

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

FILED

JAN 12 1990

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

R & R CARPET & TILE COMPANY,)
 a corporation,)
)
 Plaintiff,)
)
 vs.)
)
 DAL-TILE CORPORATION,)
)
 Defendant and)
 Third Party Plaintiff,)
)
 vs.)
)
 BTO BARTOLONI S.P.A.)
)
 Third Party Defendant.)

No. 89-C-153-B



ORDER OF REMAND

This matter came on for pretrial conference on January 11, 1990. The Defendant, Dal-Tile Corporation, appeared by its attorney, Lee Levinson, who announced to the Court that after telephone contact with Plaintiff's attorney, Michael E. Yeksavich, the parties are in agreement and state to the Court this matter should be remanded to the District Court of Tulsa County, Oklahoma from which it was originally removed. The parties state that, after this Court's order of August 30, 1989, sustaining Third-Party Defendant BTO Bartoloni S.P.A.'s Motion to Dismiss for lack of sufficient minimum contacts with the State of Oklahoma, the Court lacks subject matter jurisdiction.

Therefore, the Court concludes this matter should be and the same is hereby REMANDED to the District Court for Tulsa County, Oklahoma.

IT IS SO ORDERED this 12 day of January, 1990.



THOMAS R. BRET
UNITED STATES DISTRICT JUDGE

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

JUN 12 1943 *plw*

IN RE:
ASBESTOS LITIGATION

M-1417
ASB (IOLA) NO. 1943

ROY O. BURGESS, et ux	)	87-C-404-C
LEONARD A. BALLENGER, et ux	)	88-C-209-E
LARRY CAUGHMAN, et ux	)	88-C-210-E
LEONARD CULP, et ux	)	88-C-212-E
ALVA SHANKS, et ux	)	88-C-213-B
MARION JOE FLETCHER, et ux	)	88-C-218-E
CLIFTON SILVER, et ux	)	88-C-220-B
EDWARD JUNK, et ux	)	88-C-223-C
J. R. BEALL, et ux	)	88-C-292-C
BOBBY BLANKENSHIP, et ux	)	88-C-293-E
DAVID ELLIS, et ux	)	88-C-298-E
PERRY W. FRAKES, et ux	)	88-C-299-E
MORRIS HOPKINS, et ux	)	88-C-300-C
ONA M. JOHNSON, et ux	)	88-C-301-E
GARRETT JUBY, et ux	)	88-C-302-B
WILLIAM LITTLE, et ux	)	88-C-303-E
GERALD NICKS, et ux	)	88-C-304-B
LINLEY N. O'BANION, et ux	)	88-C-385-B

ORDER OF DISMISSAL WITH PREJUDICE
AS TO DEFENDANT GARLOCK INC. ONLY (IOLA)

CHARLEY PREWITT, et ux	)	88-C-386-E
WILLIAM PUGH, et ux	)	88-C-387-C
CECIL RICHARDSON, et ux	)	88-C-388-B
NEIL N. THOMPSON, et ux	)	88-C-389-B
CHARLES J. WEST, et ux	)	88-C-390-C
MARVIN R. PAVEY, et ux	)	88-C-391-B
LEONARD COLLIER, et ux	)	88-C-495-B
HENRY BALDRIDGE, et ux	)	88-C-497-E
JIM FROST, et ux	)	88-C-498-B
JIMMY W. McCORKLE	)	88-C-499-B
JACK L. LEGAN, et ux	)	88-C-500-B
LEAUN C. MANNING, et ux	)	88-C-917-E
ANDY A. HASKINS, et ux	)	88-C-918-E
CHARLES LANCASTER, et ux	)	88-C-919-B
ROBERT C. RAY	)	88-C-920-C
MARTIN RUSH, et ux	)	88-C-921-E
THOMAS D. MAYHEW, et ux	)	88-C-922-B
DOCKIE KOSIER, et ux	)	88-C-923-C
THOMAS K. HATHCOAT, et ux	)	88-C-924-C
TEDDY G. HADDEN, et ux	)	88-C-925-E
CECIL J. RAY, et ux	)	88-C-926-B
HERMAN SWANK, et ux	)	88-C-1477-E
HOMER CUNNINGHAM, et ux	)	89-C-81-E
OLEE E. CASE	)	89-C-125-C
CHARLES O. McCORKLE, et ux	)	89-C-126-B
L. D. GOSS, et ux	)	89-C-127-E

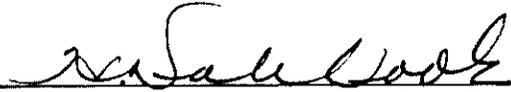
ROBERT YOACHUM, et ux	)	89-C-128-E
DALE McDONALD, et ux	)	89-C-129-E
FRED MARBLE, et ux	)	89-C-130-B
RAY VERNON YARBROUGH, et ux	)	89-C-131-E
RUDELL R. BRYCE, et ux	)	89-C-132-C
JESSE RAY HURST	)	89-C-133-E
Plaintiffs,)	
VS.)	
FIBREBOARD CORPORATION,)	
et al,)	
Defendants.)	

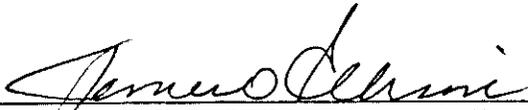
ORDER OF DISMISSAL WITH PREJUDICE
AS TO DEFENDANT GARLOCK INC. ONLY (IOLA)

NOW ON THIS 12 day of January, 1990, the above-styled and numbered causes come before the undersigned Judges of the United States District Court for the Northern District of Oklahoma upon the Stipulation of Dismissal With Prejudice as to Defendant Garlock Inc. Only (Iola); and the Court, having examined the pleadings and being fully advised in the premises, finds that said causes should be dismissed, with prejudice, as to refiling against Defendant Garlock Inc. only, each party to pay their own costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above-styled and numbered causes be and the same are

hereby dismissed, with prejudice, as to refiling against Defendant Garlock Inc. only, each party to pay their own costs.


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE

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

FILED

JAN 12 1990

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

EARL PENN,

Plaintiff,

vs.

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

Defendant.

No. 89-C-323-B

ORDER

This matter comes on for consideration upon the objection of the Plaintiff, Earl Penn, to the Findings and Recommendations of the United States Magistrate, which Findings were entered herein on October 19, 1989.

Plaintiff brought this judicial review action pursuant to 42 U.S.C. §405(g), challenging the final decision of the Secretary of Health and Human Services (Secretary) denying Plaintiff's application for disability insurance benefits under §§ 216(i) and 223 of Title II of the Social Security Act, 42 U.S.C. §§ 416(i) and 423.

In his 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)).

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).

In the present case the Secretary found that although claimant was unable to return to his past relevant work as a laborer, welder or hospital aide, he was not disabled since he could perform the full range of sedentary work.

The 30 year old claimant, through his attorney, contends both the Magistrate and the Secretary erred in finding that Plaintiff's testimony regarding pain was not credible and in "applying the grid" to this case.

The Magistrate agreed with the Secretary's conclusion that Plaintiff's allegations of pain lacked credibility because the record reflects little corroborative evidence of pain. The Court makes the same conclusion. The evidence reveals Plaintiff used little or no pain medication (Tr. 31) and saw no medical doctor regularly from shortly after the alleged onset date of July 15, 1986 (Tr. 42, 120). Other normal indicia of pain, Luna v. Bowen, 834 F.2d 161 (10th Cir. 1987), were absent in the record.

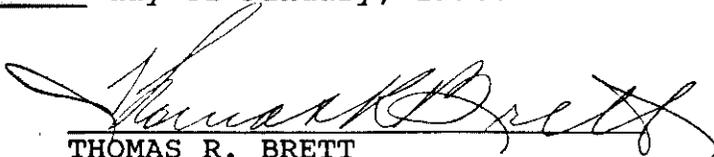
As to the grids, the Magistrate again agreed with the Secretary's Findings. Use of the Medical-Vocational Guidelines' (the grids) is predicated on an impairment that limits the physical strength or exertional capacity of a claimant. Talbot v. Heckler, 814 F.2d 1456 (10th Cir. 1987); Frey v. Bowen, 834 F.2d 508 (10th

¹20 C.F.R. §404, Subpart P, App. 2.

Cir. 1987). The guidelines relate a claimant's age, education and job experience with his ability to engage in work in the national economy at various levels of exertion to determine claimant's ability to work. The mere presence of a nonexertional impairment does not automatically preclude reliance on the grids. See Channel v. Heckler, 747 F.2d 577 (10th Cir. 1984). Use of the grids is foreclosed only to the extent that nonexertional impairments further limit the range of jobs available to the claimant. Channel v. Heckler, *supra*. The Court is unaware of any impairments as reflected by the record herein.

The Court agrees with the Magistrate's Findings and Recommendations and the same are adopted and ratified. The Court concludes that the Secretary's decision should be and the same is hereby AFFIRMED.

IT IS SO ORDERED this 12th day of January, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

JAN 12 1990

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

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

FRANK B. ANDREWS, et al.,)

Plaintiffs,)

vs.)

THOMAS N. HALL, et al.,)

Defendants.)

Case No. 88-C-422-B

PARTIAL SETTLEMENT APPROVAL ORDER

A hearing was held by this Court on January 12, 1990 to consider whether the partial settlements among the Andrews Class, the Equity Receiver, and Saul Stone & Co. (Settling Party) should be approved and confirmed by this Court as fair, reasonable and adequate, and to consider any objections to said partial settlements. This Court has carefully considered the matters presented at the Settlement Approval Hearing, including all of the arguments of counsel and all papers filed with respect to said matters, and other relevant pleadings, papers and other documents on file in this litigation, and is now fully advised in the premises.

Upon consideration of the entire record herein, including the proceedings, files and records referred to above, the Stipulation of Settlement (the "Stipulation") and Amendment to Stipulation of Settlement (the "Amendment"), (together referred to as the "Settlement Agreement"), this Court makes the following findings of fact and conclusions

of law in connection with its consideration of the Settlement Agreement and the matters relating thereto presented at the Settlement Approval Hearing:

FINDINGS OF FACT

1. The above captioned action was originally filed as a class action.

2. The parties to the Settlement Agreement entered into arms length negotiations which culminated in the lodging with the Court of a Stipulation of Settlement (the "Stipulation") and an Amendment to Stipulation of Settlement (the "Amendment"), the Settlement Agreement, for which approval is presently being sought. The Settlement Agreement contemplates the payment of sums as the Settlement Sum, which sum has been revealed to the Court and to the Class Members, but which is subject to a confidentiality agreement in exchange for the dismissal of the Andrews Action and all claims of the Receiver against Saul Stone & Co., its officers, directors, agents and employees; and which provides for the dismissal without prejudice of all claims of the Class against Charles Andrews and Andrews & Associates, Inc. and the assignment of those class claims to Saul Stone & Co. (Settling Party).

3. Following the filing of the Stipulation, the parties filed a Joint Motion for Approval of Partial Settlement, Certification of Settlement Classes, and for

Dissemination of Notice of Proposed Settlement, and a Memorandum in support thereof. Following a hearing thereon, this Court issued the Settlement Class and Notice Order which determined that, for purposes of the partial settlements only, the Andrews Action shall be maintained as a class action on behalf of the Settlement Class and directed that the Notices be mailed to all potential members of the Settlement Class.

4. The Settlement Class and Notice Order further established dates by which class members were required to file, respectively, requests for exclusion from or objections to the partial settlements and set a date of December 14, 1989 for a hearing, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, to determine whether the partial settlements should be approved. A question arose at that hearing with respect to the adequacy of the Notice and the Court re-established dates for requests for exclusion from or objections to the partial settlements and set the date of January 12, 1990 for a hearing, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, to determine whether the partial settlements should be approved.

5. Notice was sent by first class mail, postage prepaid, to all potential members of the Settlement Class as reflected on the books and records maintained by the Equity Receiver of Market Exchange Index in the manner described in

the Affidavit of mailing of Gary C. Clark filed with the Court.

6. No objections to the proposed settlements were filed. No one filed a Request for Exclusion from the Class as determined by the Court. James J. Sykora, plaintiff in James J. Sykora, et al. v. Jill Zink Tarbel, et al., Case No. 88-C-553-B, did not elect to be included in the class.

7. The Settlement set forth in the Settlement Agreement was reached as a result of extended bargaining at arm's length and in good faith between members of the Plaintiffs' Litigation Committee and their Counsel, the Equity Receiver and Counsel for the Settling Party.

8. Plaintiffs' Litigation Committee and the Equity Receiver have conducted extensive discovery as to the claims of the plaintiffs against the Settling Party, and are, accordingly, in a position properly to evaluate the fairness, adequacy and reasonableness of the partial settlements set forth in the Settlement Agreement.

9. The Counsel for the members of Plaintiffs' Litigation Committee and the Equity Receiver who prosecuted the claims against the Settling Party and who negotiated the settlements set forth in the Settlement Agreement are attorneys with considerable experience in complex securities and class action litigation. In the opinion of these

counsel, the Settlement Agreement is, in all respects, fair, adequate and reasonable.

10. Plaintiffs faced substantial risks in continuing to prosecute their claims to litigated judgment after trial. Those risks, as reflected in various pleadings filed herein include complex questions of fact and law concerning the role of the Settling Party in the activities of Market Exchange Index and THD Ltd., and the extent to which such conduct could serve as a basis for legal liability under the federal securities, commodities and other laws, as well as issues relating to statutes of limitations and the computation of damages.

11. Based upon the foregoing and the conclusions and recommendations of the Parties and considering the probability and the cost of obtaining and collecting such recovery on behalf of the Settlement Class, this Court finds and concludes that the amount of the settlements established pursuant to the Settlement Agreement is fair, adequate and reasonable.

12. If any Conclusion of Law herein be deemed to be a Finding of Fact, it is hereby incorporated in these Findings of Fact by this reference.

CONCLUSIONS OF LAW

1. This Court concludes in all respects in accordance with the foregoing findings of fact.

2. This Court has jurisdiction over the subject matter of this litigation, over all named parties to this litigation who are parties to the Settlement Agreement, and over all members of the Settlement Class to the extent necessary to bind them with respect to the subject matter of this litigation.

3. Notice was duly mailed to the members of the Settlement Class pursuant to this Court's Order. The giving of said Notice was the best notice practicable under the circumstances, including individual notice to all members of the Settlement Class who could be identified through reasonable effort, and was due and sufficient notice of the matters set forth therein. The giving of said Notice fully complied in every respect with the requirements of Rules 23(e) and 23(c)(2) of the Federal Rules of Civil Procedure.

4. Due and adequate notice, as described herein, was mailed to all those persons and entities who are members of the Settlement Class, notifying said persons and entities of the maintenance, for settlement purposes only, of the captioned case as a class action, of their right to be excluded from the Settlement Class, and of the proposed partial settlements. All persons and entities who are members of the Settlement Class and who have not duly requested to be excluded from the Settlement Class are included in and are fully bound by the Settlement Agreement and this Settlement Approval Order as though they were named

parties to the captioned actions and the Settlement Agreement. No person filed a request to be excluded from the Settlement Class, and no person objected to the proposed settlements. James J. Sykora, plaintiff in James J. Sykora, et al. v. Jill Zink Tarbel, et al., Case No. 88-C-553-B, did not elect to be included in the class.

