, Stuart & Wilkerson  
P. O. Box 1560  
Tulsa, Oklahoma 74101-1560

P. David Newsome, Jr.  
Deirdre Dexter  
Connor & Winters  
2400 First National Tower  
Tulsa, Oklahoma 74103

Ben K. McGill  
Dona K. Broyles  
Owens & McGill, Inc.  
1606 First National Bank Bldg.  
Tulsa, Oklahoma 74103

  
Kerry L. Bocock

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

**FILED**

*J* MAY - 3 1989

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

DAVID LORAN UNDERWOOD and  
BRENDA LEE GORDON, Personal  
Representatives of the Estate  
of Phyllis Rose Underwood,  
Deceased, and DAVID LORAN  
UNDERWOOD, individually, and  
BRENDA LEE GORDON, individually,  
  
Plaintiffs,

vs.

No. 87-C-644-B (Consolidated)

BILLY JAKE MYERS d/b/a  
RHINELAND AGRI-SHIPPERS d/b/a  
MYERS GRAIN AND FERTILIZER, and  
PROTECTIVE CASUALTY INSURANCE,  
a Missouri corporation,  
  
Defendants.

and

MILDRED REYNOLDS,  
  
Plaintiff,

vs.

No. 87-C-645-B

BILLY JAKE MYERS d/b/a  
RHINELAND AGRI-SHIPPERS d/b/a  
MYERS GRAIN AND FERTILIZER,  
et al.,  
  
Defendants,

and

CHARLES OVERGARD, Personal  
Representative of the Estate  
of Elizabeth Ann Overgard,  
Deceased, et al.,  
  
Plaintiffs,

vs.

No. 87-C-819-B

BILLY JAKE MYERS d/b/a  
RHINELAND AGRI-SHIPPERS d/b/a  
MYERS GRAIN AND Fertilizer, et al.,  
  
Defendants.

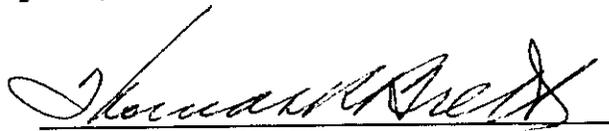


O R D E R

This matter comes before the Court upon joint motion of the parties for dismissal without prejudice as to the following corporate Defendants: Myers Grain and Fertilizer, Inc. and R.A.S. Trucking, Inc.

For good cause shown IT IS HEREBY ORDERED the above named corporate Defendants be dismissed without prejudice.

DATED this 3<sup>rd</sup> day of <sup>May</sup>~~April~~, 1989.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

CONNIE FINCHUM, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 OTIS R. BOWEN, M.D., )  
 SECRETARY OF HEALTH AND )  
 HUMAN SERVICES, )  
 )  
 Defendant. )

✓  
88-C-237-B

**FILED**

MAY - 3 1989

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

ORDER

The court has for consideration the Findings and Recommendations of the Magistrate filed April 7, 1989, in which the Magistrate recommended that the final decision of the Secretary of Health and Human Services be reversed. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

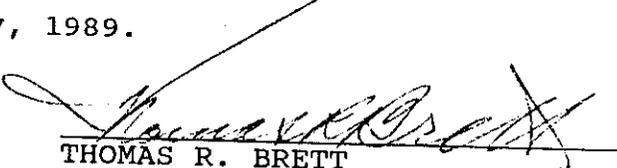
After careful consideration of the record and the issues, the court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

The record lacks substantial evidence to support the final decision of the Secretary of Health and Human Services that plaintiff is not disabled within the meaning of the Social Security Act.

It is therefore Ordered that the final decision of the Secretary is reversed. The evidence substantially establishes that plaintiff has a disability that makes her unable to do her past relevant work or any other relevant work available in the national economy and the court concludes that she is entitled to disability benefits under §§ 1602 and 1614 of the Social Security

Act, 42 U.S.C. § 318 et seq. This case is remanded to the Secretary for computation of benefits payable to plaintiff.

Dated this 3<sup>rd</sup> day of May, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

MAY - 3 1989

JOHN W. COLLIS, III, and )  
PHYLLIS COLLIS, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
ROBERT B. WELTER and )  
NATIONAL STEEL CORPORATION, )  
a foreign corporation, )  
 )  
Defendants. )

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

No. 88-C-460-B

ORDER OF DISMISSAL

NOW on this 3<sup>rd</sup> day of May, 1989, upon the written application of the Plaintiffs, John W. Collis, III, and Phyllis Collis, and the Defendants, Robert B. Welter and National Steel Corporation, for a dismissal with prejudice of the Complaint of Collis v. Welter, et al., and all causes of action therein, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action. The Court being fully advised in the premises finds said settlement is to the best interest of the Plaintiffs, and that said Complaint should be dismissed pursuant to said application.

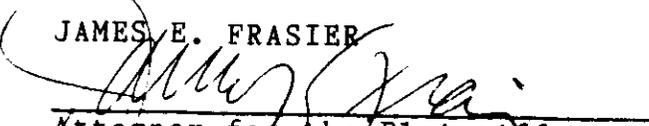
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiffs, John W. Collis, III, and Phyllis Collis, against the Defendants, Robert B. Welter and National Steel Corporation, be and the same hereby are dismissed with prejudice to any future action.

s/ THOMAS R. BRETT

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

APPROVALS AS TO FORM:

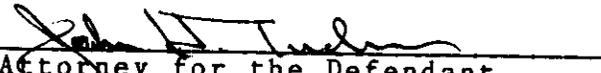
JAMES E. FRASIER

  
\_\_\_\_\_  
Attorney for the Plaintiffs

RICHARD D. WAGNER

  
\_\_\_\_\_  
Attorney for the Defendant  
Robert B. Welter

JOHN H. TUCKER

  
\_\_\_\_\_  
Attorney for the Defendant  
National Steel Corporation

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

MAY -3 1989

JACK H. OLIVER, CLERK  
U.S. DISTRICT COURT

STATE FARM FIRE AND CASUALTY  
INSURANCE COMPANY,

Plaintiff,

vs.

