

Clerk,
United States District Court
Northern District of Oklahoma
Tulsa, Oklahoma 74103

FILED

NOV 20 1989

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

Clerk:

11/22/89

This letter is to formally request that the court withdraw
my pending Title 18§2255 motion. I hereby request that no further
action be taken on the case.

Sincerely,

Jay J. Hayward

Jay J. Hayward
FCI Memphis
P.O. Box 34550
Memphis, Tennessee 38184

Case no: Criminal 86-CR-172-C
Civil # 89-C-890-C

RECEIVED

NOV 29 1989

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

3/22/



**United States
Postal Service**

TULSA, OK 74103-9998

November 30, 1989

RECEIVED

NOV 30 1989

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

All Building Tenants
Page Belcher Federal Building
Tulsa, OK 74103

Yesterday, a fire alarm was sounded to evacuate the building. The alarm was caused by smoke generated from a welding operation on the first floor. I have received reports that several tenants tried to return to their offices for coats, purses, etc.

If an alarm is sounded in the future, you are to immediately evacuate the building. Do not attempt to retrieve personal items. It was also noted that some building tenants re-entered the building prior to the "all clear". No one is to return to the building interior until instructed by postal supervisory personnel. These actions are necessary to ensure the safety of all building occupants.


NORMAN P. ROYALL, JR.
Director, Operations Services
Tulsa, OK 74103-9993

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

ADVANCE-UNITED EXPRESSWAYS,)
INC., Debtor-In-Possession,)
)
Plaintiff,)
)
vs.)
)
ANCHOR PAINT MFG. CO.,)
)
Defendant.)

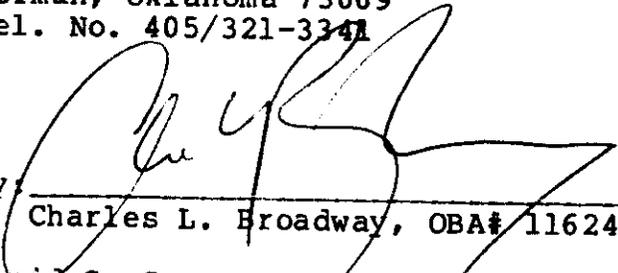
Case No. 89-C-780 E

DISMISSAL WITH PREJUDICE

Comes now the Plaintiff, Advance-United Expressways, Inc., and dismisses this cause of action with prejudice to the bringing of any other action on the facts alleged herein.

ADVANCE-UNITED EXPRESSWAYS, INC.,
PLAINTIFF

BROWN & ASSOCIATES, their Attorneys
117 East Main Street
Norman, Oklahoma 73069
Tel. No. 405/321-3341

By: 
Charles L. Broadway, OBA# 11624

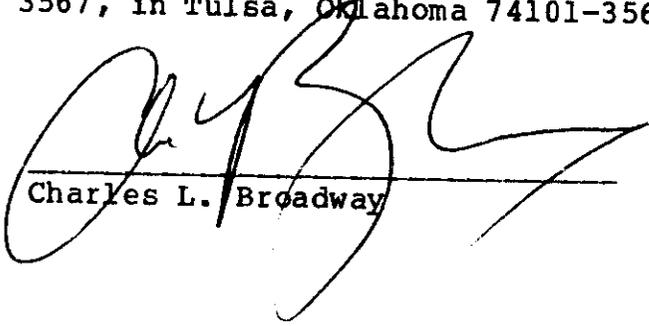
David G. Sperry
204 West Kansas, Suite 204
Independence, Missouri 64050
Tel. No. 816/461-5133

OF COUNSEL

The only copy left

CERTIFICATE OF MAILING

I hereby certify a true and correct copy of the above and foregoing Dismissal With Prejudice was mailed, postage prepaid, this 27th day of November, 1989, to R. Michael Lang, LANG, JAMES & BINGHAM, INC., at P. O. Box 3567, in Tulsa, Oklahoma 74101-3567.



Charles L. Broadway

FILED

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

NOV 29 1989

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

RAYMOND NELSON and SHIRLEY NELSON,)
husband and wife,)
)
 Plaintiffs,)
)
vs.)
)
 ALLSTATE INSURANCE COMPANY,)
an Illinois corporation, licensed)
to do business in Oklahoma,)
)
 Defendant.)

No. 88-C-1424-B



ORDER

This matter comes on for consideration upon the cross-motions for summary judgment filed by the Plaintiffs and Defendant. The latter seeks summary judgment upon Plaintiffs' Complaint allegations of Defendant's bad faith in refusing to investigate, handle and pay an uninsured motorist policy claim and also for untimely intervention by Defendant in Plaintiffs' personal injury state court suit against alleged tort-feasor(s). Plaintiffs seek summary judgment on Defendant's Rule 11¹ Counterclaim² for sanctions to recover attorney fees and costs based upon Plaintiffs' alleged bad faith filing of this federal court action.

¹Fed.R.Civ.P.

²Sometimes erroneously denominated a cross-claim.

FACTUAL SUMMARY

An automobile accident occurred August 11, 1984. Plaintiff Shirley Nelson was a passenger in a vehicle being driven by her husband, Raymond, which vehicle was traveling north on Memorial Drive (Highway 64 near Bixby). At the intersection of 111th and Memorial Drive, Alice Gorham was stationary at a stop sign in her vehicle, facing east. Gary Ralph Smith was operating a vehicle traveling south on Memorial Drive. When Smith had almost reached the intersection, Gorham's vehicle, accelerating rapidly, entered the intersection from a standing stop, striking Smith's vehicle which then careened left of center and hit the Nelson vehicle head-on.

Shirley Nelson was seriously injured. Smith was injured, being knocked unconscious.

The Nelsons had uninsured motorist coverage of \$20,000.00 each with Defendant Allstate Insurance Company. Smith, a roofer from Big Cabin, Oklahoma, had insurance coverage with Southwestern Insurance Company which, at the time of the accident, was in receivership making Smith an uninsured motorist. Gorham had liability coverage in an amount exceeding \$1,000,000.00 with AMICA, which company settled with Smith in the immediate few months after the accident.

The Nelsons filed suit, on February 21, 1986, in state court, alleging Gorham and Smith were joint tort-feasors. During the suit's pendency the Nelsons' attorney made requests of Defendant

to pay the UM coverage of Shirley Nelson's policy,³ which Defendant declined to do. Smith remained in default until February 8, 1988, when he answered the state court petition, denying negligence on his part. No default judgment was sought against Smith by Plaintiffs during such period.

Defendant intervened in the state court suit under limitations that its entry into the litigation was not to be revealed to the jury. The intervention did not delay the jury trial which occurred on October 10-13, 1988, inclusive. On the morning of the 13th,⁴ the instant case was filed and either that afternoon or the preceding afternoon Plaintiff's attorney dismissed the state court action against Smith. The issue of Smith's liability was a part of the state court case but not adjudicated as between Plaintiffs and Smith because of the dismissal of Smith.

The state court jury returned a verdict of \$125,000.00 in favor of Shirley Nelson and against Alice Gorham, which ripened into judgment, since paid and released.

THE APPLICABLE LAW

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that

³Raymond Nelson settled some time during the pendency of the state court suit, presumably with AMICA.

⁴The parties make much of the timing of Smith's dismissal *vis-a-vis* filing the federal lawsuit. In the Court's opinion, this sequence of events, either version, is of no substantial consequence.

the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Widon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

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

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

Under the present record the Court concludes a factual dispute exists as to the negligence of Gary Ralph Smith. It is not necessary for an uninsured motorist claimant to obtain an adjudication as to the negligence of the (uninsured) alleged tortfeasor as a prerequisite to recovery.⁵ However, the insured must be legally entitled to recover damages from UM owners and

⁵Everaard v. Hartford Accident & Indem. Co., 842 F.2d 1186 (10th Cir. 1988), at 1190.

operators.⁶

The determination of Smith's negligence *vel non* is critical to the ultimate issue herein, the alleged bad faith of Allstate, since that determination bears upon Allstate's intent and motives. If, factually, Smith's negligence was, though not judicially established, beyond reasonable disputation, then Defendant's actions of refusal to investigate⁷, handle and pay a UM claim could suggest bad faith. Christian v. American Assurance Co., 577 P.2d 899 (Okl. 1978). Conversely, if Smith's negligence was in serious question, and the Court is of the opinion that it was and is, then Defendant's resistance to Plaintiff's UM claims does not, perhaps, connote bad faith.⁸

As to Defendant's intervention in the state court action, the Court concludes Defendant had the right to so intervene. Keel v. MFA Ins. Co., 553 P.2d 153 (Okl. 1976). Timeliness of

⁶In Uptegraft v. Home Ins. Co., 662 P.2d 681 (Okl. 1983), the court stated:

"Legally entitled to recover simply mean(s) that the insured must be able to establish fault on the part of the uninsured motorist which gives rise to damages and prove the extent of those damages."

⁷Apparently Allstate had made a preliminary determination, perhaps from the police report, that it had no exposure.

⁸The issue of Smith's negligence is not now before the Court, only the factual dispute as to such issue.

intervention,⁹ is not, in the Court's opinion, an issue of any substance.

Under the facts now before the Court the Plaintiff has not met the burden of countering Defendant's showing of lack of bad faith. Allstate's preliminary determination, including the police report which failed to indicate any negligence on the part of Gary Smith, was that it had no UM exposure. The fact that this determination could have ultimately proven wrong does not impart bad faith to Defendant. Gary Smith has never been established as a tort-feasor or joint tort-feasor¹⁰ in this accident.

The Court concludes Allstate's stance in this matter was not an unreasonable one. The Court further concludes there is no factual scenario suggested in Plaintiff's pleadings or current evidence which could alter this. Plaintiff's reliance on Everaard v. Hartford Accident & Indemnity Co., 842 F.2d 1186 (10th Cir. 1988), is misplaced. Everaard does not obviate an insured's need to be able to prove the UM motorist proximately negligent."¹¹ Uptegraft v. Home Ins. Co., 662 P.2d 681 (Okla. 1980); Keel v. MFA Inc., 553 P.2d 153 (Okla. 1976).

⁹The state court jury was not aware of the intervention nor was the jury trial delayed.

¹⁰In the Court's opinion this would indeed be a heavy burden for Plaintiff to sustain.

¹¹In Everaard, that requirement was met by stipulation.

Conversely, Defendant's request for Rule 11 sanctions for attorneys fees must fail because, under the present pleadings and evidence, Plaintiff, in the Court's opinion in good faith misinterpreted Everaard. Everaard was not the panacea envisioned by Plaintiff. This does not amount to, the Court concludes, bad faith.

The Court therefore concludes Defendant's Motion for Summary Judgment on Plaintiffs' bad faith allegations, should be and the same is herewith SUSTAINED. The Court further concludes Plaintiffs' Motion for Summary judgment on Defendant's Counterclaim for Rule 11 sanctions,¹² should be and the same is herewith SUSTAINED. All parties are to bear their own attorneys fees and costs.

IT IS SO ORDERED this 29 day of November, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹²The Court notes the sanctions sought by Defendant were against the Plaintiffs, not Plaintiffs' counsel. A Rule 11 sanctions motion directed by Defendant at Plaintiffs' counsel, would have, indeed, received serious consideration.

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

FILED

NOV 29 1989

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

CHIROPRACTIC HEALTH CENTER,)
INC, an Oklahoma corporation d/b/a)
Anderson Chiropractic Center)
)
Plaintiff,)
)
vs.)
)
JOHN ALDEN LIFE INSURANCE COMPANY)
a Minnesota corporation, licensed to)
and doing business within Tulsa)
County, Oklahoma,)
Defendant.)

Case No. C-89-907-B

NOTICE OF DISMISSAL

Plaintiff, pursuant to Rule 41 of the Federal Rules of Civil Procedure and by and through its counsel of record, James W. Dunham, Jr., hereby gives notice of its dismissal of its Petition herein.

Respectfully submitted

COPY

James W. Dunham, Jr. OBA # 2532
8236 East 71st Street
Suite 336
Tulsa, Oklahoma 74133
(918) 493-7356
Attorney for Plaintiff

CERTIFICATE OF MAILING

The undersigned certifies that on the 6th day of November, 1989, a copy of the foregoing instrument was mailed to the following with sufficient postage prepaid thereon: Randy A. Sengel, Attorney at Law, 1800 Mid-America Tower, 20 North Broadway, Oklahoma City, OK. 73102.

COPY

James W. Dunham, Jr.

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

FILED

NOV 29 1989

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

COMMUNITY FEDERAL SAVINGS AND LOAN
ASSOCIATION, a federally chartered
savings and loan association,

Plaintiff,

vs.

RICKY LOREN WASHINGTON;
FORREST JEAN WASHINGTON;
formerly known as Forrest
Jean Youngblood; ADMINISTRATOR
OF VETERANS AFFAIRS; JOHN W.
KLEND; and KARIN CHATFIELD,

Defendants,

and

UNITED STATES OF AMERICA on
behalf of the Administrator
of Veterans Affairs,

Third Party Plaintiff,

v.

CREANN MOSLEY; MIDAMERICA
SAVINGS AND LOAN ASSOCIATION;
COUNTY TREASURER, Tulsa County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma; and STATE OF OKLAHOMA
ex rel OKLAHOMA TAX COMMISSION,

Third Party Defendants.

Civil Action No. 89-C-0019-B

Case No. CJ-88-06724
(Tulsa County District Court)

JOURNAL ENTRY OF JUDGMENT AND ORDER FOR SALE

NOW on this 29th day of November, 1989, the above styled
case comes on before the Court. Plaintiff appears by its attorneys, Jones,
Givens, Gotcher, Bogan and Hilborne, a professional corporation, by Randall J.
Snapp; the Defendant Forrest Jean Washington, formerly known as Forrest Jean
Youngblood appears by her attorney, John W. Klenda; and the Defendant Ricky

Loren Washington, appears not, though having been duly and properly served with summons but having failed to answer or otherwise appear, and the Court finds is in default. The Court, having reviewed the pleadings on file herein finds as follows, to-wit:

1. That the Plaintiff, Local America Bank of Tulsa, ("Local America"), is a federal savings bank duly organized and existing under the laws of the United States of America; that the real property which is the subject of this action is located in Tulsa County, State of Oklahoma; that Plaintiff's Petition in Foreclosure was initially filed in the District Court for Tulsa County, Oklahoma on November 14, 1988, Case No. CJ 88-06724, and was effectively removed to this Court on the 11th day of January, 1989; and that this Court has jurisdiction over the subject matter herein and the parties herein.

2. That on or about the 28th day of September, 1984, the Defendants, Rickey L. Washington and Forrest Jean Washington f/k/a Forrest Jean Youngblood ("Forrest Jean Washington"), for good and valuable consideration, made, executed and delivered to MidAmerica Federal Savings and Loan Association ("MidAmerica") their Promissory Note (the "Promissory Note") in writing, wherein said Defendants promised and agreed to pay to the order of MidAmerica the principal sum of \$15,910.00, together with interest thereon.

3. That on or about September 28, 1984, as security for the payment of all indebtedness evidenced and payable under the terms of the Promissory Note and to secure the terms and conditions of the Promissory Note and all renewals, extensions and modifications thereof, the Defendants, Rickey L. Washington and Forrest Jean Washington, executed and delivered to MidAmerica a written Real Estate Mortgage (the "Real Estate Mortgage"), covering the following described real estate located in Tulsa County, State of Oklahoma, to-wit:

Lot Fifteen (15), Block Four (4), UNITY ADDITION, Blocks 1 through 5, an Addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof,

together with all buildings and improvements and all fixtures thereon. That the Real Estate Mortgage was duly executed and acknowledged according to law, all mortgage tax paid and the Real Estate Mortgage filed of record in the records of the County Clerk of Tulsa County, Oklahoma, on the 10th day of October, 1984, in Book 4822 commencing at Page 454.

4. On August 31, 1988, the Federal Savings and Loan Insurance Corporation ("FSLIC") was appointed receiver for the assets of MidAmerica Federal Savings and Loan Association.

5. The Promissory Note and Real Estate Mortgage were assigned to Local America Bank of Tulsa pursuant to that certain Acquisition Agreement dated August 31, 1988, by and between FSLIC and Local America (then known as Community Federal Savings and Loan Association).

6. Local America is the owner and holder of the Promissory Note and Real Estate Mortgage.

7. That the Defendants, Rickey L. Washington and Forrest Jean Washington, have failed to pay said Promissory Note and Real Estate Mortgage according to their terms, and are in default thereunder, such that there is due and payable to Local America the principal sum of \$13,902.17, together with interest from and including April 30, 1988 through October 27, 1988 in the sum of \$680.03, and thereafter at the rate of \$3.84 per diem, until paid, and late charges in the sum of \$104.00, together with life insurance premiums in the amount of \$17.48, together with a reasonable attorney's fee in the amount of \$2,000.00, and all other costs incurred and to be incurred in this action, plus all costs of preserving and insuring the subject property paid by Local America, and all taxes on the subject real property paid by Local America.

8. That in accordance with the terms of the Promissory Note and Real Estate Mortgage, Local America has properly elected to declare the entire indebtedness evidenced by the Promissory Note immediately due and payable and to foreclose the Real Estate Mortgage.

9. That pursuant to the terms of the Promissory Note and Real Estate Mortgage, Local America is entitled to a reasonable attorney's fee.

10. That the Mortgage lien on the above described real property in favor of Local America evidenced by the Real Estate Mortgage is a valid and existing second lien subject only to the first mortgage lien of the United States of America on behalf of the Administrator of Veteran Affairs.

11. That the Court entered a Journal Entry of Judgment and Order for Sale herein on October 30, 1989 and the facts, findings and orders of the Court are incorporated herein by reference.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that Local America have and recover judgment in its favor and against the Defendants, Rickey L. Washington and Forrest Jean Washington, for principal in the sum of \$13,902.17, together with interest from and including April 30, 1988 through October 27, 1988 in the sum of \$680.03, and thereafter at the rate of \$3.84 per diem, until paid, and late charges in the sum of \$104.00, together with life insurance premiums in the amount of \$17.48, together with a reasonable attorney's fee in the amount of \$2,000.00, and all other costs incurred and to be incurred in this action, plus all costs of preserving and insuring the subject property paid by Local America, and all taxes on the subject real property paid by Local America.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that the judgment set forth above in favor of Local America constitutes a valid and existing second lien subject only to the first mortgage lien of the United States of America on behalf of the Administrator of Veteran Affairs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that the judgment of Local America be foreclosed as provided by law and an Order of Sale issue in this cause, commanding the United States Marshal for the Northern District of Oklahoma, to sell the above described real property, with appraisalment; and thereupon the proceeds of the sale be applied in the following order of priority, to wit:

- (a) In payment of cost of said sale and of this action;
- (b) The judgment of the United States of America on behalf of the Administrator of Veteran Affairs as set forth in the Journal Entry of Judgment entered in this case on October 30, 1989;
- (c) The judgment of Local America as hereinabove set forth;
- (d) The remainder, if any, be paid to the clerk of the Court, subject to further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that of and from and after the time of said sale of the above described real property under this judgment, and the confirmation of such sale by the Court, the Defendants, Rickey L. Washington and Forrest Jean Washington, and all persons claiming by, through or under them, be and they are hereby forever barred and foreclosed of any and all liens, rights, title, interest or equity in and to the above described real property, with the exception of such interest as may be acquired as purchaser at the Marshal's sale; and that upon proper application by the purchaser, the said Court Clerk shall issue a Writ of Assistance to the Marshal of said District, who shall, thereupon and forthwith place said purchaser in full and complete possession and enjoyment of the above described property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that the Journal Entry of Judgment and Order for Sale entered herein on October 30, 1989 is

incorporated herein and all facts, findings and orders of the Court are made a part hereof.

FOR ALL OF WHICH LET EXECUTION ISSUE.


JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM AND CONTENT:

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

By: 
Randall J. Snapp, OBA #11169
3800 First National Tower
Tulsa, Oklahoma 74103
(918) 581-8200

ATTORNEYS FOR PLAINTIFF,
LOCAL AMERICA BANK OF TULSA

John W. Klenda
1430 S. Quaker, Suite A
Tulsa, Oklahoma 74120

ATTORNEY FOR FORREST JEAN WASHINGTON

Lisa Haws

ATTORNEY FOR STATE OF OKLAHOMA EX REL
OKLAHOMA TAX COMMISSION

incorporated herein and all facts, findings and orders of the Court are made a part hereof.

FOR ALL OF WHICH LET EXECUTION ISSUE.

JUDGE OF THE DISTRICT COURT

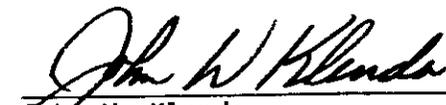
APPROVED AS TO FORM AND CONTENT:

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

By: 

Randall J. Snapp, OBA #11169
3800 First National Tower
Tulsa, Oklahoma 74103
(918) 581-8200

ATTORNEYS FOR PLAINTIFF,
LOCAL AMERICA BANK OF TULSA


John W. Klenda

1430 S. Quaker, Suite A
Tulsa, Oklahoma 74120

ATTORNEY FOR FORREST JEAN WASHINGTON

Lisa Haws

ATTORNEY FOR STATE OF OKLAHOMA EX REL
OKLAHOMA TAX COMMISSION

incorporated herein and all facts, findings and orders of the Court are made a part hereof.

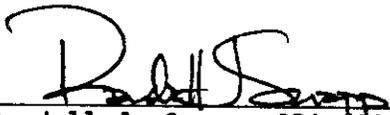
FOR ALL OF WHICH LET EXECUTION ISSUE.

JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM AND CONTENT:

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

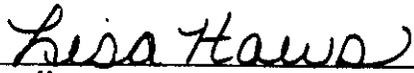
By: _____


Randall J. Snapp, OBA #11169
3800 First National Tower
Tulsa, Oklahoma 74103
(918) 581-8200

ATTORNEYS FOR PLAINTIFF,
LOCAL AMERICA BANK OF TULSA

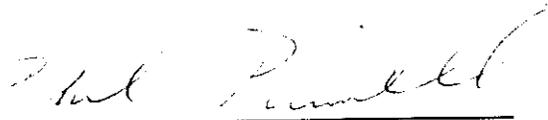
John W. Klenda
1430 S. Quaker, Suite A
Tulsa, Oklahoma 74120

ATTORNEY FOR FORREST JEAN WASHINGTON



Lisa Haws

ATTORNEY FOR STATE OF OKLAHOMA EX REL
OKLAHOMA TAX COMMISSION



Phil Pinnell
Assistant United States Attorney

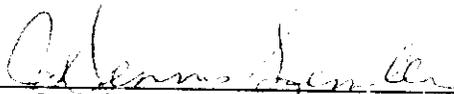
ATTORNEY FOR UNITED STATES OF AMERICA
ON BEHALF OF THE ADMINISTRATOR OF VETERANS
AFFAIRS

Jay Dennis Semler
Assistant District Attorney

ATTORNEY FOR DEFENDANTS, COUNTY TREASURER
AND BOARD OF COUNTY COMMISSIONERS, TULSA
COUNTY, OKLAHOMA

Phil Pinnell
Assistant United States Attorney

ATTORNEY FOR UNITED STATES OF AMERICA
ON BEHALF OF THE ADMINISTRATOR OF VETERANS
AFFAIRS



Jay Dennis Semler
Assistant District Attorney

ATTORNEY FOR DEFENDANTS, COUNTY TREASURER
AND BOARD OF COUNTY COMMISSIONERS, TULSA
COUNTY, OKLAHOMA

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

F I L E D

NOV 29 1989

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

RAYMOND NELSON and SHIRLEY NELSON,)
husband and wife,)
)
) Plaintiffs,)
)
vs.)
)
ALLSTATE INSURANCE COMPANY,)
an Illinois corporation, licensed)
to do business in Oklahoma,)
)
) Defendant.)

No. 88-C-1424-B

J U D G M E N T

In accordance with the order entered simultaneously this date, Judgment is hereby entered as follows:

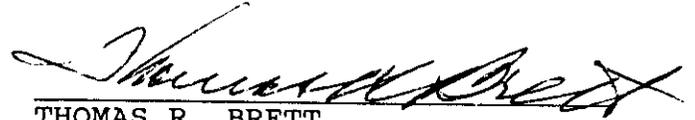
Judgment is entered against the Plaintiffs, Raymond Nelson and Shirley Nelson, husband and wife, and in favor of the Defendant, Allstate Insurance Company, an Illinois corporation, licensed to do business in Oklahoma, on the bad faith issues¹ raised in the Complaint filed herein.

Costs are assessed against the Plaintiffs, Raymond Nelson and Shirley Nelson. Any attorney fee request shall be made pursuant to Local Rule 6, Rules of the United States District Court for the Northern District of Oklahoma. Defendant Allstate's request for Rule 11, Fed.R.Civ.P., sanctions is herewith DENIED.

¹For not intervening at an earlier date in the state court action and for violating an alleged fiduciary duty to reasonably handle and negotiate Plaintiffs' claim.

HL

DATED this 29th day of November, 1989.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

REKHA PATEL)
)
 Plaintiff,)
)
 v.)
)
 UNITED STATES ENERGY CORP, et al)
)
 Defendant.)

89-C-701-C ✓

FILED

NOV 29 1989 *ms*

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

ORDER AFFIRMING REPORT AND RECOMMENDATION AND
ENTERING JUDGMENT BY DEFAULT

The Court has for consideration the Report and Recommendation of the United States Magistrate filed November 3, 1989 in which the Magistrate recommended that default judgment be entered against Defendant Gaylord Swagner, for failure to attend the status and scheduling conference November 1, 1989. The Magistrate further recommended that an evidentiary hearing be held to determine the amount of the judgment to be entered against Swagner.

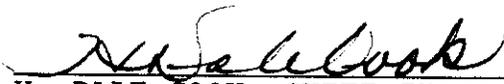
No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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 adopted and affirmed.

It is, therefore, Ordered that default judgment is entered against Defendant Gaylord Swagner, by reason of his failure to attend the status and scheduling conference November 1, 1989; and, that an evidentiary hearing be held to determine the amount of the

judgment to be entered. Plaintiff is to file his Application to set such a hearing on or before December 15, 1989.

Dated this 29th day of November, 1989.



H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

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

FILED
NOV 2 1989
DISTRICT COURT

ADVANCE-UNITED EXPRESSWAYS,)
INC., Debtor-In-Possession,)
)
Plaintiff,)
)
vs.)
)
HINDERLITER INDUSTRIES, INC.,)
)
Defendant.)

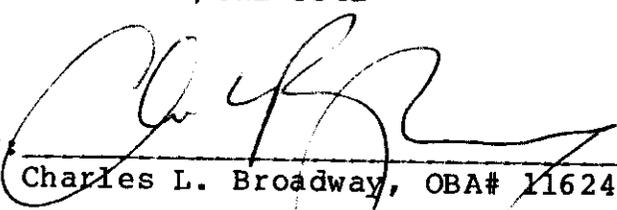
Case No. 89-C-783 E

DISMISSAL WITH PREJUDICE

Comes now the Plaintiff, Advance-United Expressways, Inc., and dismisses this cause of action with prejudice to the bringing of any other action on the facts alleged herein.

ADVANCE-UNITED EXPRESSWAYS, INC.,
PLAINTIFF

BROWN & ASSOCIATES, their Attorneys
117 East Main Street
Norman, Oklahoma 73069
Tel. No. 405/321-3341

By: 
Charles L. Broadway, OBA# 11624

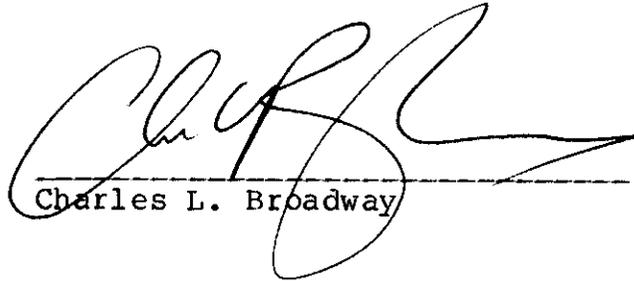
David G. Sperry
204 West Kansas, Suite 204
Independence, Missouri 64050
Tel. No. 816/461-5133

OF COUNSEL

NOTE: THIS ORDER IS TO BE MAILED
BY MAIL TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

CERTIFICATE OF MAILING

I hereby certify a true and correct copy of the above and foregoing Dismissal With Prejudice was mailed, postage prepaid, this 27th day of November, 1989, to R. Michael E. Holdgrafer, Hinderliter Industries, Inc., at P. O. Box 35505, in Tulsa, OK 74153-0505.



