

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

JAMES R. STUNKARD, and  
STUNKARD-PARKER PRODUCTIONS,  
INC., an Oklahoma corporation,

Plaintiffs,

v.

ROLAND MARTIN ENTERPRISES,  
INC., ROLAND MARTIN, an  
individual, and VIDEO SOUTH,  
INC., a Georgia corporation,

Defendants.

87-C-67-C

FILED

APR 13 1990

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

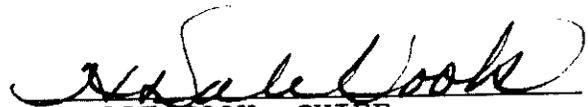
ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed March 26, 1990, in which the Magistrate recommended that defendants' Motion for Partial Summary Judgment should be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that defendants' Motion for Partial Summary Judgment is granted.

Dated this 16 day of April, 1990.

  
H. DALE COOK, CHIEF  
UNITED STATES DISTRICT JUDGE

89

FILED

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

APR 13 1990

MINNIE T. CRAIG,  
Plaintiff,

vs.

RENBURG'S, INC., an Oklahoma  
corporation,  
Defendant.

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

Case No. 89-C-950-B

ORDER OF DISMISSAL

The Court having been advised by counsel that the above  
action has been settled, it is

ORDERED that this cause be hereby dismissed with prejudice,  
with each party to bear its own costs and attorneys' fees.

DATED: Apr 13, 1990

S/ THOMAS R. KRETT  
United States District Judge

FILED

APR 13 1990

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

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

JOYCE K. PRICE \*  
Plaintiff \*  
VERSUS \*  
WHITTLE COMMUNICATIONS, L.P. \*  
A LIMITED PARTNERSHIP \*  
Defendant \*

CIVIL ACTION  
NO: 89-C-763 B

\* \* \* \* \*

ORDER

Pursuant to the joint motion of JOYCE K. PRICE and WHITTLE COMMUNICATIONS, L.P.;

IT IS HEREBY ORDERED this matter is dismissed with prejudice, each party to bear its own costs.

THUS DONE AND SIGNED, THIS 15 DAY OF APRIL, 1990, OKLAHOMA CITY, OKLAHOMA.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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

FILED

APR 18 1990

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

IN RE:

OTASCO, INC.,  
ID No. 13-2855286

Debtor.

AMERICAN MANUFACTURERS MUTUAL  
INSURANCE COMPANY, AMERICAN  
MOTORISTS INSURANCE COMPANY, and  
NATIONAL LOSS CONTROLS SERVICE  
CORPORATION,

Appellants,

vs.

OTASCO, INC.,

Appellee.

Case No. 88-03410-W  
Chapter 11

Adversary No. 89-0285-W

District Court No.  
89-C-888-E

**DISMISSAL**

COME NOW the Appellants and dismiss this action with  
prejudice.

SAVAGE, O'DONNELL, SCOTT,  
McNULTY & AFFELDT

By: Timothy H. Olsen  
Timothy H. Olsen, OBA #12431  
1100 Petroleum Club Building  
601 South Boulder  
Tulsa, Oklahoma 74119  
(918) 584-4716

Attorneys for Appellants

DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

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

Attorneys for the Appellee

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

FILED

APR 12 1990

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

GLEN LEWIS,

Plaintiff,

vs.

No. 89-C-386-E ✓

SGT. TREDWELL, et al.,

Defendants.

ORDER

This matter is before the Court on the motion of Plaintiff for default judgment against Defendants. The record reveals that Deputy Sheriff Soeback, Deputy Sheriff Sgt. Tredwell, Deputy Sheriff Dumas and Deputy Sheriff Mozart were served on May 22, 1989 and that they have not appeared or otherwise pled. Default is therefore appropriate.

IT IS THEREFORE ORDERED that Plaintiff is granted default judgment against Defendants Deputy Sheriff Soeback, Deputy Sheriff Sgt. Tredwell, Deputy Sheriff Dumas and Deputy Sheriff Mozart and that this matter is referred to the Magistrate for report and recommendation on the Plaintiff's damages.

ORDERED this 11<sup>th</sup> day of April, 1990.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

**FILED**

APR 12 1990

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

HAZEL SIRELLEN WATTS, as  
Special Administratrix of  
the Estate of Addison Luther  
Watts, Deceased,

Plaintiff,

vs.

No. 88-C-1495-E

THE UNITED STATES OF AMERICA  
(VETERAN'S ADMINISTRATION),

Defendant.

**JUDGMENT**

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

IT IS THEREFORE ORDERED that the Plaintiff Hazel Sirellen Watts, as Special Administratrix of the Estate of Addison Luther Watts, Deceased, take nothing from the Defendant United States of America, that the action be dismissed on the merits, and that the Defendant recover of the Plaintiff its costs of action.

ORDERED this 11<sup>th</sup> day of April, 1990.



JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

APR 12 1990

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

US WEST FINANCIAL SERVICES, )  
INC., a Colorado corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
EDWARD W. JENKINS, )  
 )  
Defendant )

Case No. 90-C-0032-E

JOINT STIPULATION OF DISMISSAL WITHOUT PREJUDICE

Plaintiff, US West Financial Services, Inc. ("US West"), and Defendant, Edward W. Jenkins ("Jenkins"), hereby jointly stipulate, pursuant to Rule 41(a)(1) and (c) of the Federal Rules of Civil Procedure, to dismissal of all claims asserted by US West against Jenkins in its Complaint, without prejudice, with each party to bear their own costs.

Dated this 11<sup>th</sup> day of April, 1990.

LYNNWOOD R. MOORE, JR.  
J. DAVID JORGENSON  
G. W. TURNER, III

By *G. W. Turner III*  
G. W. Turner, III

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

Attorneys for Plaintiff,  
US WEST FINANCIAL SERVICES, INC.