NELLY BELKEN,

Defendant.

No. 88-C-557-C

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

This matter came on for nonjury trial on April 21, 1989. Plaintiff, State Farm Fire and Casualty Insurance Company (State Farm), brings this action seeking a determination by this Court of its responsibilities under a homeowner's liability policy it issued to Dwight McDaniel. Dwight McDaniel has been sued in Muskogee County Court for bodily injuries allegedly suffered by the defendant therein, Nelly Belken, when McDaniel assaulted Belken at the Muskogee Veterans Hospital on November 30, 1985. Plaintiff alleges that both Belken and McDaniel were employees of Muskogee Veterans Hospital and were acting in the scope of their employment at the time of the assault. Plaintiff seeks a declaration that there is no coverage under its homeowner's liability policy because

of the applicability of two exclusions contained with the policy: the intentional acts exclusion and the business pursuit exclusion.

In response, defendant Nelly Belken denies all allegations of plaintiff and affirmatively asserts that the homeowner's liability policy in question does provide coverage. Defendant asserts that McDaniel was not working at the time of the incident and had been told by his supervisor that he was not needed for that shift, therefore the business pursuit exclusion is inapplicable. Further Belken asserts that her injuries were not intentional because at the time of the incident McDaniel was under the influence of intoxicating beverages, and possibly drugs, and was therefore incapable of forming the necessary intent to injure her.

The Court has carefully considered the pleadings, testimony, exhibits and arguments of counsel, and in view of applicable caselaw, enters the following findings of fact and conclusions of law pursuant to Rule 52(a) F.r.Cv.P.

#### Findings of Fact

##### **Parties and Jurisdiction**

1. Plaintiff State Farm is a corporation organized under the laws of the State of Illinois with its principal place of business in Bloomington, Illinois. Nelly Belken is a resident of Tulsa County, Oklahoma. The incident which gives rise to this action occurred in Muskogee County, Oklahoma.

2. This Court has jurisdiction over the subject matter of this action as there is complete diversity of citizenship and the

amount in controversy exceeds \$10,000, exclusive of cost and interest.

3. Venue is proper within the Northern District of Oklahoma in that defendant Nelly Belken resides in this judicial district.

#### **Background**

4. McDaniel is employed in the food service division of the Muskogee Veterans Hospital.

5. On the evening of November 29, 1985, McDaniel played cards with friends at his home in Muskogee and drank a few beers.

6. Around 12:00 midnight he went to a cafe-tavern in Muskogee called "The Hog Pen". He stayed at The Hog Pen until 5:00 a.m. playing dice at the gambling table. He admits to drinking cocktails and taking marijuana. McDaniel was up all night, and he returned home sometime after 5:00 a.m. to change clothes for work. He was scheduled to work the 6:30 a.m. to 3:30 p.m. shift at the Veterans Hospital.

7. McDaniel felt nauseated and called his supervisor, Mrs. Piggee, requesting sick leave. She informed him that they were short-handed and that he had to come in for work.

8. McDaniel exchanged cars with a friend and left for work around 7:30 a.m. On the way to work, about a block from the Veterans Hospital, McDaniel blacked out and the car he was driving ran into a water tower.

9. He felt dazed when he came to, left the car and walked the remainder of the way to the Veterans Hospital.

10. Upon seeing McDaniel, Mrs. Piggee told him to take a vacation day. He became agitated because she had not told him this before he came to work. He got into an argument with her and blacked out again.

11. McDaniel remembers little of the subsequent events which transpired. He testified at that point he was "out of it". McDaniel never commenced work on that day.

12. When Belken first observed McDaniel he was chasing the head nurse (Beverly) in a corridor of the hospital around 9:30 a.m. Beverly screamed for help and Belken called security.

13. Belken then observed McDaniel on top of an X-ray technician, holding her down on the floor.

14. McDaniel proceeded to a waiting area in the ward. There he was waving his arms and screaming at patients, demanding five dollars. Belken testified he was approaching the patients and she, along with others, was trying to keep him way from patients.

15. McDaniel jerked his arm away, left the waiting area, and went to a patient's room. He was still yelling "give me five dollars" and made a reference to needing the money for drugs.

16. He tried to get in bed with one of the patients. Belken intervened and he pushed her backward into a patient's bed. The head nurse, Beverly, intervened and he fell into a bed with an 89-year old patient who was asleep.

17. Belken testified McDaniel was getting worse by the minute. When she tried to assist, McDaniel grabbed her by the arm and put her in a neck lock. He eventually threw her into a wall.

18. Security arrived and they restrained him. He was admitted as a patient into the hospital.

19. Belken, a licensed practical nurse, testified that she had previously observed behavior of this fashion in people who were admitted at the Veterans Hospital with drug problems and were acting under the influence of drugs in their systems.

20. After his admission to the hospital, McDaniel tested positive for drug use. He was diagnosed as having an "acute psychotic episode secondary to drug use and multiple drug abuse".