Charles L. Broadway

FILED

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

NOV 28 1989

BILL SCHULTZ and MARSHA SCHULTZ,)
Husband and Wife, and GENENE)
SCHULTZ,)

Joe C. Steyer, Clerk
U.S. DISTRICT COURT

Plaintiffs,)

vs.)

No. 88-C-1351-B

PHOENIX FEDERAL SAVINGS & LOAN)
ASSOCIATION, a federal savings)
and loan corporation, et al.,)
BUILDERS GROUP INC., CLARENCE)
MAYBERRY, GARY KUTZ, DAVID MARKS,)
and DEWAYNE HILL, jointly and)
severally,)

Defendants.)

ORDER OF REMAND

This action was timely removed from the District Court in and for Mayes County, State of Oklahoma, predicated upon federal Defendants, the Federal Savings and Loan Insurance Corporation and Cimarron Federal Savings and Loan Association, and issues of law deemed to have arisen under federal law.¹ Pendent state claims exist.

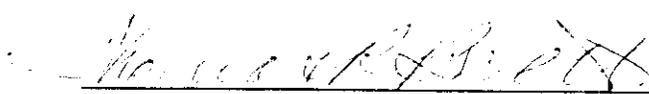
The federal Defendants and Plaintiffs have entered into a Stipulation of Dismissal herein on May 10, 1989, filed herein on May 15, 1989. The pendent state claims remain extant.

It is within the discretion of the Court to retain or remand pendent state claims when the federal jurisdiction parties and issues are no longer in the case. United Mine Workers v. Gibbs, 383 U.S. 715 (1966), and its progeny.

¹12 U.S.C. § 1730(k).

The Court concludes this matter should be and the same is hereby REMANDED to the District Court in and for Mayes County, State of Oklahoma.

IT IS SO ORDERED this 28th day of Nov, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

JONATHAN THOMAS,)
)
 Plaintiff,)
)
 vs.)
)
 DAVID MOSS, TOM GILBERT)
 and KIM RICHARDSON,)
)
 Defendants.)

No. 89-C-597-C

FILED

NOV 28 1989

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

ORDER

Before the Court is the objection by plaintiff to the Report and Recommendation of the United States Magistrate. The Magistrate recommended that the petition be denied as frivolous under 28 U.S.C. §1915(c).

Plaintiff brings this action pursuant to 42 U.S.C. §1983 against the Tulsa County District Attorney, David Moss; an assistant district attorney, Tom Gilbert; and a public defender, Kim Richardson. Plaintiff asserts defendants breached the plea bargaining agreement wherein he agreed to plea guilty to burglary II, if the "after former conviction" count was dismissed. Further, he asserts that the public defender provided ineffective assistance in her representation of him before the Court.

The Judgment and Sentence indicates plaintiff was sentenced to seven years confinement, with the Department of Corrections, for the offense of burglary II. The Judgment and Sentence also reflects that he was charged with "after former conviction" but

plaintiff did not provide the Court with credible evidence that his sentence was enhanced under this provision. The language may have been improvidently included within the Judgment and Sentence.

However, plaintiff has no legal recourse against the district attorney, his staff, or a public defender, for correction of a Judgment and Sentence. The district attorney's office is protected from this type of action by "prosecutorial immunity". Further, a public defender does not act under color of state law when performing a lawyer's traditional function as counsel to a defendant in a criminal proceeding, and therefore cannot be held liable under §1983.

If plaintiff asserts that the language within the Judgment and Sentence is inconsistent with the sentence pronounced by the trial court, plaintiff should first exhaust his state remedies before seeking relief in the federal forum.

Therefore, plaintiff's claim under 42 U.S.C. §1983 is dismissed for failure to exhaust state remedies and dismissed as against the defendants herein as having been improperly named under the relief requested.

IT IS SO ORDERED this 28th day of November, 1989.



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

entered

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

DYCO PETROLEUM CORPORATION,)
a corporation,)
)
Plaintiff,)
)
v.)
)
DELHI GAS PIPELINE CORPORATION,)
a corporation,)
)
Defendant.)

87-C-318-C

: L E D

NOV 28 1989

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

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate filed November 3, 1989 in which the Magistrate recommended that Defendant's Motion for More Definite Statement be denied in its entirety; that Defendant's Motion to Dismiss be denied insofar as regards jurisdictional amount, and, as regards Plaintiffs' non-antitrust claims.

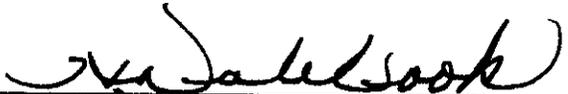
The U.S. Magistrate further recommends that Plaintiffs' antitrust claims, both state and federal, should be dismissed, for failure to plead in accord with Rule 8(a)(2), and, per Rule 12(b)(6), Fed.R.Civ.P. Thus, the Magistrate recommends that Defendants' Motion to Dismiss should be granted, without leave to amend.

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 adopted and affirmed.

It is, therefore, Ordered that the recommendations of the Magistrate are hereby adopted as set forth above. Defendant's Motion for More Definite Statement is denied in its entirety; and its Motion to Dismiss, insofar as jurisdiction and Plaintiff's non-anti-trust claims, is also denied. Defendant's Motion to Dismiss Plaintiff's anti-trust claims is hereby granted against each such claim.

Dated this 28th day of November, 1989.


H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT

COURT

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

NOV 28 1989

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

KENNETH CUTLER,

Plaintiff,

vs.

FRANK MESSINA and
OPEC CRUDE, INC.,

Defendants.

}
}
}
}
}
}
}
}
}
}

No. 86-C-788-C

FINDINGS OF FACT
and
CONCLUSIONS OF LAW

This matter came before the Court for nonjury trial on September 19 and 20, 1989. Plaintiff Kenneth Cutler brings this action against the defendants Frank Messina and OPEC Crude, Inc., alleging violations of the Fair Labor Standards Act and the Federal and State Securities Acts and common law fraud.

Plaintiff alleges that he is a former employee of the defendants having worked as a security guard-overseer and field helper from mid-1984 until the early part of 1986. During his employment, he was paid a gross salary of \$200.00 per month for an approximate 40 hour workweek. He also contends he was required to work overtime with no compensation. Plaintiff therefore seeks

damages for violation of the minimum pay and overtime pay provisions of the Fair Labor Standards Act.

Under his securities and common law fraud claims, plaintiff asserts that defendants offered and sold securities, namely, investments in oil and gas producing properties, to plaintiff. Plaintiff contends the offer and sale contained false statements or omitted statements of material facts and that the securities were not registered.

In response, defendants admit plaintiff was their employee and that he was paid approximately \$200.00 per month based upon a 40 hour workweek. Defendants deny all other allegations of the plaintiff.

After considering the pleadings, testimony, exhibits admitted at trial, arguments of the parties and applicable statutory law, and being fully advised in the premises, the Court 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 Kenneth Cutler is an individual and resides in the State of Oklahoma.
2. Defendant Frank Messina is an individual and resides in the State of Oklahoma.
3. Defendant OPEC Crude, Inc., is a corporation organized and existing under the laws of the State of Oklahoma.

4. The Court has jurisdiction over the subject matter of this action arising under applicable provisions of the Fair Labor Standards Act of 1938, as amended, and the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended. The Court has pendent jurisdiction over the state law claim for common law fraud.

5. Venue is proper within the Northern District of Oklahoma in that the cause of action under the Fair Labor Standards Act arose within this judicial district, and it is the residence of all the parties.

Background -- Fair Labor Standards Act Claim

6. At the time of trial, plaintiff Kenneth Cutler was 76 years of age.

7. Plaintiff commenced employment with defendant OPEC Crude, Inc. on or about October 22, 1984, a Monday. His paychecks were signed by defendant Frank Messina as president of OPEC Crude, Inc.

8. He worked as a guard, employed to oversee a storage building located in Cleveland, Oklahoma. The building contained oilfield equipment.

9. Cutler agreed to a salary of \$200.00 per month as compensation for his employment as a guard.

10. Plaintiff testified he worked on an average of seven to eight hours a day during this term of his employment, which lasted until November 7, 1985.

11. Defendants' records indicate that plaintiff was paid a total gross wage of \$3,075.76 from November 1, 1984 until November 7, 1985.

12. Under the minimum wage, based on a forty hour workweek, plaintiff should have received a salary of \$134.00 per workweek.

13. There are fifty-five workweeks between October 22, 1984 and November 7, 1985. Therefore defendants should have paid plaintiff a total gross salary of \$7,370.00 from Monday, October 22, 1984 until Friday, November 8, 1985.

14. From November 11, 1985 until plaintiff was terminated on February 24, 1986, plaintiff worked as a field helper. During this term of employment, plaintiff received a gross salary of \$1,199.40. Frank Messina at trial conceded that he paid plaintiff based upon a forty hour workweek.

15. There are fifteen work weeks between November 11, 1985 and February 24, 1986. Therefore defendants should have paid plaintiff a total gross salary of \$2,010.00 from Monday, November 11, 1985 until Friday, February 21, 1986.

16. The Court finds that the evidence was insufficient to show that plaintiff worked overtime, and therefore no wages based upon the overtime standard are owing.

Securities Claim

17. Plaintiff contends he paid defendant Frank Messina the sum of \$13,000.00 for interests in various producing oil and gas wells. He contends the money was paid in cash and no certificates evidencing the interests purchased were issued. In arriving at the

\$13,000.00 figure, plaintiff contends he gave Mr. Messina approximately \$6,700.00 in cash, representing proceeds from the sale of silver bars. Further, he contends that he gave Mr. Messina \$3,643.03 in cash which he withdrew from his savings account at Valley Federal Savings located in Lancaster, California. He further contends the balance of \$2,657.00 was paid Mr. Messina from cash he had on hand. No receipts were provided to plaintiff by Mr. Messina. Plaintiff contends the money was tendered to Mr. Messina on December 13, 1982, the date reflected on plaintiff's savings account records representing the \$3,643.03 withdrawal (plaintiff's exhibit 5a).

Further, plaintiff purports to offer the Court a "receipt" from the sale of the silver bars. However, the date of the silver transaction is inconclusive in that it is indeterminable whether the transaction occurred in calendar year 1982 or 1983. Based upon the face of the "receipt" tendered, (plaintiff's exhibit 5b), the Court has reason to suspect the authenticity of the exhibit.

18. Therefore the Court finds the evidence insufficient to establish the sale of a security (or any other interest) under the facts as presented.

CONCLUSIONS OF LAW

Parties and Jurisdiction

1. This Court has jurisdiction in that this is a civil action arising under the Fair Labor Standards Act of 1938, as

amended, 29 U.S.C. §201. Jurisdiction is specifically conferred in 28 U.S.C. §1338(a).

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

Fair Labor Standards Act

3. Defendants Frank Messina and OPEC are employers within the meaning of 29 U.S.C. §203(d).

4. Plaintiff Kenneth Cutler worked for defendants in the capacity of a nonexempt employee as defined with 29 U.S.C. §203(e)(1).

5. Plaintiff worked from October 22, 1984 until February 21, 1986, a total of seventy weeks for a gross wage of \$4,275.16.

6. 29 U.S.C. §201 and §206(a)(1) provide that no employer shall employ any employees in any workweek without paying the employee at least \$3.35 per hour.

7. Plaintiff Kenneth Cutler is entitled to judgment against defendants Frank Messina and OPEC Crude, Inc. in the total sum of \$5,104.84, representing underpayment of gross minimum wages under the Fair Labor Standards Act.

Securities Claim

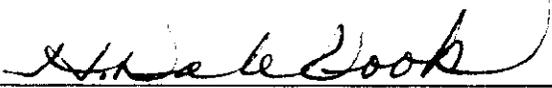
8. The Court concludes there was no credible evidence of a securities violation, as a matter of fact and therefore enters judgment in defendants' favor as a matter of law. Further, there was insufficient evidence to state a cause of action for common law fraud.

CONCLUSION

Plaintiff Kenneth Cutler is entitled to damages in the sum of \$5,104.84 representing underpayment of gross minimum wages, as against defendants Frank Messina and OPEC Crude, Inc.

Plaintiff's claim for damages under the Securities Act and common law fraud is denied.

IT IS SO ORDERED this 28th day of November, 1989.



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

FILED

NOV 28 1989

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

HESSTON CORPORATION, a)
Kansas corporation,)
)
Plaintiff,)

vs.)

Case No. 89-C-084-E

STOCKYARDS EQUIPMENT & SUPPLY,)
INC., an Oklahoma corporation;)
LeFLORE COUNTY EQUIPMENT, INC.,)
an Oklahoma corporation;)
STANLEY C. TURNER; BARBARA A.)
TURNER; DEE D. BAXTER; MARY A.)
BAXTER; EVERETT SALLEY; MARILYN)
B. SALLEY; and MARJORIE BURST,)
)
Defendants.)

**ORDER DISMISSING PLAINTIFF'S CLAIMS
AGAINST DEFENDANTS DEE D. BAXTER, MARY A. BAXTER,
STANLEY C. TURNER AND BARBARA A. TURNER, WITHOUT PREJUDICE**

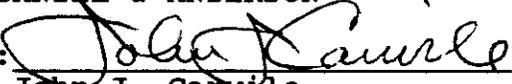
Upon the Joint Stipulation and Request for Entry of Order Dismissing Plaintiff's Claims Without Prejudice Against Defendants Dee D. Baxter, Mary A. Baxter, Stanley C. Turner and Barbara A. Turner, and pursuant to Rule 41, Federal Rule of Civil Procedure.

IT IS THEREFORE ORDERED that Plaintiff, Hesston Corporation's claims in this case against Defendants Dee D. Baxter, Mary A. Baxter, Stanley C. Turner and Barbara A. Turner are dismissed without prejudice, with each party to bear its own costs and attorney's fees.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED:

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By: 
John J. Carwile

1000 Atlas Life Building
Tulsa, OK 74103
(918) 582-1211

Attorneys for the Plaintiff,
Hesston Corporation

MOYERS, MARTIN, SANTEE, IMEL & TETRICK

By: Patrick O'Connor

Patrick O'Connor
320 South Boston
Tulsa, OK 74103

Attorneys for the Defendants,
Stockyards Equipment & Supply, Inc.,
LeFlore County Equipment, Inc.,
Everett Salley and Marilyn B. Salley



Richard T. Garren
2506 East 21st Street
Tulsa, OK 74114

Attorney for the Defendant,
Marjorie Burst


Dennis J. Downing
2642 East 21st, Suite 251
Tulsa, OK 74114

Attorney for the Defendants,
Dee D. Baxter and Mary A. Baxter

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

F I L E D
NOV 27 1989

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

FEDERAL SAVINGS AND LOAN)
INSURANCE CORPORATION,)
et al.,)
)
Plaintiffs,)
vs.)
)
FIRST SECURITY MORTGAGE,)
)
Defendant,)
and)
)
J. CRAIG ROBERTSON, et al.,)
)
Intervenors.)

Case No. 89-C-655-E

ORDER

NOW on this 22nd day of November, 1989, comes on before me, the undersigned United States District Judge, the Application of Intervenors for an Order of dismissal without prejudice as to their claim herein. The Court, being fully advised in the premises, finds that there is no objection hereto and that same should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the claim of the Intervenors, J. Craig and Laura Ann Robertson, be and the same is hereby dismissed without prejudice.

JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

**NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.**

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

FILED
NOV 27 1988

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

IN RE:)
)
DANIEL FRY and MARLA FRY,)
)
Debtors,)
)
DANIEL FRY and MARLA FRY,)
)
Plaintiffs,)
)
vs.) No. 88-C-1438-C
)
TODAY'S HOMES, INC. and)
CITICORP ACCEPTANCE COMPANY,)
INC.,)
)
Defendants.)

ORDER

Now before the Court is the appeal of Citicorp Acceptance Company, Inc. (Citicorp) from the journal entry of judgment of the bankruptcy court entered on January 24, 1989.

This action arises from the following facts. On October 21, 1981, the debtors purchased a new mobile home from Today's Homes, executing a retail installment contract and security agreement with Today's Homes. Immediately after the sale, Today's Homes assigned the retail installment contract and security agreement to Citicorp. The security interest in the mobile home was properly perfected. Shortly after the purchase, the debtors fell approximately eight months behind in their monthly payments. Many extensions were granted by Citicorp. On or about April 22, 1983, the electrical

service to the mobile home was terminated for non-payment. The debtors vacated the mobile home.

Citicorp requested that Today's Homes repossess the mobile home. A repossession action was filed in March, 1983. On June 7, 1983, the debtors filed a bankruptcy petition, thereby invoking the automatic stay of 11 U.S.C. §362. Neither Citicorp nor Today's Homes received written notice from the bankruptcy court of the filing until some time after June 23, 1983. A secretary for the debtors' attorney telephoned the offices of the attorney for Today's Homes on the date of the bankruptcy filing to inform him that the petition had been filed. On June 14, 1983 the attorney for Today's Homes sent a letter to his client advising that the debtors had filed bankruptcy. A copy of the letter was sent to Citicorp. Upon receipt of the letter, Citicorp's collection manager called Today's Homes, requesting that Today's Homes obtain advice from its attorney and report back to Citicorp's collection manager. On June 18, 1983, without further communication to Citicorp, Today's Homes repossessed the mobile home. On June 21, 1983, Citicorp received notice of the repossession.

On October 28, 1983, Citicorp filed a motion for relief from the automatic stay. The debtors initially objected to the motion, but withdrew their objection on November 17, 1983. On November 30, 1983, the bankruptcy court entered an order granting Citicorp relief from the stay.

On June 27, 1986, debtors brought an adversary proceeding against Today's Homes and Citicorp. Debtors sought recovery for

the alleged violation of the automatic stay. After hearing, the bankruptcy court filed its journal entry of judgment, finding that both Today's Homes and Citicorp had violated the automatic stay but awarding no damages. Citicorp filed the present appeal.

Findings of fact by the bankruptcy court are not set aside unless clearly erroneous; conclusions of law are subject to de novo review. In re Posta, 866 F.2d 364, 366-67 (10th Cir. 1989). The bankruptcy court found that the attorney, in repossessing the mobile home, acted as agent for both Today's Homes and Citicorp and that the repossession violated the automatic stay.

Initially, Citicorp argues that the adversary proceeding should have been dismissed because this bankruptcy case was filed prior to the enactment of 11 U.S.C. §362(h), which provides an express remedy for automatic stay violations. Citicorp argues that, absent §362(h), the only remedy is for civil contempt, which remedy was unavailable because debtors undisputedly suffered no damages. In In re Wagner, 74 B.R. 898 (Bankr. E.D.Pa. 1987), the court stated:

Prior to the enactment of 11 U.S.C. §362(h), parties aggrieved by a violation of the automatic stay ordinarily invoked the remedy of civil contempt.

* * *

Upon a finding of civil contempt, a court may impose a fine or in terrorem damages in order to coerce compliance with its orders; it may also award damages to compensate the aggrieved party for any actual loss suffered, as well as attorney's fees and costs.

Id. at 902.

Thus, it appears that damages to the debtor are not necessary to a finding of civil contempt. However, the bankruptcy court

expressly declined to make such a finding. The following exchange took place:

MR. WARD: Okay. Judge, so you are finding that there is not a contempt of Court?

THE COURT: No, I'm not finding one way or another.

(Transcript of October 7, 1988 [filed October 19, 1988] at 9 LL.1-3).

The only remedy available to these debtors was contempt. The bankruptcy court therefore was required to make a finding that Citicorp was or was not in contempt. The journal entry of judgment, standing alone, might be construed as finding contempt. But that document expressly incorporates all statements made by the bankruptcy judge. Declining to rule on contempt "one way or another" renders the judgment infirm.

The journal entry of judgment further recites that "[t]he Court makes no award of damages in favor of the [debtors] ... for the reasons stated in open court." (Journal Entry at 5, ¶8). Those reasons were as follows:

All right. I will proceed here now. We'll hear evidence purely and simply on the question of whether the Defendant violated the automatic stay. And then if I find that they did, I will reserve, or remand, or abstain or something, and the question of actual damages to be decided by the State Court.

(Transcript of October 7, 1988 [filed on December 7, 1988] at 10, LL.20-25).

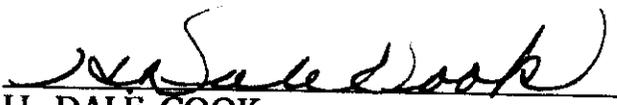
The bankruptcy court cited no authority, and this Court is aware of none, for the proposition that a federal court may "refer" to a state court the issue of damages for contempt of a federal court order.

Pending in state court is an action for conversion of the debtors' personal property which was in the mobile home at the time of repossession. Contempt of the bankruptcy court's automatic stay order is exclusively a federal concern.

As it stands, the journal entry of judgment constitutes, in this Court's view, a mere advisory opinion. Until requisite findings are made, this Court need not review the other factual and legal issues presented; otherwise, this Court's Order too would be largely advisory.¹

It is the Order of the Court that the journal entry of judgment of the bankruptcy court entered on January 24, 1989 is hereby vacated and the case is remanded to the bankruptcy court for further proceedings consistent with this Order.

IT IS SO ORDERED this 27th day of November, 1989.


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

¹This Court in no way intimates that, upon remand, if the bankruptcy court finds Citicorp in contempt it must or should impose sanctions. A denial of sanctions, however, should be based on the fact that the bankruptcy court finds them unwarranted, not upon "referral" to the state court.

IN THE DISTRICT COURT OF ~~TULSA COUNTY~~ STATE OF OKLAHOMA

FILED

NOV 27 1989

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

In Re:)
JOHNNY DARRELL CARTWRIGHT and)
ORVELLA ROSE CARTWRIGHT,)
)
Debtors,)
)
FRED W. WOODSON, ESQ., Trustee,)
)
Plaintiff,)
)
vs.)
)
JOHNNY DARRELL CARTWRIGHT,)
ORVELLA ROSE CARTWRIGHT, OTASCO)
EMPLOYEES' RETIREMENT TRUST)
AGREEMENT and Its Unnamed)
Fiduciaries,)
)
Defendants.)

Bankruptcy No.
87-03397-C
Chapter 7

District Court
No. 89-C-663-B

~~NOV 27 1989~~

NOTICE OF DISMISSAL

Defendant OTASCO EMPLOYEES' RETIREMENT TRUST AGREE-
MENT hereby gives notice that the captioned lawsuit has been
dismissed with prejudice, pursuant to that Stipulation for
Dismissal With Prejudice filed September 20, 1989, in the
Bankruptcy Court.

HENRY G. WILL
ANDREW R. TURNER
HANNIBAL B. JOHNSON

By: 
Andrew R. Turner, OBA No. 9125

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

Attorneys for Defendant OTASCO
EMPLOYEES' RETIREMENT TRUST
AGREEMENT

OF COUNSEL:

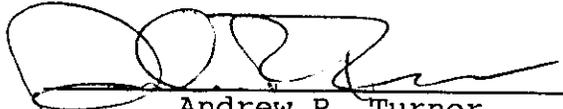
CONNER & WINTERS
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of November, 1989, I served a true and correct copy of the foregoing Notice of Dismissal, with proper postage thereon fully prepaid, and addressed to said following individuals at their last known address as indicated:

James A. Hogue, Sr.
HOGUE AND TURKEL, INC.
P.O. Box 2904
Tulsa, Oklahoma 74101-2904

Brian W. Huckabee
5310 East 31st Street, Suite 520
Tulsa, Oklahoma 74103



Andrew R. Turner

*Closes as
to Elliott only*

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

LADONNA SHAUGHNESSY,)
)
 Plaintiff,)
)
 vs.)
)
 HILLCREST MEDICAL CENTER,)
 INC., an Oklahoma corporation,)
 and KIM ELLIOTT, an)
 individual,)
)
 Defendants.)

No. 89-C-344-C

FILED

NOV 27 1989

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

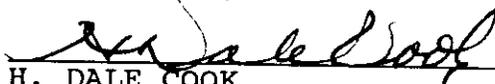
O R D E R

BEFORE the Court for consideration is the Joint Application for Mutual Dismissals Without Prejudice of Plaintiff, LaDonna Shaughnessy ("Shaughnessy"), and Defendant, Kim Elliott ("Elliott"), in which, pursuant to Federal Rule of Civil Procedure 41(a), the parties seek an Order dismissing without prejudice Shaughnessy's causes of action against Elliott pursuant to Title VII, 42 U.S.C. §2000e et seq., for sexual harassment and retaliation, and her causes of action for intentional infliction of emotional distress and wrongful termination; and Elliott's causes of action against Shaughnessy for slander per se, invasion of privacy, intentional infliction of emotional distress, and interference with business and contractual relations.

Being advised in the premises, for good cause shown, the Court finds that the parties' Application should be granted.

IT IS THEREFORE ORDERED that Shaughnessy's causes of action against Elliott pursuant to Title VII, 42 U.S.C. §2000e, et seq., for sexual harassment and retaliation and her causes of action for intentional infliction of emotional distress and wrongful termination; and Elliott's causes of action against Shaughnessy for slander per se, invasion of privacy, intentional infliction of emotional distress, and interference with business and contractual relations, are dismissed without prejudice.

ENTERED this 27 day of November, 1989.


H. DALE COOK,
UNITED STATES DISTRICT JUDGE

William R. Grimm
Robert B. Sartin
Barrow Gaddis Griffith & Grimm
610 South Main, Suite 300
Tulsa, OK 74119-1226
(918) 584-1600

Attorneys for Plaintiff

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

FILED

NOV 27 1989

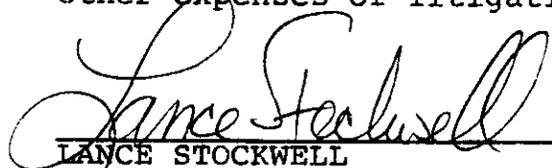
Jack C. Silver, Clerk
U.S. DISTRICT COURT

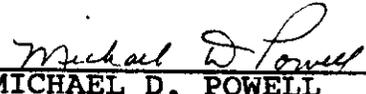
W. K. RAPP,
Plaintiff,
v.
UNITED STATES OF AMERICA,
Defendant.

Civil No. 88-C-1358-C

STIPULATION FOR DISMISSAL

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


LANCE STOCKWELL
Boesche, McDermott & Eskridge
800 Oneok Plaza
100 West 5th Street
Tulsa, Oklahoma 74103
(918) 583-1777


MICHAEL D. POWELL
Trial Attorney, Tax Division
U.S. Department of Justice
Room 5B31, 1100 Commerce Street
Dallas, Texas 75242-0599
(214) 767-0293

ATTORNEY FOR PLAINTIFF

ATTORNEY FOR DEFENDANT

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

JOHN H. McCOY and
DEBARA SUBLETT McCOY,

Plaintiffs,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

Case No. 89-C-432-C

FILED

NOV 27 1989

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

ORDER OF DISMISSAL

THE Court herewith orders the above-entitled cause of action dismissed with prejudice as the parties hereto have fully agreed and compromised all the claims existing between them with the agreement that said cause of action should be dismissed with prejudice.

Dated this 27 day of November, 1989.

W. S. Soble
~~MAURICE JEFFREY G. WOLFE~~
WJG UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAG:lh
10-30-89
5146.89

18

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

FILED

NOV 22 1989

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 JIM L. HERRON; PIONEER SAVINGS)
 AND TRUST COMPANY; PROPERTY)
 VENTURES OF LOUISIANA, INC.;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

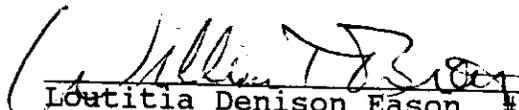
No. 89-C-590-B

**NOTICE OF DISMISSAL OF COUNTERCLAIM
AND CROSS-COMPLAINT OF DEFENDANT WAYNE OSBORN,
BANK COMMISSIONER OF THE STATE BANKING DEPARTMENT,
AS RECEIVER FOR PIONEER SAVINGS & TRUST COMPANY,**

Wayne Osborn, Bank Commissioner of the Oklahoma State Banking Department, as Receiver for Pioneer Savings and Trust Company, gives notice to the parties herein, pursuant to Federal Rules of Civil Procedure, Rule 41(a)(1), of dismissal of his Counterclaim and Cross-Complaint filed herein on October 24, 1989.