GRAYDON DEAN LUTHEY, JR.  
STEPHEN W. RAY

By   
Graydon Dean Luthey, Jr.

Jones, Givens, Gotcher & Bogan  
3800 First National Tower  
Tulsa, Oklahoma 74103

Attorneys for Edward W. Jenkins

FILED

APR 12 1990

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

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

LEROY WAYNE JACKSON,  
Plaintiff,  
v.  
JAY D. DALTON, et al,  
Defendants.

89-C-1021-E ✓

**ORDER**

Now before the court are the Motion to Dismiss plaintiff's civil rights complaint of defendants State of Oklahoma, Et Al (Docket #2)<sup>1</sup> and the Motion to Dismiss or for Summary Judgment of defendant Don Austin (#6). Although plaintiff failed to respond to defendants' motions in a timely manner as required by the Federal Rules of Civil Procedure and the Local Rules of the Northern District of Oklahoma, on March 12, 1990, the court, sua sponte, gave plaintiff an extension of time in which to respond to the motions. However, no such response was ever filed by plaintiff.

As the court previously advised plaintiff, all litigants, including those appearing pro se, are obligated to follow the procedural rules of court. See, Joplin v. Southwestern Bell Telephone Co., 671 F.2d 1274 (10th Cir. 1982). Plaintiff having been given every opportunity to comply with the pleading requirements of this court, the court concludes that plaintiff's failure to respond to the pending motions constitutes a waiver of

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

12

objection to the motions. Rule 15A of the Local Rules for the Northern District of Oklahoma.

It is, therefore, ordered that the Motion to Dismiss plaintiff's civil rights complaint of defendants State of Oklahoma, Et Al, and the Motion to Dismiss or for Summary Judgment of defendant Don Austin are granted, and plaintiff's civil rights complaint pursuant to 42 U.S.C. § 1983 is hereby dismissed.

Dated this 11<sup>th</sup> day of April, 1990.

  
JAMES D. ELLISON  
UNITED STATES DISTRICT JUDGE

**FILED**

IN THE UNITED STATES DISTRICT COURT FOR THE **APR 12 1990** *dt\**  
NORTHERN DISTRICT OF OKLAHOMA

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

MR. ALFRED RAY CARTER,  
Plaintiff,

v.

89-C-1031-E ✓

MR. RICHARD CLARK  
TULSA PUBLIC DEFENDER,  
Defendant.

**ORDER**

Now before the court is defendant's Motion to Dismiss (Docket #3)<sup>1</sup> plaintiff's civil rights complaint. Although plaintiff failed to respond to defendants' motion in a timely manner as required by the Federal Rules of Civil Procedure and the Local Rules of the Northern District of Oklahoma, on March 7, 1990, the court, sua sponte, gave plaintiff an extension of time in which to respond to this motion. However, no such response was ever filed by plaintiff.

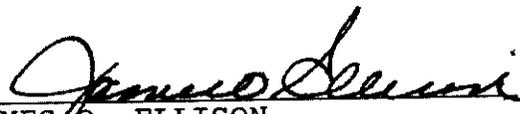
As the court previously advised plaintiff, all litigants, including those appearing pro se, are obligated to follow the procedural rules of court. See, Joplin v. Southwestern Bell Telephone Co., 671 F.2d 1274 (10th Cir. 1982). Plaintiff having been given every opportunity to comply with the pleading requirements of this court, the court concludes that plaintiff's failure to respond to the pending motion constitutes a waiver of objection to the motion. Rule 15A of the Local Rules for the

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

Northern District of Oklahoma.

It is, therefore, ordered that defendants' Motion to Dismiss is granted, and plaintiff's civil rights complaint pursuant to 42 U.S.C. § 1983 is hereby dismissed.

Dated this 11<sup>th</sup> day of April, 1990.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

**FILED**

APR 12 1990 *at*

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

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

UNION BANK AND TRUST,  
BARTLESVILLE, OKLAHOMA,

Plaintiff,

vs.

THOMAS J. NAVE and JAMES  
E. STALEY,

Defendants.

Case No. 88-C-1506-E

CONSOLIDATED

UNION BANK AND TRUST,  
BARTLESVILLE, OKLAHOMA,

Plaintiff,

vs.

THOMAS J. NAVE, JAMES E. STALEY,  
and CHARLES N. EPPERSON,

Defendants.

WITH

Case No. 88-C-1507-E

**JOURNAL ENTRY OF JUDGMENT AS TO  
DEFENDANTS JAMES E. STALEY AND CHARLES N. EPPERSON**

COMES NOW for consideration the Motion for Summary Judgment of the Defendant, Federal Deposit Insurance Corporation ("FDIC"), in its corporate capacity. Pursuant to the Order entered on March 22, 1990, the Motion is sustained as to Defendants James E. Staley and Charles N. Epperson. The Court finds as follows:

1. On or about December 15, 1986, Defendants Thomas J. Nave a/k/a Tom Nave ("Nave") and James E. Staley, a/k/a Jim Staley ("Staley") executed and delivered to Union Bank and Trust, Bartlesville, Oklahoma ("Bank") a promissory note in the principal sum of \$35,000 ("Nave and Staley Note").

2. On or about June 16, 1986 Nave, Staley and Charles N. Epperson ("Epperson") executed and delivered to the Bank unlimited and continuing guaranties ("Guaranties") of all indebtedness of Naco Plastics, Inc. to the Bank.

*13 20*

3. On or about June 16, 1986 Naco Plastics, Inc. executed and delivered to the Bank a promissory note in the principal sum of \$500,000 ("Naco Note 1").