21. The neurological exam revealed McDaniel was not oriented to persons, places or time.

22. McDaniel's urine test reported positive readings for the presence of PCP (Angel Dust), cannabis and valium in his system at the time of admission.

23. McDaniel was not properly oriented and does not remember pushing, shoving or striking hospital personnel.

24. McDaniel and Belken were not acquainted prior to the incident on November 30, 1985.

25. The Court finds that at no time during the incident on November 30, 1985, did McDaniel either intend or expect injury to occur to Belken, or others, as he was not properly oriented or acting out of deliberate actions.

26. The Court finds that the acts of McDaniel had no relationship to the business of the Veterans Hospital, did not contribute to or further the interest of that business, nor were

the actions an integral part of the employee performing the work to which he was employed.

27. The Court further finds that on the date in question there was in full force and effect a homeowner's liability policy issued by State Farm to its insured Dwight McDaniel. The policy provides that, should a claim for bodily injuries be made or suit be brought against McDaniel, State Farm would provide a defense at State Farm's expense and/or would pay up to the limit of liability for the damages for which McDaniel is legally liable.

28. The homeowner's liability policy excluded from coverage any bodily injury expected or intended by McDaniel and further excluded any bodily injury arising out of business pursuits of McDaniel except to activities which are ordinarily incident to non-business pursuits.

#### Conclusions of Law

##### **Parties and Jurisdiction**

1. This Court has jurisdiction under 28 U.S.C. §1332. This is a declaratory judgment action filed pursuant to 28 U.S.C. §2202.

2. Venue is proper within this judicial district pursuant to 28 U.S.C. §1391.

##### **Intentional Acts Exclusion**

3. Under Oklahoma law, the relevant inquiry is whether McDaniel intended the injury to Belken. The Oklahoma Court in Lumbermens Mutual Ins. Co. v. Blackburn, 477 P.2d 62 (Okla. 1970) stated:

In our opinion, the majority of the better-reasoned opinions in cases involving insurance policy exclusion provisions with language like the one involved here, or wording of similar import, require that the intention of the person, whose act caused the injury,

"must be to inflict the injury actually inflicted and must be directed against" the party injured "and not against another" or against a group of individuals ... The insurer's arguments are irrelevant because they focus upon acts possibly causing the injury and the question of whether or not they were intentionally performed -- rather than upon the injury, as does the language of the subject policy's exclusion provisions. Id. at 65.

4. State Farm applies an objective test, and asserts that it appears that McDaniel intended his acts of assaulting Belken. The Court does not agree. McDaniel was under the influence of drugs, acting irrationally. He was medically diagnosed as having an "acute psychotic episode" relating to the multiple abuse of drugs. McDaniel does not have any independent recollection of the events that transpired. This Court declines to follow the line of cases which hold that allowing intoxicated persons to come within policy coverage would offend public policy. See, e.g., American Family Mutual Insurance Co. v. Peterson, 405 N.W.2d 418 (Minn. 1987). An inebriated person is not capable of formulating the necessary intent to injure another. Intent must stem from the mind, not physical condition.

5. State Farm argues that McDaniel committed "intentional acts" by running in the corridor, pushing and assaulting Belken. However, a person who is in an automobile accident may be intentionally driving the vehicle prior to the accident but that does not mean the accident was intentional. The accident occurs because the driver has lost control of the vehicle. The only evidence before the Court is that McDaniel did not have control over himself at the time his vehicle ran into the water tower, nor at the time he assaulted Ms. Belken. At trial, State Farm's attorney conceded that McDaniel's automobile collision which occurred immediately

prior to walking into the Veterans Hospital was an accident and not an intentional act. If this conduct was not intentional then neither was his conduct inside the Hospital. The result, in each instance, stemmed from the same cause.

6. The Court concludes that State Farm has failed to prove that Belken's injuries were intended or expected by McDaniel. McDaniel's mental state was such that as a matter of law he could not have expected or intended any injury to Belken or others, as he was not cognizant of his actions.

#### **Business Pursuit Exclusion**

7. McDaniel drove to the Veterans Hospital with the intent to work his shift, as directed by his supervisor. It is undisputed that McDaniel would not have been on the premises had he not been scheduled to work the morning of November 30. After some difficulty, McDaniel arrived at work, but he did not assume any work responsibilities. His supervisor told him to take a vacation day due to his physical condition, he was not fit to work.

8. State Farm's reliance on Davis v. Frederick's, Inc., 517 P.2d 1014 (Utah 1973) is misplaced. In Davis, a college student was working as an assistant cook at a cafe. His shift varied to accommodate his class schedule. On the day of the incident he left work early. Immediately after leaving, he returned to ask his supervisor when he should report back for his next shift. He went through a rear door, which opened onto an alley leading to a parking lot. As he did so, he swung open the screen door just as the plaintiff was walking by. The door knocked her to the ground.

The court held applicable the business pursuit exclusion within the employee's insurance policy. In so holding, the court stated that egress and ingress are necessary and common activities associated with work. If the activity is something which is "reasonably necessary in carrying on of the business", then such activity should be regarded as a part of the business pursuit. Davis, supra, at 1015.