5. This case has been vigorously litigated, substantial discovery on the underlying facts, conducted on an adversary basis, has been taken; Plaintiffs' Counsel were provisionally authorized to represent and act on behalf of the Settlement Class; Plaintiffs Counsel did in fact act for the Settlement Class, and negotiated the partial settlements on their behalf; and such Settlement Agreement was negotiated at arm's length and is not collusive.

6. Based upon all of the matters heard by this Court at the Settlement Hearing and upon the record herein, including the pleadings, papers and other documents on file in this litigation, this Court hereby finds and concludes that the partial settlements set forth in the Settlement Agreement is, in all respects, fair, reasonable and adequate with respect to the rights of the absent class members, and therefore hereby approves said partial settlements pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. The Court further finds that the Notice adequately informed members of the Settlement Class of the material terms of the Settlement Agreement.

7. The Settling Plaintiffs have not entered into and are not bound by any settlement agreement with Charles Andrews and/or Andrews & Associates, Inc., and the Settlement Agreement does not breach or interfere with any rights of Charles Andrews and/or Andrews & Associates, Inc.

8. If any Finding of Fact herein be deemed to be a Conclusion of Law, it is hereby incorporated in these Conclusions of Law by this reference.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. This Court having previously ordered that, for purposes of these partial settlements only, and without prejudice to a full consideration of any objections to class certification that the Settling Party may assert in the event that the partial settlements provided for in the Settlement Agreement are not consummated, and without prejudice to any objections to class certification that any non-settling defendants in this litigation may make at any time, the Andrews Action shall be maintained as a class action on behalf of the Settlement Class defined in the Settlement Class and Notice Order, the claims of all named plaintiffs and all members of the Settlement Class shall be determined in accordance with the Settlement Agreement and this Settlement Approval Order.

2. The partial settlement set forth in the Settlement Agreement is hereby approved as fair, reasonable

and adequate with respect to the rights of the absent class members.

3. The Settling Party expressly denies any liability to the Settling Plaintiffs (as defined in the Settlement Agreement), and expressly deny any wrongdoing of any description, or any deficiencies, faults, errors or omissions of any nature whatever; they have entered into the Settlement Agreement solely for the purpose of terminating this litigation as to them and to avoid the cost, expense and effort required to continue to participate in such complex and protracted litigation. The Settlement Agreement shall not be deemed an admission or concession on the part of the Settling Party, as to the validity of any claims asserted against them, or as to any liability to any of the Settling Plaintiffs or others or as to any wrongdoing by them, or any deficiencies, faults, errors or omissions of any nature whatever.

4. After the Settling Party makes the payment required by the Settlement Agreement, this Court shall enter judgments of dismissal in the Andrews Action insofar as such action is asserted against the Settling Party. In addition, the Court shall enter an order dismissing, without prejudice, the claims of Settling Plaintiffs against Charles Andrews and Andrews & Associates, Inc. At the same time that the Settling Plaintiffs dismiss without prejudice their claims against Charles Andrews and Andrews & Associates,

Inc., the Court shall grant leave to Saul Stone & Co., as assignee of those claims, to file an amended complaint, third party complaint, and/or cross claim against Charles Andrews and/or Andrews & Associates, Inc., in substitution for and/or amendment of Settling Plaintiffs' claims against Charles Andrews and/or Andrews & Associates, Inc. Such leave to file an amended pleading or pleadings will be granted without expression of any view on the merits, and without prejudice to the assertion of any defenses which Charles Andrews and/or Andrews & Associates, Inc. shall choose to raise. Nothing in this order shall be construed as an opinion on the legal effect of the assignments to be granted by Settling Plaintiffs to Saul Stone & Co. in any actions brought on those assignments, and nothing in this order shall be construed to preclude Charles Andrews or Andrews & Associates, Inc. from raising any defenses, claims or legal arguments, or from asserting any rights (other than those foreclosed by paragraph 7 of the Conclusions of Law in this order) that were available against the Settling Plaintiffs, Saul Stone & Co. or any other person prior to the entry of this order.

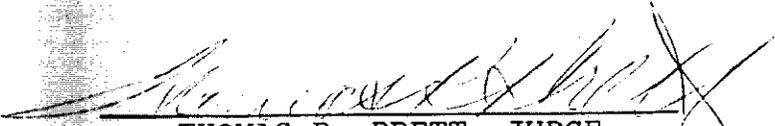
5. All persons and entities who are members of the Settlement Class are hereby forever barred and enjoined from instituting or prosecuting any actions, causes of action, or claims of any kind or nature whatsoever, whether known, unknown, suspected or unsuspected, against Saul Stone

& Co. and its past and present officers, directors, shareholders, affiliates, parent corporations, subsidiaries, successors, assigns, predecessors, representatives, employees, and agents, including without limitation Thomas Stone, Jerry Hirsch, James Gary, Gary Sinclair, and Linda Rudenberg, of any claims asserted or which could have been asserted by the Receiver and any claims asserted or which could have been asserted in the Andrews Action by any member of the Andrews Settlement Class or by any other person who ever invested in MEI or who ever claimed any interest in any investment in MEI; provided, however, that this Order shall not preclude or be construed to preclude prosecution of claims against Charles Andrews, Andrews & Associates, Inc., Thomas N. Hall, Donald Brooks, United Bank and its successor, Metropolitan Life Insurance Company, or MetLife Securities, Inc.

6. Each member of the Settlement Class who claims a right to share in the Settlement Amount (as defined in the Settlement Agreement) must execute and deliver a Mutual Covenant Not to Sue and Assignment in the form provided for in the Settlement Agreement. No member of the Settlement Class who fails to furnish such agreement shall share in and receive any portion of the Settlement Amount notwithstanding the fact that all Settled Claims of such class member against the Settling Party shall be dismissed pursuant to this Settlement Approval Order.

7. Without affecting the finality of the judgments to be entered pursuant to this Settlement Approval Order, the Court shall retain continuing jurisdiction to administer the performance of the Settlement Agreement in accordance with its terms, and, with respect to the Andrews Action, the Court shall retain continuing jurisdiction over the funds paid to the Settling Plaintiffs (as defined in the Settlement Agreement) for the purpose of entering orders appropriate and consistent with the terms of the Settlement Agreement, allowing or disallowing applications for attorneys' and accountants' fees, costs, and expenses; determining and supervising distribution procedures relating to said funds; identifying Settlement Class members and their respective interests, if any, in such funds; sending notices to Settlement Class members; reviewing claims submitted; and distributing such funds. After the completion of such matters, and pursuant to the terms of the Settlement Agreement, such funds, except insofar as they may be otherwise disbursed pursuant to the terms of the Settlement Agreement, shall be distributed to such persons as may be designated by the Court.

IT IS SO ORDERED, in Tulsa, Oklahoma, this 12th day of January, 1990.


THOMAS R. BRETT, JUDGE
UNITED STATES DISTRICT COURT

APPROVED AS TO FORM:

Stan P. Doyle

Stan P. Doyle
For the Plaintiffs of the
Andrews Class

Gary C. Clark

Gary C. Clark, Equity Receiver

William J. Nissen

William J. Nissen
For the Defendants
Saul Stone & Co.

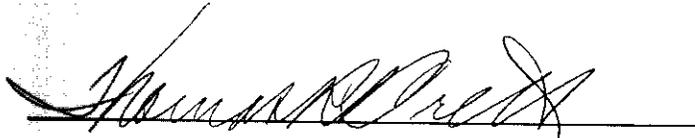
Lance Stockwell

Lance Stockwell
For the Defendants
Andrews and Andrews & Associates

Response to Request for Admissions. Defendant, however, filed an Affidavit stating he received the same Response as that attached to Plaintiff's Motion to Remand.

Based upon the Plaintiff's Response to Request for Admissions, the Court concludes the amount in controversy does not exceed \$50,000 and the Court is without jurisdiction. Therefore, Plaintiff's Motion to Remand is SUSTAINED.

IT IS SO ORDERED, this 12th day of January, 1990.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

CLERK'S OFFICE

UNITED STATES COURT HOUSE

TULSA, OKLAHOMA 74103

January 11, 1990

JACK C. SILVER
CLERK

TO ALL COUNSEL OF RECORD:

IN RE 89-C-890-C (Jay J. Hayward v. U.S.A.)
86-CR-172-C (U. S. A. v. Jay J. Hayward)

Please be advised that Chief Judge H. Dale Cook entered the following Minute Order in the above styled case:

"Upon Movant Hayward's request that the Court allow withdrawal of his 2255 motion, the Court orders said motion withdrawn and case closed."

Very truly yours,


Deputy Clerk,

WFS/tmm

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

AETNA CASUALTY & SURETY COMPANY,)
a Connecticut corporation,)
)
Plaintiff,)
)
vs.)
)
NATIONAL STEEL ERECTORS)
CORPORATION, an Oklahoma)
corporation; ENGINEERING)
DESIGN SERVICES, INC., an)
Oklahoma corporation; and)
TOWER INSPECTION, INC.,)
an Oklahoma corporation,)
)
Defendants.)

FILED

JAN 11 1990

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

Case No. 89-C-913B

NOTICE OF DISMISSAL WITHOUT PREJUDICE

Plaintiff, Aetna Casualty & Surety Company, a Connecticut corporation, by this Notice dismisses its action against the defendant, Engineering Design Services, Inc., only, without prejudice to the refiling of same all pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure.

Respectfully submitted,

SECRET & HILL

By:

JAMES K. SECREST, OBA #8049
WILLIAM F. SMITH, OBA #8420
7134 South Yale, Suite 900
Tulsa, Oklahoma 74136
Telephone: (918) 494-5905

CERTIFICATE OF MAILING

This is to certify that a true, correct and complete copy of the foregoing was deposited in the U.S. Mail this _____ day of January, 1990, with proper postage thereon fully prepaid to the following:

Mr. Richard D. Wagner
Attorney at Law
P. O. Box 1560
Tulsa, Oklahoma 74101-1560

Mr. Mark Green
Attorney at Law
706 West Okmulgee
P. O. Box 2362
Muskogee, Oklahoma 74401-2362

FILED
11

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

John C. Sherrill, Clerk
US District Court

TIM L. IPOCK,

Plaintiff,

-vs-

E.W. BLISS CO., et al.,

Defendants.

Case No. 88-C-578 B

DISMISSAL WITH PREJUDICE

COMES NOW the plaintiff, Tim L. Ipock, and hereby dismisses any and all claims and causes of action against the defendant, Summit Loss Control Services, Inc., with prejudice to the refiling thereof.

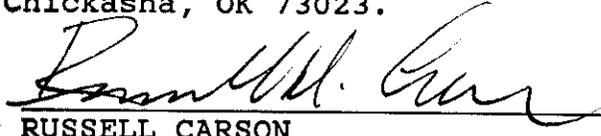
ROBERTS, MARRS & CARSON



Russell D. Carson OBA #11251
110 South Hartford
Suite 111, Hartford Building
Tulsa, OK 74120
(918) 582-6567
Attorneys for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on this 21 day of October, 1989, a true and correct copy of the above and foregoing pleading was mailed, postage prepaid, to the following attorneys of record: Mr. Steven Lewis, 5500 N. Western, Suite #144, Oklahoma City, OK 73118 and Michael R. Chaffin, P.O. Box 533, Chickasha, OK 73023.


RUSSELL CARSON

FILED

JAN 11 1990

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

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

DARRYL S. HAYES, an individual,
Plaintiff,
v.
THE CITY OF NOWATA,
Defendant.

NO. 88-C-1513-B ✓

ORDER OF DISMISSAL

NOW, on this, the 11th day of January, 1990
Plaintiff's application for dismissal without prejudice having
been considered and the Court having found good cause for
Plaintiff's dismissal without prejudice to refileing. The Court
has further been advised that counsel for Defendant has no
objections hereto.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this
cause be dismissed without prejudice to refileing.


UNITED STATES DISTRICT JUDGE

NOTE: THIS ORDER IS BEING
FORWARDED TO ALL CO-DEBTORS
AND CREDITORS IMMEDIATELY
UPON RECEIPT.

*Dismisses
X Claims between
As.*

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

MARK WILLIAMS, a minor by his next
friend, ROSALIE BLIZZARD; and ROSALIE
BLIZZARD, individually,

Plaintiffs,

v.

EMPIRE DISTRICT ELECTRIC COMPANY,
a Kansas corporation, and ROBERT E. BRUNER
an individual,

Defendants.

No. 89-C-002-C

FILED

JAN 14 1990

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

ORDER OF DISMISSAL WITHOUT PREJUDICE

NOW on this, the 9th day of January, 1990, comes on to be heard the
Stipulation of Dismissal Without Prejudice of the Empire District Electric Company
of its cross-claims against Robert E. Bruner, and of Robert E. Bruner of his cross-
claims against the Empire District Electric Company. The Court, being well advised
in the premises, finds that all cross-claims now pending between the Empire District
Electric Company and Robert E. Bruner should be and hereby are DISMISSED WITHOUT
PREJUDICE.

IT IS SO ORDERED!

H. Dale Cook
H. Dale Cook, United States District Judge

APPROVED AS TO FORM AND CONTENT:

Walter D. Haskins
Walter D. Haskins, Attorney for
Empire District Electric Company

Douglas W. Golden
Douglas W. Golden, Attorney for
Robert E. Bruner

WDH/bb
372-20

54

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

FILED

JAN 10 1990 *dt*

BRETT FREELAND, Administrator)
of the Estate of Beulah M.)
King, Deceased,)

Plaintiff,)

vs.)

RICHARD GLASSCOCK, et al.,)

Defendants.)

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

No. 89-C-767-E ✓

ORDER

NOW on this 10th day of January, 1990 comes on for hearing the above styled case and the Court, being fully advised in the premises finds Defendant Richard Glasscock has entered a special appearance and has moved to dismiss the case against him without prejudice, based on Plaintiff's failure to effectively serve him. Some two-hundred forty-nine (249) days have passed since the filing of the case and no service has as yet been obtained. Therefore, pursuant to Fed.R.Civ.P. 4(j), this Court finds that the action shall be dismissed without prejudice to any subsequent refiling as to Defendant Richard Glasscock.

IT IS THEREFORE ORDERED that the motion of Defendant Richard Glasscock to dismiss should be and is hereby granted as to that Defendant only.

ORDERED this 10th day of January, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

10

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 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.)

FILED

JAN 10 1990

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

CIVIL ACTION NO. 89-C-601-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 8 day
of Jan, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; and the Defendants, John Doe, Tenant and Mary Doe,
Tenant, appear not, and should be dismissed from this action; the
Defendants, Jim L. Herron, Pioneer Savings and Trust Company and
Property Ventures of Louisiana, Inc., appear not, having
previously filed their Disclaimers.

The Court being fully advised and having examined the
file herein finds that the Defendant, Pioneer Savings and Trust

Company, acknowledged receipt of Summons and Complaint on or about October 19, 1989; that the Defendant, Property Ventures of Louisiana, Inc., acknowledged receipt of Summons and Complaint on July 21, 1989; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on July 24, 1989; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on July 24, 1989.