4. On or about October 7, 1986 Naco Plastics, Inc. executed and delivered to the Bank a promissory note in the principal sum of \$130,000. Overdrafts and collections subsequently caused the principal amount to be increased by \$5,579.71 ("Naco Note 2").

5. The FDIC is the current holder of each of the above-referenced promissory notes and guaranties.

6. The Nave and Staley Note is in default and there is currently due and owing thereon the principal sum of \$35,000, plus accrued interest as of April 20, 1989 of \$11,615.08, plus interest accruing thereafter at the rate of Union Bank and Trust prime plus 8%, plus attorney's fees and costs.

7. Naco Note 1 is in default and there is currently due and owing thereon the principal sum of \$2,316.03, plus accrued interest as of April 20, 1989 of \$38,951.04, plus interest accruing after April 20, 1989, plus a reasonable attorney's fee and costs.

8. Naco Note 2 is in default and there is currently due and owing thereon the principal sum of \$135,579.71, together with accrued interest as of April 20, 1989 of \$45,807.09, plus interest accruing thereafter at the rate of Union Bank and Trust prime plus 7½%, plus a reasonable attorney's fee and costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of the Defendant, Federal Deposit Insurance Corporation, as follows:

A. Against Defendant Staley in the amount of \$35,000 plus accrued interest as of April 20, 1989 of \$11,615.08, plus interest accruing thereafter at the rate of Union Bank and Trust prime plus 8%, plus a reasonable attorney's fee and costs in connection with the collection of same.

B. Against Defendant Staley and Epperson, jointly and severally, in the principal sum of \$2,316.03, plus interest accrued as of April 20, 1989 of \$38,951.04, plus interest accruing thereafter, plus a reasonable attorney's fee and costs in connection with the collection of same.

C. Against Defendants Staley and Epperson in the principal sum of \$135,579.71, plus interest accrued as of April 20, 1989 in the amount of \$45,807.09, plus interest accruing thereafter at the rate of Union Bank and Trust prime plus 7½%, plus a reasonable attorney's fee and costs in connection with the collection of same.

FOR ALL OF WHICH LET EXECUTION ISSUE.

DATED and entered on the judgment docket this 11<sup>th</sup> day of April, 1990.

  
UNITED STATES DISTRICT JUDGE

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

**FILED**

APR 12 1990

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

UNION BANK AND TRUST,  
BARTLESVILLE, OKLAHOMA,

Plaintiff,

vs.

THOMAS J. NAVE and JAMES  
E. STALEY,

Defendants.

Case No. 88-C-1506-E

CONSOLIDATED

UNION BANK AND TRUST,  
BARTLESVILLE, OKLAHOMA,

Plaintiff,

vs.

THOMAS J. NAVE, JAMES E. STALEY,  
and CHARLES N. EPPERSON,

Defendants.

WITH

Case No. 88-C-1507-E

**JOURNAL ENTRY OF JUDGMENT AS TO  
DEFENDANTS JAMES E. STALEY AND CHARLES N. EPPERSON**

COMES NOW for consideration the Motion for Summary Judgment of the Defendant, Federal Deposit Insurance Corporation ("FDIC"), in its corporate capacity. Pursuant to the Order entered on March 22, 1990, the Motion is sustained as to Defendants James E. Staley and Charles N. Epperson. The Court finds as follows:

1. On or about December 15, 1986, Defendants Thomas J. Nave a/k/a Tom Nave ("Nave") and James E. Staley, a/k/a Jim Staley ("Staley") executed and delivered to Union Bank and Trust, Bartlesville, Oklahoma ("Bank") a promissory note in the principal sum of \$35,000 ("Nave and Staley Note").

2. On or about June 16, 1986 Nave, Staley and Charles N. Epperson ("Epperson") executed and delivered to the Bank unlimited and continuing guaranties ("Guaranties") of all indebtedness of Naco Plastics, Inc. to the Bank.

3. On or about June 16, 1986 Naco Plastics, Inc. executed and delivered to the Bank a promissory note in the principal sum of \$500,000 ("Naco Note 1").

4. On or about October 7, 1986 Naco Plastics, Inc. executed and delivered to the Bank a promissory note in the principal sum of \$130,000. Overdrafts and collections subsequently caused the principal amount to be increased by \$5,579.71 ("Naco Note 2").

5. The FDIC is the current holder of each of the above-referenced promissory notes and guaranties.

6. The Nave and Staley Note is in default and there is currently due and owing thereon the principal sum of \$35,000, plus accrued interest as of April 20, 1989 of \$11,615.08, plus interest accruing thereafter at the rate of Union Bank and Trust prime plus 8%, plus attorney's fees and costs.

7. Naco Note 1 is in default and there is currently due and owing thereon the principal sum of \$2,316.03, plus accrued interest as of April 20, 1989 of \$38,951.04, plus interest accruing after April 20, 1989, plus a reasonable attorney's fee and costs.

8. Naco Note 2 is in default and there is currently due and owing thereon the principal sum of \$135,579.71, together with accrued interest as of April 20, 1989 of \$45,807.09, plus interest accruing thereafter at the rate of Union Bank and Trust prime plus 7½%, plus a reasonable attorney's fee and costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of the Defendant, Federal Deposit Insurance Corporation, as follows:

A. Against Defendant Staley in the amount of \$35,000 plus accrued interest as of April 20, 1989 of \$11,615.08, plus interest accruing thereafter at the rate of Union Bank and Trust prime plus 8%, plus a reasonable attorney's fee and costs in connection with the collection of same.

B. Against Defendant Staley and Epperson, jointly and severally, in the principal sum of \$2,316.03, plus interest accrued as of April 20, 1989 of \$38,951.04, plus interest accruing thereafter, plus a reasonable attorney's fee and costs in connection with the collection of same.