9. In the case before this Court, McDaniel's conduct was not "reasonably necessary in carrying on the business".

10. Further, State Farm relies on Reliance Insurance Co. v. Fisher, 521 P.2d 193 (Mont. 1974), wherein an assault between co-workers at a school was held to come within the business pursuit exclusion. Poeppel, a school teacher, alleged that he had been attacked and struck by Fisher, also a teacher. The incident arose during regular school hours. Poeppel had physically ejected one of his students from his classroom into the hallway. Fisher observed the actions of Poeppel and the student, and reported them to the assistant principal. Fisher then returned to the vicinity of Poeppel and the disciplined student to intervene. The altercation occurred during which Fisher struck Poeppel. The court held that "the altercation was clearly connected with and related to school activities". Reliance Insurance, supra at 197.

11. This Court concludes that Reliance Insurance is not applicable to the case before it. In Reliance Insurance, both employees were on the premisses to perform work, had engaged in work, and the assault arose out of the course of the employee's

employment. Teachers are hired to supervise, teach and look after the welfare of their students. The teachers differed as to the definition of those terms. In the case before this Court, McDaniel was not acting within the scope of his employment. He never commenced work; in fact, he was told to go home. Further, the altercation was clearly not connected with or related to Hospital activities.

12. State Farm's reliance on Maryland Casualty Co. v. Farmers Alliance, 566 P.2d 168 (Okla.App. 1977) is equally inapplicable. In that case, an explosion occurred when a carpenter lit a cigarette after he connected a gas tank to the gas plumbing in order to provide heat in a house in which he was working. The court applied the exclusion commenting that smoking is a common habit of a workman. 566 P.2d at 170. The case is distinguishable in that psychotic behavior incident to multiple drug abuse is not a "common habit" of workers.

13. In interpreting a "business pursuit exclusion" in a homeowner's policy, the Oklahoma Supreme Court has instructed:

In construing an insurance contract, its terms and words, if unambiguous, must be accepted in their plain, ordinary and popular sense. Penley v. Gulf Ins. Co., Okl., 414 P.2d 305 (1966). Parties to insurance contract are at liberty to contract for insurance to cover such risks as they see fit and are bound by terms of contract and courts will not undertake to rewrite terms thereof. The construction of an insurance policy should be a natural and reasonable one, fairly construed to effectuate its purpose, and viewed in the light of common sense so as not to bring about an absurd result.

Torres v. Sentry Ins., 558 P.2d 400 (Okla. 1976).

14. A reading of the exclusionary language contained in the policy and the policy as a whole makes it quite evident that the exclusions do not apply to the facts of this case.

Therefore, the Court finds and concludes that the defendant Nelly Belken<sup>1</sup> is entitled to a declaratory judgment in her favor finding that the plaintiff, State Farm Fire and Casualty Insurance Company, must provide to Dwight McDaniel the benefits of his homeowner's insurance policy, particularly coverage for any bodily injury claim proved by Nelly Belken and/or State Farm Fire and Casualty Insurance Company, must provide to Dwight McDaniel a defense of the state court action brought by Nelly Belken in Muskogee County, Oklahoma.

IT IS SO ORDERED this 2<sup>nd</sup> day of May, 1989.

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

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<sup>1</sup>Dwight McDaniel was originally named as a co-defendant. He filed his Answer stating that "he will not contest the cause plead by the plaintiff."

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

MAY -3 1989

JACK D. SLAVES, CLERK  
U.S. DISTRICT COURT

STATE FARM FIRE AND CASUALTY  
INSURANCE COMPANY,

Plaintiff,

vs.

NELLY BELKEN,

Defendant.

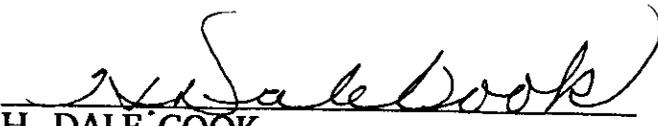
No. 88-C-557-C

JUDGMENT

This matter came before the Court for nonjury trial. 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 Nelly Belken, and against plaintiff State Farm Fire and Casualty Insurance Company on plaintiff's claim for declaratory relief under its insurance policy.

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

  
H. DALE COOK

Chief Judge, U. S. District Court

**FILED**

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

MAY - 3 1989  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

JACKIE L. GOODELL, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 OTIS R. BOWEN, Secretary of Health )  
 and Human Services, )  
 )  
 Defendant. )

88-C-373-B

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate filed April 12, 1989 in which the Magistrate recommended that this case be remanded to the Secretary for a further hearing; that additional inquiry be made of the claimant consistent with the duty recognized in Dixon; and that further expert vocational testimony be taken, in light of the additional, heretofore unconsidered evidence, particularly as related to medication, as to the period in question.

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

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

It is, therefore, Ordered that this case is remanded to the Secretary for a further hearing; that additional inquiry be made of the claimant consistent with the duty recognized in Dixon; and that further expert vocational testimony be taken, in light of the additional, heretofore unconsidered evidence, particularly as

3

related to medication, as to the period in question.

Dated this 3<sup>rd</sup> day of May, 1989.

  
\_\_\_\_\_  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

**FILED**

MAY - 3 1989

COBB OIL AND GAS COMPANY, )  
a Corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MOBIL OIL CORPORATION, )  
a Corporation, )  
 )  
Defendant. )

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

Case No. 88-C-47-B

ADMINISTRATIVE CLOSING ORDER

The parties herein having requested the Court continue this action for sixty (60) days pending the final settlement.

IT IS HEREBY ORDERED that the Clerk administrative-ly 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 this litigation.

If by July 1, 1989, the parties have not reopened the proceedings for the purpose of obtaining a final determination herein, this action shall be deemed dismissed without prejudice.