The Court further finds that Defendants, John Doe, Tenant and Mary Doe, Tenant, have not been served herein as such persons do not exist, and should therefore be dismissed as Defendants herein.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on August 4, 1989; Defendant, Jim L. Herron, filed his Disclaimer on September 15, 1989; that the Defendant, Pioneer Savings and Trust Company, filed its Answer, Counterclaim and Cross-Complaint on October 24, 1989, its Notice of Dismissal of Counterclaim and Cross-Complaint on November 22, 1989, and its Disclaimer on November 22, 1989; and that the Defendant, Property Ventures of Louisiana, Inc., filed its Disclaimer on October 10, 1989.

The Court further finds that Wayne Osborn, Bank Commissioner of the State Banking Department, is the Receiver for Defendant, Pioneer Savings and Trust Company.

The Court further finds that on September 21, 1989, Plaintiff filed a Notice of Dismissal dismissing with prejudice

the Defendant, Jim L. Herron, from the subject foreclosure action according to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

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

Lot Fourteen (14), Block One (1), NORTHGATE ADDITION, to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on August 1, 1980, Jim L. Herron, 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, his mortgage note in the amount of \$17,089.00, payable in monthly installments, with interest thereon at the rate of 12 percent per annum.

The Court further finds that as security for the payment of the above-described note, Jim L. Herron, 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 August 1, 1980, covering the above-described property. Said mortgage was recorded on August 6, 1980, in Book 4489, Page 914, in the records of Tulsa County, Oklahoma.

The Court further finds that Jim L. Herron made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which

default has continued, and that by reason thereof Jim L. Herron is indebted to the Plaintiff in the principal sum of \$16,363.61, plus interest at the rate of 12 percent per annum from March 1, 1980 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, Pioneer Savings and Trust Company and Property Ventures of Louisiana, Inc., disclaim any right, title, or interest in the subject real property.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem in the principal sum of \$16,363.61, plus interest at the rate of 12 percent per annum from March 1, 1988 until judgment, plus interest thereafter at the current legal rate of 7.66 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, Jim L. Herron; John Doe, Tenant; Mary Doe, Tenant; Pioneer Savings and Trust Company; Property Ventures of

Louisiana, Inc.; and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property, and the Defendants, John Doe, Tenant and Mary Doe, Tenant, are hereby dismissed as Defendants herein.

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

First:

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

Second:

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

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

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

(Signed) N. Dale Cook

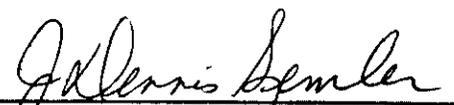
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney



J. DENNIS SEMLER, OBA #8076
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

FILED

JAN 10 1990

DARYL LEE WILSON,)
)
 Plaintiff,)
)
 vs.)
)
 RON CHAMPION, Warden C.C.C.,)
 and The Attorney General of)
 the State of Oklahoma,)
)
 Defendants.)

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

No. 89-C-274-B

ORDER

By Report and Recommendation entered December 1, 1989, filed December 4, 1989, the United States Magistrate found Petitioner had failed to meet the "in custody" requirement for habeas relief pursuant to 28 U.S.C. § 2254. The Magistrate recommended Petitioner's Application for a Writ of Habeas Corpus be denied.

Petitioner objected to such Report and Recommendation by instrument filed December 15, 1989. Petitioner essentially urges that the "new rule" announced in Maleng v. Cook, _____ U.S. _____, 109 S.Ct. 1923 (1989)' should not be applied retroactively in that his Petition for Writ was filed prior to the Maleng decision.

Petitioner misconceives Maleng. It is not a new ruling as evidenced by this excerpt therefrom:

"The federal habeas statute gives the United States District Courts jurisdiction to entertain petitions for habeas relief only from persons who are 'in custody in violation of the Constitution or laws or treaties of the United States.' 28 U.S.C. § 2241(c)(3) (emphasis

'Upon which the Magistrate, in main part, predicated the Report and Recommendation.

added); see also 28 U.S.C. § 2254(a). We have interpreted the statutory language as requiring that the habeas petitioner be 'in custody' under the conviction or sentence under attack at the time his petition is filed. See Carafas v. LaVallee, 391 U.S. 234, 238, 88 S.Ct. 1556, 1560, 20 L.Ed.2d 554 (1968). ...

* * *

"We have never held, however, that a habeas petitioner may be 'in custody' under a conviction when the sentence imposed for that conviction has *fully expired* at the time his petition is filed. Indeed, our decision in Carafas v. LaVallee, *supra*, strongly implies the contrary. ..."

The Court therefore concludes that the Magistrate's Report and Recommendation should be and the same is hereby ADOPTED AND AFFIRMED.

Petitioner's Application for a Writ of Habeas Corpus should be and the same is hereby DENIED.

IT IS SO ORDERED this 10th day of January, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

1 1990

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

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

RAYMOND HERSCHEL JOHNSON,

Plaintiff,

vs.

SECRETARY OF HUMAN SERVICES,

Defendant.

No. 89-C-696-E ✓

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed August 31, 1989. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Petitioner's "Nun [sic] Pro Tunc Writ of Mandamus, Injoinder [sic] and in Toto" is dismissed as frivolous.

ORDERED this 10th day of January, 1990.



JAMES C. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

JAWED 1990 *JS*

IN RE:

GARY DOUGLAS HENDRICK, et al.,)

Debtors,)

SSN 446-44-8940 (H))
SSN 441-58-8516 (W))

LINDA NIX,)

Plaintiff,)

vs.)

ST. JOHN MEDICAL CENTER,)
INC.,)

Defendant.)

89-C-800-E ✓

Case No. 88-3201-C
(Chapter 7)

Adversary No. 88-0354-C

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

ORDER

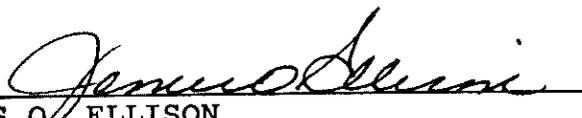
This matter is before the Court on the Report and Recommendation of the United States Bankruptcy Judge for the Northern District of Oklahoma filed September 11, 1989. Judge Covey previously determined that this adversary proceeding should be classified as a non-core proceeding in order to preserve the debtor's right to a jury trial on these issues. See Order of May 19, 1989. The Bankruptcy Judge recommends that this non-core proceeding be remanded to the state district court for a jury trial on debtor's claims against St. John Medical Center, her former employer.

Following review of the Report and Recommendation, the evidence and exhibits received by the Bankruptcy Court and, the

objections made by St. John the Court concludes that equitable grounds exist to remand this adversary proceeding, including the following: This action presents no federal question and there is no diversity of citizenship between the parties; the state court is better able to respond to questions solely involving state law; and this action proceeded through discovery in state court and appears nearly ready for trial. There are, therefore, sufficient equitable grounds present to remand this proceeding, pursuant to 28 U.S.C. §1452(b).

IT IS THEREFORE ORDERED that the Report and Recommendation of the United States Bankruptcy Court is affirmed and adopted by this Court and this adversary proceeding is remanded to the state district court for Tulsa County, Oklahoma.

ORDERED this 10th day of January, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

JAN 10 1990 *clt*

FREDA LANNON,

Plaintiff,

vs.

METROPOLITAN LIFE
INSURANCE COMPANY,

Defendant.

No. 89-C-657-E ✓

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

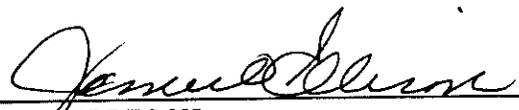
O R D E R

NOW on this 10th day of January, 1990 comes on for hearing the above styled case and the Court, being fully advised in the premises finds that Defendant has moved to dismiss Plaintiff's Third Claim for Relief on the ground that it fails to state a cause of action for which relief may be granted. Plaintiff's third claim is for public policy wrongful termination under the narrow exception to the employment-at-will doctrine created by the decision in Burk v. K-Mart Corporation, 60 O.B.J. 305 (1989). In that decision, the Oklahoma Supreme Court ruled that Oklahoma recognizes a cause of action in tort for a discharge which is contrary to a clear mandate of public policy as articulated by constitutional statutory or decisional law, and that the public policy exception must be tightly circumscribed. The circumstances which give rise to an actionable tort claim exist when an employee is discharged for refusing to act in violation of an established and well-defined public policy or for performing an act consistent with a clear and compelling public policy. Id.

This Court finds that Plaintiff's third claim must be dismissed, as it falls to meet the criteria delineated above. Initially, Plaintiff has not been discharged and, secondarily, Plaintiff's complaint contains no allegations that she either refused to act in violation of an established public policy or that she performed an act consistent with such a clear and compelling public policy. Thus Defendant's Motion to Dismiss Plaintiff's Third Claim for Relief must be granted.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss Plaintiff's Third Claim for Relief should be and is hereby granted.

ORDERED this 10th day of January, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JAMES A. WILSON; TERRI LYNN)
MELTON a/k/a TERRI LYNN)
FOREMAN; DEBRA JEAN BONHAM;)
COUNTY TREASURER, Washington)
County, Oklahoma; and BOARD)
OF COUNTY COMMISSIONERS,)
Washington County, Oklahoma,)
)
Defendants.)

FILED

JAN 10 1990

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

CIVIL ACTION NO. 89-C-850-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 10th day of January, 1990. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney; the Defendant, James A. Wilson, appears not, having previously filed his Disclaimer; the Defendants, Terri Lynn Melton a/k/a Terri Lynn Foreman; Debra Jean Bonham; County Treasurer, Washington County, Oklahoma; and Board of County Commissioners, Washington County, Oklahoma, appear not, but make default.

The Court being fully advised and having examined the file herein finds that Defendant, James A. Wilson, acknowledged receipt of Summons and Complaint on October 20, 1989; Defendant, Terri Lynn Melton a/k/a Terri Lynn Foreman, acknowledged receipt of Summons and Complaint on November 2, 1989; Defendant, Debra Jean Bonham, acknowledged receipt of Summons and Complaint on

November 13, 1989; that Defendant, County Treasurer, Washington County, Oklahoma, acknowledged receipt of Summons and Complaint on October 18, 1989; and that Defendant, Board of County Commissioners, Washington County, Oklahoma, acknowledged receipt of Summons and Complaint on October 18, 1989.

It appears that the Defendant, James A. Wilson, filed his Disclaimer on November 15, 1989; and that the Defendants, Terri Lynn Melton a/k/a Terri Lynn Foreman; Debra Jean Bonham; County Treasurer, Washington County, Oklahoma; and Board of County Commissioners, Washington County, Oklahoma, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

A part of Block Six (6) and Seven (7), Tidal Subdivision, bounded and described as follows: Beginning at a point on the East line of said Block Six (6), that is 300 feet South of the Northeast corner thereof; thence South along the East line of said Blocks Six (6) and Seven (7) for a distance of 90 feet; thence West 150 feet; thence North 90 feet to a point that is 300 feet South of the North line of said Block Six (6); thence East 150 feet to the point of beginning.

The Court further finds that on August 15, 1978, Carol J. Blevins executed and delivered to the United States of America, acting through the Farmers Home Administration, her promissory note in the amount of \$25,000.00, payable in monthly installments, with interest thereon at the rate of eight and one-half percent (8.5%) per annum.

The Court further finds that as security for the payment of the above-described note, Carol J. Blevins executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated August 15, 1978, covering the above-described property. Said mortgage was recorded on August 15, 1978, in Book 712, Page 215, in the records of Washington County, Oklahoma.

The Court further finds that Carol J. Wilson, formerly known as Carol J. Blevins, died on December 9, 1985. Certificate of Death No. 28497 issued by the Oklahoma State Department of Health certifies Carol J. Wilson's death.

The Court further finds that an Order Allowing Final Account, Determination of Heirship, Distribution and Discharge, dated August 6, 1986, and filed on August 11, 1986, in a case stated in the Matter of the Estate of Carol J. Wilson, Deceased, Case No. P-86-41, in the District Court, Washington County, State of Oklahoma, named James A. Wilson, Terri Lynn Melton a/k/a Terri Lynn Foreman, and Debra Jean Bonham, as the heirs of Carol J. Wilson, formerly known as Carol J. Blevins.

The Court further finds that Carol J. Wilson, formerly known as Carol J. Blevins, now deceased, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof there is now due and owing under the note and mortgage, after full credit for all payments made, the principal sum of \$22,121.80, plus accrued interest in the amount of \$4,067.07 as of May 2, 1989, plus interest accruing

thereafter at the rate of 8.5 percent per annum or \$5.1517 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, James A. Wilson, disclaims any right, title, or interest in the subject real property.

The Court further finds that the Defendants, Terri Lynn Melton a/k/a Terri Lynn Foreman, Debra Jean Bonham, and County Treasurer and Board of County Commissioners, Washington County, Oklahoma, are in default and have no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem in the principal sum of \$22,121.80, plus accrued interest in the amount of \$4,067.07 as of May 2, 1989, plus interest accruing thereafter at the rate of 8.5 percent per annum or \$5.1517 per day until judgment, plus interest thereafter at the current legal rate of 7.66 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, James A. Wilson, Terri Lynn Melton a/k/a Terri Lynn Foreman, Debra Jean Bonham, and County Treasurer and Board of County Commissioners, Washington County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

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

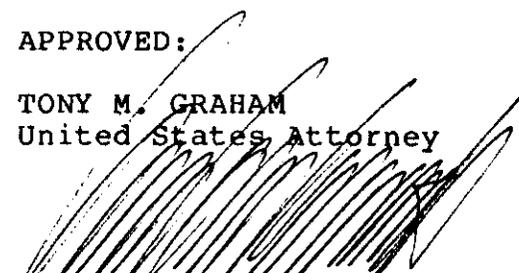
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PETER BERNHARDT, OBA #741
Assistant United States Attorney

Judgment of Foreclosure
Civil Action No. 89-C-850-E

4. Plaintiff's consent to the entry of this Judgment and Order of Payment is based upon certain financial information which defendant has provided it and the defendant's express representation to Plaintiff that he is unable to presently pay the amount of indebtedness in full and the further representation of the defendant that he will well and truly honor and comply with the Order of Payment entered herein which provides terms and conditions for the defendant's payment of the Judgment, together with costs and accrued interest, in regular monthly installment payments, as follows:

(a) Beginning on or before the 5th day of January 1990, the defendant shall tender to the United States a check or money order payable to the U.S. DEPARTMENT OF JUSTICE, in the amount of \$50.00 and a like sum on or before the 5th day of each following month until the entire amount of the Judgment, together with costs and accrued postjudgment interest, is paid in full.

(b) The defendant shall mail each monthly installment payment to: United States Attorney, Debt Collection Unit, 3600 U.S. Courthouse, 333 West 4th Street, Tulsa, Oklahoma 74103.

(c) Each said payment made by defendant shall be applied in accordance with the U.S. Rules, i.e., first to the payment of costs, second to the payment of postjudgment interest (as provided by 28 U.S.C. 1961) accrued to the date of the receipt of said payment, and the balance, if any, to the principal.