C. Against Defendants Staley and Epperson in the principal sum of \$135,579.71, plus interest accrued as of April 20, 1989 in the amount of \$45,807.09, plus interest accruing thereafter at the rate of Union Bank and Trust prime plus 7½%, plus a reasonable attorney's fee and costs in connection with the collection of same.

FOR ALL OF WHICH LET EXECUTION ISSUE.

DATED and entered on the judgment docket this 11<sup>th</sup> day of April, 1990.

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UNITED STATES DISTRICT JUDGE

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

OTASCO, INC., a Nevada  
corporation,  
Employer I.D. #13-2855286,

Debtor.

OTASCO, INC.,

Plaintiff,

vs.

SCHOTTENSTEIN STORES  
CORPORATION, a corporation,

Defendant.

Case No. 88-03410-W  
Chapter 11

Adversary No. 89-0361-W

FILED

APR 11 1990 *hm*

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

Case No. 90-C0081-B ✓

ORDER

Upon the Application to Withdraw the Motion for the  
Withdrawal of the Reference filed herein, and good cause having  
been shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion  
for Withdrawal of the Reference filed herein on February 2,  
1990, be withdrawn and that the issues of the referenced  
adversary proceeding be litigated in the United States  
Bankruptcy Court for the Northern District of Oklahoma.

DATED this 12<sup>th</sup> day of Apr., 1990..

*James D. ...*  
Judge, United States District Court

APPROVED AS TO FORM:

DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

By

*John G. Carwile*  
John G. Carwile, Esq.  
Leonard I. Pataki, Esq.  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
(918) 582-1211

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

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

**FILED**

APR 12 1990 *dt*

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

LOCAL AMERICA BANK OF TULSA,  
F.S.B.,

Plaintiff,

vs.

No. 89-C-698-E ✓

OEHL, INC., et al.,

Defendants.

**JUDGMENT ON COUNTERCLAIMS**

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

IT IS THEREFORE ORDERED that the Defendants Oehl, Inc. and H. Allan Oehlschlager take nothing by way of their counterclaims against Plaintiff Local America Bank of Tulsa, F.S.B.

ORDERED this 11<sup>th</sup> day of April 11, 1990.

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

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

**FILED**

APR 12 1990

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

BILLY GEORGE MITCHELL, SR., )

Plaintiff, )

vs. )

No. 89-C-559-E

AMERICAN ECONOMY INSURANCE )  
COMPANY, )

Defendant, )

vs. )

ESTATE OF BETH ANN BURNETT, )  
et al., )

Third Party Defendants. )

**ADMINISTRATIVE CLOSING ORDER**

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

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation

is necessary.

ORDERED this 11<sup>th</sup> day of April, 1990.



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JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

**FILED**

APR 12 1990 *dt*

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

RONALD W. SUMMERS, et al.,

Plaintiffs,

vs.

No. 89-C-790-E✓

MISSOURI PACIFIC RAILROAD,  
et al.,

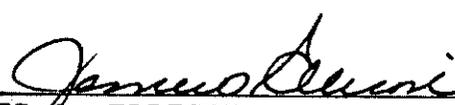
Defendants.

**ADMINISTRATIVE CLOSING ORDER**

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

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

ORDERED this 11<sup>th</sup> day of April, 1990.

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

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

*A Mitchell only*

BILL CRUIKSHANK,  
Plaintiff and  
Counterclaim defendant,  
v.  
UNITED STATES OF AMERICA,  
Defendant and  
Counterclaimant,  
v.  
GARY A. JONES, VERNON D. MITCHAE,  
and WILLIAM E. HOWELL,  
Counterclaim defendants. )

CIVIL NO. 88-C-585-C

AGREED JUDGMENT

Pursuant to an agreement between defendant, United States of America, and additional defendant on counterclaim, Vernon D. Mitchael, it is hereby

ORDERED, ADJUDGED, and DECREED that Vernon D. Mitchael is indebted to the United States of America in the sum of \$35,781.66, with statutory interest thereon from February 10, 1986.

Signed this 11<sup>th</sup> day of April, 1990.

*[Signature]*  
UNITED STATES DISTRICT JUDGE

AGREED:

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

ATTORNEY FOR UNITED STATES

*[Signature]*  
VERNON D. MITCHAE  
805 S.31st Street  
Broken Arrow, Oklahoma 74014

PRO SE

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

**FILED**  
APR 11 1990

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

No. 89-C-219-B ✓

SHELTER INSURANCE COMPANIES, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DAVID KLEIN PIETILA and SHANNON )  
HARRIS, )  
 )  
Defendants. )

J U D G M E N T

In accordance with the Court's Order filed this date sustaining Plaintiff's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Plaintiff, Shelter Insurance Companies, and against the Defendants, David Klein Pietila and Shannon Harris. It is ADJUDGED that Plaintiff has no obligation or responsibility toward David Klein Pietila arising out of the homeowner insurance policy executed between Shelter Insurance Companies and David Klein Pietila. Each party is to pay its respective costs and attorney's fees.

DATED this 11<sup>th</sup> day of April, 1990.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

DAVID THOMAS CHANEY; KATHRYN A. )  
CHANEY; COUNTY TREASURER, Tulsa )  
County, Oklahoma; and BOARD OF )  
COUNTY COMMISSIONERS, Tulsa )  
County, Oklahoma, )

Defendants. )

CIVIL ACTION NO. 89-C-612-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 11<sup>th</sup> day  
of April, 1990. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by J. Dennis Semler, Assistant District  
Attorney, Tulsa County, Oklahoma; and Defendants, David Thomas  
Chaney and Kathryn A. Chaney, appear pro se.