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

S/ THOMAS R. BRETT

---

APPROVED FOR ENTRY

COMFORT, LIPE & GREEN, P.C.

By: Richard A Paschal  
Richard A. Paschal  
2100 Mid-Continent Tower  
401 South Boston Avenue  
Tulsa, Oklahoma 74103  
(918) 599-9400

ATTORNEYS FOR PLAINTIFF,  
COBB OIL AND GAS COMPANY

J. Clay Christensen  
GARY W. DAVIS  
J. CLAY CHRISTENSEN

- Of the Firm -

CROWE & DUNLEVY  
A Professional Corporation  
1800 Mid-America Tower  
20 North Broadway  
Oklahoma City, Oklahoma 73102  
(405) 235-7700

ATTORNEYS FOR DEFENDANT,  
MOBIL OIL CORPORATION

557JCC89A

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA MAY -3 1989

DELVIN LEWIS RHODES, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 TULSA CITY POLICE DEPARTMENT, )  
 et al, )  
 )  
 Defendants. )

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

88-C-274-C

ORDER

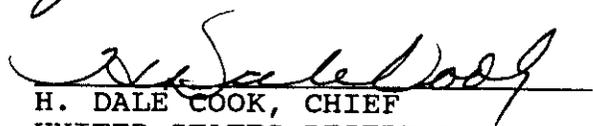
The Court has for consideration the Report and Recommendation of the United States Magistrate filed April 13, 1989 in which the Magistrate recommended that both motions to dismiss, as filed by the City and County, be granted and, further, that the entire action be dismissed.

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 both motions to dismiss, as filed by the City and County, are granted and, further, that the entire action is dismissed.

Dated this 3 day of May, 1989.

  
H. DALE COOK, CHIEF  
UNITED STATES DISTRICT JUDGE

16

**FILED**

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

**MAY - 3 1989**

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

MIDAMERICA FEDERAL SAVINGS AND )  
LOAN ASSOCIATION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
SHERIDAN PROPERTIES, INC., et al, )  
 )  
Defendants. )

88-C-1344-B

**ORDER**

The Court has for consideration the Report and Recommendation of the United States Magistrate filed April 14, 1989 in which the Magistrate recommended that Green Country Appraisal Service's Motion to Dismiss be granted and, that the "Third-Party Petition" be dismissed against Green Country.

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 Green Country Appraisal Service's Motion to Dismiss is granted and, that the "Third-Party Petition" is dismissed against Green Country.

Dated this 3<sup>rd</sup> day of May, 1989.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

T. D. WILLIAMSON, INC.,  
an Oklahoma corporation,

Plaintiff,

vs.

R. L. FRAILEY, INC.,  
a Delaware corporation,

Defendant.

FILED

MAY - 3 1989

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

No. 87-C-355-E

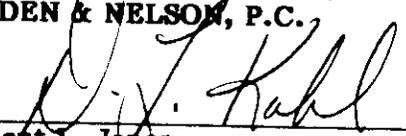
STIPULATION OF DISMISSAL

Plaintiff and defendant, pursuant to Fed. R. Civ. P. 41(a)(1)(ii), stipulate that all claims and counterclaims raised by the parties in the above-styled action shall be, and hereby are, dismissed with prejudice, with each party to bear its own costs herein.

Respectfully submitted,

HALL, ESTILL, HARDWICK, GABLE,  
GOLDEN & NELSON, P.C.

By

  
Kent L. Jones

Donald L. Kahl

Orval E. Jones

4100 Bank of Oklahoma Tower

One Williams Center

Tulsa, Oklahoma 74172

(918) 588-2700

ATTORNEYS FOR PLAINTIFF  
T.D. WILLIAMSON, INC.

**DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON**

By Linda C. Martin  
Dickson M. Saunders  
Linda C. Martin  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103

and

**SCHNADER, HARRISON, SEGAL &  
LEWIS**

Lawrence Schor  
1111 Nineteenth St., N.W.  
Suite 1000  
Washington, D.C. 20036

**ATTORNEYS FOR DEFENDANT,  
R.L. FRAILEY, INC.**

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MAY - 5 1989

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ONE 1986 BLACK FORD BRONCO, )  
FLORIDA LICENSE PLATE AVE-00E, )  
VIN 1FMDUI5H3GLA91912, et al., )  
 )  
Defendant. )

Frank Palmero, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 87-C-755-B

NOTICE OF DISMISSAL

Plaintiff, the United States of America, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, hereby gives notice that a certain defendant properties in the above-styled action are hereby dismissed without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, specifically, the defendant properties described as:

Residence of FRANCISCO BERNARDO PALMERO, a/k/a Frank Palmero, 1815 Bayshore Drive, Ft. Pierce, Florida, described as:

Tract "B" - From the southeast corner of Lot 2, Block 3, SURFSIDE, UNIT ONE, as per plat thereof recorded in Plat Book 10, page 17, St. Lucie County, Florida, Public Records, run South 28 deg.-51 min. West, along the west line of Bayshore Drive, 85 feet to a point of curvature; thence on a circular curve, concave to the northeast, having a radius of 75 feet, run 5 feet to the Point of Beginning of the lands herein described:

From said Point of Beginning continue on the aforesaid circular curve, 51.7 feet; thence Southwesterly, 215.52 feet to a point on the west boundary of Block 11, SURFSIDE, UNIT TWO, as per plat thereof recorded in Plat Book 11, Page 8, St. Lucie County, Florida, Public Records, said point being 272.82 feet southwesterly from the southwest corner of

aforesaid Lot 2, Block 3, SURFSIDE UNIT ONE, as measured along the bulkhead line disclosed by said plat; thence northerly along said bulkhead line 172.8 feet; thence Southeasterly, 150.47 feet to the Point of Beginning.