(d) The defendant shall keep the United States currently informed in writing of any material change in his financial situation or ability to pay, and of any change in his employment, place of residence or telephone number. Defendant shall provide such information to the United States Attorney at the address set forth in (b) above.

(e) The defendant shall provide the United States with current, accurate evidence of his assets, income and expenditures (including but not limited to, his Federal income tax returns) within fifteen (15) days of the date of a request for such evidence by the United States Attorney.

5. This Consent Judgment and Order of Payment shall be recorded among the records of the Circuit Court in the county of residence of the defendant, and all other jurisdictions where it is determined by the United States that the defendant owns real or personal property.

6. Default under the terms of this Consent Judgment and Order of Payment will entitle the United States to execute on this Judgment without notice to the defendant.

7. The defendant has the right of prepayment of this debt without penalty.

8. The parties further agree that any Consent Judgment and Order of Payment which may be entered by the Court pursuant hereto may thereafter be modified and amended upon stipulation

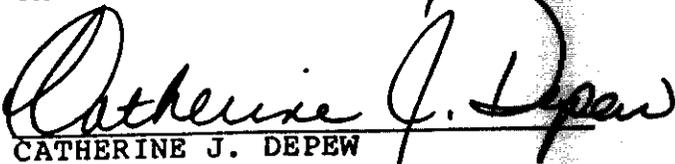
of the parties; or, should the parties fail to agree upon the terms of a new stipulated Order of Payment, the Court may, after examination of the defendant, enter a supplemental Order of Payment.

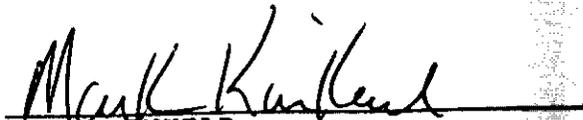
S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

TONY M. GRAHAM
United States Attorney


CATHERINE J. DEPEW
Assistant U.S. Attorney


MARK KINKEAD

CJD/mp

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

JAN 10 1990

UNITED STATES OF AMERICA,
Plaintiff,

vs.

THIRTEEN THOUSAND FIVE
HUNDRED TWENTY-FOUR DOLLARS
(\$13,524.00) IN UNITED
STATES CURRENCY,

Defendant.

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

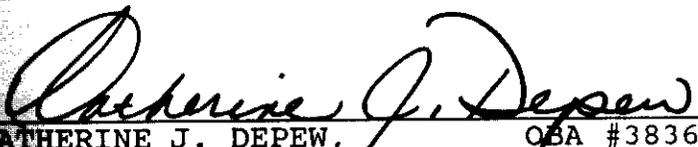
CIVIL ACTION NO. 89-C-867-E

NOTICE OF DISMISSAL

Plaintiff, the United States of America, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, gives notice that the above-styled action is hereby dismissed without prejudice and without costs pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, for the reason that the defendant property has been forfeited administratively, pursuant to the attached Declaration of Forfeiture.

Respectfully submitted

TONY M. GRAHAM
United States Attorney


CATHERINE J. DEPEW, OBA #3836
Assistant United States Attorney
3600 United States Courthouse
333 West Fourth Street
Tulsa, Oklahoma 74103
(918) 581-7463

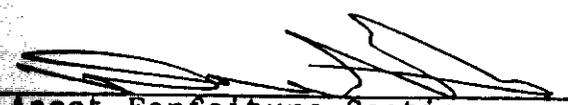


SEIZURE #: 63451 CASE #: MG890028
PROP: \$13,524.00 IN U. S. CURRENCY
ID#:
VALUE: \$13524.00
SEIZURE DATE: 03 AUG 89
SEIZURE PLACE: TULSA, OKLAHOMA
OWNER: DYWANE HANSBOROUGH
SEIZED FROM: DYWANE HANSBOROUGH
JUDICIAL DIST: OKLAHOMA NORTHERN

Date: OCTOBER 25, 1989

DECLARATION OF FORFEITURE

The above-described property has been seized by agents of the Drug Enforcement Administration pursuant to 21 USC 881. Notice of the seizure has been sent to all known parties who may have a legal or possessory interest in the property. Also, in accordance with 19 USC 1607, notice of the seizure has been published and no claim has been filed for the property within 20 days from the date of the first publication of the advertisement. THEREFORE, it is hereby declared that such property is forfeited to the United States pursuant to 19 USC 1609.


Asset Forfeiture Section
Office of Chief Counsel

cc: DEA/ DALLAS, TX/ TULSA, OK.
USMS/NASAPP TULSA, OKLAHOMA

DEA-294 (9/87)

BY: DF

FILED

JAN 10 1990

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

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

PEABODY COAL COMPANY,
Plaintiff,

vs.

THE PROSPECT COMPANY,
Defendant.

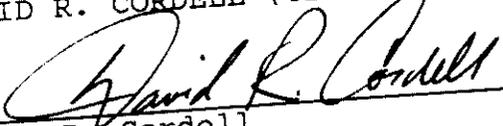
Case No. 89-C-1019-E

NOTICE OF DISMISSAL

Plaintiff, Peabody Coal Company, pursuant to Rule 41(a)(1),
Federal Rules of Civil Procedure, hereby dismisses, without
prejudice, its claims against Defendant The Prospect Company.

Respectfully submitted,

JOHN S. ATHENS (OBA #365)
RUSSELL H. HARBAUGH, JR.
(OBA #3826)
DAVID R. CORDELL (OBA #11272)


David R. Cordell

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

-and-

JACK E. GORDON (OBA #3468)
GORDON & GORDON
212 S. Missouri
Claremore, Oklahoma 74017
(918) 341-7322

Attorneys for Plaintiff,
PEABODY COAL COMPANY

OF COUNSEL:

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

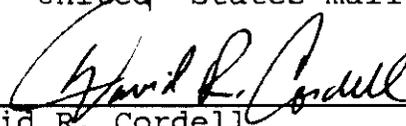
GORDON & GORDON
212 S. Missouri
Claremore, Oklahoma 74017
(918) 341-7322

CERTIFICATE OF SERVICE

I, David R. Cordell, hereby certify that on the ¹⁴10 day of January, 1990, that I mailed a true and correct copy of the above and foregoing instrument to:

Robert D. Edinger, Esq.
Kenneth H. Blakely, Esq.
MUSSEY, BUNCH, ROBINSON
& HIRSCH
Suite 400
100 Park Avenue Bldg.
Oklahoma City, OK 73102

by depositing said copy in the United States mail, postage prepaid thereon.



David R. Cordell

UNITED STATES OF AMERICA FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA)

Plaintiff,)

vs.)

PATTY J. ALIKOR,)

a/k/a PATTY J. ALIKOR)

a/k/a PATTY J. KELLEY)

a/k/a PATTY J. KELLY)

Defendant.)

CIVIL ACTION NO. 89-C-981-E

AGREED JUDGMENT AND ORDER OF PAYMENT

Plaintiff, the United States of America, having filed its Complaint herein, and the defendant, having consented to the making and entry of this Judgment without trial, hereby agree as follows:

1. This Court has jurisdiction over the subject matter of this litigation and over all parties thereto. The Complaint filed herein states a claim upon which relief can be granted.
2. The defendant hereby acknowledges and accepts service of the Complaint filed herein.
3. The defendant hereby agrees to the entry of Judgment in the sum of \$7,042.94 plus accrued interest of \$436.44 as of March 1, 1989, plus interest thereafter at the rate of 3 percent per annum until judgment, plus interest thereafter at the legal rate until paid, plus costs of this action, until paid in full.
4. Plaintiff's consent to the entry of this Judgment and Order of Payment is based upon certain financial information

which defendant has provided it and the defendant's express representation to Plaintiff that he is unable to presently pay the amount of indebtedness in full and the further representation of the defendant that will well and truly honor and comply with the Order of Payment entered herein which provides terms and conditions for the defendant's payment of the Judgment, together with costs and accrued interest, in regular monthly installment payments, as follows:

(a) Beginning on or before the 15th day of January, 1990, the defendant shall tender to the United States a check or money order payable to the U.S. Department of Justice, in the amount of \$35.00, and a like sum on or before the 5th day of each following month until April 15, 1990, when defendant has agreed to increase the monthly payments, until the entire amount of the Judgment, together with the costs and accrued postjudgment interest, is paid in full.

(b) The defendant shall mail each monthly installment payment to: United States Attorney, Debt Collection Unit, 36090 U.S. Courthouse, 333 West 4th Street, Tulsa, Oklahoma 74103.

(c) Each said payment made by defendant shall be applied in accordance with the U.S. Rules, i.e., first to the payment of costs, second to the payment of postjudgment interest (as provided by 28 U.S.C. § 1961) accrued to the date of the receipt of said payment, and the balance, if any, to the principal.

4. Default under the terms of this Agreed Judgment will entitle the United States to execute on this Judgment without notice to the defendant.

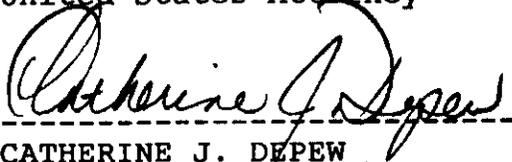
5. The defendant has the right of prepayment of this debt without penalty.

S/ JAMES O. FLYNN

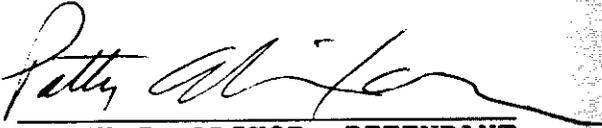
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM;

TONY M. GRAHAM
United States Attorney



CATHERINE J. DEPEW
Assistant United States Attorney



PATTY J. ALIKOR, DEFENDANT

CD/mlc

Jack L. David, D.C., for the principal amount of \$10,307.68, plus accrued interest of \$531.46 as of March 31, 1989, plus late charges in the amount of \$1,218.27, plus interest and late charges accruing thereafter at the approximate rate of \$3.25 per day and \$1.41 per day respectively until judgment, plus interest thereafter at the current legal rate of 7.66 percent per annum until paid, plus costs of this action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

mmp

FILED

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

JAN 10 1990

SCOTT A. WOMMACK,

Plaintiff,

vs.

BRIDGESTONE (USA), INC.

Defendant.

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

No. 89-C-924-B

ORDER OF REMAND

Plaintiff, Scott A. Wommack, moves to remand this matter to the District Court of Creek County, from where it was timely removed November 3, 1989. The removal was predicated upon diversity of citizenship jurisdiction, the removing party (Defendant, Bridgestone (USA), Inc.) alleging the amount in controversy (Plaintiff seeks damages of \$49,500.00) is "in excess of \$10,000.00." Since May 18, 1989, the federal diversity amount has been "in excess of \$50,000.00."¹

Defendant responds by urging this court to deny the remand on the ground this action should be consolidated with another case pending in this district² growing out of the same factual scenario. (Both cases allege a defective tire manufactured by Defendant caused an accident whereby different Plaintiffs were damaged). Defendant fails to support this contention with any authority. The Court is unaware of any authority, statutory or case precedent,

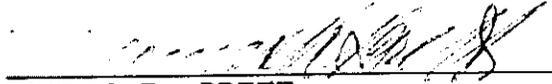
¹Pub.L. 100-702, Title II, §§ 201, 203.

²Guest Trucking Company, Inc. v. Bridgestone (USA), Inc., No. 89-C-949-E.

which recognizes that lack of jurisdiction may be cured by consolidation with another case jurisdictionally sound. In fact, the law is opposite. McKenzie v. United States, 678 F.2d 571 (5th Cir. 1982). Even consent by all parties does not cure lack of subject matter jurisdiction. If the court does not have jurisdiction, it cannot be created by the parties. *Ibid.*

The Court concludes this matter should be and the same is herewith REMANDED to the District Court for Creek County, Oklahoma. Costs and attorneys' fees for the removal and remand are awarded in favor of Plaintiff and against the Defendant.

IT IS SO ORDERED this 17th day of January, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

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

JAN 9 1990

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

STEPHEN D. WHITTLE,

Plaintiff

vs.

No. 89-C-333-B

CITY OF TULSA, a Municipal
Corporation,

Defendant.

ORDER REMANDING CASE TO STATE COURT

NOW on this 9th day of Jan, 1990, the Court considers Plaintiff's Consolidated Motion for Leave to File Amended Complaint and Motion for Remand to State District Court.

The Court has previously granted that portion of the Consolidated Motion which requested leave to amend the Complaint.

This matter comes on for decision upon the Plaintiff's additional request, set forth in the aforesaid Motion, that this action, as amended, be remanded to the District Court of Tulsa County, Oklahoma, from which it was removed.

The Court, having examined and considered the briefs submitted by both parties, determines that this action, as amended, involves no claim or issue arising under the statutes,

Constitution, common law, or treaties of the United States, and that there is no diversity of citizenship between the parties.

The Court further finds that remand of this action would serve the interests of fairness, judicial economy, and comity. The trial and appellate courts of Oklahoma are the more appropriate forum to resolve certain issues in the case at bar, as amended, especially those which arise under the Oklahoma Fire and Police Arbitration Act.

IT IS THEREFORE ORDERED that this action, having been amended to dismiss without prejudice all claims under the Fair Labor Standards Act, should be, and hereby is, remanded to the District Court of Tulsa County, Oklahoma, for further proceedings.

S/ THOMAS R. BRETT
THOMAS R. BRETT
United States District Judge

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

FILED

FELIX SCOTT JUNIOR,

SEP 9 1990 *JS*

Petitioner,

v.

89-C-1068-E ✓ Jack C. Silver, Clerk
DISTRICT COURT

RON CHAMPION and The Attorney
General of the State of
Oklahoma,

Respondents.

ORDER

Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is now before the court for initial consideration. Petitioner challenges his conviction in Oklahoma County District Court, Case No. CRF-71-1700, of Burglary in the Second Degree, when he was sentenced to three (3) years imprisonment. The conviction was not appealed.

Petitioner filed an application for relief under the Oklahoma Post-Conviction Procedure Act, 22 O.S. §1080 et seq. Petitioner's application was denied by the trial court on 7/5/89. Such denial was affirmed by the Oklahoma Court of Criminal Appeals on 8/22/89, in Case No. PC-89-789.

Petitioner admits that his sentence in Case No. CRF-71-1700 has been served in full, but he alleges it was used to enhance punishment in Case No. CRF-72-1133, for which he is currently confined.

The Supreme Court in Maleng v. Cook, ___ U.S. ___, 109 S.Ct. 1923, 104 L.Ed.2d 540 (1989), held that when a sentence has fully expired, the collateral consequences of that conviction are not sufficient to satisfy the "in custody" requirement, even when the

prior conviction is used to enhance punishment for a later conviction, under which a petitioner is presently incarcerated. The Court further stated:

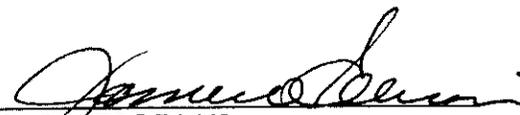
While we have very liberally construed the 'in custody' requirement for purposes of federal habeas, we have never extended it to the situation where a habeas petitioner suffers no present restraint from a conviction. Since almost all States have habitual offender statutes, and many States provide as Washington does for specific enhancement of subsequent sentences on the basis of prior convictions, a contrary ruling would mean that a petitioner whose sentence has completely expired could nonetheless challenge the conviction for which it was imposed at any time on federal habeas. This would read the 'in custody' requirement out of the statute and be contrary to the clear implication of the opinion in Carafas v. LaVallee, [391 U.S. 234, 238 (1968)].