The Court being fully advised and having examined the  
file herein finds that the Defendants, David Thomas Chaney and  
Kathryn A. Chaney, acknowledged receipt of Summons and Complaint  
on August 4, 1989; that Defendant, County Treasurer, Tulsa  
County, Oklahoma, acknowledged receipt of Summons and Complaint  
on August 1, 1989; and that Defendant, Board of County  
Commissioners, Tulsa County, Oklahoma, acknowledged receipt of  
Summons and Complaint on July 28, 1989.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on August 15, 1989; and that the Defendants, David Thomas Chaney and Kathryn A. Chaney, filed their Answer on August 9, 1989.

This matter was set for non-jury trial on March 26, 1990, at which time Defendants, David Thomas Chaney and Kathryn A. Chaney, failed to appear. Plaintiff is therefore entitled to entry of a default judgment against said Defendants as follows.

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

Lot Five (5), Block One (1), WILLOW ROAD ESTATES, an Addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on August 1, 1980, the Defendants, David Thomas Chaney and Kathryn A. Chaney, executed and delivered to Midland Mortgage Co. their mortgage note in the amount of \$56,000.00, payable in monthly installments, with interest thereon at the rate of 11.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, David Thomas Chaney and Kathryn A. Chaney, executed and delivered to Midland Mortgage Co. a mortgage dated August 1, 1980, covering the above-described property. Said mortgage was recorded on August 6, 1980, in Book 4489, Page 692, in the records of Tulsa County, Oklahoma.

The Court further finds that Midland Mortgage Co. assigned the above-described mortgage to the Administrator of Veterans Affairs by an Assignment of Mortgage, dated October 23, 1986, and recorded on February 24, 1989, in Book 5168, Page 1461, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, David Thomas Chaney and Kathryn A. Chaney, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, David Thomas Chaney and Kathryn A. Chaney, are indebted to the Plaintiff in the principal sum of \$57,706.70, plus interest at the rate of 9 percent per annum from June 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, David Thomas Chaney and Kathryn A. Chaney, in the principal sum of \$57,706.70, plus interest at the rate of 9 percent per annum from June 1, 1988 until judgment, plus interest thereafter at the current legal rate of 8.32 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during

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

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

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

First:

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

Second:

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

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

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

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

S/ THOMAS R. BRETT

---

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
NANCY NESBITT BLEVINS, OBA #6634  
Assistant United States Attorney

  
J. DENNIS SEMLER, OBA #8076  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

Judgment of Foreclosure  
Civil Action No. 89-C-612-B

FILED

APR 11 1990

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

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

SHELTER INSURANCE COMPANIES, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DAVID KLEIN PIETILA and SHANNON )  
 HARRIS, )  
 )  
 Defendants. )

No. 89-C-219-B ✓

ORDER

Now before the Court for consideration is Plaintiff's Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56. Plaintiff initiated this Declaratory Judgment action to have declared its rights and obligations under a homeowner's insurance policy issued to Defendant Pietila.

Plaintiff Shelter issued Homeowners Insurance Policy No. 35-71-001517126-0001 to David and Rebecca Pietila, effective from April 4, 1985 to April 4, 1986. Said policy contained the following language:

E. Personal Liability

We will pay all sums arising out of any one loss which an insured becomes legally obligated to pay as damages because of bodily injury or property damaged covered by this policy.

\* \* \*

Under Personal Liability and Medical Payments to Others, we do not cover

- (5) bodily injury or property damage expected or intended by an insured.

During the relevant time period, Defendant Harris was a 15 year old minor employed as a baby sitter for Pietila. On two occasions,

Pietila induced Harris to sit unclothed with him in his hot tub. Harris asserts that on both occasions Pietila committed a battery upon her by placing his hands on her breasts and vagina and on one occasion attempted to have intercourse with her. (Deposition of Shannon Harris, pp. 45-50 and 56-62). Defendant Pietila denies touching Harris in any manner at any time and that he never intended or expected to harm Harris in any manner. (Affidavit of David Pietila). Pietila was charged in Tulsa County District Court with the crimes of lewd molestation and second degree rape. Pietila pled *nolo contendere* and was found guilty of both counts. (Plaintiff's Exhibits 4 and 5). Defendant Harris filed suit against Pietila in Tulsa County District Court alleging two counts of assault and battery for the alleged acts of molestation.

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 (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, 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, the nonmoving party "must establish that there is a genuine issue of material facts...." The nonmoving party "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).

In response to the motion, Pietila argues he never intended or expected to cause injury to Harris; there is no evidence of Harris ever being sexually abused; and Harris was not forced to remove her clothes and was not threatened or received physical injury from any contact with Pietila. These arguments, however, go to the merits of Harris' assault and battery claims and do not affect whether Pietila's conduct was intentional. The language of the state court Petition states that Pietila intentionally and knowingly committed the various acts of assault and battery.

Pietila next asserts Plaintiff is obligated to defend him because no injury was intended or expected and that coverage must exist if an injury is unintended. (Pietila Brief, p. 5). Pietila's argument was recently rejected in Allstate Insurance Company v. Thomas, 684 F.Supp. 1056 (W.D. Okl. 1988). In Allstate, a homeowner's insurer sued for declaratory judgment that it was not obligated to defend or indemnify its insured in a personal injury action arising out of the insured's alleged sexual molestation of a child. After a review of current opinions around the country and the legislative history behind Tit. 21 Okl.St. §1123, the Court held that intent to harm would be inferred as a matter of law for the purpose of denying coverage under the policy's intentional acts

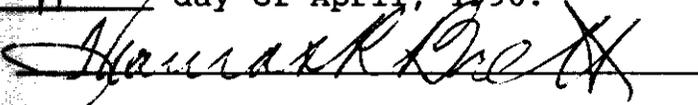
exclusion. Allstate, p. 1060. This holding is consistent with fourteen of the fifteen states that have addressed this issue.' See, Whitt v. DeLeu, 707 F.Supp. 1011, 1014 n.4 (W.D.Wis. 1989) for an extensive summary of these cases. After reviewing the cases, the Whitt court stated:

"These courts have found that the alleged sexual contact is so substantially certain to result in some injury, or so inherently injurious, 'that the act is considered a criminal offense for which public policy precludes a claim of unintended consequences, that is, a claim that no harm was intended to result.'"