Respectfully submitted,

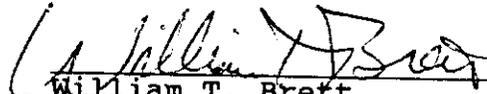
LAWRENCE, ELLIS & HARMON, P.A.

By: 
Loretita Denison Eason, #2595
William T. Brett, #1105
602 Union Plaza
3030 Northwest Expressway
Oklahoma City, Oklahoma 73112
(405) 948-6000
SPECIAL COUNSEL TO RECEIVER

CERTIFICATE OF MAILING

I hereby certify that on the 20 day of Nov., 1989,
a true and correct copy of the above and foregoing instrument was
mailed with sufficient postage prepaid thereon to:

Phil Pinnell
Assistant U.S. Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103



William T. Brett

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

FILED

NOV 22 1989

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 CHAD F. STITES; CHADCO, INC.,;)
 PIONEER SAVINGS AND TRUST COMPANY;)
 ROY L. THIGPEN PROPERTIES, INC.;)
 PROPERTY VENTURES OF LOUISIANA,)
 INC.; UNITED FIRST MORTGAGE)
 CORPORATION; COUNTY TREASURER,)
 Tulsa County, Oklahoma; and BOARD)
 OF COUNTY COMMISSIONERS, Tulsa)
 County, Oklahoma,)
)
 Defendants.)

No. 89-C-613-B

**NOTICE OF DISMISSAL OF COUNTERCLAIM
AND CROSS-COMPLAINT OF DEFENDANT WAYNE OSBORN,
BANK COMMISSIONER OF THE STATE BANKING DEPARTMENT,
AS RECEIVER FOR PIONEER SAVINGS & TRUST COMPANY,**

Wayne Osborn, Bank Commissioner of the Oklahoma State Banking Department, as Receiver for Pioneer Savings and Trust Company, gives notice to the parties herein, pursuant to Federal Rules of Civil Procedure, Rule 41(a)(1), of dismissal of his Counterclaim and Cross-Complaint filed herein on October 24, 1989.

Respectfully submitted,

LAWRENCE, ELLIS & HARMON, P.A.

By: William T. Brett
Loutitia Denison Eason, #2595
William T. Brett, #1105
602 Union Plaza
3030 Northwest Expressway
Oklahoma City, Oklahoma 73112
(405) 948-6000
SPECIAL COUNSEL TO RECEIVER

CERTIFICATE OF MAILING

I hereby certify that on the 20 day of Nov, 1989,
a true and correct copy of the above and foregoing instrument was
mailed with sufficient postage prepaid thereon to:

Nancy Nesbitt Blevins
Assistant U.S. Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103


William T. Brett

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

FILED
NOV 22 1989
CLERK OF DISTRICT COURT

KEITH L. BELKNAP, and)
CHAMPIONS ORGANIZATION, INC.,)
an Oklahoma corporation,)
)
Plaintiffs,)
)
JIMMIE LEE BELKNAP,)
)
Involuntary Plaintiff,)
)
vs.)
)
AMWAY CORPORATION, a Michigan)
corporation,)
)
Defendant.)
)
and)
)
AMWAY MUTUAL FUND, INC., a)
Delaware corporation,)
)
Intervening Defendant.)

No. 87-C-795-B

J U D G M E N T

In accordance with the Order entered simultaneously this date, Judgment is hereby entered as follows:

Judgment is entered in favor of Jimmie Lee Belknap that she is the owner of one-half (1/2) interest in the 4,000 Amway Mutual Fund, Inc. shares interpled into the court by Amway Mutual Fund, Inc., and Keith L. Belknap is the owner of the remaining one-half (1/2) interest.

DATED this 22nd day of November, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

11-22-89

FRED P. LEIDING, an individual,)
)
 Plaintiff,)

v.)

No. 88-C-1567-B

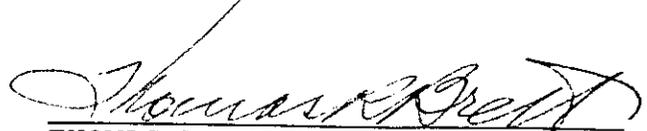
FEDERAL DEPOSIT INSURANCE)
 CORPORATION, THE KEMPTON)
 COMPANY, AS PLAN ADMINISTRATOR)
 OKLAHOMA BANKERS ASSOCIATION)
 INSURANCE TRUST, AND, AS TRUSTEES,)
 ROBERT HOLLIS, GEORGE HAUGER,)
 HARRY LEONARD, JOHN LOWRY,)
 RALPH McCALMONT, F. A. SEWELL III)

Defendants.)

J U D G M E N T

Pursuant to the Order Sustaining the Motion for Summary Judgment Pursuant to Fed.R.Civ.P. 12(b)(1), filed contemporaneous herewith, the Court hereby enters judgment in favor of the Defendant, Federal Deposit Insurance Corporation, and against the Plaintiff, Fred P. Leiding. The Plaintiff's action is hereby dismissed against said Defendant and costs are assessed against the Plaintiff if timely applied for pursuant to Local Rule 6. The parties are to pay their own respective attorneys' fees.

DATED this 22nd day of November, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FRED P. LEIDING, an individual,)
)
 Plaintiff,)
)
 v.)
)
 FEDERAL DEPOSIT INSURANCE)
 CORPORATION, THE KEMPTON)
 COMPANY, AS PLAN ADMINISTRATOR)
 OKLAHOMA BANKERS ASSOCIATION)
 INSURANCE TRUST, AND, AS TRUSTEES,)
 ROBERT HOLLIS, GEORGE HAUGER,)
 HARRY LEONARD, JOHN LOWRY,)
 RALPH McCALMONT, F. A. SEWELL III)
)
 Defendants.)

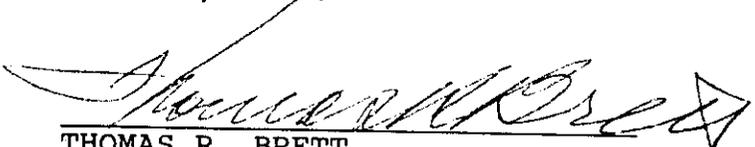
11-22-89

No. 88-C-1567-B

J U D G M E N T

Pursuant to the Order Sustaining the Motion for Summary Judgment Pursuant to Fed.R.Civ.P. 56 filed contemporaneous herewith, the Court hereby enters judgment in favor of the Defendants, The Kempton Company, as Plan Administrator, Oklahoma Bankers Association Insurance Trust, and, as Trustees, Robert Hollis, George Hauger, Harry Leonard, John Lowry, Ralph McCalmont, and F. A. Sewell III, and against the Plaintiff, Fred P. Leiding. The Plaintiff's action is hereby dismissed against said Defendants and costs are assessed against the Plaintiff if timely applied for pursuant to Local Rule 6. The parties are to pay their own respective attorneys' fees.

DATED this 22nd day of November, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

L.E. SMITH,)
)
 Plaintiff,)
)
 v.) 88-C-1672-B
)
 MARCIA HAYNES, AND)
 JACK COWLEY,)
)
 Defendants.)

22

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate filed October 13, 1989 in which the Magistrate recommended that defendant Haynes' Motion for Summary Judgment (Docket #8)¹ should be granted.

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

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

It is, therefore, ordered that defendant Haynes' Motion for Summary Judgment is granted, and this case is hereby dismissed with prejudice as to her.

The Court notes that defendant, Jack Cowley, has not been served with a copy of the summons and Complaint within 120 days after the filing of the Complaint, as required by Federal Rule

¹"Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion or 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.

Civil Procedure 4(j). Unless good cause is shown by plaintiff why such service was not made within that period within ten (10) days of the date of this Order, this action will be dismissed without prejudice as to defendant Jack Cowley upon the Court's own initiative.

Dated this 22 day of Nov, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

OCT 13 1989

L.E. SMITH,)
)
 Plaintiff,)
)
 v.)
)
 MARCIA HAYNES, and JACK COWLEY,)
)
 Defendants.)

88-C-1672-B Jack C. Silver, Clerk
U.S. DISTRICT COURT

REPORT AND RECOMMENDATION OF U.S. MAGISTRATE

Now before the Magistrate is the Defendant's Motion for Summary Judgment (docket #8).¹ Consideration of Defendant's Motion to Dismiss (docket #3) was stayed by the Magistrate's Order facilitating §1915(d) (frivolity) review dated June 8, 1989. Having reviewed the pleadings and applicable law, the Magistrate finds as follows.

The Plaintiff, L.E. Smith, is a patient at the Eastern State Hospital ("Eastern"), having been transferred there from the Joseph Harp Correctional Center Inmate Mental Health Unit ("JHCC/IMHU"). Smith claims that he was "framed and railroaded" (see, Complaint, p.2, docket #2) in his transfer to Eastern from JHCC/IMHU. In essence he argues that he was deprived of his right to due process.

The Defendant, Marcia Haynes, is a nursing supervisor at JHCC/IMHU. Haynes seeks summary judgment, arguing that she had no role in Plaintiff's transfer to Eastern, and that even if she did, the Plaintiff was afforded all the process he was due. The

¹ "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion or 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.

✓

Defendant, Jack Crowley, was not served as of February 16, 1989 and is not a party to the Motion for Summary Judgment.

In order to state a cause of action under §1983, Plaintiff must establish 1) that the conduct complained of was committed by a person acting under color of state law, and 2) that such conduct deprived Plaintiff of some right, privilege, or immunity secured by the Constitution or laws of the United States. Gunkel v. City of Emporia, Kansas, 835 F.2d 1302, 1303 (10th Cir. 1987). Plaintiff must also show that Defendant was the cause of a deprivation. "The plain language of §1983 requires that causation be established before liability can attach". Lee v. Town of Estes Park, Colorado, 820 F.2d 1112, 1116 n. 3 (10th Cir. 1987).

The Supreme Court addressed the issue of the movant's burden in a summary judgment motion in Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986), and the applicable standard of proof in Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). The Celotex Court held that the "plain language of Rule 56(c) [Fed.R.Civ.P.] mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial". Celotex, at 2553. According to Celotex, if there is a complete failure of proof concerning an essential element of the non-movant's case, there can be no genuine issue of material fact because all other facts are necessarily rendered immaterial. Id.

The quantum of evidence necessary for the non-moving party to survive summary judgment was addressed in Anderson, supra, wherein the Court explained that Fed.R.Civ.P. 56(e) provides that a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue of material fact for trial. Anderson, at 2514. The court held that the Plaintiff must present affirmative evidence in order to defeat a properly supported motion for summary judgment. Id. In this regard, the Court stated that "the mere existence of a scintilla of evidence in support of the Plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the Plaintiff". Id. at 2512.

Plaintiff argues that Haynes framed and railroaded him in the transfer to Eastern. However, in her sworn affidavit to the Court (Exhibit A to Defendants' Motion for Summary Judgment), Haynes described her involvement with the Plaintiff during his stay at JHCC/IMHU and his subsequent transfer to Eastern (Docket #10, Exhibit A). Haynes' contact with Plaintiff was limited to medical evaluation and treatment. She did not initiate mental health proceedings against Plaintiff. This was done by Peggy Lero (see, Exhibit D to Defendant's Motion for Summary Judgment). Haynes did not testify at the court hearing concerning Plaintiff's transfer to Eastern.

It appears from the Complaint that Plaintiff is arguing that his transfer to Eastern violated his right to due process. The

United States Supreme Court, in Vitek v. Jones, 445 U.S. 480 (1980), held that the involuntary transfer of a state prisoner to a mental institution implicates a liberty interest which is protected by the Due Process Clause. The Vitek Court held that procedural protection must include written notice of the transfer and an adversary hearing before an independent decision maker.

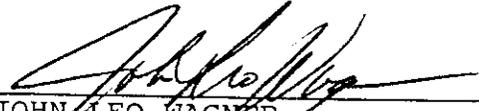
On September 13, 1988, Plaintiff appeared before an examining committee which, after a complete psychological assessment, recommended to the Cleveland County District Court that Smith be transferred to Eastern. Peggy Lero stated in her Affidavit that commitment procedures laid out by the Oklahoma Mental Health Law in Title 43A and Department of Corrections Health Services policies, which require notice and a hearing, were followed. (Affidavit of Peggy Lero, Exhibit D to Defendant's Motion for Summary Judgment.) The Court ordered his transfer. (See, Affidavit of Jack Cowley, Exhibit B to Defendant's Motion for Summary Judgment, Affidavit of Peggy Lero, Exhibit D to Defendant's Motion for Summary Judgment, and Affidavit of Annice Jo Steen, Exhibit F to Defendant's Motion for Summary Judgment.)

The Magistrate finds that the Plaintiff has failed to present evidence of a violation of his civil rights or of the Defendant's role in any alleged violation. Plaintiff was granted the full due process afforded him by law and the Defendant had no role in transferring him to Eastern.

For these reasons the Magistrate finds that the Defendant's Motion for Summary Judgment should be granted.

Pursuant to Local Rule 32(D), parties are given ten (10) days from the above filing date to file any objections with supporting brief.

Dated this 13th day of October, 1989.



JOHN LEO WAGNER
UNITED STATES MAGISTRATE

Dated this 22 day of Nov., 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FAITH A. KOEHN,

Petitioner,

v.

LOUIS W. SULLIVAN, M.D.,
SECRETARY OF HEALTH AND
HUMAN SERVICES,

Defendant.

OCT 18 1983

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

89-C-282-B

FINDINGS AND RECOMMENDATIONS OF U.S. MAGISTRATE

Plaintiff brought this action pursuant to 42 U.S.C. §405 (g) for judicial review of the final decision of the Secretary of Health and Human Services ("Secretary") denying plaintiff's application for disability income benefits under §§216(i) and 223 of Title II of the Social Security Act, 42 U.S.C. §§416(i) and 423. This matter is before the court for decision after a hearing in open court. The Magistrate has carefully considered all pleadings filed in this case, as well as the oral arguments of the parties.

The procedural background of this matter was summarized adequately by the parties in their briefs and during oral argument, and in the decision of the Administrative Law Judge, which summaries are incorporated herein by reference.

The only issue now before the court is whether there is substantial evidence in the record to support the final decision of the Secretary that plaintiff is not disabled within the meaning to the Social Security Act.

Judicial review of the Secretary's determination is limited in scope by 42 U.S.C. §405(g). The court's sole function is to

✓

determine whether the record as a whole contains substantial evidence to support the Secretary's decision. The Secretary's findings stand if they are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (citing Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229 (1938)). In deciding whether the Secretary's findings are supported by substantial evidence, the court must consider the record as a whole. Hephner v. Mathews, 574 F.2d 359 (6th Cir. 1978).

The Social Security Regulations require that a five-step sequential evaluation be made in considering a claim for benefits under the Social Security Act. 20 C.F.R. §404.1520 (1983). See generally, Talbot v. Heckler, 814 F.2d 1456 (10th Cir. 1987); Tillery v. Schweiker, 713 F.2d 601 (10th Cir. 1983). First, the Administrative Law Judge ("ALJ") must ascertain whether the claimant is currently working. If so, there can be no disability. If not, the next inquiry is whether the claimant has a severe impairment. If the answer is yes, then the evaluation continues and the ALJ must determine if the claimant's impairment(s) meet or equal an impairment listed in Appendix 1 of the Social Security Regulations. If plaintiff's impairment meets or equals a listed impairment, then disability is automatically found. Otherwise, the process continues with the question whether the impairment prevents the claimant from doing past relevant work. Finally, if plaintiff cannot return to his past relevant work, then the ALJ

must determine whether claimant's impairment prevents him from doing any other relevant work available in the national economy.

In the case at bar, the ALJ made his decision at the fourth step of the sequential evaluation process. He found that plaintiff has the residual functional capacity for a light exertional level of work not requiring prolonged standing, and this vocational base was not significantly compromised by any non-exertional impairment such as pain. He found that plaintiff was able to perform her past relevant work. Having determined that plaintiff could perform her past work, the ALJ concluded that she was not disabled under the Social Security Act at any time through the date of the decision.

Plaintiff now appeals this ruling, and asserts that the decision of the ALJ is not supported by substantial evidence.

It is well settled that the claimant bears the burden of proving her disability that prevents her from engaging in any gainful work activity. Channel v. Heckler, 747 F.2d 577, 579 (10th Cir. 1984).

The medical records in this case led the ALJ to conclude that the plaintiff suffers from some discomfort and limitation of motion secondary to congenital fusion at L4-5 and spondylosis. He also found that she has evidence of foraminal stenosis on the right, although her complaints are left-sided.

The Magistrate finds that there is substantial evidence to support the conclusion of the ALJ that plaintiff's impairments, singly or in combination, do not meet or equal in severity any category of the listing of impairments found in Appendix 1 to

subpart P of Social Security Regulations No. 4 ("the listings"). The requirements of §105(c) of the listings are not met.

However, the Magistrate concludes that there is not substantial evidence to support the conclusion of the ALJ that plaintiff is able to perform her past relevant work. Plaintiff testified at the hearing that "I could not do hardly any light housework. I have to sit and rest. When I did do the light housework, like last Friday I did light housework, I had to, I have to sit down and rest..." (TR. 38) When asked "If you had an opportunity to do a job as you did when you were previously working as an office worker where you didn't have to be on your feet most of the time, do you think you could handle it now?", she said "No...I cannot sit longer than 30 minutes...And then I have to get up and move around or I get stiff." (TR 40)

The plaintiff also testified that her husband helped her with housework. She said "I have not ran the sweeper for four to five years." (TR 43) She said she could not do anything outside the house such as gardening. "If I did gardening I would not have anything to--if I stoop down I wouldn't have anything to help me get back up." (TR 44) She said "If I stand longer than five minutes or ten minutes it is very hard on my back. It just the bluntness of standing...or the bluntness of sitting". (TR 52) She admitted that she walked a mile in twenty minutes in the mall, but she could not go "any further than a mile." (TR 52)

The ALJ also ignored the report of Dr. William Benzing, which stated:

There are rather bizarre changes involving the 4th and 5th lumbar bodies and the 4th and 5th lumbar interspaces.

There is marked narrowing of the 4th and 5th interspaces, and there is some juxta-articular sclerosis at the 4th level. There is also a rather dense, mature bony overgrowth to the right of the 4th lumbar interspace, which projects slightly posteriorly in the lateral view, and this looks like a rather severe hypertrophic change, probably involving the 5th lumbar body.

IMPRESSION:

Advanced degenerative changes involving both the 4th and 5th lumbar disk with marked narrowing of the interspaces, and with juxta-articular sclerosis at L4. This is associated with a severe hypertrophic change to the right of the 5th lumbar body that apparently is rising from the apophyseal joint between L4 and L5 on this right side.

Congenital anomalies, as noted above, certainly would contribute to an unstable back.

(TR 155)

Dr. Mark Capehart found as follows:

The patient apparently is unable to perform her usual activities at work due to the abnormal articulation in this area with secondary stress on the facet joints and pain. She should be able to perform a job that does not involve stooping or lifting. A sedentary job would be better in view of the symptoms related to this congenital abnormality.

(TR 134)

Dr. David Fell noted:

These left leg symptoms have not responded to Naprosyn or Feldene and continue to bother her on a daily basis. At the present time she has a constant low grade pain in the above distribution which is exacerbated by either protracted sitting or protracted standing. This is particularly a problem since she works as a sales clerk at the Sanger Harris.

. . .

On pinprick testing she describes mild to moderate

dullness of the lateral aspect of the left thigh and calf extending down the lateral margin left foot.

Dr. Alexander Raptov found:

[T]he EMG examination in selected musculature of the low back, hips and both lower extremities reveals evidence of lower motor neuron [sic] neuron pathology at or proximal to the L-5 nerve root level bilaterally. Left involvement appears much more intense electrically than the lower motor neuron findings observed on the right side at this time....

Finally, Dr. J. Frederick McNeer stated:

Mrs. Koehn certainly would appear to me to be in the category of impairments for musculoskeletal evaluation Section 1.05C. She has experienced marked recurrent pain with associated muscle spasm and significant limitation of motion secondary to her severe degenerative arthritic problem. I have enclosed pertinent consultative opinions from several neurosurgical-consultants who do not feel that Mrs. Koehn should be doing even sedentary work.

(TR 191)

The ALJ disregarded Dr. McNeer's opinion because the "conclusions are not substantiated by findings on physical examination and are merely conclusory." (TR 13)

On the basis of the above, the Magistrate finds no support for the conclusion of the ALJ regarding plaintiff's allegations of pain: "the nature, duration and frequency are de minimis, and there is little evidence of more than minimal true functional

limitation secondary to the claimant's allegations of pain". (TR 14) There is also no support for Findings #6 and #7 that plaintiff had the residual functional capacity for light work and could resume her past work as a clerical office worker.

The vocational expert acknowledged that plaintiff was unable

to do retail sales work (TR 65). He also noted there might be problems with a bank teller job, due to the amount of standing involved (TR 65). He admitted that none of the occupations he suggested, restaurant cashier, drive-in teller, or clerical office worker, allowed the worker to get off her feet and lie down (TR 65), and none could make specific accommodations for a person's handicaps (TR 66). Plaintiff told the expert that she takes a nap for 5-30 minutes every day after she does housework because "I will be so worn out that I will have to lay down." (TR 69)

There being findings of pain and a disabling condition, the Magistrate finds that the decision of the Secretary should be reversed, and plaintiff should be entitled to disability income benefits under §216(i) and 223 of Title II of the Social Security Act, 42 U.S.C. §§416(i) and 423.

Dated this 18th day of October 1989.


John Leo Wagner
United States Magistrate

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

CHIDE ENTERPRISES, INC., PAUL R.)
BRANHAM, The Tax Matters Person,)
)
Plaintiff,)

vs.)

UNITED STATES OF AMERICA,)
)
Defendant.)

Civil No. 89-C-106-B
Magistrate Wolfe

ORDER

On this 22nd day of November Plaintiff's Motion To Dismiss, filed the 29th day of September, 1989, comes on for hearing and the Court finds that Defendant has not objected to said motion pursuant to Rule 15. The Court therefore finds that Plaintiff's Motion to Dismiss in Case No. 89-C-106-B should be and is hereby granted.

S/ THOMAS R. BRETT

JUDGE

CERTIFICATE OF MAILING

It is hereby certified that service of the foregoing Order has been made on this _____ day of November, 1989, by mailing, postage prepaid a copy thereof to:

Gigi M. Fowler
Trial Attorney
Tax Division
U.S. Department of Justice
P. O. Box 7238
Washington, D.C. 20044

Tony Graham
United States Attorney
333 West Fourth
Tulsa, Oklahoma 74103

Kenneth C. Ellison

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

FILED

NOV 22 1989

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
JIM L. HERRON; JOHN DOE, Tenant;)
MARY DOE, Tenant; PIONEER SAVINGS)
AND TRUST COMPANY; PROPERTY)
VENTURES OF LOUISIANA, INC.;)
COUNTY TREASURER, Tulsa County,)
Oklahoma; and BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
)
Defendants.)

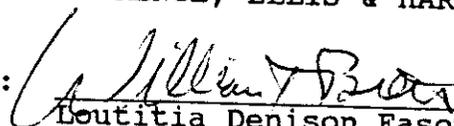
No. 89-C-601-C

**NOTICE OF DISMISSAL OF COUNTERCLAIM
AND CROSS-COMPLAINT OF DEFENDANT WAYNE OSBORN,
BANK COMMISSIONER OF THE STATE BANKING DEPARTMENT,
AS RECEIVER FOR PIONEER SAVINGS & TRUST COMPANY.**

Wayne Osborn, Bank Commissioner of the Oklahoma State Banking Department, as Receiver for Pioneer Savings and Trust Company, gives notice to the parties herein, pursuant to Federal Rules of Civil Procedure, Rule 41(a)(1), of dismissal of his Counterclaim and Cross-Complaint filed herein on October 24, 1989.

Respectfully submitted,

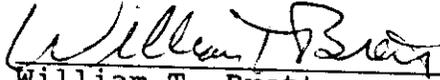
LAWRENCE, ELLIS & HARMON, P.A.

By: 
Leutitia Denison Eason, #2595
William T. Brett, #1105
602 Union Plaza
3030 Northwest Expressway
Oklahoma City, Oklahoma 73112
(405) 948-6000
SPECIAL COUNSEL TO RECEIVER

CERTIFICATE OF MAILING

I hereby certify that on the 20 day of Nov, 1989,
a true and correct copy of the above and foregoing instrument was
mailed with sufficient postage prepaid thereon to:

Phil Pinnell
Assistant U.S. Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103



William T. Brett

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
vs.)
)
JAMES B. HAMMETT and J. ANN)
HAMMETT, husband and wife,)
individually and doing business)
as Honcho's Restaurant and)
Club; ALVIN M. IVERSON;)
PETER C. IVERSON,)
)
Defendants.)

FILED

NOV 21 1989

James O. Ellison, Clerk
U.S. District Court

CIVIL ACTION NO. 88-C-1503-E

ORDER VACATING JUDGMENT OF FORECLOSURE
AND
DISMISSAL WITHOUT PREJUDICE

This matter comes on before the Court on this 20th day of November, 1989, upon the Motion of the Plaintiff, United States of America, for an Order of this Court vacating the Judgment of Foreclosure entered in this case on May 24, 1989 and dismissing this action without prejudice. The Court, having considered the motion and the records and files in this case, and being fully advised in the premises, finds that good cause has been shown for the relief sought and that the motion should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Judgment of Foreclosure entered in this case on May 24, 1989, be, and the same is hereby vacated, set aside and held for naught.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this action be, and the same is hereby dismissed without prejudice.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

SUBMITTED BY:

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT, OBA #741
Assistant United States Attorney
3600 United States Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

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

FRANK EUGENE JOHNSTON,
Petitioner,
v.
SHERIFF DALE WHITECOTTON,
Respondent.

)
)
)
)
)
)
)
)
)
)

89-C-725-E

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

ORDER

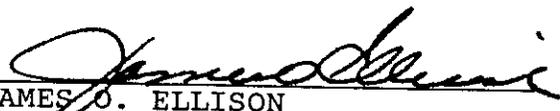
The Court has for consideration the Report and Recommendation of the United States Magistrate filed September 22, 1989 in which the Magistrate recommended that this cause be transferred to the United States District Court for the District of Kansas for all further proceedings.

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 adopted and affirmed.

It is, therefore, Ordered that this cause is transferred to the United States District Court for the District of Kansas for all further proceedings.

Dated this 21st day of November, 1989.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
STEPHEN RAY LEWIS; MARY EARLINE)
LEWIS; COUNTY TREASURER, Creek)
County, Oklahoma; and BOARD OF)
COUNTY COMMISSIONERS, Creek)
County, Oklahoma,)
)
Defendants.)

FILED

NOV 21 1989

Jack C. P. [unclear], Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 89-C-243-E

AMENDED JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 21st day
of Nov, 1989. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney; the Defendants, County Treasurer, Creek County,
Oklahoma, and Board of County Commissioners, Creek County,
Oklahoma, appear by Wesley R. Thompson, Assistant District
Attorney, Creek County, Oklahoma; and the Defendants, Stephen Ray
Lewis and Mary Earline Lewis, appear pro se.

The Court being fully advised and having examined the
file herein finds that the Defendants, Stephen Ray Lewis and Mary
Earline Lewis, acknowledged receipt of Summons and Complaint on
April 10, 1989; that Defendant, County Treasurer, Creek County,
Oklahoma, acknowledged receipt of Summons and Complaint on
April 3, 1989; and that Defendant, Board of County Commissioners,
Creek County, Oklahoma, acknowledged receipt of Summons and
Complaint on March 30, 1989.