Id. at 1926.

The court finds that petitioner has failed to meet the "in custody" requirement for habeas relief pursuant to 28 U.S.C. § 2254. The record clearly reflects that petitioner is not "in custody" on the conviction which he seeks to attack.

The court finds that petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 should be and is denied.

Dated this 9th day of January, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

JAN -9 1991

U.S. DISTRICT COURT

VIOLA F. FLETCHER,

Plaintiff,

v.

MORGAN DRIVE-AWAY, INC., a foreign
corporation, and RODNEY G. GIESIGE,

Defendants.)

No. 89-C-349-E

TIME STUDY CASE
Record Time Spent by Judge or Magistrate

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Viola F. Fletcher, by and through her attorney, Robert E. Martin, and the Defendants, Morgan Drive-Away, Inc., a foreign corporation, and Rodney G. Giesige, by and through their attorney of record, Bruce N. Powers, of the law firm of Thomas, Glass, Atkinson, Haskins, Nellis & Boudreaux, Tulsa, Oklahoma, and pursuant to Rule 41 of the Federal Rules of Civil Procedure, hereby dismisses with prejudice the Plaintiff's action against the Defendants, Morgan Drive-Away, Inc. and Rodney G. Giesige.

THOMAS, GLASS, ATKINSON, HASKINS,
NELNIS & BOUDREAUX

Bruce N. Powers
Bruce N. Powers, OBA #12822
525 South Main, Suite 1500
Tulsa, Oklahoma 74103
(918) 582-8877

ATTORNEY FOR DEFENDANTS

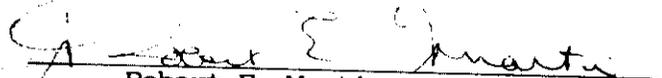
Robert E. Martin
Robert E. Martin, OBA #5743
717 South Houston, Suite 401
Tulsa, Oklahoma 74127
(918) 587-7234

ATTORNEY FOR PLAINTIFF

Viola F. Fletcher
Viola F. Fletcher
Plaintiff

CERTIFICATE OF SERVICE

This is to certify that on this the 29 day of December, 1989, a true, correct and exact copy of the above and foregoing instrument was mailed to: Bruce N. Powers, 525 South Main Street, Suite 1500, Tulsa, OK 74103, with proper postage thereon fully prepaid.


Robert E. Martin

ENP/kav
336-132

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 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.)

FILED

JAN 9 1990

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

CIVIL ACTION NO. 89-C-590-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 9th day
of January, ¹⁹⁹⁰ 1989. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; and the Defendants, Jim L. Herron, Pioneer Savings and
Trust Company and Property Ventures of Louisiana, Inc., appear
not, having previously filed their Disclaimers.

The Court being fully advised and having examined the
file herein finds that the Defendant, Pioneer Savings and Trust
Company, acknowledged receipt of Summons and Complaint on or
about October 17, 1989; that the Defendant, Property Ventures of
Louisiana, Inc., acknowledged receipt of Summons and Complaint on
July 18, 1989; that Defendant, County Treasurer, Tulsa County,
Oklahoma, acknowledged receipt of Summons and Complaint

on July 19, 1989; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on July 19, 1989.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on August 4, 1989; that the Defendant, Jim L. Herron, filed his Disclaimer on September 15, 1989; that the Defendant, Pioneer Savings and Trust Company, filed its Answer, Counterclaim and Cross-Complaint on October 24, 1989, its Notice of Dismissal of Counterclaim and Cross-Complaint on November 22, 1989, and its Disclaimer on November 22, 1989; and that the Defendant, Property Ventures of Louisiana, Inc., filed its Disclaimer on October 10, 1989.

The Court further finds that Wayne Osborn, Bank Commissioner of the State Banking Department, is the Receiver for Defendant, Pioneer Savings and Trust Company.

The Court further finds that on September 21, 1989, Plaintiff filed a Notice of Dismissal dismissing with prejudice the Defendant, Jim L. Herron, from the subject foreclosure action according to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

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

Lot Six (6), in Block Five (5), SUBURBAN HILLS ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on November 23, 1979, the Defendant, Jim L. Herron, 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, his mortgage note in the amount of \$16,085.00, payable in monthly installments, with interest thereon at the rate of 9.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Jim L. Herron, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated November 23, 1979, covering the above-described property. Said mortgage was recorded on December 4, 1979, in Book 4444, Page 2246, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Jim L. Herron, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Jim L. Herron, is indebted to the Plaintiff in the principal sum of \$14,802.31, plus interest at the rate of 9.5 percent per annum from April 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, Jim L. Herron, Pioneer Savings and Trust Company, and Property Ventures of Louisiana, Inc., disclaim any right, title, or interest in the subject real property.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem in the principal sum of \$14,802.31, plus interest at the rate of 9.5 percent per annum from April 1, 1988 until judgment, plus interest thereafter at the current legal rate of 7.66 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, Jim L. Herron, Pioneer Savings and Trust Company, Property Ventures of Louisiana, Inc., and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

In payment of the costs of this action accrued and accruing incurred by the

Plaintiff, including the costs of sale of
said real property;

Second:

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

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

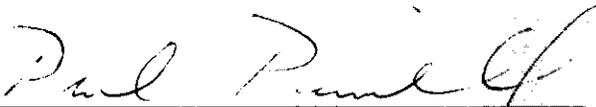
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, all of the Defendants
and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of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

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


PHIL PINNELL, OBA #7169
Assistant United States Attorney


J. DENNIS SEMLER, OBA #8076
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

FILED

JAN 9 1990

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

ANADARKO LAND AND EXPLORATION
COMPANY, an Oklahoma Corporation,)

Plaintiff,)

vs.)

WESTERN ENERGY, INC., a Utah
Corporation, and JACK BURDICK,)

Defendants.)

No. 88-C-973-E

NOTICE OF DISMISSAL WITH PREJUDICE

Pursuant to Fed. R. Civ. P. 41(a)(1), Plaintiff, Anadarko Land and Exploration Company hereby dismisses with prejudice its claims against Defendants.

Respectfully submitted,

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

By: Susan J. Speaker

Claire V. Egan, OBA #554
Susan J. Speaker, OBA #11524
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR PLAINTIFF
ANADARKO LAND & EXPLORATION COMPANY

CERTIFICATE OF MAILING

I hereby certify that on this 9th day of January, 1990, I mailed a true and correct copy of the foregoing instrument to the following, with proper postage thereon.

Thomas M. Melton, Esq.
Steven L. Taylor, Esq.
Prince, Yeates & Geldzahler
City Centre I, Suite 900
175 East Fourth South
Salt Lake City, Utah 84111

Susan J. Speaker

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

F I L E D

JAN 8 1990

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

ALLSTATE INSURANCE COMPANY,)

Plaintiff,)

vs.)

No. 89-C-105-E

DON REYNOLDS, Administrator)
of the Estate of Betty)
Reynolds, Deceased; ROBERT)
HUGHES; LINDA HUGHES; and)
D & B SALES, a partnership,)

Defendants.)

ORDER

Plaintiff, Allstate Insurance Company (Allstate), moves to dismiss this declaratory judgment action, pursuant to Rule 41 (a) (2) of the Federal Rules of Civil Procedure, on the grounds that the underlying controversy which required a judicial declaration of the rights of the parties has been settled. Defendants do not oppose dismissal so long as it is conditioned on the payment by Allstate of costs and attorney fees. As an additional issue, defendants assert that their counterclaim remains justiciable and, they move for leave to amend the counterclaim to add a claim for bad faith breach of the insurance contract.

Allstate's claim for declaratory relief arises from an underlying state action in Rogers County, Oklahoma brought by the estate of Betty Reynolds against Robert and Linda Hughes, and D &

B Sales for damages alleged to be the result of negligence.' D & B Sales is alleged to be owned by Robert and Linda Hughes and doing business as Bob's Corner, a rural convenience store. It is alleged to be a former partnership consisting of Robert Hughes, Linda Hughes, and Don Reynolds. The partnership allegedly was dissolved during the policy period and, shortly after dissolution, Betty Reynolds, wife of Don Reynolds, was fatally shot at the store during a robbery.

Allstate's Complaint seeks a determination that the policy provided no coverage for the alleged negligence because Robert Hughes conducted the business as part of a partnership not designated as the named insured under the policy. Allstate's Complaint seeks a declaration that it likewise has no duty to defend or indemnify against the negligence action. Defendants allege that Allstate had actual notice of the existence of the partnership and, that defendants were assured by Allstate's agent that the policy covered the partnership and Robert Hughes, individually. They argue that Allstate is estopped to deny coverage for acts of the partnership because of the knowledge of the partnership's existence and that, in any event, defendants argue, the business was not operating as a partnership when Betty

'Don Reynolds, Administrator of the Estate of Betty Reynolds, deceased, Plaintiff, vs. Robert Hughes and Linda Hughes, and D & B Sales, a partnership, Defendants, Case No. C-87-731.

Reynolds was murdered.²

Defendants' counterclaim seeks a determination that the policy requires Allstate to defend and indemnify against the estate's action. Defendants moved to amend the counterclaim on October 10, 1989 on the grounds that discovery has revealed the factual basis to support a bad faith claim against Allstate. Allstate moves to dismiss because the parties have settled the underlying Rogers County action and, consequently, there is no need for a judicial declaration of the rights of the parties under the insurance contract.

Allstate's Motion to Dismiss

Rule 41 (a)(2) of the Federal Rules of Civil Procedure provides in part:

[A]n action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

Rule 41(a)(2) appears to require that the court hear Allstate's counterclaim. However, the counterclaim and the settled claim present the same issue: whether the insurance policy provides

²Defendants moved for summary judgment on these grounds on September 8, 1989. Allstate has been granted leave to respond to the motion, if necessary, following this Order by the court.

coverage for losses occurring while the business was operated as a partnership. The settlement of the underlying lawsuit for recovery under the policy thus appears to moot the coverage issue.

The "case or controversy" requirement in Article III and the Declaratory Judgment Act prevents federal courts from considering questions which have become moot. U.S.C.A. Const. art. 3 §2, cl. 1; 28 U.S.C. §2201. The question whether the request for declaratory relief has become moot depends on "whether the facts alleged, under all the circumstances, show that there is a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant issuance of a declaratory judgment." Maryland Casualty Co. v. Pacific Coal & Oil Co., 312 U.S. 270, 273, 61 S.Ct. 510, 512 (1941).

Generally, settlement of a dispute between two parties renders moot any case between them growing out of that dispute. Local No. 8-6, Oil, Chemical & Atomic Workers International Union v. Missouri, 361 U.S. 363, 80 S.Ct. 391 (1960). When there is a substantial likelihood that the "moot" question will recur and be incapable of review, the issue remains justiciable and the court may render a declaratory judgment to define the rights of the parties. Sosna v. Iowa, 419 U.S. 393, 399-400, 95 S.Ct. 553, 557 (1975); Southern Pacific Terminal Co. v. Interstate Commerce Comm'n, 219 U.S. 498, 515, 31 S.Ct. 279, 283 (1911). Defendants suggest that the coverage issue remains justiciable because of the possibility of future claims made against the policy. The coverage issue is, however, moot unless there is a substantial

likelihood than the question will recur. Sosna, 419 U.S. at 399, 400, 95 S.Ct. at 557.

The court believes the possibility of future claims is too speculative to overcome mootness. Presumably, the only claims that Allstate would challenge on the same grounds asserted in this controversy would be claims made for losses occurring during the time the business was operated as a partnership. It appears to be undisputed that the business began operating as a partnership in 1981 and continued through most of 1985. (Deposition of Robert Hughes, pp. 9, 13).³ For a similar coverage dispute to arise again, unknown claims must now exist for losses occurring at least four and, as many as nine, years ago. The court finds the possibility of unknown losses for the years 1981 through 1985 highly unlikely. In any event, those claims would not evade review. Dismissal without prejudice of the declaratory claim would allow for review of any claims made in the future.

Defendants' Motion to Amend Counterclaim

Defendants sought leave to amend their counterclaim to add a claim for bad faith on the part of Allstate, before the underlying action was settled and Allstate moved to dismiss this action. The court has discretion to grant or deny leave to amend.

³There is some dispute when the partnership dissolved and, specifically, whether the partnership had dissolved at the time of Betty Reynolds' murder. This factual dispute, however, is not material to the question whether the coverage issue is substantially likely to recur and be incapable of review.

Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 91 S.Ct. 795 (1971).

Defendants state that discovery has revealed a factual basis to support a bad faith claim. The proposed counterclaim is not, however, before the court and defendants do not specify what newly discovered facts provide a basis for asserting a bad faith claim. Notably, it appears to the court that the same facts supporting defendants' estoppel theory of coverage could have provided the basis for a bad faith claim. That is to say, defendants already had evidence at the time they answered Allstate's Complaint that Allstate's agent knew the business was operating as a partnership. Further, the underlying claim in Rogers County was pending at least two years before this action and before defendants sought leave to amend. Amendment was not sought until after the close of discovery in this case and would necessitate both the reopening of discovery and a completely new schedule for these proceedings. It appears to the court, therefore, that defendants did not seek amendment within a reasonable time after they were aware of the basis for a bad faith claim and, that amendment would prejudice Allstate because discovery would have to be reopened. Accordingly, the court denies defendants leave to amend their counterclaim to allege bad faith on the part of Allstate.

Dismissal upon just terms and conditions

Rule 41 (a)(2) requires that an action be dismissed in these circumstances only upon terms and conditions that the court deems

just. The court has broad discretion to determine the conditions for dismissal. Taragan v. Eli Lilly & Co., 838 F.2d 1337 (D.C. Cir. 1988). "The purpose of the conditions are to protect a defendant from prejudice or inconvenience resulting from voluntary dismissal." Taragan, 838 F.2d at 1340 (quoting GAF Corp. v. Transamerica Ins. Co., 665 F.2d 364, 369 (D.C. Cir. 1981)). The good faith of the dismissing plaintiff is irrelevant, as is the relative wealth of the parties. Taragan, 838 F.2d at 1340 (citing Kern v TXO Production Corp., 738 F.2d 968, 972 (8th Cir. 1984)).

Defendants argue that Allstate should be required to pay defendants' costs and attorney fees as a condition of dismissal. Allstate has not responded specifically to what costs and expenses, if any, would be appropriately awarded as a condition of allowing it to dismiss its declaratory relief claim. Allstate should be given the opportunity to respond to that question before the imposition of any such conditions.