Any interest held by FRANCISCO BERNARDO PALMERO, a/k/a Frank Palmero, in real property described as:

That part of the South 275.00 feet of the Southwest Quarter (SW 1/4) of the Southeast Quarter (SE 1/4) of Section 27, Township 35 South, Range 40 East lying East of U.S. Highway No. 1, less however, the North 25.00 feet and the East 15.00 feet for right-of-way, situate, lying and being in St. Lucie County, Florida.

Any interest held by FRANCISCO BERNARDO PALMERO, a/k/a Frank Palmero, in 3.39 acres with structures described as:

From the northeast corner of the Southwest 1/4 of Section 7, Township 35 South, Range 39 East, St. Lucie County, Florida, run S 00°08'25" E along the 1/4 Section Line 48.46 feet, thence run S 89°42'13" W, 52 feet to the West line of Canal No. 55 and the South line of State Road 68 from the Point of Beginning, thence run S 00°08'25" E along the canal right of way 727.37 feet, then run N 87°14'51" W, 177.08 feet, thence run N 00°37'51" W 542.40 feet, thence run S 86°33'12" W, 104.10 feet, thence run N 02°50'54" W, 182.50 feet to the South line of State Road 68, thence run N 89°42'13" E, 293 feet to the Point of Beginning.

Respectfully submitted,

TONY M. GRAHAM  
United States Attorney

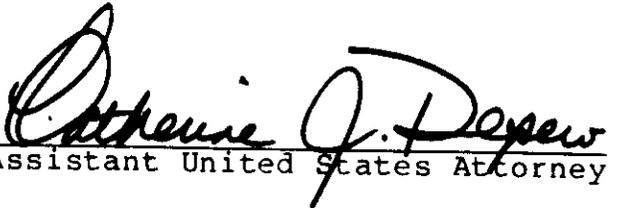


CATHERINE J. DEPEW, OBA # 3836  
Assistant United States Attorney  
3600 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 3<sup>rd</sup> day of May, 1989, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

Mr. G. Bertrand Hester  
2900 Chamblee-Tucker Road  
Building 12  
Atlanta, Georgia

  
Catherine J. Depew  
Assistant United States Attorney

ldp

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

**FILED**

**MAY 2 1989**

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

OMEGA TELECOMMUNICATIONS, INC., )  
 a Texas Corporation, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 UNITED VIDEO, INC., )  
 a Delaware Corporation, )  
 )  
 Defendant. )

NO. 88-C-1644-C

*87-C-370-C*

CONSENT JUDGMENT

The parties have advised the Court that they have agreed to the following terms of judgment in response to Defendant's Motion for Partial Summary Judgment:

1. The parties agree that this Court has jurisdiction over the subject matter of this controversy, and venue is proper with this Court.
2. Omega Telecommunications, Inc., has acquiesced in United Video, Inc.'s, (United Video's) Motion for Partial Summary Judgment regarding United States Patents Nos. 3,956,579 and 4,199,781. It is hereby the finding and conclusion of this Court that United Video's Motion for Partial Summary Judgment shall be and the same is hereby granted.
3. United States Patents Nos. 3,956,579 and 4,199,781 have not in the past and are not now infringed by any equipment, products, systems, or services of United Video nor by its past and present customers.

*Attendant  
Copy*

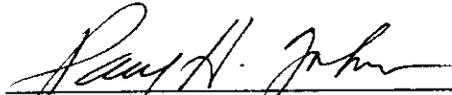
4. Each party shall bear its own costs and attorney's fees with respect to Defendant's Motion for Partial Summary judgment described in Paragraph 2 and 3 above.

ORDERED this 1<sup>st</sup> day of May, 1989.

  
UNITED STATES DISTRICT JUDGE  
H. Dale Cook, Chief, U.S. District  
Judge

APPROVED AS TO FORM:  
HEAD & JOHNSON  
228 W. 17th Place  
Tulsa, Oklahoma 74119  
918 584-4187

JONES, GIVENS, GOTCHER, BOGAN &  
HILBORNE, P.C.  
388 First National Tower  
Tulsa, Oklahoma 74103  
918 581-8217

  
Attorneys, United Video, Inc.  
Inc.

  
Attorneys, Omega Telecommunication,

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

MID-AMERICAS PROCESS SERVICES, )  
an Oklahoma corporation, )  
 )  
Plaintiff )  
 )  
vs. ) No. 88-C1593 B  
 )  
KOLD, INC., )  
a Louisiana corporation, )  
 )  
Defendant. )

50  
MAY -2 1989  
U.S. DISTRICT COURT

JOINT DISMISSAL WITH PREJUDICE

COME NOW the Plaintiff, MID-AMERICAS PROCESS SERVICES, an Oklahoma corporation, and the Defendant, KOLD, INC., a Louisiana corporation, and hereby jointly dismiss their respective causes of action against the other in the above entitled cause with prejudice to refiling.

DATED this 2<sup>nd</sup> day of May, 1989.