It appears that the Defendants, County Treasurer, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, filed their Answer on April 18, 1989; and that the Defendants, Stephen Ray Lewis and Mary Earline Lewis, filed their Answer on April 27, 1989.

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

A tract of land situated in the SE/4 of the SE/4 of Section 2, Township 18 North, Range 11 East, Creek County, Oklahoma described as following: Beginning at a point on the East line of Section 2, 401.0 feet North of the Southeast corner thereof, thence West along the line parallel with the South line of Section 2, a distance of 254.11 feet; thence North along a line parallel with the East line of Section 2, a distance of 548.5 feet to a point in the center line of the existing county road; thence South 59° 25' 38" East along the approximate center line of the existing county road a distance of 294.58 to a point on the East line of Section 2; thence South along the said East line a distance of 395.6 feet to the point of beginning, containing in all 2.75 acres, more or less.

The Court further finds that on January 29, 1988, the Defendants, Stephen Ray Lewis and Mary Earline Lewis, 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 \$73,500.00, payable in monthly installments, with interest thereon at the rate of 10.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Stephen Ray Lewis and Mary Earline Lewis, 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 January 29, 1988, covering the above-described property. Said mortgage was recorded on February 1, 1988, in Book 231, Page 528, in the records of Creek County, Oklahoma.

The Court further finds that the Defendants, Stephen Ray Lewis and Mary Earline Lewis, 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, Stephen Ray Lewis and Mary Earline Lewis, are indebted to the Plaintiff in the principal sum of \$73,320.90, plus interest at the rate of 10.5 percent per annum from September 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, Creek County, 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 \$989.98, plus penalties and interest, for the year 1988. Said lien is superior to the interest of the Plaintiff, United States of America.

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

Stephen Ray Lewis and Mary Earline Lewis, in the principal sum of \$73,320.90, plus interest at the rate of 10.5 percent per annum from September 1, 1988 until judgment, plus interest thereafter at the current legal rate of 8.85 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have and recover judgment in the amount of \$989.98, 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 upon the failure of said Defendants, Stephen Ray Lewis and Mary Earline Lewis, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

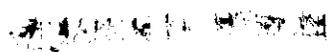
In payment of Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, in the amount of \$989.98, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

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

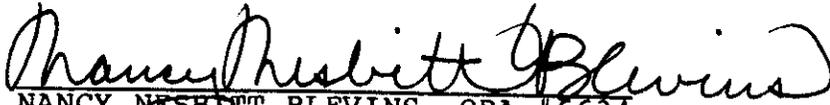
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

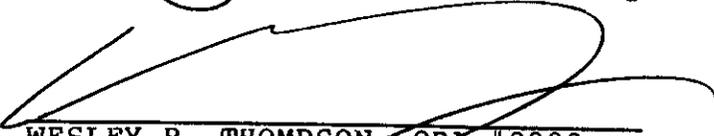


UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney


WESLEY R. THOMPSON, OBA #8993
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Creek County, Oklahoma

Judgment of Foreclosure
Civil Action NO. 89-C-243-E

FILED

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

NOV 21 1989 *old*

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

KARL WAYNE TIGER,)
)
 Plaintiff,)
)
 v.)
)
 RON CHAMPION,)
)
 Defendant.)

89-C-290-E ✓

ORDER

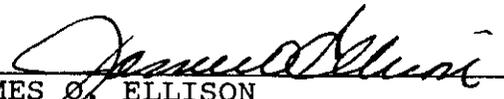
The Court has for consideration the Report and Recommendation of the United States Magistrate filed September 15, 1989 in which the Magistrate recommended that petitioner's application for habeas corpus relief pursuant to 28 U.S.C. §2254 be denied.

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

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

It is, therefore, Ordered that petitioner's application for habeas corpus relief pursuant to 28 U.S.C. §2254 is denied.

Dated this 21st day of November, 1989.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

NOV 21 1989

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

BETTY RYE, as wife and next of kin)
of WILLIAM E. RYE; and BETTY RYE,)
Individually,)

Plaintiff,)

v.)

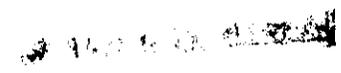
Case No. C-89-192-E

YELLOW FREIGHT SYSTEM, INC.,)
a foreign corporation,)

Defendant.)

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 20th day of Nov., 1989, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.


United States District Judge

336-124/DEH/mc

FILED

NOV 21 1989

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

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

REX HAROLD HOUSTON
and HELEN V. HOUSTON,

Plaintiffs,

vs.

FIBREBOARD CORPORATION, OWENS-CORNING
FIBERGLASS CORPORATION, EAGLE-PICHER
INDUSTRIES, INC., PITTSBURG-CORNING
CORPORATION, CELOTEX CORPORATION, GAF
CORPORATION, KEENE CORPORATION, OWENS-
ILLINOIS, INC., RAYMARK INDUSTRIES,
INC., H. K. PORTER COMPANY, GARLOCK
INC., ARMSTRONG CORK COMPANY, FLEXI-
TALLIC GASKET COMPANY, INC., and
FLINTKOTE COMPANY,

Defendants.

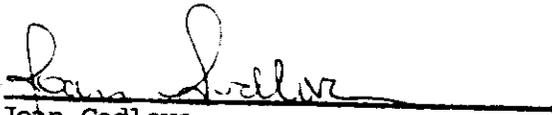
No. 88-C-222-E

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, the
Plaintiffs hereby dismiss the above-entitled cause without prejudice as to
refiling because Plaintiff does not currently have an asbestos-related disease.


Mark H. Iola OBA #4553
Post Office Box 701917
Tulsa, Oklahoma 74170-1917
ATTORNEY FOR PLAINTIFFS

**NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.**


Joan Godlove
3800 First National Tower
Tulsa, Oklahoma 74103
ATTORNEY FOR RAYMARK INDUSTRIES, INC.
AND CELOTEX CORPORATION

SEP 2 1989

Stephen Boaz

Stephen Boaz
920 North Harvey
Oklahoma City, Oklahoma 73102
ATTORNEY FOR GARLOCK INC.

Scott Rhodes

Scott Rhodes
Post Office Box 60130
Oklahoma City, Oklahoma 73146
ATTORNEY FOR OWENS-CORNING FIBERGLAS
CORPORATION

John F. McCormick

John McCormick
900 ONEOK Plaza
Tulsa, Oklahoma 74103
ATTORNEY FOR OWENS-ILLINOIS, INC.,
PITTSBURGH-CORNING CORPORATION, GAF
CORPORATION, KEENE CORPORATION, H. K.
PORTER COMPANY, ARMSTRONG CORK COMPANY,
FLEXITALLIC GASKET COMPANY, INC.,
FLINTKOTE COMPANY and FIBREBOARD
CORPORATION

Joe Michael Russell

Joe Michael Russell
302 North Market Street, Suite 501
Dallas, Texas 75201
ATTORNEY FOR EAGLE-PICHER INDUSTRIES.
INC.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Civil Action No. 89-C-372-B

ONE PARCEL OF REAL PROPERTY,
WITH BUILDINGS, APPURTENANCES,
AND IMPROVEMENTS, KNOWN AS

ROUTE 3, BOX 128-A,
ANTLERS, PUSHMATAHA, OKLAHOMA;
and

ONE 1966 CESSNA 310 AIRCRAFT,
REGISTRATION NUMBER N917MB;
and

ONE 1968 CESSNA 310 AIRCRAFT,
REGISTRATION NUMBER N5770M;
and

ONE 1969 CESSNA 310 177B
AIRCRAFT, REGISTRATION
NUMBER N30713,

Defendants.

JUDGMENT OF FORFEITURE

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

ORDERED, ADJUDGED, AND DECREED that Judgment be entered against the defendant real property, with buildings, appurtenances, and improvements, known as Route 3, Box 128-A, Antlers, Pushmataha County, Oklahoma, and legally described as follows:

One Parcel of Real Property, with Buildings, Appurtenances, and Improvements Known as: Route 3, Box 128-A, Antlers, Pushmataha County, Oklahoma; more particularly described as follows:

The West 450 Feet of the North 840 Feet of the W/2 E/2 SW/4 of Section 20, Township 4 South, Range 16 East of the I.B.M., LESS AND EXCEPT the following: Beginning at a point .450 feet East and 228.90 feet South of the NW corner of the NE/4 SW/4 of Section 20, Township 4 South, Range 16 East; thence West 27.35 feet; thence South 25 feet; thence East 27.30 feet; thence North 25 feet to the point of beginning, Pushmataha County, Oklahoma,

and against all persons interested in such defendant real property, and that the said defendant real property be, and the same is, hereby forfeited to the United States of America for disposition by the United States Marshal according to law.

S/ THOMAS R. BRETT.

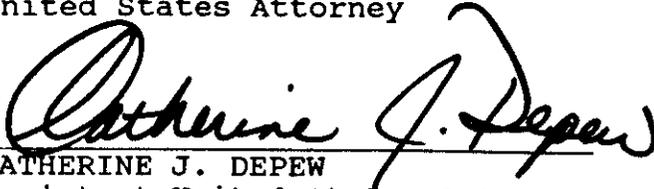
THOMAS R. BRETT,
UNITED STATES DISTRICT JUDGE

THE NORTHERN DISTRICT OF OKLAHOMA

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

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

CATHERINE J. DEPEW
Assistant United States Attorney

CJD/ch
00322

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

1977 17 18

JACKSONVILLE, FLORIDA
U.S. DISTRICT COURT

TOWN & COUNTRY BANK, an)
Oklahoma banking corporation,)
)
Plaintiff,)
vs.)
)
JOE D. WILLARD,)
)
Defendant and)
Third-Party Plaintiff,)
vs.)
)
A. J. DiGERONIMO, DON E. VALE,)
and FRED P. LEIDING, SR.,)
)
Third-Party Defendants.)

No. 88-C-1488-C

JUDGMENT

This matter came before the Court for consideration of plaintiff's motion for summary judgment. The issues having been duly considered and a decision having been rendered in accordance with the Order filed contemporaneously herewith,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered for plaintiff Federal Deposit Insurance Corporation, and against defendant Joe D. Willard and that plaintiff recover the amount of the principal sum of \$227,250.00, together with interest through February 4, 1988, of \$13,287.81, with interest continuing thereafter at the rate of \$78.91 per day until paid, plus default interest on the principal amount from September 21, 1987, at the rate of six percent (6%) per year until paid, plus the costs of

collection, including attorney fees of fifteen percent (15%) of all sums due upon default.

IT IS SO ORDERED this 17th day of November, 1989.



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

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

FILED
NOV 17 1989

WILLIE WADE CALDERA and
MARIE R. CALDERA,

Plaintiff(s),

v.

FIBREBOARD CORPORATION, et al.,

Defendants.

)
) 77-1417
) ASB
)
) No. 87-C-522-B ✓
)
)
)

ORDER

NOW, on this 17 day of Nov., 1989,
this matter comes before the Court upon Stipulation for Dismissal
With Prejudice by Plaintiffs, and each of them, and Defendant,
Owens-Corning Fiberglas Corporation.

It being shown to the Court that the issues and disputes
between them have been compromised and settled, the above matter
is dismissed with prejudice as to Defendant, Owens-Corning
Fiberglas Corporation, only.

IT IS SO ORDERED.

Thomas R. ...
JUDGE OF THE DISTRICT COURT

RECEIVED
NOV 17 1989
FIBREBOARD CORPORATION

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

DENVER WESLEY WILMOTH
AND JEWELL A. WILMOTH

VS.

FIBREBOARD CORPORATION,
ET AL

§
§
§
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§
§
§
§

CA NO: 87-C-403-B

AGREED ORDER OF DISMISSAL WITH PREJUDICE

ON THIS DAY came on to be heard the above-styled and numbered cause, and came Plaintiffs and Defendant, The Celotex Corporation, and announced to the court that all claims by Plaintiffs against Defendant The Celotex Corporation have been fully compromised and settled, and that said Plaintiffs have given or will give to The Celotex Corporation a final release of all claims and causes of action herein. It is therefore,

ORDERED, ADJUDGED and DECREED by the court that Plaintiffs recover nothing from Defendant, The Celotex Corporation by this action and that Plaintiffs' claims against The Celotex Corporation in the above-styled and numbered cause be, and the same is hereby, DISMISSED WITH PREJUDICE to the refiling of same in any form. It is further,

ORDERED, ADJUDGED and DECREED by the court that each party be taxed its own costs of court.

SIGNED this 17th day of Nov., 1989.

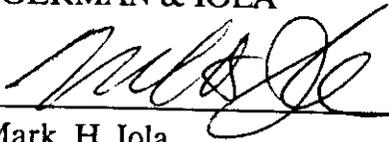
S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

AGREED AND APPROVED:

UNGERMAN & IOLA

By

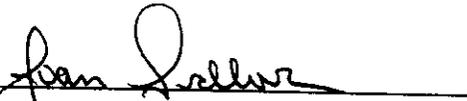


Mark H. Iola
OBA 4553
P. O. Box 701917
Tulsa, Oklahoma 74170-1917
(918) 495-0550

Attorney for Plaintiffs,
Denver Wesley Wilmoth and
Jewell A. Wilmoth

ROBERTS, MARRS & CARSON

By



Joan Godlove
OBA 10563
110 South Hartford, Suite 111
Tulsa, Oklahoma 74120
(918) 582-6567

Attorney for Defendant,
The Celotex Corporation

et 97-c:\wp\celotex\wilmoth.rls

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

FILED
NOV 17 1989
CLERK

FREDERICK CLINTON McCORKLE and
BERNEICE CAROL McCORKLE,

Plaintiff(s),

v.

FIBREBOARD CORPORATION, et al.,

Defendants.

77-1417

ASB

No. 87-C-640-B

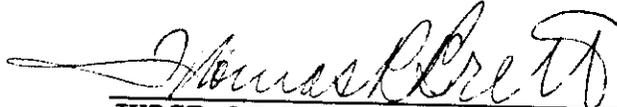
ORDER

NOW, on this 17th day of Nov., 1989,

this matter comes before the Court upon Stipulation for Dismissal
With Prejudice by Plaintiffs, and each of them, and Defendant,
Owens-Corning Fiberglas Corporation.

It being shown to the Court that the issues and disputes
between them have been compromised and settled, the above matter
is dismissed with prejudice as to Defendant, Owens-Corning
Fiberglas Corporation, only.

IT IS SO ORDERED.


JUDGE OF THE DISTRICT COURT

NOTE: THIS ORDER IS TO BE MAILED
BY DELIVERING TO ALL COUNSEL AND
PROVIDING COPIES IMMEDIATELY
UPON RECEIPT.

198

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

FREDERICK CLINTON McCORKLE
AND BERNICE CAROL McCORKLE

VS.

FIBREBOARD CORPORATION,
ET AL

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§
§
§
§
§
§
§
§
§

CA NO: 87-C-640-B

AGREED ORDER OF DISMISSAL WITH PREJUDICE

ON THIS DAY came on to be heard the above-styled and numbered cause, and came Plaintiffs and Defendant, The Celotex Corporation, and announced to the court that all claims by Plaintiffs against Defendant The Celotex Corporation have been fully compromised and settled, and that said Plaintiffs have given or will give to The Celotex Corporation a final release of all claims and causes of action herein. It is therefore,

ORDERED, ADJUDGED and DECREED by the court that Plaintiffs recover nothing from Defendant, The Celotex Corporation by this action and that Plaintiffs' claims against The Celotex Corporation in the above-styled and numbered cause be, and the same is hereby, DISMISSED WITH PREJUDICE to the refiling of same in any form. It is further,

ORDERED, ADJUDGED and DECREED by the court that each party be taxed its own costs of court.

SIGNED this 17th day of Nov., 1989.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

NOTE: THIS ORDER IS TO BE MAILED
BY MOVING TO ALL COUNSEL AND
FILED WITH THE COURT DAILY

AGREED AND APPROVED:

UNGERMAN & IOLA

By

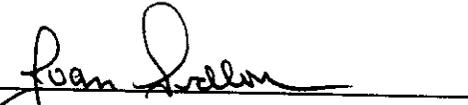


Mark H. Iola
OBA 4553
P. O. Box 701917
Tulsa, Oklahoma 74170-1917
(918) 495-0550

Attorney for Plaintiffs,
Frederick Clinton McCorkle and
Bernice Carol McCorkle

ROBERTS, MARRS & CARSON

By



Joan Godlove
OBA 10563
110 South Hartford, Suite 111
Tulsa, Oklahoma 74120
(918) 582-6567

Attorney for Defendant,
The Celotex Corporation

et 97-c:\wp\celotex\mccorkle.rls

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

JUNIOR ALMON BALDRIDGE
AND VIRGINIA LEE BALDRIDGE

VS.

FIBREBOARD CORPORATION,
ET AL

§
§
§
§
§
§
§

CA NO: 87-C-668-B

AGREED ORDER OF DISMISSAL WITH PREJUDICE

ON THIS DAY came on to be heard the above-styled and numbered cause, and came Plaintiffs and Defendant, The Celotex Corporation, and announced to the court that all claims by Plaintiffs against Defendant The Celotex Corporation have been fully compromised and settled, and that said Plaintiffs have given or will give to The Celotex Corporation a final release of all claims and causes of action herein. It is therefore,

ORDERED, ADJUDGED and DECREED by the court that Plaintiffs recover nothing from Defendant, The Celotex Corporation by this action and that Plaintiffs' claims against The Celotex Corporation in the above-styled and numbered cause be, and the same is hereby, DISMISSED WITH PREJUDICE to the refiling of same in any form. It is further,

ORDERED, ADJUDGED and DECREED by the court that each party be taxed its own costs of court.

SIGNED this 17th day of Nov., 1989.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

AGREED AND APPROVED:

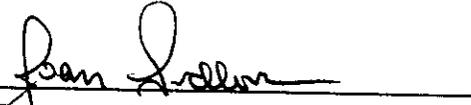
UNGERMAN & IOLA

By 

Mark H. Iola
OBA 4553
P. O. Box 701917
Tulsa, Oklahoma 74170-1917
(918) 495-0550

Attorney for Plaintiffs,
Junior Almon Baldrige and
Virginia Lee Baldrige

ROBERTS, MARRS & CARSON

By 

Joan Godlove
OBA 10563
110 South Hartford, Suite 111
Tulsa, Oklahoma 74120
(918) 582-6567

Attorney for Defendant,
The Celotex Corporation

ct 97-c:\wp\ccelotex\baldrge.ris

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

NOV 17 1989

BILLY BUCK HOGAN,)
)
 Petitioner,)
)
 v.)
)
 WARDEN RON CHAMPION,)
)
 Respondent.)

89-C-397-B ✓

ORDER

Now before the Court for consideration is Billy Buck Hogan's Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. §2254. Hogan is currently serving a twenty-six (26) year term in prison. He pled guilty to First Degree Burglary, two counts of Robbery with Firearms, three counts of Running a Road Block, Unauthorized Use of a Motor Vehicle, and Assault with a Dangerous Weapon, the crimes arising out of a single day's events. Petitioner now seeks federal habeas relief, alleging the convictions for Robbery, Assault with a Dangerous Weapon, and Unauthorized Use of a Motor Vehicle are violative of the double jeopardy clause of the Fifth Amendment of the U.S. Constitution.

Respondent argues, inter alia, that this federal court should respect the procedural bar employed by the Oklahoma court to dismiss this double jeopardy claim. Where there is an adequate and independent state ground for denying relief, such as a procedural default, a federal court should likewise deny relief unless the prisoner can show cause for, and prejudice, from the default. Teague v. Lane, 109 S.Ct. 1060 (1989).

But before a federal court requires the cause and prejudice test be met, the last state court rendering a judgment on the claim must "clearly and expressly" rest its judgment on the state procedural bar. Harris v. Reed, 109 S.Ct. 1038 (1989).

In the case at bar, the Oklahoma Court of Criminal Appeals addressed Petitioner's double jeopardy claim by citing Oklahoma's waiver rule, finding that Petitioner had waived his double jeopardy claim by failing to raise it prior to appeal, and refused to address the merits of his claim.¹

Because the state court clearly and expressly relied on the procedural bar this Court must now utilize the cause and prejudice test to determine whether to hear the claim Petitioner waived in the state courts. To that end, the Magistrate asked Petitioner what the cause was (for his double jeopardy claim waiver) in interrogatories propounded pursuant to Rule 7 of the Rules Governing §2254 cases. Petitioner answered in the alternative that (1) he did not waive the double jeopardy objection because his attorney entered a general demurrer at his preliminary hearing; or (2) that he thought his attorney would have objected.

As to his first explanation of "cause", Petitioner attempts to cast doubt on the state court's finding that "the issue of

¹ The Hogan court wrote:

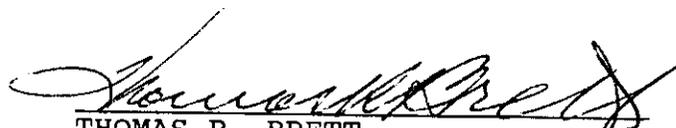
"Finally, petitioner seeks relief due to violation of his protection against double jeopardy. The long established rule in Oklahoma is that protection from double jeopardy is a personal right which may be waived by the defendant's failure to assert the defense or make a timely objection The issue of double jeopardy was never raised by this petitioner in any of the proceedings below. Because of the distinctions between Menna and this case, and because of petitioner's failure to raise the issue below, petitioner's claim of double jeopardy cannot be reviewed by this Court." (Id.)

double jeopardy was never raised" in the trial proceedings. This Petitioner cannot do, without making the showing required by 28 U.S.C. §2254(d). As most recently explained in Case v. Mondragon, No. 88-1685 (10th Cir. October 25, 1989), "Explicit and implicit findings by state trial and appellate courts 'shall be presumed to be correct', 28 U.S.C. §2254(d), unless one of seven facts listed in section 2254(d) are present, or the federal court concludes that the state court findings are not fairly supported in the record". (Footnotes omitted.) Petitioner does not base his challenge on any of the factors cited in Case v. Mondragon. Consequently, the state court finding that the double jeopardy objection was never raised in the trial proceedings will be presumed correct.

As to his second explanation of "cause", Petitioner's mistaken belief that his attorney would make the double jeopardy objection is not enough to constitute "cause". Even if the error can be construed to be so grievous as to fall to the realm of ineffective assistance of counsel, Petitioner has never presented the ineffective assistance of counsel claim to the state courts. This he must first do before relying on the excuse of ineffective counsel to supply a sufficient "cause" for failing to raise the double jeopardy issue. "[T]he exhaustion doctrine generally requires that an ineffective assistance claim be presented to the state courts as an independent claim before it may be used to establish cause for a procedural default in federal habeas proceedings." Murray v. Carrier, 106 S.Ct. 2639 (1986).

Because the Court can discern nothing that would amount to good cause for Petitioner's procedural default, the Court finds Petitioner's double jeopardy claim is procedurally barred and the merits of the claim will not be considered. Teague v. Lane, 109 S.Ct. 1069 (1989); Dugger v. Adams, 109 S.Ct. 1211 (1989); Harris v. Reed, 109 S.Ct. 1038 (1989). Therefore, the Petition for Writ of Habeas Corpus is, hereby, **denied**.

SO ORDERED THIS 17 day of Nov., 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

WILLIE WADE CALDERA
AND MARIE R. CALDERA

VS.

FIBREBOARD CORPORATION,
ET AL

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CA NO: 87-C-522-B

AGREED ORDER OF DISMISSAL WITH PREJUDICE

ON THIS DAY came on to be heard the above-styled and numbered cause, and came Plaintiffs and Defendant, The Celotex Corporation, and announced to the court that all claims by Plaintiffs against Defendant The Celotex Corporation have been fully compromised and settled, and that said Plaintiffs have given or will give to The Celotex Corporation a final release of all claims and causes of action herein. It is therefore,

ORDERED, ADJUDGED and DECREED by the court that Plaintiffs recover nothing from Defendant, The Celotex Corporation by this action and that Plaintiffs' claims against The Celotex Corporation in the above-styled and numbered cause be, and the same is hereby, DISMISSED WITH PREJUDICE to the refiling of same in any form. It is further,

ORDERED, ADJUDGED and DECREED by the court that each party be taxed its own costs of court.

SIGNED this 17 day of Nov., 1989.

S/ THOMAS R. BRELL

UNITED STATES DISTRICT JUDGE

AGREED AND APPROVED:

UNGERMAN & IOLA

By 

Mark H. Iola
OBA 4553
P. O. Box 701917
Tulsa, Oklahoma 74170-1917
(918) 495-0550

Attorney for Plaintiffs,
Willie Wade Caldera and
Marie R. Caldera

ROBERTS, MARRS & CARSON

By 

Joan Godlove
OBA 10563
110 South Hartford, Suite 111
Tulsa, Oklahoma 74120
(918) 582-6567

Attorney for Defendant,
The Celotex Corporation

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

FILED
NOV 17 1989

JEWELL A. WILMOTH, Individually,
and as surviving spouse and
next of kin of
DENVER WESLEY WILMOTH, Deceased,

Plaintiff(s),

v.

FIBREBOARD CORPORATION, et al.,

Defendants.

M-1417

ASC

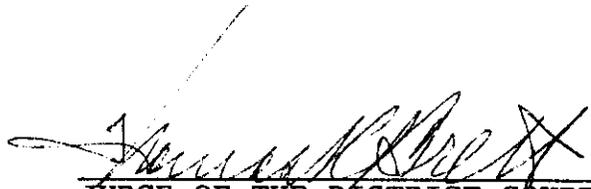
No. 87-C-403-B ✓

ORDER

NOW, on this 17 day of Nov., 1989,
this matter comes before the Court upon Stipulation for Dismissal
With Prejudice by Plaintiffs, and each of them, and Defendant,
Owens-Corning Fiberglas Corporation.

It being shown to the Court that the issues and disputes
between them have been compromised and settled, the above matter
is dismissed with prejudice as to Defendant, Owens-Corning
Fiberglas Corporation, only.

IT IS SO ORDERED.



JUDGE OF THE DISTRICT COURT

RECEIVED
... AND
... VALIDLY
... RECEIPT.

210

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

MICHAEL A. CLERE,
Plaintiff,

vs.

ERNST W. DORN COMPANY, INC.,
a California Corporation,
Defendant.

No. 88-C-678-C ✓

FILED
NOV 17 1989
Jack C. [unclear]
U.S. DISTRICT COURT

ORDER OF DISMISSAL

NOW on this 17th day of November, 1989, upon the written application of the Plaintiff, Michael A. Clere, and the Defendant, Ernst W. Dorn Company, Inc., for a Dismissal With Prejudice of the Complaint of Clere v. Dorn, 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 parties and that said Complaint should be dismissed pursuant to said application.

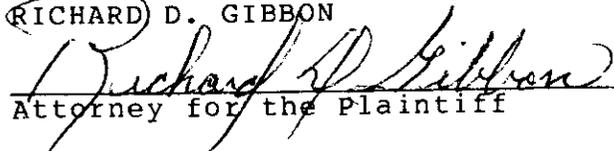
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action therein, be and the same hereby are dismissed with prejudice to any future action.



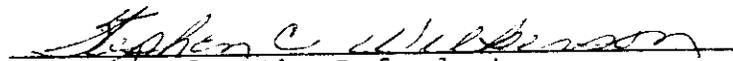
JUDGE OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

APPROVALS AS TO FORM AND CONTENT:

RICHARD D. GIBBON


Attorney for the Plaintiff

STEPHEN C. WILKERSON


Attorney for the Defendant

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

DONALD LESLIE MCDANIEL, et al,)
Debtors,)
DONALD LESLIE MCDANIEL, et al,)
Appellants,)
v.) 87-C-769-B
HARVARD BANK,)
Appellee.)

NOV 17 1989

ORDER

This matter comes on for consideration upon the Motion to Dismiss Appeal filed herein by Appellants Donald Leslie McDaniel and Helen Catherine McDaniel (Debtors) from Bankruptcy Case No. 87-01323. The Court finds the Motion should be and the same is hereby granted.

This appeal is dismissed herewith.

SO ORDERED THIS 17th day of Nov., 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

NOTE: THIS ORDER IS TO BE MAILED
BY MAIL TO ALL COUNSEL AND
FILED IN THE COURT IMMEDIATELY
UPON RECEIPT.