In summary, the court concludes and, orders as follows:

1. Allstate's claim for relief for a judicial declaration of the rights of the parties, pursuant to 28 U.S.C. §2201 should be and, is hereby, dismissed without prejudice;
2. Defendants' motion for leave to amend their counterclaim is denied.
3. Defendants' motion for summary judgment is moot and is accordingly denied. Allstate need not respond to the motion; and
4. Defendants shall file a brief addressing the appropriate

terms and conditions for dismissal with authority supporting their position within 20 days of this Order. Allstate shall respond within 15 days thereafter.

ORDERED this 6th day of January, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED
JAN 11 1989
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN RE:

ROY OLIVER HOGARD,
Debtor.

Bankruptcy No. 88-03102-C
Adversary No. 89-0107-C

ROY OLIVER HOGARD,
Plaintiff/Appellant,

v.

Case No. 89-C-485-B ✓

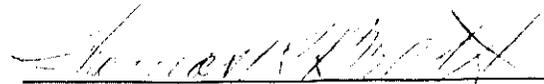
UNITED STATES OF AMERICA
(INTERNAL REVENUE SERVICE),
Defendant/Appellee.

ORDER

There being no response to the Motion to Dismiss filed October 31, 1989 by Debtor Roy Oliver Hogard, alleging the appeal is moot, and more than fifteen (15) days having passed since the filing of such Motion, and no extension of time having been sought by Defendant/Appellee, United States of America (Internal Revenue Service), the court, pursuant to Local Rule 15A of the Northern District of Oklahoma, concludes that Defendant/Appellee has therefore waived any objection or opposition to the Motion. See, Woods Construction Co. v. Atlas Chemical Indus., Inc., 337 F.2d 888, 890 (10th Cir. 1964).

The Motion to Dismiss filed by Debtor Roy Oliver Hogard is therefore granted and this appeal is dismissed.

It is so ordered this 8th day of January, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

JAN 5 1990

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

AL RARDIN d/b/a MANNFORD,
AUTO CLINIC,

Plaintiff,

vs.

BEAR AUTOMOTIVE SERVICE,
EQUIPMENT COMPANY,

Defendant.

Case No. 89-C-641-E

ORDER

NOW on this 5TH day of January, 1990, comes on for consideration the above styled matter and the Court, being fully advised in all premises, finds that Plaintiff has moved to remand this case to state court. In his Motion to Remand, Plaintiff states that the amount in controversy does not exceed the sum of \$50,000.00. This Court, relying upon this statement of counsel as an officer of the Court, finds that, bereft of the jurisdictional amount, this Court lacks jurisdiction over the matter. Thus remand is appropriate for this case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Remand should be and is hereby granted.


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

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

FILED

JAN 19 1989

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

FEDERAL SAVINGS AND LOAN
INSURANCE CORPORATION, as
receiver for FIRST TEXAS
SAVINGS ASSOCIATION,

Plaintiff,

vs.

HOWARD L. RASKIN, PHYLLIS
RASKIN, RASKIN RESOURCES, INC.,
an Oklahoma corporation; and
UTICA NATIONAL BANK,

Defendants.

Civil Action No. 89-C-061C

TULSA L.O.L. PARTNERS, L.P.,
a New Jersey limited partner-
ship, by its general partner,
COLFAX ASSOCIATES, INC., a
New Jersey corporation,

Plaintiff,

vs.

ROBERT RASKIN, HOWARD L. RASKIN,
PHYLLIS RASKIN, RASKIN
RESOURCES, INC.,
an Oklahoma corporation,
RENBURG'S, INC., an Oklahoma
corporation, and FIRST
TEXAS SAVINGS ASSOCIATION,
a Texas savings and loan
association,

Defendants.

No. 88-C-1368C

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

COME NOW the Plaintiff in Case No. 88-C-1368C, TULSA
L.O.L. PARTNERS, L.P., a New Jersey limited partnership, by its
general partner, COLFAX ASSOCIATES, INC., a New Jersey corporation,
and Defendants Renberg's, Inc. and Federal Deposit Insurance
Corporation, as Manager of the Federal Savings and Loan Insurance
Corporation, as Receiver for First Texas Savings Association, and

hereby stipulate to the dismissal without prejudice of Case No. 88-C-1368C only as to the Defendants Federal Savings and Loan Insurance Corporation as receiver for First Texas Savings Association, a Texas savings and loan association and Renberg's, Inc. (This Dismissal Without Prejudice does not pertain to Defendants Robert Raskin, Howard L. Raskin, Phyllis Raskin, Raskin Resources, Inc., or First Gibraltar Bank, FSB.)

SNEED, LANG, ADAMS,
HAMILTON & BARNETT



James C. Lang, O.B.A. #5218
Kevin C. Leitch, O.B.A. #5366
2300 Williams Center Tower
Two West Second Street
Tulsa, Oklahoma 74119
(918) 583-3145

and

James L. Sneed
309 Philtower Building
427 South Boston
Tulsa, Oklahoma 74103
(918) 583-1651

Attorneys for Plaintiff
Tulsa L.O.L. Partners, L.P.,
a New Jersey limited partnership

WORKS, LENTZ & POTTORF, INC.

OWENS & MCGILL, INC.

By Harry A. Lentz, Jr.
Harry A. Lentz, Jr.
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By Ben K. McGill
Ben K. McGill
1606 First National Bank Bldg.
Tulsa, Oklahoma 74103

Attorneys for Renberg's Inc.

Attorneys for Federal Deposit
Insurance Corporation, as
Manager of the Federal Savings
and Loan Insurance Corporation,
as Receiver for First Texas
Savings Association

CERTIFICATE OF MAILING

I, Kevin C. Leitch, do hereby certify that on the 4
day of January, 1990, I caused to be mailed a true and correct copy
of the above and foregoing instrument, proper postage thereon
prepaid, to:

Louis Levy, Esq.
Louis Levy, Inc.
5314 South Yale
Suite 310
Tulsa, Oklahoma 74135

Ben McGill, Esq.
Owens & McGill, Inc.
1606 First National Bank Building
Tulsa, Oklahoma 74103

Carole A. Dewey, Esq.
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Federal Deposit Insurance
Corporation
P. O. Box 2269
Tulsa, Oklahoma 74101-2269

Richard B. Noulles, Esq.
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Steven M. Harris, Esq.
Doyle & Harris
P. O. Box 1679
Tulsa, Oklahoma 74101

Michael B. Lee, Esq.
Wanda L. McKee, Esq.
Rachel Fefer, Esq.
Fouts & Moore
5555 San Felipe, 17th Floor
Houston, Texas 77056

Kevin C. Leitch

Kevin C. Leitch

ORDERED this 6TH day of January, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

NANCY J. DIXON-WENGERD,
Plaintiff,
vs.
HORACE MANN INSURANCE CO.,
Defendant.

No. 89-C-823 C

FILED

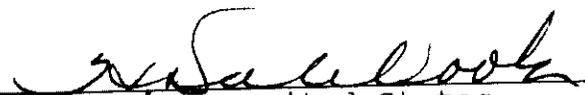
JAN 5 - 1990

ORDER OF DISMISSAL WITH PREJUDICE

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

Pursuant to Joint Stipulation For Order of Dismissal With Prejudice filed herein by the parties, the Court finds that such Order should issue.

BE IT THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiff's cause herein be and the same is dismissed with prejudice and the parties to bear their respective costs.


H. DALE COOK, United States
District Judge

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

AMERICAN COMBINED ENERGY
SYSTEMS, INC.,

Plaintiff,

vs.

UNIVERSAL POWER CONCEPTS,
INC., et al.,

Defendants.

PAPP INTERNATIONAL, INC.,
a Nebraska corporation,

Plaintiff,

vs.

JOSEPH PAPP, an Individual,
and UNIVERSAL POWER CONCEPTS,
INC.,

Defendants.

JOSEPH PAPP, an Individual,
et al.,

Plaintiffs,

vs.

UNIVERSAL POWER CONCEPTS,
INC., a Nevada corporation,
et al.,

Defendants.

No. 88-C-55-C

FILED

JAN 5 - 1990

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

No. 88-C-64-E

No. 88-C-148-E

ORDER GRANTING DISMISSAL WITH PREJUDICE

Upon stipulation of the parties and for good cause shown,
the above entitled causes of action are hereby dismissed with
prejudice to the refiling of such actions.

IT IS SO ORDERED this 4 day of January, 1990.


The Honorable H. Dale Cook
JUDGE OF THE DISTRICT COURT

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

JOHANNA R. MILES, DR. WALLIS P.
PARKER, JR., GLENDA M. TERRY,
BRENDA SIBOLE AND DAVID L. POTTS

Plaintiffs,

v.

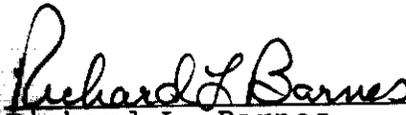
ROCKWELL INTERNATIONAL CORPORATION

Defendant.

Case No. 87-C-1022B

**PLAINTIFF POTTS' VOLUNTARY
DISMISSAL BY STIPULATION**

Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, the parties hereto stipulate and agree that all the claims of Plaintiff Potts herein be dismissed with prejudice to the refiling thereof and that Plaintiff Parker and Defendant shall each bear their own costs and expenses herein.



Richard L. Barnes
2121 South Columbia, Suite 700
Tulsa, Oklahoma 74114
(918) 745-6625

ATTORNEY FOR PLAINTIFF POTTS



Craig W. Hoster
Baker, Hoster, McSpadden, Clark,
Rasure & Slicker
800 Kennedy Building
Tulsa, Oklahoma 74103

ATTORNEY FOR DEFENDANT

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

IN THE MATTER OF ESTABLISHMENT)
INSPECTION OF UNARCO RUBBER)
PRODUCTS.)

NO. 89-C-368-E ✓

FILED

JAN 13 1990 *alt*

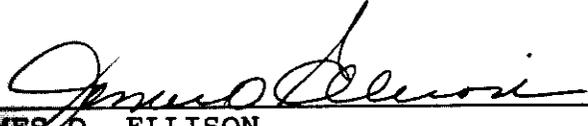
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed July 7, 1989. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that UNARCO's Motion to Quash should be and is hereby denied and that the requested inspection warrant shall issue.

ORDERED this 6th day of January, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

JUN 5 1990

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

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

HERBERT L. MILLER,
Plaintiff,

vs.

DEPARTMENT OF TREASURY,
et al.,

Defendants.

No. 88-C-504-E,
89-C-44-E,
89-C-62-E,
89-C-242-E,
89-C-317-E,
89-C-429-E,
Consol.

ORDER

The Court has for consideration the Reports and Recommendations of the Magistrate filed October 4, 1989 and October 25, 1989. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Reports and Recommendations of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss case No. 89-C-242-E should be and is hereby granted, with Plaintiff's Motion to Amend Petition being denied as futile.

IT IS FURTHER ORDERED that the Motion of the Union Defendants to Dismiss Case No. 89-C-429-E should be and is hereby granted on the ground that this Court lacks jurisdiction over the subject matter of the claim set forth in Plaintiff's complaint. Plaintiff's exclusive remedy is to pursue his claim of a breach of the Union's duty of fair representation before the Federal Labor Relations Authority and its General Counsel.

ORDERED this 6th day of January, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

JAN 5 1990 8

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

RECOVERY RESOURCE CORPORATION,)

Plaintiff,)

vs.)

UNITED STATES OF AMERICA,)

Defendant.)

Case No. 88-C-1651-E J

ORDER

NOW on this 6TH day of January, 1990, comes on for consideration the above styled matter and the Court, being fully advised in all premises, finds that Plaintiff has moved for summary judgment in the case, while Defendant has moved to dismiss. It is clear that resolution of the case involves a pure application of law, with no material issues of fact remaining.

The Court has carefully examined the pleadings filed by the parties, including the authorities, arguments and exhibits cited therein and finds that it is more persuaded by the arguments of Defendant United States. The issue at hand is whether Plaintiff timely filed its claim for refund under the Windfall Profit Tax for calendar years 1982 and 1983. This Court finds, based upon its review of the regulations and those few cases which exist on the subject, that the statute of limitations for filing such a claim had expired at the time of the filing, thus rendering this Court without jurisdiction. See United States v. Mitchell, 445 U.S. 535, 538 (1980). Absent the waiver of sovereign immunity present with a timely filing, this case must be dismissed for lack of

jurisdiction.

IT IS THEREFORE ORDERED, **ADJUDGED** AND DECREED that Plaintiff's Motion for Summary Judgment is hereby denied and Defendant's Cross-Motion to Dismiss is hereby granted.



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

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

GREGORY A. LAMBERT,)
)
 Plaintiff,)
)
 vs.)
)
 AMFAC DISTRIBUTION CORPORATION,)
 d/b/a AMFAC SUPPLY COMPANY,)
 a California Corporation, and)
 IRON-OAK SUPPLY CORPORATION,)
 a California Corporation,)
 Successor in interest to Amfac)
 Distribution Corporation,)
)
 Defendants.)

FILED

1990

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

Case No. 89-C-875-E

ORDER OF DISMISSAL AS TO DEFENDANT IRON-OAK SUPPLY

Before the Court is the Stipulation of Dismissal with Prejudice of the Plaintiff, Gregory A. Lambert, and Defendant Iron-Oak Supply Corporation. The Court finds based on the above-described Stipulation that these parties have entered into an agreement resolving all issues raised in the Complaint and that pursuant to said agreement, this action should be dismissed with prejudice with each party to bear his or its own attorney fees and costs.

IT IS THEREFORE ORDERED that the Complaint against Defendant Iron-Oak Supply Corporation is hereby dismissed with prejudice with each party to bear his or its own attorney fees and costs.

Dated this 31 day of December, 1990.

JAMES O. ELLISON

United States District Court Judge

DSF/var

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

FILED

JAN 4 1990

EVERETT ALLEN and MARY ALLEN,)
)
 Plaintiffs,)
)
 vs.)
)
 STATE FARM MUTUAL AUTOMOBILE)
 INSURANCE COMPANY, a foreign)
 corporation,)
)
 Defendant.)

John C. Elzer, Clerk
DISTRICT COURT

No. 88-C-1650-E

ORDER

NOW on this 3rd day of January, 1990, 1989,
plaintiffs' Application for Dismissal comes on for hearing in front
of the undersigned Judge of the District Court. After appropriate
review and consideration and for good cause shown, the Court grants
the plaintiffs' Application for Dismissal With Prejudice.

S/ JAMES O. ELLISON

JUDGE OF THE DISTRICT COURT

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

JUN - 8 1989

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

SANDRA HOWELL, Individually)
and as next friend of TINA)
MICHELLE PATTERSON, a minor,)
)
Plaintiff,)
)
vs.)
)
CITY OF CATOOSA, a municipal)
corporation, JAMES ENOS COMBS,)
an individual, and JOE GARBER,)
an individual,)
)
Defendants.)

No. 88-C-580-B

O R D E R

This matter comes on for consideration upon a Motion for Summary Judgment filed on April 27, 1989, by Defendants City of Catoosa (City), James Enos Combs (Combs) and Joe Garber (Garber). Combs and Garber were Catoosa Police Officers at times material herein.