BOYD & NICHOLS  
111 West Fifth Street, Suite 800  
Tulsa, Oklahoma 74103  
(918) 582-3222

By [Signature]  
JEFF G. BOYD, OBA #10213  
Attorneys for Defendant,  
KOLD, INC

SNEED, LANG, ADAMS,  
HAMILTON & BARNETT  
2300 Williams Center Tower II  
Tulsa, Oklahoma 74103  
(918) 583-3145

By [Signature]  
James C. Lang, OBA #5218  
Mark L. Collier, OBA #013260  
Attorneys for Plaintiff,  
MID-AMERICAS PROCESS SERVICES



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

THOMAS DAVID KIEFER, a minor, by  
JOSEPH F. CLARK, JR., his  
Guardian ad Litem, and  
WILLIAM R. KIEFER and LUMDAUN  
KIEFER, Father and Mother of  
Thomas David Kiefer, individually,  
Plaintiffs,

v.

EMBASSY SUITES, INC., a Delaware  
corporation, d/b/a EMBASSY SUITES  
HOTEL, TULSA, OKLAHOMA; R & M  
AMUSEMENT CO., INC., an Oklahoma  
corporation, and/or ADA GAMES  
(DISTRIBUTING COMPANY), and  
ARDAC, an Ohio corporation,  
Defendants.

FILED

APR 26 1989

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

No. 88 C1619C ✓

FILED

MAY 2 1989

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

ORDER OF DISMISSAL WITHOUT PREJUDICE

Upon joint application for Dismissal Without Prejudice in  
the above matter as to Defendant, Embassy Suites, Inc.,

IT IS ORDERED, ADJUDGED AND DECREED that Defendant Embassy  
Suites, Inc. be dismissed from the above-styled matter without  
prejudice.

So ordered this 1<sup>st</sup> day of May, 1989.

W. S. Wood  
U.S. DISTRICT JUDGE

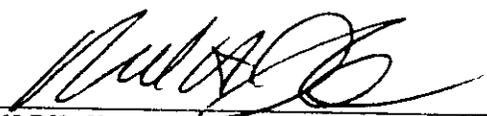
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DENVER WESLEY WILMOTH and )  
JEWELL A. WILMOTH, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
FIBREBOARD CORPORATION, et al., )  
 )  
Defendants. )

Case No. 87-C-403-B

STIPULATION OF DISMISSAL

COME NOW the Plaintiffs, Denver Wesley Wilmoth and Jewell A. Wilmoth, and hereby dismiss this cause of action against Defendant Flintkote Company without prejudice to the filing of a future action against said Defendant.

  
\_\_\_\_\_  
MARK H. IOLA  
Attorneys for Plaintiffs

OF COUNSEL:

UNGERMAN & IOLA  
P. O. 701917  
1323 East 71st Street  
Suite 300  
Tulsa, OK 74170-1917  
918/495-0550

  
\_\_\_\_\_  
DIXIE L. COFFEY  
Attorneys for Defendant,  
Flintkote Company

OF COUNSEL:

McKINNEY, STRINGER & WEBSTER, P.C.  
101 North Broadway  
Oklahoma City, Oklahoma 73102  
405/239-6444

CERTIFICATE OF SERVICE

I hereby certify that on this 1 day of ~~April~~<sup>May</sup>, 1989, a true and correct copy of the above and foregoing Stipulation of Dismissal has been mailed to the following:

Joan Godlove, Esq.  
Jones, Givens, Gotcher, Bogan & Hilborne  
3800 First National Tower  
Tulsa, OK 74103  
Attorneys for Defendants, Raymark  
Industries, Inc. and Celotex Corporation

Scott M. Rhodes, Esq.  
Huckaby, Fleming, Frailey,  
Chaffin & Darrah  
1215 Classen drive  
P. O. Box 60130  
Oklahoma City, OK 73146  
Attorneys for Defendant,  
Owens-Corning Fiberglas Corp.

Joe Michael Russell, Esq.  
Jody H. Randall, Esq.  
Smith, Ralston, Russell & Wright  
302 North Market, Suite 501  
Dallas, TX 75202  
Attorneys for Defendant,  
Eagle-Picher Industries, Inc.

Martha Phillips, Esq.  
Thomas, Glass, Atkinson, Haskins,  
Nellis & Boudreau  
525 South Main, Suite 1500  
Tulsa, OK 74103  
Attorneys for Defendant,  
Eagle-Picher Industries, Inc.

John F. McCormick, Jr., Esq.  
Pray, Walker, Jackman, Williamson & Marlar  
900 Oneok Plaza  
Tulsa, OK 74103  
Attorneys for Defendants, Fibreboard  
Corporation, Pittsburgh-Corning Corp.,  
Gaf Corporation, Keene Corporation,  
Owens-Illinois, Inc., H. K. Porter  
Company, Armstrong Cork Company and  
Flexitallic Gasket Company, Inc.

Stephen S. Boaz, Esq.  
Durbin, Larimore & Bialick  
920 North Harvey  
Oklahoma City, OK 73102-2610  
Attorneys for Defendant,  
Garlock, Inc.

  
\_\_\_\_\_  
MARK H. IOLA

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

FILED  
MAY 11 1988 *pw*

GARY SCHOOLEY et al

Plaintiff(s),

vs.

JOHN THOMAS

Defendant(s).

No.

- 88-C-400-C
- 88-C-403-C
- 88-C-524-C
- 88-C-1221-C
- 88-C-1222-C
- 88-C-1249-C

ADMINISTRATIVE CLOSING ORDER

The Deft 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 75 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 1 day of May, 1988.