Whitt at 1014-1015, quoting, Horace Mann Insurance Co. v. Leeber, 376 S.E.2d 581, 585 (W.Va. 1988). The Court finds the reasoning and conclusions in these cases to be persuasive. As the very nature of the Petition involves the issue of intent and injury can be inferred as a matter of law, the policy's "intentional acts" exclusion applies and Plaintiff is not obligated to defend or indemnify Defendant Pietila in the state court litigation.

For the reasons stated herein, Plaintiff's Motion for Summary Judgment is SUSTAINED and the case DISMISSED.

IT IS SO ORDERED, this 11<sup>th</sup> day of April, 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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'Although Florida is the only state not to reach the same conclusion, the Court in Allstate addressed the basis for Florida's holding and concluded that "Oklahoma would not accept Florida's distinction that harm may be inferred only where penetration or threats of violence accompany sexual assault on a child." 684 F.Supp. at 1059.

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

FREEDOM RENT-A-CAR SYSTEM, )  
INC., )

Plaintiff, )

vs. )

Civil Action No.:  
88-Cl512 C

ANTHONY L. TREMBLAY, a/k/a )  
TONY TREMBLAY, a/k/a TONY )  
TRIMBLY, a/k/a A. D. )  
TREMBLAY, a/k/a A. L. )  
TREMBLEY, an individual; )  
WILLIAM LANE, an individual; )  
ROY I. MATHERS, an individual; )  
ALT, INC., a California )  
corporation; PACIFIC FLEET )  
INTERNATIONAL, INC., a )  
California corporation, d/b/a )  
PACIFIC AUTO, d/b/a NORTHBAY )  
AUTO BROKERS, INC.; ELITE )  
AUTO RENTAL, form unknown; )  
FREEDOM AUTO REPAIRING, form )  
unknown; Does 1-25, inclusive, )

Defendants. )

FILED  
APR 11 1990  
U.S. District Court  
Northern District of Oklahoma

ORDER OF DISMISSAL WITHOUT PREJUDICE

NOW, on this 11<sup>th</sup> day of April, 1990, this matter comes on before the Court for consideration of Plaintiff's Application for Order of Dismissal Without Prejudice, and the Court, after having reviewed said Application and determining that there is no party to this action which can or would raise an objection thereto, it is

ORDERED AND DECREED that ~~this~~ action be and same is hereby  
dismissed without prejudice as to all parties.

  
H. Dale Cook  
United States District Judge

Submitted by:  
James R. Johnson  
BREWER, WORTEN, ROBINETT,  
JOHNSON, WORTEN & KING  
Attorneys for Plaintiff

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

FILED

APR 10 1990

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

NATIONAL CAR RENTAL SYSTEMS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 KIM SELLERS, JOHN ALLISON, and )  
 JENNIFER GLOVER, )  
 )  
 Defendants. )

No. 89-C-092-B /

J U D G M E N T

In accordance with the Court's Order filed this date sustaining Plaintiff's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Plaintiff, National Car Rental Systems, and against the Defendant, Johnny Glover as Guardian ad litem for Jennifer Glover. It is ADJUDGED that Plaintiff has no obligation or responsibility toward Jennifer Glover arising out of the car rental agreement executed between National Car Rental Systems and John Allison. Each party is to pay its respective costs and attorney's fees.

DATED this 10<sup>th</sup> day of April, 1990.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

**FILED**

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

APR 10 1990

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

NATIONAL CAR RENTAL SYSTEMS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 KIM SELLERS, JOHN ALLISON, and )  
 JENNIFER GLOVER, )  
 )  
 Defendants. )

No. 89-C-092-B ✓

ORDER

Currently before the Court is Plaintiff's Motion for Summary Judgment against Defendant Jennifer Glover pursuant to Fed.R.Civ.P. 56. The Court has previously granted Default Judgment against Defendants Sellers and Allison. Plaintiff initiated this Declaratory Judgment action to establish the rights and obligations arising out of a car rental insurance policy.

The undisputed facts establish National is a certified self-insured car rental company pursuant to Tit. 47 Okl.St.§8-101.<sup>1</sup> On August 11, 1988, Plaintiff rented a car to John Allison with Allison listed as the only authorized driver. Beginning at approximately 6:30 p.m. on August 15, 1988, Defendants began an evening of swimming at Allison's hotel, the Residence Inn, and drinking at the Camelot Inn. The Defendants would alternate between swimming and drinking at each hotel, each time driving the rental car between the two hotels. Kim Sellers, then age 17, was driving the car between the hotels when she "passed out" and

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<sup>1</sup>Defendant does not dispute Plaintiff's statement of facts.

wrecked the rented vehicle. Sellers was intoxicated at the time of the accident. Glover has filed an action in Tulsa County District Court against Sellers for damages allegedly received in the accident. Relevant terms of the rental agreement provide:

(2) Who May Drive the Vehicle - Authorized Driver

\* \* \*

(b) The Vehicle shall NOT be operated by anyone except me, and the following Additional Authorized Drivers who are capable and validly licensed drivers, 21 years of age or older (some locations may have higher or lower minimum age requirements) and have my prior permission to drive the Vehicle. In addition, an Additional Authorized Driver must be:

(1) a person who has signed the Rental document of this Agreement as an Additional Authorized Driver after approval by the Company;

\* \* \*

(5) Prohibited Uses of the Vehicle

\* \* \*

I agree that the Vehicle shall NOT be used by or for any of the following PROHIBITED USES:

(a) by an unauthorized driver;

(b) by any driver under the influence of intoxicants, drugs, or any other substance known to impair driving ability;

\* \* \*

(e) in any abusive or reckless manner;

\* \* \*

I UNDERSTAND THAT IF THE VEHICLE IS OBTAINED OR USED FOR ANY PROHIBITED USE OR IN VIOLATION OF THIS AGREEMENT, THEN THE [COLLISION DAMAGE WAIVER] OPTION SHALL BE VOID AND, WHERE PERMITTED BY LAW, THE LIABILITY AND COMPREHENSIVE PROTECTION, PAI, PEC, AND SLI INSURANCE SHALL BE VOID.