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

LEWIS LEON BROWN and EVA)
JACQUELINE BROWN,)
)
Plaintiffs,)
)
v.)
)
FIBREBOARD CORPORATION, et al.,)
)
Defendants.)

Case No. M-1417
ASB(I) No. _____

Case No. 87-C-580-G

FILED

NOV 17 1989

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

STIPULATION AND ORDER DISMISSING
DEFENDANT, THE FLINTKOTE COMPANY
(IOLA)

COME NOW Plaintiffs, through their attorney, and individual Defendant The Flintkote Company through its attorneys, and do hereby stipulate that this case is "settled and dismissed with prejudice as to Defendant, The Flintkote Company only, each party to bear its own costs," and said action is to remain pending against other named Defendants.

IT IS SO ORDERED.

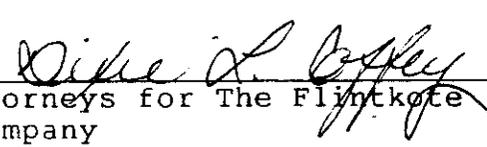
(Signed) H. Dale Cook

JUDGE

APPROVED:



Attorneys for Plaintiffs OBA #4553



Attorneys for The Flintkote
Company

IN THE UNITED STATES DISTRICT COURT **F I L E D**
FOR THE NORTHERN DISTRICT OF OKLAHOMA
TULSA DIVISION **NOV 17 1989**

LEWIS LEON BROWN
AND EVA JACQUELINE BROWN

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

VS.

CA NO: 87-C-580-C

FIBREBOARD CORPORATION,
ET AL

AGREED ORDER OF DISMISSAL WITH PREJUDICE

ON THIS DAY came on to be heard the above-styled and numbered cause, and came Plaintiffs and Defendant, The Celotex Corporation, and announced to the court that all claims by Plaintiffs against Defendant The Celotex Corporation have been fully compromised and settled, and that said Plaintiffs have given or will give to The Celotex Corporation a final release of all claims and causes of action herein. It is therefore,

ORDERED, ADJUDGED and DECREED by the court that Plaintiffs recover nothing from Defendant, The Celotex Corporation by this action and that Plaintiffs' claims against The Celotex Corporation in the above-styled and numbered cause be, and the same is hereby, DISMISSED WITH PREJUDICE to the refiling of same in any form. It is further,

ORDERED, ADJUDGED and DECREED by the court that each party be taxed its own costs of court.

SIGNED this 17 day of Nov, 1989.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

AGREED AND APPROVED:

UNGERMAN & IOLA

By 

Mark H. Iola
OBA 4553
P. O. Box 701917
Tulsa, Oklahoma 74170-1917
(918) 495-0550

Attorney for Plaintiffs,
Lewis Leon Brown and
Eva Jacqueline Brown

ROBERTS, MARRS & CARSON

By 

Joan Godlove
OBA 10563
110 South Hartford, Suite 111
Tulsa, Oklahoma 74120
(918) 582-6567

Attorney for Defendant,
The Celotex Corporation

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

F I L E D

NOV 17 1989

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

IGNACIO A. NAVARRO, }
 }
 Plaintiff, }
 }
 vs. }
 }
 STEVE HARGETT, et al., }
 }
 Defendants. }

No. 89-C-187-C

ORDER

Before the Court is the objection by petitioner, Ignacio A. Navarro, to the Report and Recommendation of the United States Magistrate. It is the recommendation of the Magistrate that the petition for Writ of Habeas Corpus be denied.

Plaintiff, an inmate in a state correctional institution, brought this action pursuant to 28 U.S.C. §2254. Navarro sets forth two grounds for relief. Navarro asserts he was denied a fair trial as a result of (1) the introduction of alleged hearsay evidence of a drug-related telephone call to Navarro's home, and (2) the alleged prejudicial introduction of evidence of Navarro's "other crimes".

The Court has independently reviewed the record and finds that the Report and Recommendation of the Magistrate are supported by applicable law. The Magistrate's Report and Recommendation are affirmed and adopted by the Court.

8

It is therefore Ordered that the petition of Ignacio Navarro for Writ of Habeas Corpus is hereby DENIED.

IT IS SO ORDERED this 17th day of November, 1989.



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

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

FILED

NOV 17 1989

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

BOBBY JEAN LEE
AND GOLDIE CAUDILL LEE

VS.

FIBREBOARD CORPORATION,
ET AL

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CA NO: 87-C-380-C

AGREED ORDER OF DISMISSAL WITH PREJUDICE

ON THIS DAY came on to be heard the above-styled and numbered cause, and came Plaintiffs and Defendant, The Celotex Corporation, and announced to the court that all claims by Plaintiffs against Defendant The Celotex Corporation have been fully compromised and settled, and that said Plaintiffs have given or will give to The Celotex Corporation a final release of all claims and causes of action herein. It is therefore,

ORDERED, ADJUDGED and DECREED by the court that Plaintiffs recover nothing from Defendant, The Celotex Corporation by this action and that Plaintiffs' claims against The Celotex Corporation in the above-styled and numbered cause be, and the same is hereby, DISMISSED WITH PREJUDICE to the refiling of same in any form. It is further,

ORDERED, ADJUDGED and DECREED by the court that each party be taxed its own costs of court.

SIGNED this 17 day of Nov, 1989.

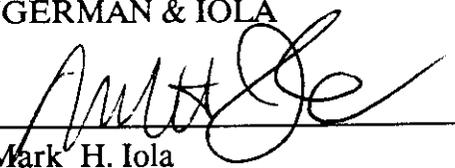
(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

AGREED AND APPROVED:

UNGERMAN & IOLA

By


Mark H. Iola

OBA 4553

P. O. Box 701917

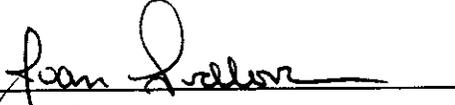
Tulsa, Oklahoma 74170-1917

(918) 495-0550

Attorney for Plaintiffs,
Bobby Jean Lee and
Goldie Caudill Lee

ROBERTS, MARRS & CARSON

By


Joan Godlove

OBA 10563

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Tulsa, Oklahoma 74120

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Attorney for Defendant,
The Celotex Corporation

et 97-c:\wp\celotex\lee.rls

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

U.S. DISTRICT COURT

EDWARD MAMBUCA,
Plaintiff,
vs.
AARON RENTS, INC.,
Defendant.

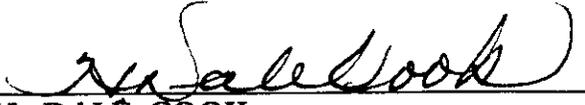
No. 88-C-863-C

J U D G M E N T

In accordance with the Findings of Fact and Conclusions of Law
filed contemporaneously herewith,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment be
entered on behalf of defendant, Aaron Rents, Inc., and against
plaintiff, Edward Mambuca.

IT IS SO ORDERED this 17th day of November, 1989.


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

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

10/17/89
CLERK OF DISTRICT COURT

EDWARD MAMBUCA,)
)
Plaintiff,)
)
vs.)
)
AARON RENTS, INC.,)
)
Defendant.)

No. 88-C-863-C ✓

FINDINGS OF FACT
and
CONCLUSIONS OF LAW

The above-styled action for discrimination on account of national origin predicated on 42 U.S.C. §2000(e) et seq., Title VII of the Civil Rights Act of 1964 came on for nonjury trial on October 11, 1989. After considering the pleadings, the testimony and exhibits admitted at trial, all of the briefs and arguments presented by counsel for the parties, and being fully advised in the premises, the Court enters the following Findings of Fact and Conclusions of Law in accordance with Rule 52, F.R.Cv.P.

FINDINGS OF FACT

1. The plaintiff, Edward Mambuca, was born in Havana, Cuba, and came to this country on May 4, 1980. After being processed through Fort Chaffee, Arkansas, Mr. Mambuca was sponsored by a Collinsville family and moved into the Tulsa, Oklahoma area.

2. On or about March 15, 1983, Mr. Mambuca obtained employment with Aaron Rents, Inc., first as a warehouseman, then

as a truck driver, and finally, as a re-work man, repairing rental furniture.

3. Darrell Corrington became Mambuca's supervisor in January of 1984. Prior to that, Corrington had been the assistant manager for an Aaron Rents store in Oklahoma City.

4. Shortly before Corrington came to Tulsa, Mambuca was in the Oklahoma City store to pick up some furniture. While there, he heard Corrington talking to someone on the phone who Corrington referred to as a "camel jock". He also complained about "all these damned foreigners". Mr. Mambuca then confronted Corrington about these remarks. Corrington replied that he did not like those "g__d_____ foreigners".

5. After Corrington became Mambuca's supervisor, Mambuca once overheard Corrington refer to him as a "f_____ Cuban".

6. Lanette Kane was the assistant manager at Aaron Rents during the time of Mambuca's employment. When speaking to Kane about Mambuca, Corrington often referred to Mambuca's nationality, usually calling him Kane's "Cuban friend".

7. Corrington also kept a detailed diary on Mambuca's activities, but did not do that for any other employees.

8. Corrington prohibited the speaking of Spanish by employees. He also assigned petty tasks to Mambuca, such as rearranging the furniture in his office, which took Mambuca away from his regular work.

9. Mambuca's employment was terminated by Corrington on February 6, 1984, less than one month after Corrington became Mambuca's supervisor.

10. The reason articulated by Corrington for Mambuca's discharge was that he had taken two lunch breaks in one day, in violation of company policy. In fact, Mambuca took care of car problems his wife was having during his lunch hour and then waited until his fifteen-minute afternoon break to eat his lunch. Corrington was absent from the store that morning. Assistant manager Lanette Kane was left in charge during his absence. She was informed by Mambuca of his desire to assist his wife and gave him permission to do so.

11. Corrington's decision to discharge plaintiff was based upon the instruction of Dan Nold, a District Manager for defendant. Nold testified to two personal observations by him which formed his impression of plaintiff as a poor employee: (1) the backlog in the rework area, and (2) an incident in which plaintiff allegedly swore in front of customers.

CONCLUSIONS OF LAW

1. This is an action alleging discrimination in employment on the basis of national origin, in violation of Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e).

2. All filing requirements of Title VII, which are a prerequisite to this Court's jurisdiction, have been satisfied by the plaintiff. This Court has subject matter jurisdiction and

personal jurisdiction, pursuant to 28 U.S.C. §1331 and 42 U.S.C. §2000e-5(f)(3).

3. The defendant herein is an employer subject to the provisions of Title VII. 42 U.S.C. §2000(e)(b), (h).

4. Venue properly lies in this Court. 42 U.S.C. §2000(e)-5(e)(f)(3).

Prima Facie Case

In a discharge case, based on disparate treatment, a prima facie case consists of the following: (1) plaintiff is a member of a protected group; (2) he was qualified for the position from which he was dismissed; (3) he was removed from that position; (4) he was replaced by someone not a member of the protected group. Whatley v. Skaggs Companies, Inc., 707 F.2d 1129, 1135 (10th Cir.), cert. denied, 464 U.S. 938 (1983). A discharged employee establishes a prima facie case by satisfying the first three requirements and by producing evidence that someone was hired in his place after he was fired. Brown v. Parker-Hannifin Corp., 746 F.2d 1407, 1409-10 (10th Cir. 1984).

The plaintiff herein has made out a prima facie case of discrimination in his termination from employment.

The burden that shifts to the defendant requires defendant to rebut the presumption of discrimination by producing evidence of a legitimate non-discriminatory reason for the discharge of the plaintiff. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 254 (1981): "The defendant need not persuade the Court

that it was actually motivated by the proffered reasons. (citation omitted). It is sufficient if the defendant's evidence raises a genuine issue of fact as to whether it discriminated against the plaintiff." Id. 254-255.

Defendant has met its burden of rebutting the plaintiff's prima facie case of discrimination (assuming the prima facie case has been shown) by articulating a lawful reason for its action, that is, by producing admissible evidence which would allow the Court to conclude that the employment decision had not been motivated by discriminatory animus. Id. 257.

The ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff. Texas Department of Community Affairs, supra, 253. In essence, the burden of the plaintiff "to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a mere pretext for discrimination," merges with the ultimate burden of proving intentional discrimination. Id. 253, 256. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 805-06 (1973). See also Watson v. Fort Worth Bank and Trust, 108 S.Ct. 2777 (1988).

The reference to "articulated reason" refers to the reason which the defendant articulates at trial. The defendant is not bound by the reason articulated at the time of discharge (e.g., in this instance, Corrington's accusation of plaintiff taking two lunch breaks). No federal rule requires just cause for discharges.

Pollard v. Rea Magnet Wire Co., Inc., 824 F.2d 557, 558 (7th Cir. 1987), cert. denied, 108 S.Ct. 488 (1988). The Court therefore does not place the burden on the employer to justify the cause for dismissal; rather, the burden is on the plaintiff to demonstrate discharge violative of statutory language. Accordingly, the Court examines defendant's reason or reasons articulated at trial. See also Burdine, 450 U.S. at 254-55 & n.9 (defendant sets forth its reasons through admissible evidence). Plaintiff has cited EEOC v. West Bros. Dept. Store, 805 F.2d 1171 (5th Cir. 1986) which states that a court should concern itself with an employer's actual motive, not a hypothetical or post hoc motive. However, that case involves a district court itself supplying a motive in the absence of evidence. Such is not the case here. Plaintiff also refers to Price Waterhouse v. Hopkins, 109 S.Ct. 1775 (1989), in which the United States Supreme Court distinguished between "pretext" cases and "mixed motive" cases. While plaintiff herein presented direct evidence of discriminatory animus on Corrington's part, this evidence does not rise to the level that the Court infers that an unlawful motive was a substantial factor actually relied upon in making the decision. cf. id. at 1795 (White, J., concurring); id. at 1806 (Kennedy, J. dissenting). The Court is persuaded that the analysis employed in this case, that appropriate to a "pretext" case, is the proper one.

Plaintiff did not allege or attempt to prove that Nold was motivated by discriminatory animus in instructing Corrington to

discharge plaintiff. The Court must conclude that plaintiff has failed to sustain his burden of proof.

It is the Order of the Court that judgment be entered in favor of defendant Aaron Rents, Inc., and against plaintiff Edward Mambuca.

IT IS SO ORDERED this 17th day of November, 1989.



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

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

UNDERWRITERS SALVAGE COMPANY,
an Illinois Corporation,
Plaintiff,

vs.

**DAVID HICKS, RALPH FULP,
DAVE HICKS AUTO PARTS, INC.,** an Oklahoma
corporation, and **Part Mart, Inc.,** d/b/a
M & M Automart, a Missouri corporation,

Defendants.

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) No. 89-C-169-B
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JUDGMENT

Now on this 17th day of November, 1989, this matter comes on for entry of judgment pursuant to the Court's order of October 11, 1989, the instructions of the Court at the hearing conducted November 3, 1989 and the findings and opinion contained therein. The Court hereby adopts the findings of the said Order of October 11, 1989, in this Order of Judgment, as if set forth herein in full. The Court further finds:

1. That Plaintiff is a citizen of Illinois, being incorporated and having its principal place of business in that state;
2. That Defendants Fulp, Hicks, and Dave Hicks Auto Parts, Inc., are all citizens of the State of Oklahoma; and that Defendant Part Mart, Inc., being a Missouri corporation, is a citizen of that state and may or may not be a citizen of Oklahoma, depending upon whether it has its principal place of business in Oklahoma; but in any event is not a citizen of Illinois.
3. There is complete diversity of citizenship of the parties;
4. The amount in controversy exceeds the sum of \$10,000.00 exclusive

of costs and interest;

5. This Court therefore has jurisdiction of the subject matter of the controversy under 28 U.S.C. § 1332(a)(1) and (c) as it was in force at the time this action was commenced.

6. The parties have been properly served and all parties necessary to a decision are before the Court.

7. Further deadlines for scheduling should be set.

Based on the findings of the Court, and the opinion expressed in the previous order, it is by the Court,

ORDERED, ADJUDGED AND DECREED, that the Plaintiff, Underwriter's Salvage Company, an Illinois Corporation, have judgment against Defendant Ralph Fulp for the return of the motor home identified in the Second Amended Complaint, the same being a 1985 Coachman President motor home, VIN # 1GBKP37W7F3320735; said return to be WITHOUT BOND by the Plaintiff, and the title and right of Plaintiff to ownership and possession of the motor home is absolute, without restriction, lien, claim or encumbrance of any party to this action; and it is further

ORDERED, ADJUDGED AND DECREED, that upon the return of the motor home, Plaintiff shall have 10 days within which to make inspection of the said motor home to determine whether this Court's orders concerning the preservation of the motor home in its original state as delivered to Defendant Fulp have been complied with and, in the event they have not, to make application to this Court for further relief; and it is further

ORDERED, ADJUDGED AND DECREED, that should Defendant Fulp elect to refuse the return of the motor home to Plaintiff as directed, he is ordered

to post a cash bond in the amount of \$33,000.0 to secure the interest of Plaintiff and Plaintiff shall have leave of this Court to apply for a modification of the bond at any time during the pendency of this action; and it is further

ORDERED, ADJUDGED AND DECREED, that the remaining claims of Plaintiff against Defendants Dave Hicks, Dave Hicks Auto Parts, Inc., and Part Mart, Inc., shall be tried together with the cross-claim of Ralph Fulp against the said Defendants, to a jury, January 16, 1990, the parties to adhere to the following pre-trial schedule: objections to outstanding interrogatories and requests to produce to be filed by Plaintiff by Thursday, November 9, 1989; the status conference scheduled for November 15, 1989 is stricken; parties to exchange expert and witness names (including testimony) unless previously deposed, by November 20, 1989; discovery cutoff December 4, 1989; exchange pre-numbered exhibits and agreed pre-trial order due December 29, 1989; voir dire, jury instructions and trial brief due January 8, 1990.

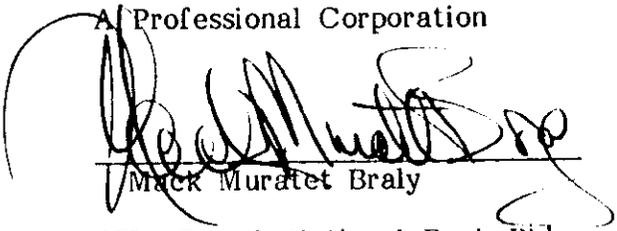
Dated this 17th of November, 1989.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

BRALY & HINDS
A Professional Corporation



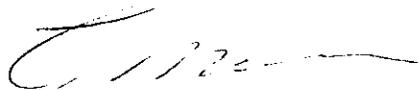
Mack Muratet Braly

1701 Fourth National Bank Bldg.
Tulsa, Oklahoma 74119
(918) 582-2806

Attorneys for Plaintiff

James W. Keeley, Esq.

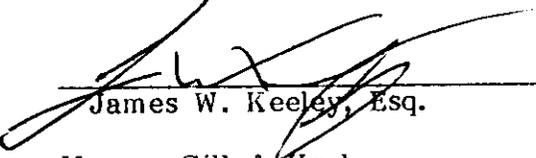
Messrs. Gill & Keeley
1400 South Boston Bldg.
Suite 680
Tulsa, Oklahoma 74119
Attorneys for David Hicks



Coy Morrow, Esq.

Messrs. Wallace, Owens, Langers, Gee,
Morrow, Wilson, Watson, James & Coiner
P. O. Box 1168
Miami, Oklahoma 74355
Attorney for Ralph Fulp

Attorneys for Plaintiff



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Tulsa, Oklahoma 74119
Attorneys for David Hicks

Coy Morrow, Esq.

Messrs. Wallace, Owens, Langers, Gee,
Morrow, Wilson, Watson, James & Coiner
P. O. Box 1168
Miami, Oklahoma 74355
Attorney for Ralph Fulp

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

ROBERT MARSEY,)
)
 Plaintiff,)
)
 vs.) No. 88-C-97-B
)
 CITY OF SAPULPA,)
 OKLAHOMA, et al.,)
)
 Defendants.)

ORDER OF DISMISSAL WITH PREJUDICE

Upon stipulation of all of the parties and for good cause shown, Plaintiff's causes of action against all Defendants are hereby dismissed with prejudice to the refiling of such actions.

SO ORDERED this 17th day of Nov., 1989.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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

NOV 17 1989

JAMES H. ...
U.S. DISTRICT COURT

ROY HANNAFORD COMPANY, INC.,)	
)	
Plaintiff,)	
)	
vs.	)	No. 89-C-96-C
)	
CIGNA INSURANCE COMPANY, INC.,)	
et al.,)	
)	
Defendants.)	

ORDER

Now before the Court for its consideration is the objection of plaintiff to the Report and Recommendation of the United States Magistrate filed on August 29, 1989.

The only portion objected to is that which denied plaintiff's motion to amend scheduling order, which motion seeks a jury trial in this action. This action began in state court with the filing of a petition in state court on January 13, 1989, alleging interference with contract, interference with prospective economic advantage, abuse of fiduciary relationship, violation of the Oklahoma deceptive trade practices act, and common law fraud. The petition did not contain a jury trial demand. On February 8, 1989 the defendants filed a joint petition for removal.

On May 11, 1989, a scheduling conference was held before the Magistrate. The matter was set down for non-jury trial, as reflected in the Scheduling Order. There is no indication of an objection by the plaintiff. On August 4, 1989, almost three months

later, the plaintiff filed its motion to amend scheduling order, wherein plaintiff requests jury trial.

The Magistrate recommended that the motion be denied, based upon Rule 13(B) of the Local Court Rules, which provides in pertinent part that "in any case removed from State Court, a jury, if desired, must be demanded on or before thirty (30) days from the date of the Notice of Removal, or trial by jury is waived."

In objecting, plaintiff relies upon Rule 81(c) F.R.Cv.P., which provides in pertinent part that

If state law applicable in the court from which the case is removed does not require the parties to make express demands in order to claim trial by jury, they need not make demands after removal unless the court directs that they do so within a specified time if they desire to claim trial by jury. The court may make its direction on its own motion and shall do so as a matter of course at the request of any party.

(emphasis added).

Plaintiff argues that Rule 81 contemplates a case by case application, and that the inadvertent failure to request a jury trial should not be enforced.

Plaintiff's argument would have more force if the request for jury trial had been made immediately after the Scheduling Order of May 11, 1989. Plaintiff was clearly put on notice that a non-jury trial was contemplated. Plaintiff waited almost three months before filing a motion to seek to revise the Scheduling Order. The Court believes that such lack of diligence was properly found by the Magistrate to constitute a waiver. No other objection having been filed the Report and Recommendation of the Magistrate will be affirmed in its entirety.

It is the Order of the Court that the motion to dismiss or, in the alternative for more definite statement of defendants Orvil Coborn and Corroon & Black is hereby denied as to dismissal, but is granted requiring a more definite statement as to the fourth and fifth causes of action. Plaintiff has ten days from the date of this Order to make more particular averments of its fourth and fifth causes of action and defendants have twenty days to answer all claims.

It is the further Order of the Court that the motion of defendants Insurance Company of North America and Cigna Insurance Company, Inc. for more definite statement is hereby granted as to plaintiff's fourth and fifth causes of action. The same dates described above apply.

It is the further Order of the Court that plaintiff's motion to amend the Scheduling Order is hereby denied.

IT IS SO ORDERED this 17th day of November, 1989.



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

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

SHERYL K. WILLCOX, et al ,)
)
)
)
Plaintiff(s),)
)
vs.)
)
THE CITY OF HOMINY, et al ,)
)
)
)
Defendant(s).)

FILED
NOV 17 1988
DISTRICT COURT

No. 88-C-1445-B ✓

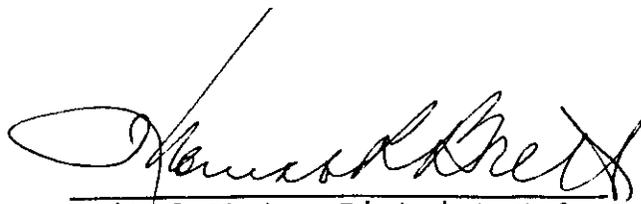
JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

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

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

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

IT IS SO ORDERED this 17 day of NOVEMBER, 1989.



United States District Judge
THOMAS R. BRET

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

1989 JUL 17 1030

JACOB W. ... CLERK
U.S. DISTRICT COURT

TOWN & COUNTRY BANK, an)
Oklahoma banking corporation,)
)
Plaintiff,)
)
vs.)
)
JOE D. WILLARD,)
)
Defendant and)
Third-Party Plaintiff,)
)
vs.)
)
A. J. DiGERONIMO, DON E. VALE,)
and FRED P. LEIDING, SR.,)
)
Third-Party Defendants.)

No. 88-C-1488-C

ORDER

Now before the Court for its consideration are the objections of defendant Joe D. Willard to the Report and Recommendation of the United States Magistrate filed on July 20, 1989.

The facts of this case are detailed in the Magistrate's Report. Defendant Willard executed a promissory note to Town and Country Bank. The Federal Deposit Insurance Corporation (FDIC) is now the owner and holder of the note. Willard asserted various affirmative defenses and counterclaims. The Magistrate found that none of these survived 12 U.S.C. §1823(e), citing Langley v. FDIC, 108 S.Ct. 396 (1987) and FDIC v. Galloway, 856 F.2d 112 (10th Cir. 1988). Willard objects only as regards his contention under state and federal securities laws. Willard asserts that his investment

in a motel complex (the investment for which he borrowed money from the Bank) constitutes a security. The Court finds this contention to be irrelevant. The FDIC sues on the promissory note and §1823(e) bars any claim based upon terms or conditions not present in the bank's records. It is undisputed in this case that none of the misrepresentations alleged by Willard appear in the loan documents or were approved by the Bank's Credit Committee or Board of Directors. The Magistrate correctly recommended that the FDIC's motion for summary judgment should be granted.

Also before the Court is Willard's objection to the Magistrate's recommendation that Willard's third-party complaint be dismissed. Willard seeks to sue DiGeronimo, Vale, and Leiding, the three men who allegedly fraudulently induced him into obtaining the loan. The third-party defendants moved to dismiss, arguing that the claim was not properly brought as a third-party action.

Rule 14(a) F.R.Cv.P. provides in pertinent part as follows:

At any time after commencement of the action, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff.

(emphasis added).

As the emphasized language indicates, "impleader is proper only where the third-party defendant's liability is 'in some way derivative of the outcome of the main claim'." Hefley v. Textron, Inc., 713 F.2d 1487, 1498 (10th Cir. 1983) (quoting United States v. Joe Grasso & Son, Inc., 380 F.2d 749, 751 (5th Cir. 1967)). It has been noted that "[t]he secondary or derivative liability notion is central and it is irrelevant whether the basis of the third-

party claim is indemnity, subrogation, contribution, express or implied warranty, or some other theory." 6 C.Wright & A.Miller, Federal Practice and Procedure, §1446 at 246-248 (footnotes omitted). Further, the third party claim

cannot simply be an independent or related claim but must be based upon plaintiff's claim against defendant. The crucial characteristic of a Rule 14 claim is that defendant is attempting to transfer to the third-party defendant the liability asserted against him by the original plaintiff. The mere fact that the alleged third-party claim arises from the same transaction or set of facts as the original claim is not enough.

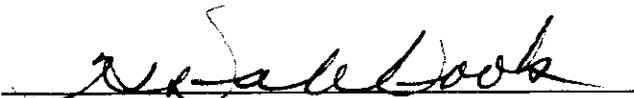
Id. at 257 (footnote omitted).

The Court agrees with the Magistrate that the claim of fraud against the third-party defendants in no way contemplates that they are liable on the note upon which the FDIC sues. Therefore, the third-party complaint should be dismissed without prejudice to Willard bringing a separate action based on the same claim.

It is the Order of the Court that the motion of the plaintiff for summary judgment is hereby GRANTED.

It is the further Order of the Court that the motion of the third-party defendants to dismiss is hereby GRANTED.

IT IS SO ORDERED this 17th day of November, 1989.


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

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

FILED

NOV 16 1989

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

JASON SCOTT WILLIAMS,
Plaintiff,

vs.