*[Signature]*  
UNITED STATES DISTRICT JUDGE

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

**FILED**

MAY - 1 1989

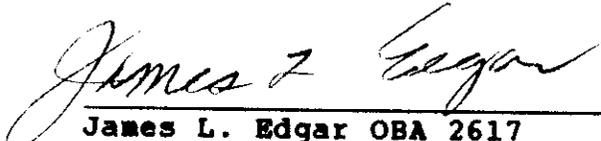
RONALD V. WOODROME, )  
Plaintiff, )  
v. )  
SUN OIL COMPANY AND )  
SCAFFOLDING RENTAL AND )  
ERECTOR SERVICE, INC. )  
Defendants.)

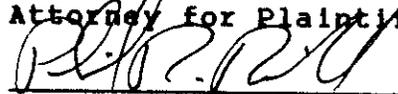
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 88-C-533-E

*of*  
**STIPULATION FOR DISMISSAL**

Pursuant to provisions of Rule 41 (a) FRCP, the parties stipulate that the Plaintiff's cause of action against the Defendant Scaffolding Rental and Erector Service be dismissed.

  
James L. Edgar OBA 2617  
2606 G. South Sheridan  
Tulsa, Oklahoma 74129  
(918) 834-2600  
Attorney for Plaintiff

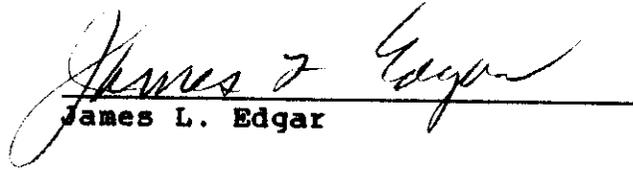
  
Phil Richards  
9 East 4th. Street  
Suite 400  
Tulsa, Oklahoma 74103  
Attorney for Defendant Sun

  
Richard C. Honn  
2421 East Skelly Drive  
Tulsa, Oklahoma 74103  
Attorney for Defendant  
Scaffolding Rental

**CERTIFICATE OF MAILING**

I Certify that a true, correct and exact copy of the above and foregoing Motion was mailed on the 1st. day of May, 1989 to Phil R. Richards, Richards, Paul, Richards & Siegel, 9 East 4th. Street, Suite 400, Tulsa, Oklahoma

74103, and to Richard C. Honn, 2421 East Skelly Drive, Tulsa,  
Oklahoma 74103.

  
James L. Edgar

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

FILED

MAY 7 1989

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

PAUL McALEXANDER,

Plaintiff,

v.

JIMELCO, INC.,

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 87-C-1027-C

JUDGMENT

This action came before the Court for a trial by jury. The issues have been tried and on April 21, 1989, the jury rendered its verdict.

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of the defendant, Jimelco, Inc., and against the plaintiff, Paul McAlexander.

Signed and entered this the 1 day of May, 1989.

(Signed) H. Dale Cook

H. DALE COOK  
UNITED STATES DISTRICT JUDGE

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

FILED

MAY -1 1989

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

GARY SCHOOLEY et al

Plaintiff(s),

vs.

JOHN THOMAS

Defendant(s).

No. 88-C-400-C  
88-C-403-C  
88-C-524-C  
88-C-1221-C  
88-C-1222-C  
88-C-1249-C

ADMINISTRATIVE CLOSING ORDER

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

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

IT IS SO ORDERED this 1 day of may, 1989.

*[Signature]*  
UNITED STATES DISTRICT JUDGE

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

FILED

MAY -1 1988 *pm*

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

GARY SCHOOLEY et al

Plaintiff(s),

vs.

JOHN THOMAS

Defendant (s).

No. 88-C-400-C  
88-C-403-C  
88-C-524-C  
~~88-C-1221-C~~  
88-C-1222-C  
88-C-1249-C

ADMINISTRATIVE CLOSING ORDER

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

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

IT IS SO ORDERED this 1 day of may, 1988.

*[Signature]*  
UNITED STATES DISTRICT JUDGE

26

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

FILED

MAY -1 1989

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

GARY SCHOOLEY et al

Plaintiff(s),

vs.

JOHN THOMAS

Defendant(s).

No. 88-C-400-C  
88-C-403-C  
88-C-524-C  
88-C-1221-C  
88-C-1222-C  
88-C-1249-C

ADMINISTRATIVE CLOSING ORDER

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

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

IT IS SO ORDERED this 1 day of may, 1989.

*[Signature]*  
UNITED STATES DISTRICT JUDGE

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

**FILED**

MAY - 1 1989

MACHINERY CONSULTANTS, INC., )  
)  
Plaintiff, )  
)  
vs. )  
)  
UMA CORPORATION, )  
)  
Defendant. )

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

Case No. 88-C-1373-B

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

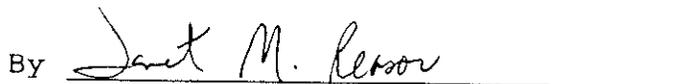
Plaintiff and Defendant, by and through their respective attorneys, would jointly stipulate that all of Plaintiff's claims herein should be dismissed with prejudice, with each party to bear his or her own costs and attorney fees.

UNGERMAN, CONNER & LITTLE

By: 

Thomas F. Birmingham  
1323 East 71st Street  
P.O. Box 701917  
Tulsa, Oklahoma 74170-1917

HALL, ESTILL, HARDWICK, GABLE,  
GOLDEN & NELSON, P.C.

By: 

Janet M. Reasor  
4100 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, Oklahoma 74172  
(918) 588-3944