Plaintiff Sandra Howell (Howell), individually and as next friend of Tina Patterson (Tina) (hereinafter Plaintiffs), alleged in the Complaint that Howell's ex-husband, Jerry D. Patterson (Tina's natural father) traumatized and inflicted emotional harm upon them by his actions of May 2, 1987; that Defendants violated Plaintiffs' civil rights' by failure to take proper action on that date and thereafter; that Plaintiffs were damaged thereby in the amount of \$10,000,000.00.

¹42 U.S.C. § 1983.

Plaintiffs allege Patterson broke into Howell's house at 1:00 A.M., May 2, 1987, and sexually assaulted, molested and raped Howell; that Howell called the Catoosa police when Patterson fell asleep; that Officer Garber awoke Patterson upon arrival at Howell's residence, took a key² from Patterson and inquired whether he sexually assaulted Howell which Patterson denied. Garber required Patterson to leave Howell's house but did not arrest him.

Approximately 1 hour later (about 7 A.M.) Patterson returned to Howell's residence outside the bedroom window of Tina,³ who summoned her mother. Howell advised Patterson she was unable to work that day because of his assault upon her and Patterson offered her recompense. As Howell opened the screen to permit Patterson to slide through the money, he pulled the screen away and entered the house. Howell and Tina fled to a neighbor's house and called Catoosa police. Patterson had left Howell's house by the time Officer Combs arrived.

Defendants filed a Motion to Dismiss essentially based upon Plaintiffs' failure to plead that their alleged damages resulted from some officially enacted City of Catoosa policy. Thereafter, and prior to any ruling by this Court on Defendants' motion, Plaintiffs filed an Amended Complaint alleging denial of constitutionally granted equal protection under the law by failing

²By which Patterson gained entrance to the house.

³Who had been asleep during the earlier encounter between her parents.

to arrest Patterson because of his gender and by failing to enforce, because of their gender, the law in protection of Plaintiffs. Specifically, Plaintiffs complain of Defendants' failure to arrest Patterson on the first visit and failure to protect Howell by proper law enforcement. Plaintiffs' third claim alleged tortious conduct on the part of Defendants.

Defendants again moved to dismiss. This Court, by bench order, denied Defendants' motion. Plaintiffs, in their Amended Complaint, stated a claim of a governmental policy of indifference to victims of domestic violence in line with Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978), and its progeny, thus withstanding a motion to dismiss. Defendants then moved for summary judgment.

Municipalities and other local governmental units cannot be sued on a *respondeat superior* theory for the unconstitutional acts of their employees. Monell v. City of New York, *supra*. However, a municipality may be sued for "constitutional deprivations visited pursuant to governmental 'custom'" as well as deprivations visited pursuant to a "policy statement, ordinance, regulation, or decision officially adopted and promulgated by the body's officers." *Id.* at 690-91, reversing Monroe v. Pape, 365 U.S. 167 (1961).

As with other civil litigation, the Plaintiff has the burden of proving the elements of a § 1983 action by a preponderance of the evidence. Further, in cases such as the instant case, proving deprivation of equal protection under the Fourteenth Amendment

requires a showing of intentional discrimination, not simply of disproportionate impact. Batson v. Kentucky, 476 U.S. 79 (1986); Firefighters Local Union No. 1784 v. Stotts, 467 U.S. 561, 583 n. 16 (1984) (relief authorized under § 1983 "only when there is proof or admission of intentional discrimination"). See also, Minority Policy Officers Ass'n. v. South Bend, 801 F.2d 964 (7th Cir. 1986); Briggs v. Anderson, 796 F.2d 1009 (8th Cir. 1986).

Defendants have, of course, the burden of pleading affirmative defenses, such as immunity, Gomez v. Toledo, 446 U.S. 635 (1980), which was done in this case. (Defendants raised qualified immunity arguments in both Motions to Dismiss as well as their Motion for Summary Judgment).

Once a Defendant raises the defense of qualified immunity as a defense to an action the Plaintiff has the burden of coming forward with facts or allegations sufficient to show both that Defendant's alleged conduct violated the law and that the law was clearly established when the violation occurred. Powell v. Mikulecky, No. 88-1907 (10th Circuit, December 15, 1989). Qualified immunity "is an immunity from suit" rather than a mere defense to liability. Like absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial. Powell v. Mikulecky, *supra*, citing Mitchell v. Forsyth, 472 U.S. 511 (1985), and Eastwood v. Dept. of Corrections of the State of Oklahoma, 846 F.2d 627 (10th Cir. 1988).

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); 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).

The existence of qualified immunity defenses, most courts agree, should be decided on summary judgment. Green v. Carlson, 826 F.2d 647 (7th Cir. 1987); Trapnell v. Ralston, 819 F.2d 182 (8th Cir. 1987). Summary judgment is inappropriate where, viewing all facts in a light most favorable to the Plaintiff, a reasonable jury could conclude that the unlawfulness of the defendant's act was so apparent that no reasonable officer would have believed that his/her action was lawful. Martin v. Malhoyt, 830 F.2d 237, 255 (D.C.Cir. 1987).

The Court concludes Plaintiffs have not sustained their burden, as to alleged constitutional equal protection claims, of showing the acts of Garber and Combs were "apparently unlawful" in failing to arrest Patterson. It is disputed whether the sexual encounter was an assault or an assented to act, which relates directly to the actions of the officers that night and in the immediate period thereafter. It is disputed whether Officers Garber and Combs discouraged Howell from filing charges or advised Howell where and how to file charges against Patterson.

Under the facts now before the Court it concludes neither Garber nor Combs had any obligation to arrest Patterson. DeShaney v. Winnebago, ____ U.S. ____, 109 S.Ct. 988, 103 L.Ed.2d 249 (1989). Viewing Plaintiff's version of the two officers' visits to Plaintiff Howell's residence in the most favorable light to Plaintiff, the arrest or pursuit of Patterson would have been discretionary with the officers.⁴ DeShaney, supra.

The Court concludes Garber and Combs were acting in good faith and had every reason to believe their actions of May 2, 1987, and thereafter were lawful. Martin v. Malhoyt, supra; therefore, the doctrine of qualified immunity grants them protection. Anderson v. Creighton, 483 U.S. 635, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987); Pueblo Neighborhood Health Centers, Inc. v. Losavio, 847 F.2d 642 (10th Cir. 1988); Coen v. Runner, 854 F.2d 374 (10th Cir. 1988);

⁴22 O.S. §§ 171, 174, contrasted with 72 O.S. § 196.

Jones v. City and County of Denver, 854 F.2d 1206 (10th Cir. 1988). Therefore, the Defendants' Motion for Summary Judgment as to Plaintiffs' claims (Counts One and Two) against Officers Garber and Combs, should be and the same is hereby SUSTAINED.

As to the city, Plaintiffs face a burden of showing a "policy or custom" of the City of Catoosa that it is indifferent to victims of domestic abuse⁵ and that it discriminated against women and in favor of men in the *de facto* execution of its police department efforts. The primary facts of the events of May 2, 1987, are essentially undisputed. The Catoosa police records, submitted by Plaintiffs, allegedly showing a pattern of indifference to victims of certain types of crime (domestic violence) and/or a neglect or disregard of certain victims (women) based on their gender, fail to show such pattern. The only issue is whether such evidence is sufficient to survive summary judgment. Celotex, supra.

Based on the police report summaries proffered by Plaintiffs, the only rape report, prior to the incident⁶ herein, involved a woman who accepted, in the early morning hours, a ride-home offer from the Hall of Fame bar and the offeror stopped in route and tried to force her to have sex. The Catoosa police investigated. Rape cases, to be sure, are not always domestic violence

⁵By strict definition, a gender-neutral class, but predominately women.

⁶Proof of policy and custom after the incident does not impact upon the City's policy on the date of the incident. Beard v. Mitchell, 604 F.2d 502 (7th Cir. 1979).

situations. The police reports were reported in their entirety. The remaining categories, assault and battery, burglary and domestic violence, were selective samples picked by Plaintiffs' attorney.

The Court concludes Plaintiffs have not shown, sufficient to withstand summary judgment, that the City of Catoosa does have a governmental policy of indifference to victims of domestic violence or of discrimination against women because of their gender.

In a much stronger Plaintiff's case, Watson v. City of Kansas City, Kansas, 857 F.2d 690 (10th Cir. 1988), the Court was presented police statistics showing a lower percentage of arrests (16%) for domestic assaults than nondomestic assaults (31%) for an approximate eight-month period, by Kansas City, Kansas police. Summary judgment was granted in favor of the city and the individual police officers. The Tenth Circuit Court of Appeals reversed, observing that "Plaintiff's statistical evidence alone may not be enough to prove the existence of a policy or custom" (citing McCleskey v. Kemp, 481 U.S. 279, 107 S.Ct. 1756, 1767, 95 L.Ed.2d 262 (1987)), but that need not be decided since plaintiff also presented evidence that the training Kansas City police officers receive encourages officers to "defuse" the situation, arrest being a last resort.⁷

⁷In Watson, the plaintiff's and the defendants' versions of the events were significantly different.

McKee v. City of Rockwall, Texas, 877 F.2d 409 (5th Cir. 1989), decided July 19, 1989, is apropos. In McKee, the District Court denied the individual officers and the city summary judgment. Upon appeal, the Circuit Court dismissed the action as to the individual officers and remanded the case to the District Court because it had no jurisdiction to hear an interlocutory appeal by the city. The Fifth Circuit concluded that the § 1983 claims against the individual officers must be dismissed because the Plaintiff "failed to show the officer's inaction was a consequence of discrimination against a protected minority."⁸ *Id.* at 416.

The McKee case was also a much stronger plaintiff's case than the present action. Statistical police reports were offered by Plaintiff in opposition to summary judgment. Also, by affidavit, the plaintiff established the city police chief, in response to a query of why the person (plaintiff's boyfriend) who assaulted plaintiff was not arrested, stated "his officers did not like to make arrests in domestic assault cases since the women involved either wouldn't file charges or would drop them prior to trial." *Id.* at 423.

McKee, explains that DeShaney v. Winnebago, *supra*, while sounding in due process rather than equal protection, holds that there is no constitutional violation when the most that can be said

⁸The dissenting opinion observed that, under the majority's reasoning that plaintiff had made out no claim, judgment for the city (on remand) was virtually preordained. *Id.* at p. 416, fn. 2.

is state functionaries stood by and did nothing when suspicious circumstances dictated a more active role. McKee, *supra*, treated Watson approvingly.

The Court concludes that Plaintiffs' constitutional claims against the City do not meet the tests of Celotex, Monell, Watson, and McKee and must, accordingly, fail. Therefore, the Court concludes the City of Catoosa's Motion for Summary Judgment as to Plaintiffs' claims (one and two) should be and the same are hereby SUSTAINED.

In their third claim Plaintiffs allege "tortious conduct"⁹ seeking, as in the first two claims, \$10,000,000.00. The Plaintiff Howell filed a claim under the Governmental Tort Claims Act (GTCA) against the City of Catoosa. This was denied as early as August 3, 1987, and no later than August 7, 1987.¹⁰ Since the claim was against the City only," the 180 days (see 51 O.S. 157(b)) within which to thereafter file an action would apply only to the action against the City of Catoosa. Plaintiffs' third claim is against the two individual officers and the City of Catoosa.

⁹The Court does not reach the issue of whether a claim for "tortious conduct" exists under Oklahoma law, in view of the statute of limitations issue.

¹⁰Plaintiffs acknowledge receiving the denial on August 10, 1987 (see Plaintiffs' Brief in Response to Motion for Summary Judgment, p. 12).

¹¹There is no allegation to the contrary; also the letter of denial only referenced the City of Catoosa.

Plaintiffs' suit against the City (and Garber and Combs) was filed February 8, 1988, dismissed by Plaintiffs without prejudice June 22, 1988, and refiled that same day. Plaintiffs' efforts as to the pendent state tort claim against the City are untimely since more than 180 days had expired (185) by February 8, 1988, from August 7, 1987 (date of denial).¹²

Any individual claim against Garber and Combs, on a state tort claim, would have had to be filed within two years from the pivotal events, i.e., May 2, 1987. 12 O.S. § 95, which was done. However, such claim is subject to dismissal under 51 O.S. 163 which provides municipal employees acting within the scope of employment shall not be named as defendants in Governmental Tort Claims Act proceedings. Additionally, it appears Plaintiffs failed to file a prerequisite claim against Garber and Combs. 51 O.S. § 157. Plaintiffs' state tort claims against Garber and Combs are accordingly barred.¹³

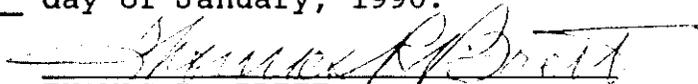
Defendants', City of Catoosa, Garber and Combs, Motion for Summary Judgment as to Plaintiffs' Third Claim, a pendent state

¹²Even if computed from the date the notice of denial was received, i.e., August 10, 1987, Plaintiffs' claim is still untimely (182 days). See also, Willbourn v. City of Tulsa, 721 P.2d 803 (Okl. 1986).

¹³Buttressing Plaintiffs' untimely state tort claim is the fact that even if Garber and Combs had been included within Plaintiffs' GTCA claim, denied as late as August 7, 1987, more than 180 days (185) had expired by February 8, 1988.

tort claim, should be and the same is hereby SUSTAINED.

IT IS SO ORDERED this 3rd day of January, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

JAN -3 1990
JAMES EARL HALEY
U.S. DISTRICT COURT

JOHN REIDEL, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 SAMUEL K. SKINNER, et al.,)
)
 Defendants.)

No. 89-C-0660-B

O R D E R

This matter comes on for consideration upon the Motion to Dismiss filed by Defendants, Manuel Lujan, Jr., in his official capacity as Secretary of the United States Department of the Interior, and John Turner, in his official capacity as Director-Designate of the United States Fish and Wildlife Service. Plaintiffs, in their Response, confess this Motion to Dismiss.

Therefore, Plaintiffs' Complaint, as to Defendants Manuel Lujan, Jr., in his official capacity as Secretary of the United States Department of the Interior, and John Turner, in his official capacity as Director-Designate of the United States Fish and Wildlife Service, should be and the same is DISMISSED.

IT IS SO ORDERED this 3rd day of January, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

JAN 3 - 1990

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

Aetna Casualty and Surety Company, a
Connecticut corporation,)
)
)
 Plaintiff,)
)
)
 vs.)
)
 James J. Wasson, et al.,)
)
)
 Defendants.)

No. 88-C1592-C

JOURNAL ENTRY OF JUDGMENT

Upon consideration of the Motion of all parties who have appeared in this action for entry of a general civil judgment against James J. Wasson of \$75,000.00, this court finds that said Motion should be and is hereby granted, all parties to bear their own costs and fees of litigation.

It is hereby ordered that Aetna Casualty and Surety Company is granted judgment against James J. Wasson in the amount of \$75,000.00.

So ordered this 21 day of Jan, 1990.

(Signed) H. Dale Cook

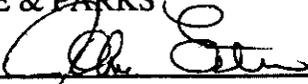
H. DALE COOK
UNITED STATES DISTRICT JUDGE

Approved:

COMFORT, LIPE & GREEN, P.C.