(9) Liability Insurance or Qualified Self-Insurance

I understand that coverage does not apply to:

- (c) Any liability of a driver who is not an Authorized Driver and any liability for an accident which occurs while Vehicle is obtained or used in violation of this Agreement. In the event that the liability coverage is extended by operation of law to anyone not permitted by this Agreement to drive the Vehicle, the limits of coverage shall be the minimum required by the Financial Responsibility law or other applicable statute of the State or other jurisdiction in which the accident occurred. ...

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 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Windon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). In Celotex, 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, the nonmoving party "must establish that there is a genuine issue of material facts...." The nonmoving party "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).

Plaintiff argues the National Car Rental Systems, Inc. qualified self-insurance plan is not obligated to pay for injuries sustained while the car is operated outside the scope of the rental agreement. Plaintiff asserts there is no coverage because Sellers was not an authorized driver and the vehicle was being operated in a prohibited manner. Defendant does not dispute that Sellers was not an authorized driver and was intoxicated at the time of the accident, but argues that said exclusions violate the public policy of the compulsory liability laws of Oklahoma. Defendant relies upon Young v. Mid-Continent Casualty Company, 743 P.2d 1084 (Okla. 1987) for her argument that coverage should extend to any person suffering a loss arising out of the ownership, maintenance, operation or use of a vehicle. Tit. 47 Okl.St. §7-600(1)(b). Tit. 47 Okl.St. §7-600(1)(c) limits the broad language of §7-600(1)(b) by allowing exclusions from coverage in accordance with existing laws.<sup>2</sup> Additionally, the broad liability provisions of §7-600 must be read in light of the more specific statute addressing insurance of owners of for-rent vehicles in Tit. 47 Okl.St. §8-101 *et seq.* §8-101 provides in part:

---

<sup>2</sup>The compulsory liability laws were substantially different at the time the Oklahoma Supreme Court announced its opinion in Young. The Court noted at p. 1086:

"Our consideration of legislative intent regarding public policy at the time of the incident in question is necessarily restricted to the legislation as it stood at that date. We express no view as to how the subsequent amendments to the statutes would have affected the outcome of this matter had such changes been in effect."

(b) Such owner shall submit to the Commissioner evidence [of financial responsibility] covering each motor vehicle so rented in the amounts as hereinafter stated and insuring every person operating such vehicle under a rental agreement or operating the vehicle with the express or implied permission of the owner against loss from the liability imposed by law upon such person arising out of the operation of said vehicle . . . (emphasis added)

\* \* \*

(d) Said policy or policies need not cover any liability incurred by the renter of any vehicle to any passenger in such vehicle.

\* \* \*

(f) Whenever the owner of a motor vehicle rents such vehicle without a driver to another, it shall be unlawful for the latter to permit any other person to operate such vehicle without the permission of the owner.

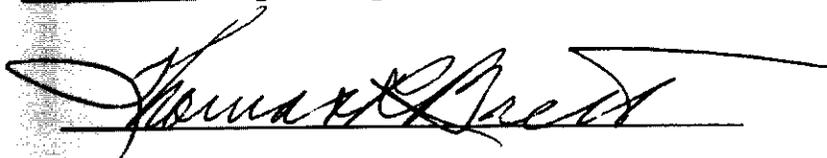
Under the language of §8-101(b) & (d), Plaintiff's liability would not extend to Defendant Glover because Sellers did not operate the vehicle with the owner's permission.<sup>3</sup> Defendant is asking this Court to ignore the plain language of §8-101 and impose liability upon the owner of a vehicle being operated without its permission. The Court concludes the statutory language of §8-101 reflects the public policy with regard to the liability of an owner of for-rent vehicles. Based upon that language, the Court concludes Plaintiff has no liability towards Glover because Sellers

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<sup>3</sup>Even if Seller were operating the vehicle with the owner's permission, Plaintiff may not necessarily be liable towards Glover as she was only a passenger. The Court need not address that here as Sellers was not an authorized driver.

was not operating the vehicle with the owner's permission. It is therefore Ordered that Plaintiff's Motion for Summary Judgment be SUSTAINED and the case DISMISSED.

IT IS SO ORDERED, this 10<sup>th</sup> day of April, 1990.

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

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

FILED

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

APR 10 1990

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

NORTHLAND INSURANCE COMPANY,  
  
Plaintiff,  
  
vs.  
  
ROBERT E. OSBURN, d/b/a OSBURN  
TRUCKING; JOSEPH OSBURN; and  
DON BENNETT,  
  
Defendants.

No. 88-C-1086-B

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law filed herein this date, declaratory judgment is hereby entered in favor of the Plaintiff, Northland Insurance Company, and against the Defendants, Robert E. Osburn, d/b/a Osburn Trucking, Joseph Osburn and Don Bennett. The Court has determined from the facts herein that no insurance coverage under Northland Insurance Company policy No. T043015 to Robert E. Osburn, d/b/a Osburn Trucking is extended to any of the Defendants herein as a result of the accident of September 7, 1987, near Boerne, Texas, in which the Defendant, Don Bennett, allegedly experienced injury. Costs herein are assessed against the Defendants, if properly applied for in accordance with Local Rule 6. The parties are to pay their own respective attorneys fees.