No. 89-C-182-E

PACIFIC MUTUAL LIFE INSURANCE
COMPANY; and EMPLOYEE BENEFITS
AMERICA ADMINISTRATION CORPO-
RATION f/k/a PM MANAGEMENT
SERVICES COMPANY,

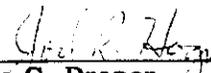
Defendants.

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

The following parties, by and through counsel of record and pursuant to Rule 41(a)(1)(ii) of the Fed.R.Civ.Proc., hereby jointly stipulate that the Plaintiff's causes of action in this case shall be dismissed with prejudice, the parties shall each bear their own attorney's fees and costs.

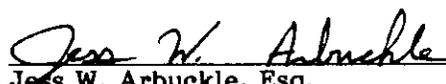
WHEREFORE Plaintiff Jason Scott Williams and Defendants Pacific Mutual Life Insurance Company and Employee Benefits America Administration Corporation jointly stipulate to the Dismissal With Prejudice of the Plaintiff's action against the Defendants with prejudice to bringing another suit.

DATED this 16 day of November, 1989.



Elsie C. Draper
Joel R. Hogue
GABLE & GOTWALS
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119

ATTORNEYS FOR DEFENDANTS
PACIFIC MUTUAL LIFE INSURANCE
COMPANY AND EMPLOYEE BENEFITS
AMERICA ADMINISTRATION
CORPORATION f/k/a PM MANAGEMENT
SERVICE COMPANY



Jess W. Arbuckle, Esq.
LAW OFFICES OF DAVID L. SOBEL
2021 South Lewis
Suite 675
Tulsa, Oklahoma 74104

ATTORNEYS FOR THE PLAINTIFF
JASON SCOTT WILLIAMS

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

FILED

NOV 16 1989

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

ADVANCE-UNITED EXPRESSWAYS,)
INC., Debtor-In-Possession,)
)
Plaintiff,)
)
vs.)
)
SOONER RAG & WIPING, INC.,)
)
Defendant.)

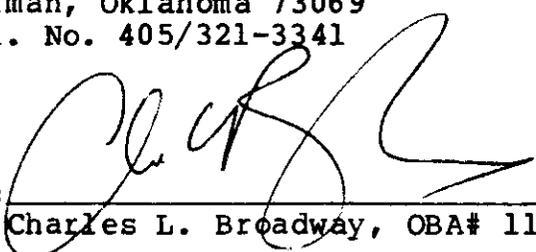
Case No. 89-C-786 E

DISMISSAL WITH PREJUDICE

Comes now the Plaintiff, Advance-United Expressways, Inc., and dismisses this cause of action with prejudice to the bringing of any other action on the facts alleged herein.

ADVANCE-UNITED EXPRESSWAYS, INC.,
PLAINTIFF

BROWN & ASSOCIATES, their Attorneys
117 East Main Street
Norman, Oklahoma 73069
Tel. No. 405/321-3341

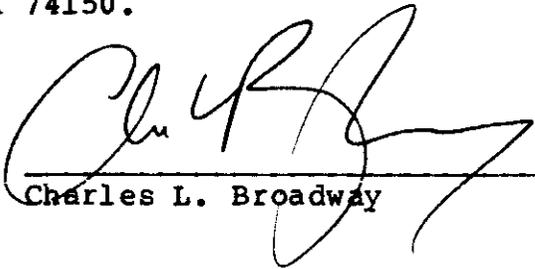
By: 
Charles L. Broadway, OBA# 11624

David G. Sperry
204 West Kansas, Suite 204
Independence, Missouri 64050
Tel. No. 816/461-5133

OF COUNSEL

CERTIFICATE OF MAILING

I hereby certify a true and correct copy of the above and foregoing Dismissal With Prejudice was mailed, postage prepaid, this 14th day of November, 1989, to Sooner Rag & Wiping, Inc., at P. O. Box 50189, in Tulsa, OK 74150.



Charles L. Broadway

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

FILED

NOV 16 1989

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

ADVANCE-UNITED EXPRESSWAYS,
INC., Debtor-In-Possession,

Plaintiff,

vs.

AMERICAN GRAPHICS, INC.,

Defendant.

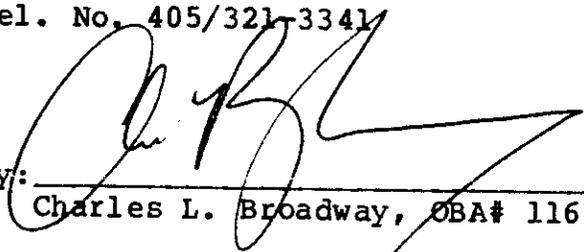
Case No. 89-C-779 E

DISMISSAL WITH PREJUDICE

Comes now the Plaintiff, Advance-United Expressways, Inc., and dismisses this cause of action with prejudice to the bringing of any other action on the facts alleged herein.

ADVANCE-UNITED EXPRESSWAYS, INC.,
PLAINTIFF

BROWN & ASSOCIATES, their Attorneys
117 East Main Street
Norman, Oklahoma 73069
Tel. No. 405/321-3341

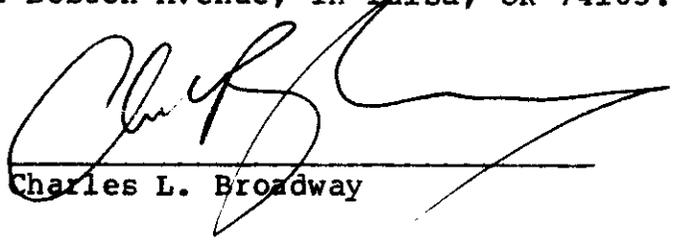
By: 
Charles L. Broadway, OBA# 11624

David G. Sperry
204 West Kansas, Suite 204
Independence, Missouri 64050
Tel. No. 816/461-5133

OF COUNSEL

CERTIFICATE OF MAILING

I hereby certify a true and correct copy of the above and foregoing Dismissal With Prejudice was mailed, postage prepaid, this 14th day of November, 1989, to George S. Thompson, Attorney for Defendant, at BARKLEY, RODOLF, SILVA, McCARTHY & RODOLF, 2700 Mid-Continent Tower, 401 South Boston Avenue, in Tulsa, OK 74103.

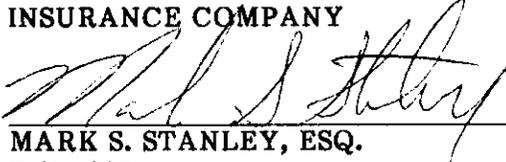


Charles L. Broadway



Joel R. Hogue
GABLE & GOTWALS
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119

ATTORNEYS FOR DEFENDANTS THIRD
PARTY ADMINISTRATORS, INC. AND
MUTUAL OF NEW YORK LIFE
INSURANCE COMPANY



MARK S. STANLEY, ESQ.
Suite 205
6660 South Lewis Street
Tulsa, OK 74126

ATTORNEY FOR PLAINTIFF JANET
SMITH

Entered
FILED
1 NOV 16 1989
Jack C. Silver, Clerk
U.S. DISTRICT COURT

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

In Re:	)	M.D.L. 153
)	
HOME-STAKE PRODUCTION COMPANY	)	73-C-382 and 73-C-377
SECURITIES LITIGATION	)	(Consolidated)
)	
	)	74-C-180, 74-C-224,
	)	74-C-225, 74-C-226,
	)	74-C-227, 74-C-229
	)	and 74-C-230

FINAL JUDGMENT

Based on the jury's verdicts dated September 2, 1988, and May 19, 1989, and the Court's Order on Motion For Partial Summary Judgment on Damages (filed March 15, 1989), as amended by the Order of March 31, 1989 (filed May 4, 1989), and further based on Plaintiffs' Motion For Entry of Judgments Pursuant To Rules 56 and 58, filed June 28, 1989, the briefs and arguments of the parties with respect thereto, and the Court's rulings in open court on November 9, 1989, with respect to the allowance of prejudgment interest,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the members of the nine program classes in the Anixter action shall recover from the defendants listed below the following aggregate amounts (including, in the exercise of the Court's discretion, prejudgment interest in the amounts set forth below) on the following claims. The share of each Anixter class member in the judgments set out below shall be as set forth in the applicable schedules attached to this judgment.

Anixter, et al. v. Home-Stake Production Co., et al., Case Nos. 73-C-382 and 73-C-377 (Consolidated).

<u>Defendant(s) Liable</u>	<u>Program (No. of Units)</u>	<u>Claim</u>	<u>Amount</u>
Robert S. Trippet Elmer M. Kunkel	1964 (248.52 Units)	Section 11 ¹ Prejudgment interest	\$2,197,177.13 \$6,923,411.28 plus \$656.91 per day from July 1, 1989 through the date of entry of this judgment
Robert S. Trippet Frank E. Sims	1964 (248.52 Units)	Rule 10b-5 ² Prejudgment interest	\$2,246,836.12 \$7,010,925.53 plus \$671.76 per day from July 1, 1989 through the date of entry of this judgment
Robert S. Trippet Elmer M. Kunkel	1965 (274.31 Units)	Section 11 Prejudgment interest	\$2,268,825.73 \$8,408,139.86 plus \$678.34 per day from July 1, 1989 through the date of entry of this judgment

¹ Reference is to section 11 of the Securities Act of 1933, 15 U.S.C. § 77k.

² Reference is to section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

Robert S. Trippet Frank E. Sims	1965 (274.31 Units)	Rule 10b-5	\$2,268,825.73
		Prejudgment interest	\$8,408,139.86 plus \$678.34 per day from July 1, 1989 through the date of entry of this judgment
Robert S. Trippet Elmer M. Kunkel	1966 (321.1 Units)	Section 11	\$2,884,880.32
		Prejudgment interest	\$9,877,418.20 plus \$862.44 per day from July 1, 1989 through the date of entry of this judgment
Robert S. Trippet Frank E. Sims	1966 (321.1 Units)	Rule 10b-5	\$2,884,880.32
		Prejudgment interest	\$9,877,418.20 plus \$862.44 per day from July 1, 1989 through the date of entry of this judgment
Robert S. Trippet	1967 (351.05 Units)	Section 11	\$1,236,629.11
		Prejudgment interest	\$9,736,200.42 plus \$369.80 per day from July 1, 1989 through the date of entry of this judgment
Robert S. Trippet Frank E. Sims	1967 (351.05 Units)	Rule 10b-5	\$1,236,629.11
		Prejudgment interest	\$9,736,200.42 plus \$369.80 per day from July 1, 1989 through the date of entry of this judgment.

Robert S. Trippet	1968	Section 11	\$4,704,418.52
(541.71 Units)		Prejudgment interest	\$15,126,916.07 plus \$1,406.50 per day from July 1, 1989 through the date of entry of this judgment
Robert S. Trippet	1968	Rule 10b-5	\$4,704,418.52
Frank E. Sims	(541.71 Units)	Prejudgment interest	\$15,126,916.07 plus \$1,406.50 per day from July 1, 1989 through the date of entry of this judgment
Robert S. Trippet	1969	Section 11	\$6,014,978.10
Elmer M. Kunkel	(628.77 Units)	Prejudgment interest	\$18,729,195.57 plus \$1,798.70 per day from July 1, 1989 through the date of entry of this judgment
Wynema Anna Cross as Executrix of the Estate of Norman C. Cross, Jr. (hereinafter referred to as "Estate of Cross")			
Robert S. Trippet	1969	Rule 10b-5	\$6,014,978.10
Frank E. Sims	(628.77 Units)	Prejudgment interest	\$18,729,195.57 plus \$1,798.70 per day from July 1, 1989 through the date of entry of this judgment
Elmer M. Kunkel			
Estate of Cross			
Robert S. Trippet	1970	Section 11	\$4,727,067.19
Elmer M. Kunkel	(655.84 Units)	Prejudgment interest	\$17,496,406.26 plus \$1,413.27 per day from July 1, 1989 through the date of entry of this judgment
Estate of Cross			

Robert S. Trippet Frank E. Sims Elmer M. Kunkel Estate of Cross	1970 (655.84 Units)	Rule 10b-5 Prejudgment interest	\$4,804,705.27 \$17,612,793.06 plus \$1,436.51 per day from July 1, 1989 through the date of entry of this judgment
Robert S. Trippet Estate of Cross	1971 (457.33 Units)	Section 11 Prejudgment interest	\$2,592,422.68 \$10,804,882.97 plus \$775.07 per day from July 1, 1989 through the date of entry of this judgment
Kothe & Eagleton, Inc.	1971 (457.33 Units)	Section 11 Prejudgment interest	\$3,223,801.83 \$11,826,217.90 plus \$963.84 per day from July 1, 1989 through the date of entry of this judgment
Robert S. Trippet Frank E. Sims Estate of Cross Kothe & Eagleton, Inc.	1971 (457.33 Units)	Rule 10b-5 Prejudgment interest	\$2,481,302.14 \$10,660,525.65 plus \$741.66 per day from July 1, 1989 through the date of entry of this judgment
Robert S. Trippet Frank E. Sims Cross & Company	1972 (514.25 Units)	Section 11 Prejudgment interest	\$418,078.38 \$2,179,828.36 plus \$124.76 per day from July 1, 1989 through the date of entry of this judgment

Robert S. Trippet	1972	Rule 10b-5	\$418,078.38
Frank E. Sims	(514.25 Units)		
Cross & Company		Prejudgment interest	\$2,179,828.36 plus \$124.76 per day from July 1, 1989 through the date of entry of this judgment

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiffs in the following individual actions shall recover from the defendants listed below the following aggregate amounts (including, in the exercise of the Court's discretion, prejudgment interest in the amounts set forth below) on the following claims. The share of each plaintiff in the judgments set out below shall be as set forth in the applicable schedules attached to this judgement.

Blesh, et al. v. Home-Stake Production Co., et al., Case No. 74-C-224.

<u>Defendant(s) Liable</u>	<u>Program (No. of Units)</u>	<u>Claim</u>	<u>Amount</u>
Robert S. Trippet	1964 (10.5 Units)	Rule 10b-5	\$78,849.91
		Prejudgment interest	\$259,017.73 plus \$23.58 per day from July 1, 1989 through the date of entry of this judgment

Elmer M. Kunkel	1964 (10.5 Units)	Negligence	\$78,849.91
		Prejudgment interest	\$259,017.73 plus \$23.58 per day from July 1, 1989 through the date of entry of this judgment

Blesh, et al. v. Home-Stake Production Co., et al., Case No. 74-C-225.

<u>Defendant(s) Liable</u>	<u>Program (No. of Units)</u>	<u>Claim</u>	<u>Amount</u>
Robert S. Trippet	1965 (31.71 Units)	Rule 10b-5	\$259,595.54
		Prejudgment interest	\$927,460.15, plus \$77.63 per day from July 1, 1989 through the date of entry of this judgment
Elmer M. Kunkel	1965 (31.71 Units)	Negligence	\$259,595.54
		Prejudgment interest	\$927,460.15, plus \$77.63 per day from July 1, 1989 through the date of entry of this judgment

Anton, et al. v. Home-Stake Production Co., et al., Case No. 74-C-226.

<u>Defendant(s) Liable</u>	<u>Program (No. of Units)</u>	<u>Claim</u>	<u>Amount</u>
Robert S. Trippet	1966 (15 Units)	Rule 10b-5 Prejudgment interest	\$141,300.06 \$460,953.02, plus \$42.25 per day from July 1, 1989 through the date of entry of this judgment
Elmer M. Kunkel	1966 (15 Units)	Negligence Prejudgment interest	\$141,300.06 \$460,953.02, plus \$42.25 per day from July 1, 1989 through the date of entry of this judgment

Anton, et al. v. Home-Stake Production Co., et al., Case No. 74-C-227.

<u>Defendant(s) Liable</u>	<u>Program (No. of Units)</u>	<u>Claim</u>	<u>Amount</u>
Robert S. Trippet	1967 (1.5 Units)	Rule 10b-5 Prejudgment interest	\$5,061.71 \$40,175.37, plus \$1.51 per day from July 1, 1989 through the date of entry of this judgment

Anderson, et al. v. Home-Stake Production Co., et al., Case No. 74-C-228.

<u>Defendant(s) Liable</u>	<u>Program (No. of Units)</u>	<u>Claim</u>	<u>Amount</u>
Robert S. Trippet	1968 (3.2 Units)	Rule 10b-5	\$28,325.84
		Prejudgment interest	\$91,622.58, plus \$8.47 per day from July 1, 1989 through the date of entry of this judgment

Anderson, et al. v. Home-Stake Production Co., et al., Case No. 74-C-229.

<u>Defendant(s) Liable</u>	<u>Program (No. of Units)</u>	<u>Claim</u>	<u>Amount</u>
Robert S. Trippet	1969 (2.5 Units)	Rule 10b-5	\$23,830.81
		Prejudgment interest	\$74,513.28, plus \$7.13 per day from July 1, 1989 through the date of entry of this judgment
Estate of Cross	1969 (2.5 Units)	Negligence	\$23,830.81
		Prejudgment interest	\$74,513.28, plus \$7.13 per day from July 1, 1989 through the date of entry of this judgment

Anderson, et al. v. Home-Stake Production Co., et al., Case No. 74-C-180.

<u>Defendant(s) Liable</u>	<u>Program (No. of Units)</u>	<u>Claim</u>	<u>Amount</u>
Robert S. Trippet Estate of Cross	1970 (5 Units)	Rule 10b-5 Prejudgment interest	\$39,344.09 \$134,548.66, plus \$11.76 per day from July 1, 1989 through the date of entry of this judgment
Robert S. Trippet Elmer M. Kunkel Estate of Cross	1970 (5 Units)	Section 11 Prejudgment interest	\$43,886.74 \$141,680.41, plus \$13.12 per day from July 1, 1989 through the date of entry of this judgment
Estate of Cross	1970 (5 Units)	Negligence Prejudgment interest	\$39,344.09 \$134,548.66, plus \$11.76 per day from July 1, 1989 through the date of entry of this judgment

Bank of America, et al. v. Home-Stake Production Co., et al., Case No. 74-C-230

<u>Defendant(s) Liable</u>	<u>Program (No. of Units)</u>	<u>Claim</u>	<u>Amount</u>
Robert S. Trippet Estate of Cross	1971 (1 Unit)	Section 11 Prejudgment interest	\$8,006.82 \$28,424.57, plus \$2.39 per day from July 1, 1989 through the date of entry of this judgment
Estate of Cross	1971 (1 Unit)	Negligence Prejudgment interest	\$6,383.25 \$25,875.63, plus \$1.91 per day from July 1, 1989 through the date of entry of this judgment

As to each of the above judgments with respect to claims for which more than one defendant is listed as liable, such liability shall be joint and several among all the defendants so listed.

With respect to the plaintiffs' claims in the Anixter action under both Section 11 and Rule 10b-5 against defendants Trippet (for the 1964 through 1972 program units), Sims (for the 1972 program units), Kunkel (for the 1969 and 1970 program units), Norman C. Cross, Jr. (for the 1969 through 1971 program units), Cross & Company (for the 1972 program units) and Kothe & Eagleton, Inc. (for the 1971 program units), the foregoing judgments are, in part, duplicative. This Order shall not be construed to permit double

recovery of damages from the same defendant for the same program units.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that there is no just reason for delay in entering the foregoing as final judgments in these cases and the Clerk is hereby directed to enter judgments against the above listed defendants in the amounts and on the claims specified herein. The Court retains jurisdiction to resolve all matters remaining undetermined in any of the cases consolidated in M.D.L. Docket No. 153, including but not limited to the proposed Anixter settlements with Kent M. Klineman and Marvin R. Barnett, approval of applications to distribute any amounts remaining undistributed from prior settlements in these actions and any applications that may be made regarding attorneys fees and expenses.

DATED: Nov. 15, 1984



MANUEL L. REAL, Chief Judge
United States District Court
Central District of California

JUDGMENT ENTERED:

Clerk

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

NOV 15 1989

ARTURO WANG,)
)
 Plaintiff,)
)
 vs.) No. 89-C-484-E
)
 WESTWOOD STABLES, INC.,)
 MIRIAM WEST, and JIM WEST,)
)
 Defendants.)

Jack C. Smith, Clerk
U.S. District Court (22111)

ORDER FOR DISMISSAL

There comes for consideration Plaintiff's Voluntary Dismissal With Prejudice filed the 25th day of October, 1989 for plaintiff, Arturo Wang, by and through his attorneys, Teresa Rendon and Steven A. Novick, and Defendants being represented by Phil Frazier. The Court, being advised that the matter has been settled in full, finds that Plaintiff's voluntary dismissal should be approved.

IT IS THEREFORE ORDERED that the captioned action be dismissed with prejudice.

ORDERED this 14th day of November, 1989.

[Handwritten signature]

JAMES O. ELLISON
U.S. DISTRICT COURT JUDGE

/vp: WANG1.ord

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

FILED

NOV 15 1989

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

CARLA COATS, Special)
Administratrix of the)
Estate of THOMAS JEFFERSON)
ODEN,)
)
Plaintiff,)
)
v.)
)
CLARA BOSIER NELSON, an)
Individual, JANICE K.)
ROZMIAREK, an Individual,)
and WINFORD ODEN, an)
Individual,)
)
Defendants.)

Case No. 89-C0009 E

SETTLEMENT AGREEMENT

The undersigned being all parties and their respective attorneys to the above styled cause, in consideration of the mutual covenants, terms and conditions contained herein, and as a final and complete settlement of all issues arising out of the above styled cause and other causes pertaining to the Estate of Thomas Jefferson Oden, deceased do hereby enter into this Settlement Agreement. Pursuant hereto, the parties agree as follows:

1. Janice K. Rozmiarek will convey, by Quit Claim Deed, to Carla Coats, Special Administratrix of the Estate of Thomas Jefferson Oden, the following described real estate in Tulsa County, State of Oklahoma, to wit:

Beginning at the Southwest Corner of the East Ninety-Nine Feet (99') of the West One Hundred and Twenty-Four Feet (124') of the South One Hundred and Thirty-Seven and One-Half (137½') of Lot Thirty-Nine (39), SPRINGDALE ADDITION (sometimes otherwise known as SPRINGDALE ACRE LOT (s) ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded plat thereof; thence North Eighty-Five Feet (85'); thence East Thirty-Four and One-Half Feet (34½') Thence North Thirteen and One-Half Feet (13½'); thence East Fifteen Feet (15'); thence South Ninety-Eight and One-Half Feet (98½'), Thence West Forty-Nine and One-Half Feet (49½') to the point of beginning, a/k/a 1901 East Newton, Tulsa, Oklahoma;

2. Any and all claims Defendants, or either of them, may have against Remax Realtors for money held by said realtor (\$1,000.00) are assigned to Carla Coats, Special Administratrix of the Estate of Thomas Jefferson Oden, and Defendants agree to cooperate with and assist said Carla Coats in obtaining said money; provided, said Defendants are not obligated to travel to Tulsa, Oklahoma, for such assistance;

3. The dining room set of the deceased is to be returned to Carla Coats with said Carla Coats to pay transportation costs;

4. Defendants shall, in good faith, search for and attempt to find any and all songs written by deceased,

Thomas Jefferson Oden, and will send same to Carla coats;

5. Defendants will make an accounting of all money received from the Estate of said Thomas Jefferson Oden and income received from the above described real estate since the death of Thomas Jefferson Oden as well as all expenses incurred for the funeral, cremation, burial and winding up the affairs of said Thomas Jefferson Oden and expenses incurred in preservation of, insuring, taxes and mortgage payments on the above described real property; if there is a surplus, same will be paid to Carla Coats, as Special Administratrix of the Estate of Thomas Jefferson Oden; if there is a deficit, a claim will be made against the Estate of Thomas Jefferson Oden, as the case may be;

6. The Defendants, and each of the, agree to not contest Thomas Jefferson Oden's paternity of Carla Coats;

7. The above entitled cause will be dismissed with prejudice;

8. Each party to this action shall pay their own costs and attorney fees.

g.R. This agreement entered this 7th day of
9-7 Sept., 1989.

Clara Bosier Nelson
Clara Bosier Nelson

Janice K. Rozmiarek
Janice K. Rozmiarek

Winford Oden
Winford Oden

David M. Anderson
David M. Anderson,
Attorney for Clara Bosier Nelson,
Janice K. Rozmiarek and
Winford Oden

Carla Coats
Carla Coats, Special
Administratrix of the
Estate of Thomas Jefferson
Oden

Dale Warner
Dale Warner,
Attorney for Carla Coats

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

FILED

NOV 1 1989

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

THE CATTS COMPANY,)
)
Plaintiff,)
)
vs.)
)
RONALD J. LATIMER, d/b/a SEVEN)
OAKS CENTER, INC., et al,)
)
Defendants.)

NO. 89-C-694-B

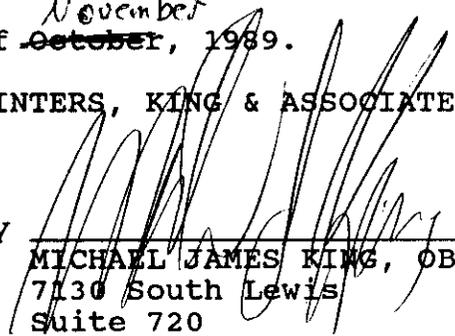
STIPULATED DISMISSAL WITHOUT PREJUDICE

Plaintiff, The Catts Company ("Plaintiff"), pursuant to Rule 41 of the Federal Rules of Civil Procedure, hereby moves to dismiss without prejudice its claim against Local America Bank of Tulsa. It is stipulated by Plaintiff and Local America Bank of Tulsa that they shall each bear their own costs and attorney fees.

Further, Plaintiff states that it is not dismissing any cause of action that it possesses against Defendant, Ronald J. Latimer, d/b/a Seven Oaks Center, Inc.

Dated this 13th day of ~~October~~ ^{November}, 1989.

WINTERS, KING & ASSOCIATES

By 
MICHAEL JAMES KING, OBA #5036
7130 South Lewis
Suite 720
Tulsa, OK 74136
(918) 494-6868

Attorneys for Plaintiff

JONES, GIVENS, GOTCHER, BOGAN
& HILBORNE, a professional corp.

By 
MICHAEL J. GIBBENS, OBA #3339
3800 First National Tower
Tulsa, OK 74103
(918) 581-8200

Attorneys for Local America
Bank of Tulsa

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing instrument on this _____ day of October, 1989, to Mr. Michael J. King at 7130 South Lewis, Suite 720, Tulsa, OK 74136 and Mr. Ronald J. Latimer at Rt. 1, Box 131-2, Coweta, OK 74429 with proper postage prepaid thereon.


MICHAEL J. GIBBENS

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

LILLIAN A. GRAHAM,)
)
 Plaintiff,)
)
-vs-)
)
AMERICAN AIRLINES, INC.,)
 a corporation, DENNIS QUISH,)
 individually, and as Agent of)
 TRANSPORT WORKERS UNION OF)
 AMERICA, LOCAL 514, GEORGE)
 BARTON, KEN HARDING,)
 FEDERAL AVIATION ADMINISTRATION,)
 SOUTHWEST REGION, an agency)
 of the United States of America,)
)
 Defendants.)

Case No. 89-C-815-B ✓

F I L E D

NOV 14 1989

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

NOTICE OF DISMISSAL AGAINST FEDERAL
AVIATION ADMINISTRATION

COMES NOW Plaintiff, LILLIAN A. GRAHAM, with this notice of her dismissal, without prejudice, of her claims stated in the complaint against the Defendant, FEDERAL AVIATION ADMINISTRATION, SOUTHWEST REGION, AN AGENCY OF THE UNITED STATES OF AMERICA, but without dismissing the claims against the remaining parties Defendants under the complaint.