By: Tim Trump
Timothy T. Trump
Comfort, Lipe & Green, P.C.
2100 Mid-Continent Tower
401 South Boston
Tulsa, Oklahoma 74103
(918) 599-9400
Attorneys for Aetna Casualty & Surety Company

STIPE, GOSSETT, STIPE, HARPER, ESTES,
MCCUNE & PARKS

By: 

John Estes

Stipe, Gossett, Stipe, Harper, Estes, McCune &
Parks

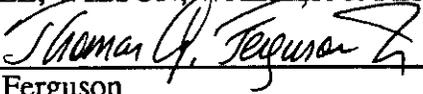
P.O. Box 53567

Oklahoma City, Oklahoma 73152

(405) 524-2268

Attorneys for James J. Wasson

KIMBALL, WILSON, WALKER & FERGUSON

By: 

Thomas Ferguson

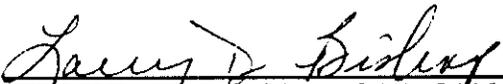
Kimball, Wilson, Walker & Ferguson

301 N.W. 63rd, Suite 400

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(405) 843-8855

Attorneys for Melvin B. Pulliam and the Oklahoma
City Finance Company Employee Pension Trust



JERRY D. SOKOLOSKY OBA#8446

LARRY D. BISHOP OBA #816

One Leadership Square, Suite 600

211 North Robinson

Oklahoma City, Oklahoma 73102

(405) 239-7046

Attorneys for Jim Bowles and Woolsey & Company

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

ALLIED BEARINGS SUPPLY CO., INC.,)
Plaintiff,)
vs.) Case No. 87-C-913-B
FRANK MATHEW SCHAD, et al.)
Defendants.)

ORDER DISMISSING WITHOUT PREJUDICE ALL
OF PLAINTIFFS' CLAIMS AGAINST FRANK M. SCHAD

The Plaintiffs' Application for Dismissal Without Prejudice of All Claims Against Frank M. Schad is hereby granted and all claims asserted herein by the Plaintiffs Allied Bearings Supply Co., Inc. ("Allied") and Commercial Bank & Trust Company as Trustee against Frank M. Schad are hereby dismissed without prejudice with all parties to bear their own costs. This Court recognizes the fact that Plaintiffs are relying upon the Restitution Order entered in the case of United States of America v. Frank Mathew Schad, Case No. 88-CR-002-001-B, U.S.D.C.-N.D. Oklahoma.

Dated this 3rd day of January, 1990.

S/ THOMAS R. BRETT
THE HONORABLE THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

JAN -3 1990

JACK J. BOYER, CLERK
U.S. DISTRICT COURT

SANDRA HOWELL, Individually)
and as next friend of TINA)
MICHELLE PATTERSON, a minor,)
)
Plaintiff,)
)
vs.)
)
CITY OF CATOOSA, a municipal)
corporation, JAMES ENOS COMBS,)
an individual, and JOE GARBER,)
an individual,)
)
Defendants.)

No. 88-C-580-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 Defendants, City of Catoosa,
James Enos Combs and Joe Garber, and against Plaintiffs, Sandra
Howell, individually and as next friend of Tina Michelle Patterson,
a minor. Costs are assessed against the Plaintiffs, each party to
pay their own attorneys' fees.

DATED this 3rd day of January, 1990.

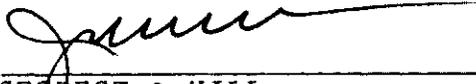


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:



STEVEN R. HICKMAN
Attorney for Plaintiffs



SECRET & HILL
Attorneys for Defendants

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

FILED
1990
COURT

WILLIAM MOSELEY and
ELEANOR MOSELEY,
Husband and Wife,

Plaintiffs,

vs.

No. 88-C-324-B

JAMES LAMBETH, an individual,
and the Estate of Gary Lambeth,

Defendants.

ORDER OF DISMISSAL WITH PREJUDICE

Now, on this 3rd day of January, 1990 came on for consideration the stipulation of dismissal with prejudice filed by the parties herein, and each of them, pursuant to Rule 41 (b) of the Federal Rules of Civil Procedure and, it appearing that all parties to this litigation have entered in to a stipulation that all claims alleged herein be dismissed with prejudice as to all defendants,

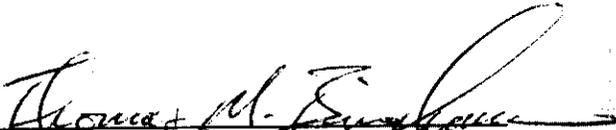
IT IS THEREFORE ORDERED that the above-styled and numbered cause, and all claims alleged therein, be dismissed with prejudice to the refiling thereof.

IT IS SO ORDERED.

S/ THOMAS R. BRETT

THOMAS R. BRETT
JUDGE OF THE UNITED STATES
DISTRICT COURT

APPROVED AS TO FORM,


Thomas M. Bingham, Esquire
Attorney for Plaintiffs
William M. Moseley and
Eleanor Moseley


Phil R. Richards
Attorney for Defendants
James Lambeth and the
Estate of Gary Lambeth

1990

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

RITA HETHERINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 VOLKSWAGEN OF AMERICA, INC.,)
)
 Defendant.)

No. 87-C-842-B

ORDER OF DISMISSAL

NOW on this 3rd day of January 1990, upon application of the parties for an Order dismissing the above captioned matter with prejudice, the court finds that the same should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this matter be and hereby is dismissed with prejudice and the Clerk of the Court is ordered to strike all remaining dates scheduled for this matter from the docket.

S/ THOMAS R. BRETT

THOMAS R. BRETT
U.S. DISTRICT COURT JUDGE

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

1990
~~1990~~

AMERICAN BANK AND TRUST COMPANY,)
an Oklahoma banking corporation,)

Plaintiff,)

vs.)

Case No. 89-C-276-B

DEUTSCHE AVIATION, INC., an)
Oklahoma corporation; C. R.)
RITTENBERRY; W. ALBERT VERMAAS;)
REPUBLIC OF SOUTH AFRICA; and)
THE SOUTH AFRICAN RESERVE BANK,)

Defendants.)

**ORDER OF DISMISSAL WITH PREJUDICE
AS TO DEFENDANTS REPUBLIC OF SOUTH AFRICA
AND THE SOUTH AFRICAN RESERVE BANK**

Pursuant to the Stipulation of Dismissal With Prejudice filed as between American Bank and Trust Company, Plaintiff, and Republic of South Africa, Defendant, and The South African Reserve Bank, Defendant, in this action,

IT IS HEREBY ORDERED that the above captioned action be dismissed with prejudice as to the Defendants, Republic of South Africa and The South African Reserve Bank. Each party to bear their own costs and attorney fees.

SO ORDERED this 30th day of Jan, 1990.

S/ THOMAS R. BRETT

United States District Judge

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

1990

AMERICAN BANK AND TRUST COMPANY,)
an Oklahoma banking corporation,)

Plaintiff,)

vs.)

Case No. 89-C-276-B

DEUTSCHE AVIATION, INC., an)
Oklahoma corporation; C. R.)
RITTENBERRY; W. ALBERT VERMAAS;)
REPUBLIC OF SOUTH AFRICA; and)
THE SOUTH AFRICAN RESERVE BANK,)

Defendants.)

ORDER OF DISMISSAL WITHOUT PREJUDICE
AS TO DEFENDANTS
DEUTSCHE AVIATION, INC. AND C. R. RITTENBERRY

Pursuant to the Stipulation of Dismissal Without Prejudice filed as between American Bank and Trust Company, Plaintiff, and Deutsche Aviation, Inc., Defendant, and C. R. Rittenberry, Defendant, in this action,

IT IS HEREBY ORDERED that the above captioned action be dismissed without prejudice as to the Defendants, Deutsche Aviation, Inc. and C. R. Rittenberry. Each party to bear their own costs and attorney fees.

SO ORDERED this 3rd day of Jan, 1990.

S/ THOMAS R. BRETT

United States District Judge

FILED
1990
JAN 3 1990

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

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

Alvin Ray Lady,

Plaintiff

vs.

Civil Action No. 89-C-222-B ✓

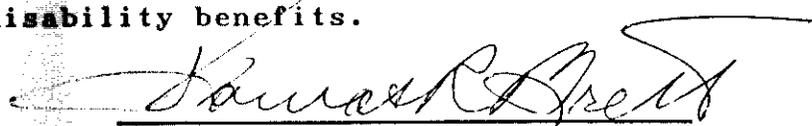
Louis W. Sullivan, M.D.,
Secretary of Health
and Human Services,

Defendant.

ORDER

NOW, on this 3rd day of Jan.,
1990, the Court has fully considered the Defendant's motion to
remand and the Plaintiff's response and non-objection to this
motion to remand for payment of benefits.

WHEREFORE, the Court finds that the case should be
remanded to the Secretary of Health and Human Services for
computation and payment of disability benefits.


United States District Judge

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

FILED

JAN 3 1990

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

R. MAXINE BRESHEAR,)
)
 Plaintiff,)
)
 -vs-)
)
 BURTEK, INC., a corporation,)
)
 Defendant.)

No. 89-C-293-E

JOINT STIPULATION OF DISMISSAL OF ALL CLAIMS WITH PREJUDICE

COME NOW the parties hereto, by and through their attorneys of record, and pursuant to Fed. R. Civ. Proc. 41(a)(1)(ii), hereby stipulate that the captioned case is hereby dismissed in its entirety with prejudice, including all claims and counterclaims therein by reason that the parties have reached a settlement. Each party is to bear its own attorneys' fees.

PRAY, WALKER, JACKMAN,
WILLIAMSON & MARLAR

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

By: James F. Bullock
James F. Bullock
900 Oneok Plaza
Tulsa, OK 74103
918-584-4136

By: Diane O. Palumbo
Diane O. Palumbo, OBA#12154
124 E. Fourth, Suite 400
Tulsa, OK 74103
918-584-5182

ATTORNEYS FOR PLAINTIFF

ATTORNEYS FOR DEFENDANT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JAMES A. HULL; GRAND FEDERAL)
 SAVINGS BANK; COUNTY TREASURER,)
 Delaware County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Delaware County, Oklahoma,)
)
 Defendants.)

FILED

2 1989

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

CIVIL ACTION NO. 88-C-344-E

DEFICIENCY JUDGMENT

This matter comes on before the Court this 21st of December, 1989, on the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment which Motion was filed on the 19th day of October, 1989, and a copy of the Motion was mailed to James A. Hull, c/o Holiday Inn, 1675 Sunset Drive, Rock Springs, Wyoming 82901, 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 Peter Bernhardt, Assistant United States Attorney, and the Defendant, James A. Hull, 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 5, 1988, in favor of the Plaintiff United States of America, and against the Defendant, James A. Hull, with interest and costs to date of sale is \$53,216.82.

The Court further finds that the appraised value of the real property at the time of sale was \$24,000.00.

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 5, 1988, for the sum of \$21,449.00 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 December, 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, James A. Hull, as follows:

Principal Balance as of 12/5/88	\$40,794.37
Interest	9,514.08
Late Charges to Date of Judgment	355.68
Appraisal by Agency	437.30
Management Broker Fees to Date of Sale	1,077.20
Abstracting	220.00
Publication Fees of Notice of Sale	149.19
Appraisers' Statements	105.00
Insurance	273.00
Taxes	256.00
Evidentiary Affidavit	<u>35.00</u>
TOTAL	\$53,216.82
Less Credit of Appraised Value	- <u>24,000.00</u>
DEFICIENCY	\$29,216.82

plus interest on said deficiency judgment at the legal rate of 7.66 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, James A. Hull, a deficiency judgment in the amount of \$29,216.82, plus interest at the legal rate of 7.66 percent per annum on said deficiency judgment from date of judgment until paid.

S/ JAMES O. NELSON

UNITED STATES DISTRICT JUDGE

PB/css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 THERON RAY SWEAT; JUANITA)
 MAXINE SWEAT; FREEDLANDER,)
 INC., The Mortgage People;)
 COUNTY TREASURER, Mayes County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Mayes County,)
 Oklahoma,)
)
 Defendants.)

FILED

2 1989

Jack C. Silver, Clerk
DISTRICT COURT

CIVIL ACTION NO. 87-C-1057-E

DEFICIENCY JUDGMENT

This matter comes on before the Court this 21st of Dec., 1989, on the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment which Motion was filed on the 1st day of November, 1989, and a copy of the Motion was mailed to Theron Ray Sweat and Juanita Maxine Sweat, General Delivery, Peggs, Oklahoma 74452, 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 Phil Pinnell, Assistant United States Attorney, and the Defendants, Theron Ray Sweat and Juanita Maxine Sweat, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Amended Judgment rendered herein on December 16, 1988, in favor of the Plaintiff United States of America, and against the Defendants, Theron Ray Sweat and Juanita Maxine Sweat, with interest and costs to date of sale is \$46,182.24.

The Court further finds that the appraised value of the real property at the time of sale was \$13,350.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Amended Judgment of this Court entered December 16, 1988, for the sum of \$11,930.00 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 December, 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 Defendants, Theron Ray Sweat and Juanita Maxine Sweat, as follows:

Principal Balance as of 12/16/88	\$32,436.62
Interest	11,045.34
Late Charges to Date of Judgment	380.16
Appraisal by Agency	530.00
Management Broker Fees to Date of Sale	958.00
Abstracting	261.50
Publication Fees of Notice of Sale	206.08
Appraisers' Statements	105.00
Taxes	<u>259.54</u>
TOTAL	\$46,182.24
Less Credit of Appraised Value	- <u>13,350.00</u>
DEFICIENCY	\$32,832.24

plus interest on said deficiency judgment at the legal rate of 7.66 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Amended 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 Defendants, Theron Ray Sweat and Juanita Maxine Sweat, a deficiency judgment in the amount of \$32,832.24, plus interest at the legal rate of 7.66 percent per annum on said deficiency judgment from date of judgment until paid.

W. JAMES

UNITED STATES DISTRICT JUDGE

PP/css

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

Entered

THRIFTY RENT-A-CAR SYSTEM,
INC., a corporation,

Plaintiff,

vs.

THEODORE J. SUDAL, et al.,

Defendants.

No. 88-C-1418-C

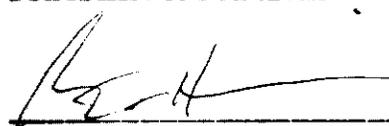
JAN 12 1989
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

STIPULATION OF PARTIAL DISMISSAL

COME NOW Plaintiff and Defendants by and through their
respective counsel of record and stipulate to the dismissal of Count
VII of Defendants' Counterclaim in the above styled and numbered
cause.

FRASIER & FRASIER

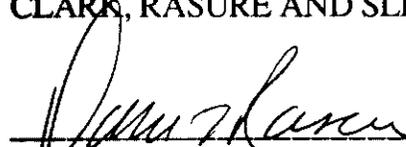
BY:



Steven R. Hickman, OBA #4172
1700 Southwest Boulevard
Suite 100
P. O. Box 799
Tulsa, OK 74101
918/584-4724

BAKER, HOSTER, McSPADDEN,
CLARK, RASURE AND SLICKER

BY:



Dana L. Rasure
800 Kennedy Bldg.
Tulsa, OK 74103
(918) 592-5555