CRAIG TWEEDY, OABA #9145
202 Wells Building
Sapulpa, Oklahoma 74066
(918) 224-2222

Attorney for Plaintiff

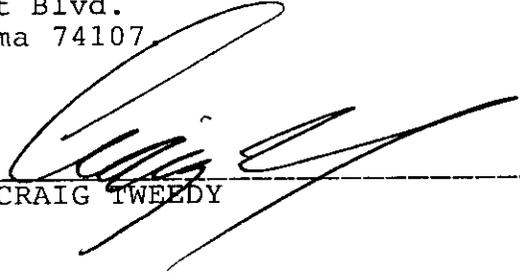
CERTIFICATE OF MAILING

I hereby certify that on the 9th day of November, 1989 a true and correct copy of the above and foregoing was mailed, postage prepaid to:

Peter Bernhardt, Esq.
Assistant U. S. Attorney
333 West 4th
3600 U.S. Courthouse
Tulsa, Oklahoma 74103

Frederic N. Schneider, III, Esq.
Kimberly A. Lambert, Esq.
500 Oneok Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103

Stephen Hickman, Esq.
Attorney at Law
1700 Southwest Blvd.
Tulsa, Oklahoma 74107



CRAIG TWEEDY

John C. Meinrath
Senior Attorney
Texas State Bar No. 13910500
Department 0597/041
400 International Parkway
Richardson, Texas 75081
(214) 470-3121

Counsel for Plaintiff,
MCI TELECOMMUNICATIONS CORPORATION

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

NOV 13 1989

COX OIL AND GAS, INC.,)	
)	
Plaintiff,)	
)	
vs.	)	Case No. 89-C-514-E
)	
ARKLA, INC.,)	
)	
Defendant.)	

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW Plaintiff Cox Oil and Gas, Inc. and Defendant Arkla, Inc., pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure and hereby jointly stipulate and agree that this action may be and hereby is dismissed with prejudice, each party to bear their own costs and attorneys fees.

Dated this 13th day of November, 1989.

Respectfully submitted,
BRUNE, PEZOLD, RICHEY & LEWIS

By: Brian R. Huddleston
Brian R. Huddleston
700 Sinclair Building
Six East Fifth Street
Tulsa, Oklahoma 74103

AND

KIRKLIN & BOUDREAUX
Glen M. Boudreaux
Tim S. Leonard
1100 InterFirst Plaza
Suite 1800
Houston, Texas 77002

ATTORNEYS FOR PLAINTIFF
COX OIL AND GAS, INC.

AND

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

By: Richard T. McGonigle
Richard T. McGonigle
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

AND

LEMLE, KELLEHER, KOHLMAYER,
DENNERY, HUNLEY, MOSS & FRILOT
Ernest L. Edwards
Amy L. Baird
21st Floor
601 Poydras Street
New Orleans, LA 70130-6097

ATTORNEYS FOR DEFENDANT
ARKLA, INC.

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

PATTY PRECISION PRODUCTS COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 GENERAL ELECTRIC COMPANY,)
)
 Defendant.)

No. 78-C-213-E

STIPULATION OF DISMISSAL WITH PREJUDICE

The Plaintiff, Patty Precision Products Company, and the Defendant, the General Electric Company, hereby file this Stipulation of Dismissal with Prejudice pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure.

Claire V. Eagan

Claire V. Eagan OBA # 554
HALL, ESTILL, HARDWICK,
GABLE, GOLDEN & NELSON
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172-0154
(918) 588-2700

ATTORNEYS FOR PLAINTIFF,
PATTY PRECISION PRODUCTS
COMPANY

Richard D. Koljack, Jr.

Sidney G. Dunagan
Theodore Q. Eliot
Richard D. Koljack, Jr.
GABLE & GOTWALS
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119
(918) 582-9201

ATTORNEYS FOR DEFENDANT,
GENERAL ELECTRIC COMPANY

FILED
NOV 13 1989
CLERK
DISTRICT COURT

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

UNITED STATES OF AMERICA,

Plaintiff,

- vs. -

KARLA ROACH,

Defendant.

89-C-842-C
No. 87-Cr-172-C

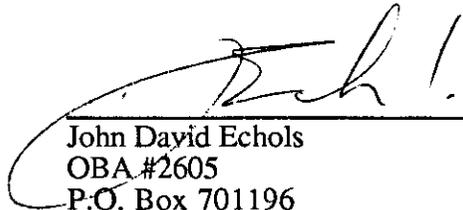
VOLUNTARY DISMISSAL OF §2255 MOTION

The Defendant Karla Roach, by and through her counsel of record, John David Echols, voluntarily dismisses her §2255 motion which was filed with the Court on October 10, 1989.

Respectfully submitted and mailed or delivered to

Kenneth Snoke, Esq.
Assistant United States Attorney
3600 United States Courthouse
333 West 4th Street
Tulsa, OK 74103
918/581-7463

as of Monday, November 13, 1989.



John David Echols
OBA #2605
P.O. Box 701196
Tulsa, OK 74170-1196
918/496-3176

33/3

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV -9 1989

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 LAWRENCE A. BOWMAN,)
)
 Defendant.)

CIVIL ACTION NO. 89-C-839-B ✓

NOTICE OF DISMISSAL

COMES NOW the United States of America by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Catherine J. Depew, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice and without costs.

Dated this 9th day of November, 1989.

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

Catherine J. Depew

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

CERTIFICATE OF SERVICE

This is to certify that on the 9th day of November, 1989, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Lawrence A. Bowman, c/o Ed Morrison, Esq., 408 Center Office Building, 707 South Houston, Tulsa, Oklahoma 74127.

Catherine J. Depew
Assistant United States Attorney

8/22

FILED
6

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DOROTHY LEWIS,)
)
 Plaintiff,)
)
 vs.)
)
 PUBLIC SERVICE COMPANY OF)
 OKLAHOMA,)
)
 Defendant.)

No. 88-C-1476-B ✓

ORDER SUSTAINING MOTION FOR SUMMARY JUDGMENT

The Defendant's Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56 is before the Court for decision. Local Rule 15(B) provides in pertinent part the following:

"15B. Summary Judgment Motions. A brief in support of a motion for summary judgment (or partial summary judgment) shall begin with a section that contains a concise statement of material facts as to which movant contends no genuine issue exists. The facts shall be numbered and shall refer with particularity to those portions of the record upon which movant relies. The brief in opposition to a motion for summary judgment (or partial summary judgment) shall begin with a section which contains a concise statement of material facts as to which the party contends a genuine issue exists. Each fact in dispute shall be numbered, shall refer with particularity to those portions of the record upon which the opposing party relies, and, if applicable, shall state the number of the movant's fact that is disputed. All material facts set forth in the statement of the movant shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the statement of the opposing party...."

Plaintiff in her response did not comply with the requirements of Local Rule 15(B) in reference to the first two underlined sentences above. Therefore, as Local Rule 15(b) states, the

material facts set forth by the movant shall be deemed admitted for the purposes of summary judgment.

Further, the Court has reviewed the record and contentions of the parties and concludes as follows:

In April, 1986, as a part of Public Service Company's (PSO) cost reduction plan, a task force was appointed by PSO senior management to review the effectiveness of PSO's Tulsa division. On May 16, 1986, the task force presented its recommendations concerning the Tulsa Division which included a structural reorganization. (Peck Affidavit, ¶¶ 4 and 5):

One of the recommendations of the task force was that Plaintiff's position of Supervisor of Field Activities be eliminated. (Peck Affidavit, ¶ 6). The task force also recommended five positions for metro supervisors and seven positions of working supervisor customer service be created. (Peck Affidavit, ¶ 6). The duties previously performed by Plaintiff as Supervisor of Field Activities were merged with the duties of the working supervisors. (Peck Affidavit, ¶ 6). The working supervisors reported to the metro supervisors, who in turn reported to Michael W. Hornsby, Manager of Customer Service. (Peck Affidavit, ¶ 6).

The Plaintiff does not contend that the elimination by PSO of the Supervisor of Field Activities position was motivated by any discriminatory intent with respect to age. (Lewis Depo. p. 47, lines 17-24).

As a result of the October 27, 1986 reduction in force, 27 employees or 18.5% of the work force, were laid off in the Tulsa Division of PSO. Of these 27 employees, 8 were age 40 and over; 19 were under age 40. (Peck Affidavit, ¶ 11).

In conjunction with the 1986 reorganization of the Tulsa Division, PSO offered all eligible employees an early retirement option. The early retirement option was an effort to accomplish a voluntary reduction in PSO's work force to reduce PSO's operating costs. (Peck Affidavit, ¶ 9).

The Plaintiff commenced work with PSO on August 14, 1968, and with the exception of brief periods, was employed by PSO until October 27, 1986, when she was laid off at age 55 years. During her 18 years of service with PSO, Plaintiff served in the following positions: Supervisor in Information Center, Office Supervisor, Supervisor Customer Information III, and Supervisor of Field Activities III.

Plaintiff applied for the positions of Metro Supervisor, Working Supervisor Customer Service, Manager of Community Services, and Coordinator of Customer Affairs, but was not granted an interview because it was concluded by superiors conducting the screening of the applicants that others were better qualified than Plaintiff. Plaintiff also applied for the position of Supervisor of Phones and Billing Analysis but was not granted an interview because PSO determined not to post the position, promoting what it concluded to be the best qualified person without receiving applications.

The Court of Appeals for the Tenth Circuit has concluded that cases brought under the Age Discrimination in Employment Act (ADEA) are subject to the same method of proof employed in Title VII cases. Branson v. Price River Coal Company, 853 F.2d 768, 770 (10th Cir. 1988); Schwager v. Sun Oil Co., 591 F.2d 58, 60 (10th Cir. 1979); and Lucas v. Dover Corp., Norris Div., 857 F.2d 1397 (10th Cir. 1988). The case of Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253-56 (1981), provides that a plaintiff must present a *prima facie* case of employment discrimination. Then the burden shifts to the employer to produce evidence tending to show that its actions were the result of legitimate, nondiscriminatory reasons. The burden then shifts back to the plaintiff to prove by a preponderance of the evidence that the proffered reason was not the true reason for the employment decision, and that, in fact, age was a determining factor in the defendant's decision.

When a motion for summary judgment is urged under Rule 56, Fed.R.Civ.P., the facts presented must be construed in a light most favorable to the nonmoving party. Board of Education v. Pico, 457 U.S. 853, 864 (1982); United States v. Diebold, Inc., 369 U.S. 654 (1962). Summary judgment is appropriate if there can be but one reasonable conclusion as to the material facts. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). The movant must establish entitlement to judgment as a matter of law. Ellis v. El Paso Natural Gas Co., 754 F.2d 884, 885 (10th Cir. 1985). The

Supreme Court has stated that, "summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the federal rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986) (quoting Fed.R.Civ.P. 1).

Regarding each position for which Plaintiff applied, appropriate supervisors charged with the responsibility of making the decision concluded that Plaintiff was not as well qualified as other applicants, and age was not a factor in their rejection of Plaintiff. Such is a legitimate nondiscriminatory reason for rejecting Plaintiff for a job position. In an attempt to join issue that Defendant's proffered reason is pretextual, Plaintiff offers evidence of the following: In her opinion she was qualified, a company "rumor" (insufficient to be admissible in evidence, Fed.R.Evid. 801(c), 801(d)(2)(C)(D) and 802) was that the older employees were being phased out, and the special early retirement program is evidence of age discrimination.

When a management level job is involved, an employer is entitled to make its own subjective business judgments. Loeb v. Textron, Inc., 600 F.2d 1003, 1019 (1st Cir. 1979). An employer is entitled to misjudge the qualifications of applicants for a particular job, so long as the employer's choice is not based upon impermissible criteria. Burdine, *supra* at 258, 259. It is the perception of the employer and not that of the Plaintiff which is

relevant. Smith v. Flax, 618 F.2d 1062, 1067 (4th Cir. 1980); Stanojev v. Ebasco Services, Inc., 643 F.2d 914, 922 (2d Cir. 1981); and Drown v. Portsmouth School District, 435 F.2d 1182, 1186 (1st Cir. 1970), *cert. denied*, 402 U.S. 972 (1971). The Court is not free to second-guess an employer's business judgment absent probative evidence of discriminatory intent. Branson, *supra* at 772, and Kephart v. Institute of Gas Technology, 630 F.2d 1217, 1223 (7th Cir. 1980), *cert. denied*, 450 U.S. 959 (1981).

The implementation by PSO of a voluntary early retirement program provides no basis for an inference of age discrimination against Plaintiff herein. Sutton v. Atlantic Richfield Co., 646 F.2d 407, 410, n. 4 (9th Cir. 1981); Henn v. National Geographic Society, 819 F.2d 824, 827 (7th Cir. 1987). *See, e.g., Public Employees Retirement System of Ohio v. Betts*, _____ U.S. _____, 57 U.S.L.W. 4931, 4937 (June 23, 1989).

The evidence advanced by Plaintiff, as well as the effort to impeach the testimony of Defendant's key witnesses, is insufficient to create a fact question that Defendant's proffered reason is pretextual. A jury would be left to second-guess the business judgment of PSO or indulge in speculation and conjecture.

For the reasons stated above, the Court concludes that no material issue of fact remains herein that would permit a reasonable jury to conclude that PSO's articulated legitimate, nondiscriminatory reasons for its conduct toward Plaintiff are pretextual. Therefore, Defendant's Motion for Summary Judgment is

hereby SUSTAINED, and a Judgment accordingly filed contemporaneous herewith.

DATED this 9th day of November, 1989.



THOMAS R. BRET
UNITED STATES DISTRICT JUDGE

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

SHERIL MITCHELL,)
)
 Plaintiff,)
)
 vs.)
)
 ZAPATA INDUSTRIES, a)
 Pennsylvania Corp., DIAMOND)
 NATIONAL CORPORATION, The)
 Gardner Division, A Ohio)
 Corp., FAMCO, INC., A)
 Kentucky Corp., AMERICAN AIR)
 FILTER COMPANY, INC., A)
 Delaware Corporation,)
)
 Defendants.)

No. 87-C-784-B

FILED

NOV 9 1989

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

DISMISSAL WITHOUT PREJUDICE

COMES NOW, the Plaintiff, Sheril Mitchell, by and through her attorneys of record, Morris & Morris, by Fred V. Monachello, and hereby dismisses Defendants, FAMCO, INC., and American Air Filter Co., without prejudice from the above styled and numbered cause of action.

Respectfully submitted,

MORRIS AND MORRIS



Fred V. Monachello OBA # 13327
1616 South Denver
Tulsa, Oklahoma 74119
918/587-5514

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

NOV 9, 1989
J
L

SUE NUCKOLS,

Plaintiff,

vs.

LOUIS W. SULLIVAN, M.D.,
Secretary of Health and
Human Services,

Defendant.

No. 88-C-1263-B

O R D E R

This matter comes on for consideration upon the objection of the Defendant to the Amended Findings and Recommendations of the United States Magistrate, which Amended Findings were entered September 22, 1989.

Plaintiff appealed the decision of the Administrative Law Judge (ALJ) dated September 24, 1987, denying disability benefits to Plaintiff. The Social Security Appeals Council, by decision dated July 22, 1988, after consideration of the entire record, denied Plaintiff disability benefits.

In his Amended Findings the Magistrate stated, correctly, that the only issue before the Court is whether there is substantial evidence in the record to support the final decision of the Secretary. The Secretary's Findings stand if they are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (citing Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229 (1938)).

17

In the present case the Secretary found that although claimant was unable to return to her past relevant work as a bookkeeper, she was not disabled since she could perform a significant number of jobs in the national economy.

After a review of the entire record the Magistrate found there was not substantial evidence in the record to support the decision of the Secretary that Plaintiff can substantially perform a full range of work at all exertional levels. The Magistrate recommended this case be remanded for consideration by the Secretary as to what jobs, if any, Plaintiff could have performed in December 1985.

The Court agrees with the Magistrate's Amended Findings and Recommendations and the same are adopted and affirmed. The Court therefore concludes this matter should be and the same is hereby REMANDED to the Secretary of Health and Human Services for proceedings not inconsistent with this order.

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


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

NOV 9 1989

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

CREEK COUNTY LUMBER COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 SOONER SUPPLIES, INC.,)
)
 Defendant,)
)
 vs.)
)
 NATHANIEL KIRKWOOD,)
)
 Third-Party Defendant.)

CASE NO. 89-C-204-E

STIPULATION OF DISMISSAL

Comes now the Plaintiff, The Creek County Lumber Co., the Defendant and Third Party Plaintiff, Sooner Supplies, Inc., and the Third Party Defendants, Nathaniel Kirkwood and the United States of America, pursuant to Rule 41(a)(1)(ii), F.R. Civ. P., and hereby stipulates to the Dismissal of the above styled action. The parties stipulate that each of their claims against any other party or parties in this case are dismissed with prejudice.



SAM ALLEN, Attorney for
Creek County Lumber Co.

Chris Knight

CHRIS KNIGHT, Attorney for
Sooner Supplies, Inc.

Nancy Nesbitt Blevins

NANCY NESBITT BLEVINS, Attorney
for Nathaniel Kirkwood and The
United States of America

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

JUL 11 1989
U.S. DISTRICT COURT
TULSA, OKLAHOMA

RAMONA WILLIAMS,)	
)	
Plaintiff,)	
)	
vs.	)	No. 89-C-534-C
)	
KARA GAE WILSON, Tulsa County)	
Superintendent of Schools,)	
)	
Defendant.)	

ORDER

Now before the Court for its consideration is the motion of defendant to dismiss plaintiff's second cause of action for failure to state a claim.

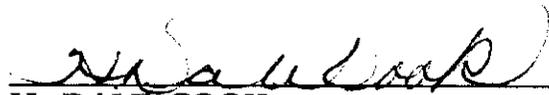
Plaintiff's Amended Complaint contains a first cause of action for violation of Title VII of the Civil Rights Act, alleging that plaintiff was discharged solely because of her race. In a second cause of action, plaintiff alleges that she was discharged in retaliation for filing a workers' compensation claim. A third cause of action, not addressed by defendant, apparently alleges discharge as against public policy.

The basis of defendant's motion is that because plaintiff has alleged that the sole reason for her discharge was race, she may not couple this with an allegation of discharge because of a workers' compensation filing. Rule 8(e)(2) F.R.Cv.P. provides in pertinent part that "[a] party may also state as many claims ... as the party has regardless of consistency" Of course, any

allegation made is subject to Rule 11, but defendant has not stated a proper basis for dismissal.

It is the Order of the Court that the motion of defendant to dismiss the second cause of action is hereby DENIED.

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



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

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

NOV 9 1989

JIMMIE ELAINE REBREY,)
)
 Plaintiff,)
)
 vs.)
)
 SUN REFINING AND MARKETING COMPANY,)
)
 Defendant.)

No. 89-C-714-B

O R D E R

This matter comes on for consideration upon Defendant's, Sun Refining and Marketing Company (Sun), Motion to Dismiss Counts Two and Three of Plaintiff's Complaint. Plaintiff alleges she was discharged from her employment with Sun pretextually because of a safety violation¹ but actually because of her sex.

In Count Two Plaintiff, Jimmie Elaine Rebrey (Rebrey), alleges a wrongful discharge, in violation of public policy, from her terminable-at-will employment with Sun.² The public policy violation was discrimination based on sex. In Count Three Plaintiff alleges a wrongful discharge from her employment based upon a public policy violation by Sun's alleged firing of Plaintiff to cover up its own negligence in the safety violation.

Prior to January 1988, Plaintiff had three safety violations, two of which she alleges were falsely charged to her. On January 8, 1988, Plaintiff was involved in a propane spill which Plaintiff

¹The fourth alleged violation involving Plaintiff, as stated in her Complaint.

²Plaintiff was employed with Sun from 1981 to 1988.

alleges was not her fault.³ Plaintiff was discharged on January 13, 1988.

Plaintiff alleges numerous male employees of Sun were involved in safety violations but not fired as a result thereof.

Sun urges two reasons why Plaintiff' second and third counts should be dismissed, which are:

- (1) Where a remedy exists, judicially or administratively, the public policy tort enunciated in Burk⁴ is pre-empted thereby⁵, (which applies to both counts), and
- (2) The Complaint fails to state the constitutional, statutory or case law which sets out the public policy alleged to have been violated (which applies to the third count only).

To dismiss a complaint and action for failure to state a claim upon which relief can be granted it must appear beyond doubt that Plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41 (1957). Motions to dismiss under Rule 12(b), Fed.R.Civ.P. admit all well-pleaded facts. Jones v. Hopper, 410 F.2d 1323 (10th Cir. 1969), *cert. denied*, 397 U.S. 991 (1970). The allegations of the Complaint must be taken as true and all reasonable inferences from them must

³Plaintiff alleges the installation of a new system on January 5, 1988, and supervisory neglect were instrumental in the spill.

⁴Burk v. K-Mart Corp., 770 P.2d 24 (Okla. 1989).

⁵In Count One, to which Sun's Motion to Dismiss does not apply, Plaintiff pleads a sex discrimination claim under Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000(e) *et seq.*

be indulged in favor of complainant. Olpin v. Ideal National Ins. Co., 419 F.2d 1250 (10th Cir. 1969), *cert. denied*, 397 U.S. 1074 (1970).

Despite a burden which Plaintiff may not be able to sustain at trial, her Complaint does, it seems to the Court, plead a disparate treatment case sufficient to withstand a Motion to Dismiss. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Hazelwood School Dist. v. United States, 433 U.S. 299 (1977).

This Court, in a recent order⁶ in the original Burk case, from which certified question(s) developed into "the Burk public policy tort," noted the divergence of views among the recent federal district court decisions in Oklahoma.⁷ This Court again concludes the Oklahoma Supreme Court's Burk decision does not stand for the proposition that the existence of a judicial or administrative remedy pre-empts a Burk public policy tort claim under an employment-at-will contract. Therefore, Sun's Motion to Dismiss on this ground, as to Counts Two and Three should be and the same is hereby DENIED.

⁶Entered October 23, 1989, Burk v. K-Mart, No. 86-C-440-B, In the United States District Court for the Northern District of Oklahoma.

⁷Carlis v. Sears, No. 89-C-184-C, Northern District of Oklahoma; Ugochukwu v. KFC Nat'l Mgmt., No. CIV-87-2231-A, Western District of Oklahoma; Wages v. Winchell Donut House, No. CIV-89-335-A, Western District of Oklahoma; Patterson v. Hudson Farms, No. 88-C-273-E, Northern District of Oklahoma.

As to Sun's Motion to Dismiss Count Three because the Complaint fails to articulate the public policy violation,⁸ the Court reaches a different conclusion.

Plaintiff's third count fails to state, in the Court's opinion, any reasonably defined public policy upon which to predicate a Burk tort claim. Plaintiff's efforts, in her Response Brief in Opposition to Sun's Motion to Dismiss, to inject statutory health and safety standards into a Burk tort claim, without more, fails to cure the Complaint deficit. It has not been alleged nor shown that a propane spill is, *ipso facto*, a public policy matter or is automatically a health or safety matter. Plaintiff, in the Court's opinion, fails to sufficiently connect Sun's alleged acts or omissions to any relevant public policy.

In an unrelated suit⁹ this same Defendant was complained against under language remarkably similar to Plaintiff's third count.¹⁰ Judge Ellison concluded that Plaintiff had failed to designate any requisite constitutional, statutory or decisional law that articulated the public policy alleged to have been

⁸By failing to plead the constitutional, statutory or decisional law which enunciates the public policy.

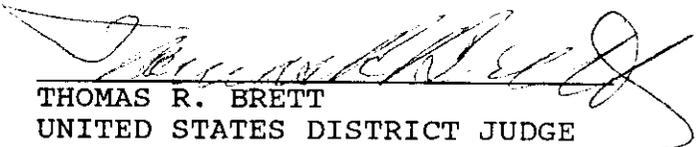
⁹Ponds v. Sun Refining and Marketing Company, No. 89-C-324-E, Northern District of Oklahoma.

¹⁰Ponds' third count alleged it is a violation of well-established public policy for an employer to discharge an employee in an attempt to cover up its own negligence, its defective equipment and its improper procedures.

violated.

The Court concludes that Sun's Motion to Dismiss as to Plaintiff's third count should be and the same is hereby SUSTAINED.

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


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

NOV 9 1989

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

FEDERAL DEPOSIT INSURANCE)
CORPORATION, in its corporate)
capacity for Bank of)
Commerce and Trust Company,)

Plaintiff,)

vs.)

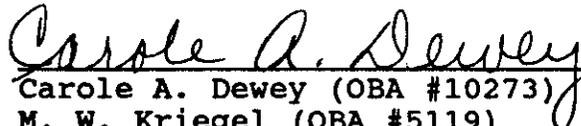
PAUL W. THOMAS,)

Defendant.)

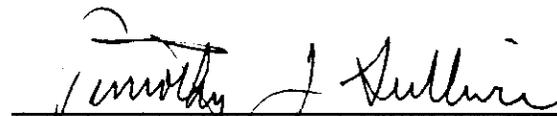
No. 89-C-415-E

STIPULATION OF DISMISSAL

The Parties appearing herein, Federal Deposit Insurance Corporation, by and through its attorney of record, Carole A. Dewey, and Paul W. Thomas, appearing by and through his attorney of record, Timothy W. Sullivan, pursuant to Fed. R. Civ. P. 41(a)(1), hereby stipulate dismissal of the above styled cause of action with prejudice.



Carole A. Dewey (OBA #10273)
M. W. Kriegel (OBA #5119)
Attorneys for the Federal Deposit
Insurance Corporation
P.O. Box 2269
Tulsa, OK 74101-2269
(918) 627-9000



Timothy J. Sullivan
Attorney for Paul Thomas
1443 S. Norfolk
Tulsa, OK 74102

CERTIFICATE OF SERVICE

I hereby certify that a true and correct, exact photostatic file-stamped copy of the Stipulation of Dismissal was deposited in the United States Mail with proper postage thereon fully prepaid, addressed to the following:

Timothy J. Sullivan
1443 S. Norfolk
Tulsa, OK 74102

DATED this 9th day of November, 1989.


Carole A. Dewey (OBA #10273)
M. W. Kriegel (OBA #5119)
Attorney for Federal Deposit
Insurance Corporation
P. O. Box 2269
Tulsa, OK 74101-2269
918/627-9000

103189f

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

107-8-1000

JACOB G. SULLIVAN, CLERK
U.S. DISTRICT COURT

IN RE:)
CAESAR C. LATIMER,)
Debtor,)
CAESAR C. LATIMER,)
Plaintiff,)
vs.) No. 89-C-607-C
ANDREA VANDYKE,)
Defendant.)

ORDER

Now before the Court for its consideration is the motion of the defendant/appellee to dismiss appeal.

Appellant filed his notice of appeal on July 24, 1989. Defendant moves to dismiss, on the ground that the order sought to be appealed from is not a final order.

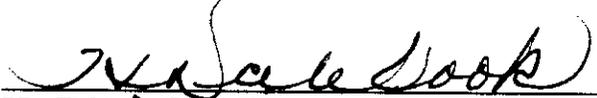
Appeal as of right may only be taken from a final order. See Bankruptcy Rule 8001(a) and 28 U.S.C. §158(a). As best the Court can determine from the skimpy representations by counsel, the order involved herein fixes the amount of a claim against the appellant, but does not determine liability for that claim. Appellant concedes that this is an interlocutory order, but argues that he will be irreparably damaged if review is delayed. No federal

5

authority is cited for his exception to the bankruptcy appeal process and the irreparable damage is not specified.

It is the Order of the Court that the motion of the defendant/appellee to dismiss appeal is hereby GRANTED.

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



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

FILED

NOV 8 1989 *olt*

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

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

THRIFTY RENT-A-CAR SYSTEM, INC.,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
THOMAS L. KELLEN and)
MAC-KEL, INC., a corporation,)
)
Defendants.)

Case No. 89-C-681-E ✓

ORDER OF DISMISSAL WITHOUT PREJUDICE

Pursuant to the Dismissal Without Prejudice filed by the Plaintiff, Thrifty Rent-A-Car System, Inc. ("Thrifty"), on November 6, 1989, Thrifty's claim against the Defendants, Thomas L. Kellen and Mac-Kel, Inc., is dismissed without prejudice.

ENTERED, this 8th day of November, 1989.

James D. ...

 UNITED STATES DISTRICT JUDGE

H

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

NOV 8 1989

FEDERAL DEPOSIT INSURANCE CORPORATION,

Plaintiff,

vs.

GRAYFOX OPERATING COMPANY, an Oklahoma Corporation; GARY D. JONSON; W. L. RIEMAN d/b/a HILL'S TANK TRUCK SERVICE; and TRICO INDUSTRIES, INC.,

Defendants.

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

Case No. 88-C-163-E

AGREED ORDER OF PARTIAL DISMISSAL

Pursuant to the agreement of all parties herein, as indicated by the consent of their counsel of record below, it is HEREBY ORDERED that the remaining portion of this action which has not been reduced to judgment, which involves the FDIC's security interest in and to 14,700 shares of stock in Roxana Resources, Ltd., is HEREBY DISMISSED without prejudice, and each party is to bear its own costs and expenses as to that portion of the litigation except as is inconsistent with previous orders of the Court regarding payment of fees and expenses.

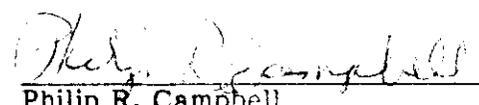
s/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE



Larry D. Thomas
Jeffrey D. Hassell
GABLE & GOTWALS, INC.
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119
918-582-9201

ATTORNEYS FOR THE FEDERAL DEPOSIT INSURANCE CORPORATION



Philip R. Campbell
1208 South Utica Tower
1924 South Utica
Tulsa, Oklahoma 74114

ATTORNEY FOR GRAYFOX OPERATING COMPANY, an Oklahoma Corporation, and GARY D. JONSON

James M. Hinds

James M. Hinds
BRALY & HINDS
1701 Fourth National Bank Building
Tulsa, Oklahoma 74119

ATTORNEYS FOR SOFIA
EXPLORATION COMPANY

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

NOV 8 1989

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
RONALD CLYDE BROWN; RHANDA S.)
BROWN; ARROW SPRINGS THIRD)
DEVELOPMENT CO., LTD., an)
Oklahoma limited partnership;)
THE FIRST NATIONAL BANK & TRUST)
CO. OF BROKEN ARROW, OKLAHOMA;)
COUNTY TREASURER, Tulsa County,)
Oklahoma; and BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)
)
Defendants.)

CIVIL ACTION NO. 87-C-945-E

DEFICIENCY JUDGMENT

This matter comes on before the Court this 8th of Nov, 1989, on the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment which Motion was filed on the 31st day of August, 1989, and a copy of the Motion was mailed to Ronald Clyde Brown, 2 Royale Drive, Carson City, Nevada 89701, and all counsel of record. The Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, appeared by Tony M. Graham, United States Attorney for the Northern District of Oklahoma through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Ronald Clyde Brown, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on December 15, 1988,

in favor of the Plaintiff United States of America, and against the Defendant, Ronald Clyde Brown, with interest and costs to date of sale is \$47,942.97.

The Court further finds that the appraised value of the real property at the time of sale was \$35,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered December 15, 1988, for the sum of \$31,279.00 which is less than the market value.

The Court further finds that the said Marshal's sale was confirmed pursuant to the Order of this Court on the 1st day of November, 1989.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendant, Ronald Clyde Brown, as follows:

Principal Balance as of 12/15/88	\$37,500.31
Interest	8,905.34
Late Charges to Date of Judgment	518.32
Appraisal by Agency	350.00
Management Broker Fees to Date of Sale	500.00
Abstracting	<u>169.00</u>
TOTAL	\$47,942.97
Less Credit of Appraised Value	- <u>35,000.00</u>
DEFICIENCY	\$12,942.97

plus interest on said deficiency judgment at the legal rate of 7.90 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendant, Ronald Clyde Brown, a deficiency judgment in the amount of \$12,942.97, plus interest at the legal rate of 7.90 percent per annum on said deficiency judgment from date of judgment until paid.

~~UNITED STATES DISTRICT JUDGE~~

UNITED STATES DISTRICT JUDGE

NNB/css

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

P.P.G. INDUSTRIES, INC., a
Pennsylvania corporation,

Plaintiff,

vs.

Case No. 89-C-478-C

1st STOP AUTOMOTIVE PARTS
AND PAINT, INC., an
Oklahoma corporation, and
SANFORD HAY, Individually,

Defendants.

**ORDER GRANTING PLAINTIFF'S REQUEST FOR
ATTORNEYS' FEES AND EXPENSES**

The Plaintiff, P.P.G. Industries, Inc., having timely filed its Application of Plaintiff for Allowance of Attorneys' Fees, Expenses and Costs and the Brief in Support of the Application of Attorneys' Fees along with the Affidavit of the attorney of record, James H. Ferris, who appeared before this Court and made motion for an Order Awarding Attorneys' Fees and Expenses. The Defendants, 1st Stop Automotive Parts and Paint, Inc., an Oklahoma corporation, and Sanford Hay, an individual, have not made an appearance in this action nor responded to the Plaintiff's Application.

This Court finds that, in this action for payment on an open account, note and guaranty, the Plaintiff received a judgment recovering in the amount of \$44,458.88 against the Defendants. This Court further finds that any attorney fees recoverable in this action shall be taxed as costs pursuant to 12 O.S. §936. Finally, this Court finds that the costs of this action were taxed by the Court Clerk in the amount of \$195.00 through the Bill of Costs

filed November 1, 1989.

AND NOW, this 9th day of November, 1989, upon consideration of the foregoing Application for Attorneys' Fees, Costs and Expenses and upon Plaintiff's motion, this Court finds that the that Plaintiff, P.P.G. Industries, Inc., is entitled to their requested attorneys' fees and expenses in the amount of \$2,725.25.

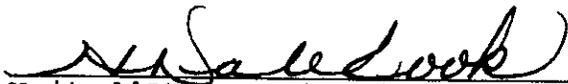
IT IS THEREBY ORDERED AND DECREED that the Plaintiff, P.P.G. Industries, Inc., is awarded an amount of \$2,725.25 for recovery of attorneys' fees and expenses for prosecuting the action against the Defendants, Sanford Hay and 1st Stop Automotive Parts and Paint, Inc.

IT IS FURTHER ORDERED AND DECREED that the award of \$2,725.25 for recovery of attorneys' fees and expenses shall be taxed as costs to the Defendants.

IT IS FURTHER ORDERED AND DECREED that the amount of \$195.00, taxed in the Bill of Costs, shall be included in the Judgment award of the Plaintiff, P.P.G. Industries along with the award of attorneys' fees and expenses.

IT IS FURTHER ORDERED AND DECREED that Defendants, 1st Stop Automotive Parts and Paint, Inc. and Sanford Hay, are directed to pay the awarded sums in accordance with the applicable law and the rules of this Court.

SO ORDERED this 8 day of November, 1989.


United States District Judge

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

IN RE: ASBESTOS LITIGATION)
)
) Master #1417
 ASB # _____

ORDER PERMITTING DISMISSAL OF HARWICK CHEMICAL
CORPORATION WITH PREJUDICE FROM ALL PENDING
TIREWORKER LITIGATION PROJECT CASES

The Court having received Plaintiffs' Application For
Court Approval Of Dismissal Of Harwick Chemical Corporation With
Prejudice From All Pending Tireworker Litigation Project Cases,
and being fully advised in the premises,

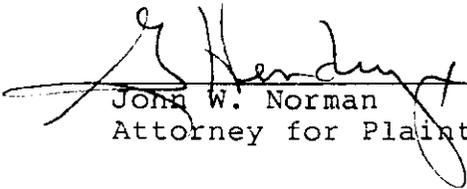
IT IS HEREBY ORDERED:

That Defendant Harwick Chemical Corporation should be
and it is hereby ordered to be dismissed with prejudice to filing
future suit and Plaintiffs are permitted to dismiss said Defen-
dant, with prejudice to the filing of future suit, from each and
every pending Oklahoma tireworker litigation project case filed
in this Court. Each party to bear its own costs.

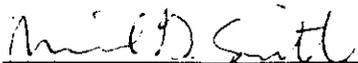
(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

Approved as to Form:



John W. Norman
Attorney for Plaintiffs



Michael G. Smith
Attorney for Defendant,
Harwick Chemical Corporation

Order Permitting Dismissal of Harwick Chemical Corporation
With Prejudice From All Pending Tireworker Litigation Project Cases

FILED

NOV 8 1989 *old*

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

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

SAMSON RESOURCES COMPANY,)
)
 Plaintiff,)
)
 v.)
)
 NORTHERN NATURAL GAS COMPANY,)
 now INTERNORTH, INC., a)
 corporation,)
)
 Defendant.)

Case No. 85-C-911-E
(Consolidated)

87-C-807-E ✓

ORDER

Pursuant to the stipulation of the parties, the Court does hereby dismiss with prejudice any and all claims alleged herein by either party, each party to bear its own costs and fees.

It is further ordered that Northern Natural Gas Company and Seaboard Surety Company are hereby released from all responsibilities and liabilities on the performance bonds, Nos. 164212 and 164213, posted herein on March 14, 1989, and that the originals of such bonds shall be released by the Clerk to counsel for Northern.

DONE this 8th day of November, 1989.

James D. ...
UNITED STATES DISTRICT JUDGE

118
6

FILED

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

NOV 8 1989

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

SAMSON RESOURCES COMPANY,)
)
Plaintiff,)
)
v.)
)
NORTHERN NATURAL GAS COMPANY,)
now INTERNORTH, INC., a)
corporation,)
)
Defendant.)

Case No. 85-C-911-E
(Consolidated)

87-C-808-E ✓

ORDER

Pursuant to the stipulation of the parties, the Court does hereby dismiss with prejudice any and all claims alleged herein by either party, each party to bear its own costs and fees.

It is further ordered that Northern Natural Gas Company and Seaboard Surety Company are hereby released from all responsibilities and liabilities on the performance bonds, Nos. 164212 and 164213, posted herein on March 14, 1989, and that the originals of such bonds shall be released by the Clerk to counsel for Northern.

DONE this 8th day of November, 1989.

UNITED STATES DISTRICT JUDGE

128
7

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

LOUIE VERNON LEAMON, et al) 88-C-708-C
)
 Plaintiffs,)
)
VS.)
)
ANCHOR PACKING COMPANY, et al,)
)
 Defendants.)

FILED
NOV 8 1989
U.S. DISTRICT COURT

ORDER PERMITTING DISMISSAL OF HARWICK CHEMICAL
CORPORATION WITH PREJUDICE FROM ALL PENDING
TIREWORKER LITIGATION PROJECT CASES

Order Permitting Dismissal of Harwick Chemical
Corporation with Prejudice From All Pending
Tireworker Litigation Project Cases

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

IN RE: ASBESTOS LITIGATION)
)
) Master #1417
 ASB # _____

ORDER PERMITTING DISMISSAL OF HARWICK CHEMICAL
CORPORATION WITH PREJUDICE FROM ALL PENDING
TIREWORKER LITIGATION PROJECT CASES

The Court having received Plaintiffs' Application For
Court Approval Of Dismissal Of Harwick Chemical Corporation With
Prejudice From All Pending Tireworker Litigation Project Cases,
and being fully advised in the premises,

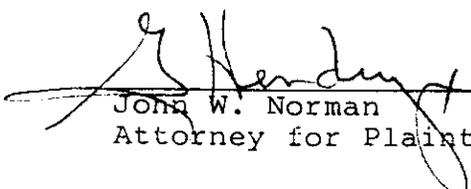
IT IS HEREBY ORDERED:

That Defendant Harwick Chemical Corporation should be
and it is hereby ordered to be dismissed with prejudice to filing
future suit and Plaintiffs are permitted to dismiss said Defen-
dant, with prejudice to the filing of future suit, from each and
every pending Oklahoma tireworker litigation project case filed
in this Court. Each party to bear its own costs.

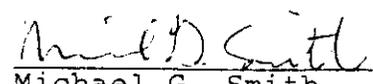
(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

Approved as to Form:



John W. Norman
Attorney for Plaintiffs



Michael G. Smith
Attorney for Defendant,
Harwick Chemical Corporation

Order Permitting Dismissal of Harwick Chemical Corporation
With Prejudice From All Pending Tireworker Litigation Project Cases

F I L E D

NOV 2 1989

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

JOHNNIE JUNIOR ENGLAND, et al) 88-C-709-C
)
Plaintiffs,)
)
VS.)
)
ANCHOR PACKING COMPANY, et al,)
)
Defendants.)

ORDER PERMITTING DISMISSAL OF HARWICK CHEMICAL
CORPORATION WITH PREJUDICE FROM ALL PENDING
TIREWORKER LITIGATION PROJECT CASES

Order Permitting Dismissal of Harwick Chemical
Corporation with Prejudice From All Pending
Tireworker Litigation Project Cases

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

IN RE: ASBESTOS LITIGATION)
)
) Master #1417
) ASB # _____

ORDER PERMITTING DISMISSAL OF HARWICK CHEMICAL
CORPORATION WITH PREJUDICE FROM ALL PENDING
TIREWORKER LITIGATION PROJECT CASES

The Court having received Plaintiffs' Application For
Court Approval Of Dismissal Of Harwick Chemical Corporation With
Prejudice From All Pending Tireworker Litigation Project Cases,
and being fully advised in the premises,

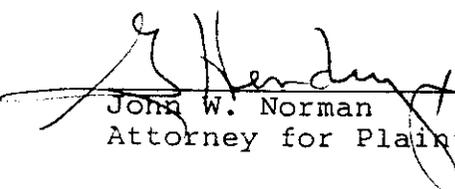
IT IS HEREBY ORDERED:

That Defendant Harwick Chemical Corporation should be
and it is hereby ordered to be dismissed with prejudice to filing
future suit and Plaintiffs are permitted to dismiss said Defen-
dant, with prejudice to the filing of future suit, from each and
every pending Oklahoma tireworker litigation project case filed
in this Court. Each party to bear its own costs.

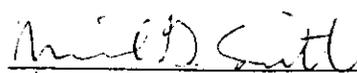
(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

Approved as to Form:



John W. Norman
Attorney for Plaintiffs



Michael G. Smith
Attorney for Defendant,
Harwick Chemical Corporation

Order Permitting Dismissal of Harwick Chemical Corporation
With Prejudice From All Pending Tireworker Litigation Project Cases

NOV 3 1989

DISTRICT COURT

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

WILLIAM JACKSON WYNN,) 88-C-951-C
)
Plaintiff,)
)
VS.)
)
ANCHOR PACKING COMPANY, et al,)
)
Defendants.)

ORDER PERMITTING DISMISSAL OF HARWICK CHEMICAL
CORPORATION WITH PREJUDICE FROM ALL PENDING
TIREWORKER LITIGATION PROJECT CASES

Order Permitting Dismissal of Harwick Chemical
Corporation with Prejudice From All Pending
Tireworker Litigation Project Cases

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

IN RE: ASBESTOS LITIGATION

)
)
)

Master #1417

ASB # _____

ORDER PERMITTING DISMISSAL OF HARWICK CHEMICAL
CORPORATION WITH PREJUDICE FROM ALL PENDING
TIREWORKER LITIGATION PROJECT CASES

The Court having received Plaintiffs' Application For
Court Approval Of Dismissal Of Harwick Chemical Corporation With
Prejudice From All Pending Tireworker Litigation Project Cases,
and being fully advised in the premises,

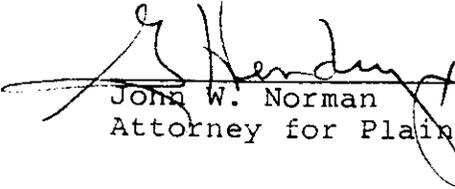
IT IS HEREBY ORDERED:

That Defendant Harwick Chemical Corporation should be
and it is hereby ordered to be dismissed with prejudice to filing
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every pending Oklahoma tireworker litigation project case filed
in this Court. Each party to bear its own costs.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

Approved as to Form:



John W. Norman
Attorney for Plaintiffs



Michael G. Smith
Attorney for Defendant,
Harwick Chemical Corporation

Order Permitting Dismissal of Harwick Chemical Corporation
With Prejudice From All Pending Tireworker Litigation Project Cases

FILED

NOV 3 1989

Jack C. Smith, C.
U.S. DISTRICT COURT

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

CHARLES WADE SMITH, et al	)	88-C-955-C
)	
Plaintiffs,)	
)	
VS.)	
)	
ANCHOR PACKING COMPANY, et al,)	
)	
Defendants.)	

ORDER PERMITTING DISMISSAL OF HARWICK CHEMICAL
CORPORATION WITH PREJUDICE FROM ALL PENDING
TIREWORKER LITIGATION PROJECT CASES

Order Permitting Dismissal of Harwick Chemical
Corporation with Prejudice From All Pending
Tireworker Litigation Project Cases

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

IN RE: ASBESTOS LITIGATION

)
)
)

Master #1417

ASB # _____

ORDER PERMITTING DISMISSAL OF HARWICK CHEMICAL
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TIREWORKER LITIGATION PROJECT CASES

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and being fully advised in the premises,

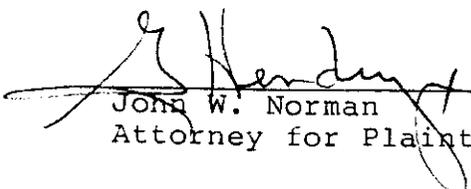
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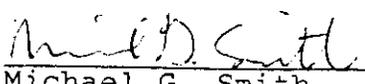
(Signed) H. Dole Cook

UNITED STATES DISTRICT JUDGE

Approved as to Form:



John W. Norman
Attorney for Plaintiffs



Michael G. Smith
Attorney for Defendant,
Harwick Chemical Corporation

Order Permitting Dismissal of Harwick Chemical Corporation
With Prejudice From All Pending Tireworker Litigation Project Cases

FILED

NOV 9 1989

U.S. District Court
Northern District of Oklahoma

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

ROBERT J. GANDY, et al	)	88-C-960-C
)	
Plaintiffs,)	
)	
VS.)	
)	
ANCHOR PACKING COMPANY, et al,)	
)	
Defendants.)	

ORDER PERMITTING DISMISSAL OF HARWICK CHEMICAL
CORPORATION WITH PREJUDICE FROM ALL PENDING
TIREWORKER LITIGATION PROJECT CASES

Order Permitting Dismissal of Harwick Chemical
Corporation with Prejudice From All Pending
Tireworker Litigation Project Cases

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

IN RE: ASBESTOS LITIGATION

)
)
)

Master #1417

ASB # _____

ORDER PERMITTING DISMISSAL OF HARWICK CHEMICAL
CORPORATION WITH PREJUDICE FROM ALL PENDING
TIREWORKER LITIGATION PROJECT CASES

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and being fully advised in the premises,

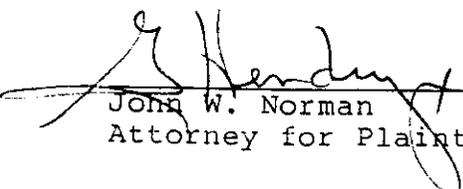
IT IS HEREBY ORDERED:

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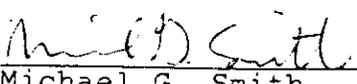
(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

Approved as to Form:



John W. Norman
Attorney for Plaintiffs



Michael G. Smith
Attorney for Defendant,
Harwick Chemical Corporation

Order Permitting Dismissal of Harwick Chemical Corporation
With Prejudice From All Pending Tireworker Litigation Project Cases

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

IN RE: ASBESTOS LITIGATION

)
)
)

Master #1417

ASB # _____

ORDER PERMITTING DISMISSAL OF HARWICK CHEMICAL
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TIREWORKER LITIGATION PROJECT CASES

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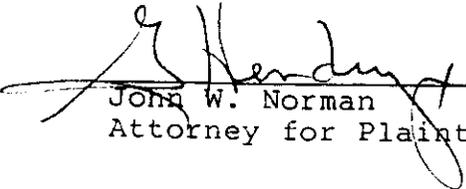
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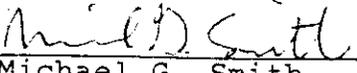
(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

Approved as to Form:



John W. Norman
Attorney for Plaintiffs



Michael G. Smith
Attorney for Defendant,
Harwick Chemical Corporation

Order Permitting Dismissal of Harwick Chemical Corporation
With Prejudice From All Pending Tireworker Litigation Project Cases

FILED

NOV 8 1989

U.S. DISTRICT COURT

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

BILLY EVERETT RENTFROW, et al	)	88-C-982-C
)	
Plaintiffs,)	
)	
VS.)	
)	
ANCHOR PACKING COMPANY, et al,)	
)	
Defendants.)	

ORDER PERMITTING DISMISSAL OF HARWICK CHEMICAL
CORPORATION WITH PREJUDICE FROM ALL PENDING
TIREWORKER LITIGATION PROJECT CASES

Order Permitting Dismissal of Harwick Chemical
Corporation with Prejudice From All Pending
Tireworker Litigation Project Cases

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

IN RE: ASBESTOS LITIGATION

)
)
)

Master #1417

ASB # _____

ORDER PERMITTING DISMISSAL OF HARWICK CHEMICAL
CORPORATION WITH PREJUDICE FROM ALL PENDING
TIREWORKER LITIGATION PROJECT CASES

The Court having received Plaintiffs' Application For
Court Approval Of Dismissal Of Harwick Chemical Corporation With
Prejudice From All Pending Tireworker Litigation Project Cases,
and being fully advised in the premises,

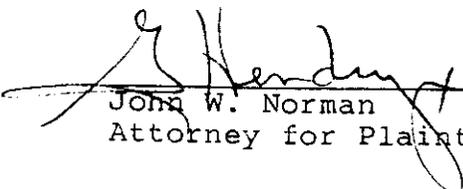
IT IS HEREBY ORDERED:

That Defendant Harwick Chemical Corporation should be
and it is hereby ordered to be dismissed with prejudice to filing
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dant, with prejudice to the filing of future suit, from each and
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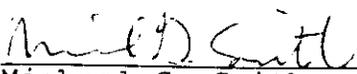
(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

Approved as to Form:



John W. Norman
Attorney for Plaintiffs



Michael G. Smith
Attorney for Defendant,
Harwick Chemical Corporation

Order Permitting Dismissal of Harwick Chemical Corporation
With Prejudice From All Pending Tireworker Litigation Project Cases

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

NOV 8 1989

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

SAMSON RESOURCES COMPANY,)
)
 Plaintiff,)
)
 v.)
)
 NORTHERN NATURAL GAS COMPANY,)
 now INTERNORTH, INC., a)
 corporation,)
)
 Defendant.)

Case No. 85-C-911-E
(Consolidated)

ORDER

Pursuant to the stipulation of the parties, the Court does hereby dismiss with prejudice any and all claims alleged herein by either party, each party to bear its own costs and fees.

It is further ordered that Northern Natural Gas Company and Seaboard Surety Company are hereby released from all responsibilities and liabilities on the performance bonds, Nos. 164212 and 164213, posted herein on March 14, 1989, and that the originals of such bonds shall be released by the Clerk to counsel for Northern.

DONE this 8 day of Nov, 1989.

JAMES C. SILVER

UNITED STATES DISTRICT JUDGE

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

U.S. DISTRICT COURT

JOE BLANTON,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

No. 89-C-606-C

7/21/89

ORDER

Before the Court is the motion of petitioner for habeas corpus relief under the provisions of 28 U.S.C. §2255.

Petitioner contends that the sentence imposed on him on September 14, 1988 is inequitable and in violation of the Eighth Amendment in that petitioner's co-defendant received a lesser sentence than the sentence imposed on the petitioner. Petitioner contends that under the Sentencing Reform Act of 1984, "defendants sentenced for the same crime shall be treated the same." Further, petitioner asserts that the sentence imposed was unjust in view of his lesser involvement and lesser ability to control the circumstances than his co-defendant Arlin Plender.

The Court has carefully reviewed the record and concludes that the sentence imposed was fair and just under the circumstances of this case and not in violation of the Eighth Amendment to the United States Constitution.

Therefore, it is the Order of the Court that the motion of petitioner Joe Blanton for relief pursuant to 28 U.S.C. §2255 is hereby DENIED.

IT IS SO ORDERED this 8 day of November, 1989.



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

GLH/ta
10/30/89

FILED

NOV 7 1989

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

IN RE: ASBESTOS LITIGATION) Master #1417
)
) ASB - TW # _____

=====

FLORA L. POWELL, individually, and as)
surviving wife of HUBERT C. POWELL,)
Deceased,)
)
Plaintiff,)
)
vs.) No. 88-C-555-E
)
ANCHOR PACKING COMPANY, et al.,)
)
Defendants.)

=====

O R D E R

Upon the above and foregoing Joint and Stipulated Motion for Order of Dismissal Without Prejudice, the above-styled action is hereby dismissed without prejudice as to Pleuss-Staufer Industries, Inc., each party to bear its own costs.

JAMES O. ELLISON

JAMES O. ELLISON
U.S. DISTRICT COURT JUDGE

(TIRE WORKERS)
ORDER OF DISMISSAL

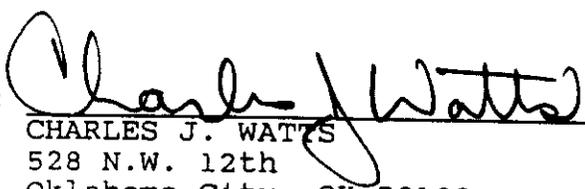
APPROVED:

LAW OFFICES OF
JOHN W. NORMAN INCORPORATED
ATTORNEYS FOR PLAINTIFF

By: 

GINA L. HENDRYX - OBA #10330
Renaissance Centre East
127 N.W. 10th
Oklahoma City, OK 73103-4903
405/272-0200

LOONEY, NICHOLS, JOHNSON & HAYES
ATTORNEYS FOR DEFENDANT
PLEUSS-STAUFER INDUSTRIES, INC.

By: 

CHARLES J. WATTS
528 N.W. 12th
Oklahoma City, OK 73103
405/235-7641

GLH/ta
10/30/89

FILED

NOV 7 1989

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

IN RE: ASBESTOS LITIGATION

) Master #1417
)
) ASB - TW # _____

=====

CHARLES L. ROLLINS, Plaintiff, and)
SALLY DORIS ROLLINS, Plaintiff's Spouse,)
)
) Plaintiffs,)

vs.)

) No. 88-C-354-E

ANCHOR PACKING COMPANY, a corporation;)
et al.,)

) Defendants.)

=====

O R D E R

Upon the above and foregoing Joint and Stipulated Motion for Order of Dismissal Without Prejudice, the above-styled action is hereby dismissed without prejudice as to Pleuss-Staufer Industries, Inc., each party to bear its own costs.

S/ JAMES O. ELLISON

JAMES O. ELLISON
U.S. DISTRICT COURT JUDGE

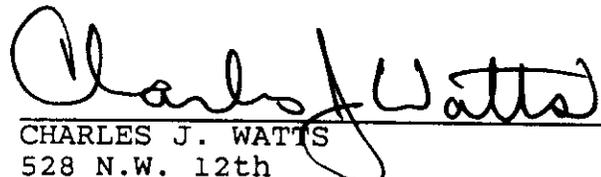
(TIRE WORKERS)
ORDER OF DISMISSAL

APPROVED:

LAW OFFICES OF
JOHN W. NORMAN INCORPORATED
ATTORNEYS FOR PLAINTIFFS

By: 
GINA L. HENDRYX - OBA #10330
Renaissance Centre East
127 N.W. 10th
Oklahoma City, OK 73103-4903
405/272-0200

LOONEY, NICHOLS, JOHNSON & HAYES
ATTORNEYS FOR DEFENDANT
PLEUSS-STAUFER INDUSTRIES, INC.

By: 
CHARLES J. WATTS
528 N.W. 12th
Oklahoma City, OK 73103
405/235-7641

F I L E D

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

NOV 7 1989 *clt*

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

LINDA SWEET and DANIEL SWEET,)
)
 Plaintiffs,)
)
 vs.)
)
 ANDREA RENEE JOHNSON and BUCK)
 JOHNSON,)
)
 Defendant.)

No. 89-C-312 E ✓

ORDER

NOW on this 1st day of October, 1989, this matter comes on for hearing upon the ORDER OF DISMISSAL, and for good cause shown, the Court finds that said Order of Dismissal should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the order this dismissal be granted, *WITH PREJUDICE*

Jamodellum
UNITED STATES DISTRICT JUDGE