DATED this 10<sup>th</sup> day of Apr., 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

APR 10 1990

CLERK  
U.S. DISTRICT COURT

JOHN REIDEL, et al.,

Plaintiffs,

v.

SAMUEL K. SKINNER, in his official  
capacity as Secretary of the United  
States Department of Transportation,  
et al.,

Defendants.

Case No. 89-C-660-B

**ORDER**

Having reviewed the plaintiffs' confession of defendant John Kilpatrick's Motion for Summary Judgment, the Court finds and it is hereby ordered that the defendant John Kilpatrick's Motion for Summary Judgment is sustained and that the defendant John Kilpatrick is granted judgment on the plaintiffs' first and sixth claims for relief, this 10<sup>th</sup> day of Apr. March, 1990.

  
UNITED STATES DISTRICT JUDGE

APR 9 1990

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

UNITED STATES OF AMERICA,  
Plaintiff,

Case No. 90-C-0010E

v.

CONO-MAC, Inc., a corporation  
d/b/a J AND K INDUSTRIES,  
and CLIFFORD R. MACKEY,  
an individual,

Defendants.

CONSENT DECREE OF PERMANENT INJUNCTION

Plaintiff, the United States of America, having filed a complaint for injunction on January 5, 1990, against Cono-Mac, Inc., a corporation doing business as J and K Industries, and Clifford R. Mackey, an individual; and defendants having appeared and having consented to entry of this decree without contest and before any testimony has been taken; and the United States of America having consented to this decree:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

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

II. The complaint for injunction states a claim for relief against the defendants under the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301 et seq.

III. The defendants, Cono-Mac, Inc., and Clifford R. Mackey, president of Cono-Mac, Inc. and of J and K Industries, and each of their officers, directors, agents, servants,

*X. R. ARM  
SKB  
NNB*

representatives, employees, distributors, attorneys, successors and assigns, and any and all persons in active concert or participation with them, are hereby enjoined from directly or indirectly doing or causing to be done any of the following acts:

A. Importing, manufacturing, processing, packing, labeling, promoting, advertising, distributing, or selling the "Snake Doctor," or any other item that is a "device" within the meaning of 21 U.S.C. § 321(h) and that is intended for human use, unless and until:

1. The Food and Drug Administration (FDA) has received a premarket notification as specified at 21 U.S.C. § 360(k), and has determined that the device is substantially equivalent to a device introduced into interstate commerce before May 28, 1976, which is not required to be approved for marketing pursuant to a regulation published under the authority of 21 U.S.C. § 360e(b); or

2. An application for premarket approval, filed pursuant to 21 U.S.C. § 360e, for such device is approved by FDA and is in effect; or

3. An FDA approved investigational device exemption, filed pursuant to 21 U.S.C. § 360j(g) and 21 C.F.R. Part 812, for such device is in effect; or

4. FDA grants a petition under 21 U.S.C. § 360c(f)(2) to reclassify such device from Class III to Class I or Class II; or

5. FDA has determined that it appears to be appropriate to apply the requirements of 21 U.S.C. § 360e(f), has approved a product development protocol for such device, and has declared that the requirements of the protocol have been completed, pursuant to 21 U.S.C. § 360e(f).

B. Importing, manufacturing, processing, packing, labeling, promoting, advertising, distributing or selling the "Snake Doctor," or any other item that is a "device" within the meaning of 21 U.S.C. § 321(h) and that is intended for animal use, unless and until valid scientific evidence demonstrates that the device is safe and effective for its intended use, defendants submit such evidence to FDA, and defendants receive from FDA written authorization to engage in such activities.

C. Representing or suggesting that the "Snake Doctor" or any other electric shock device is a safe and effective treatment for poisonous or nonpoisonous bites in humans or in animals unless and until valid scientific evidence demonstrates that the device is safe and effective for its intended use, defendants submit such evidence to FDA, and defendants receive from FDA written authorization to make such representations or suggestions; provided that nothing in this paragraph shall alter the requirements of paragraph III(A) with respect to the marketing of devices intended for human use.

IV. A request for the authorization described in paragraphs III(A) and III(B) of this Decree must be made in writing to the

CRM  
SKB  
NNB

Director, FDA Dallas District Office, 3032 Bryan Street, Dallas, Texas 75204.

V. FDA investigators may make inspections of defendants' facility, and all equipment, materials and products therein, to take photographs as necessary, and to examine and to copy all records relating to the receipt, processing, packing, labeling, holding, and distribution of the "Snake Doctor," or any other item that is a "device" within the meaning of 21 U.S.C. § 321(h), in order to assure continuing compliance with the terms of this Decree. Such inspections are authorized upon presentation of a copy of this Decree and appropriate credentials. Such inspection authority granted by this Decree exists apart from, and in addition to, the authority to make inspections under 21 U.S.C. § 374.

VI. The defendants shall reimburse FDA for the costs of any FDA inspections necessary to evaluate the defendants' compliance with this Decree at the rate of \$40.00 per hour or a fraction thereof per representative; 22.5 cents per mile for travel expenses; and, where necessary, \$73.00 per day for subsistence expenses.

VII. Within ten (10) days of the date of entry of this Decree, the defendants shall serve a copy thereof upon each of their officers, directors, agents, servants, representatives, employees, distributors, attorneys, successors and assigns, and upon all persons in active concert or participation with them. Within thirty (30) days of the date of entry of this Decree,

defendants shall provide to the Director, FDA Dallas District Office, 3032 Bryan Street, Dallas, Texas 75204, and to plaintiff's attorneys, an affidavit stating the fact and manner of their compliance with this paragraph and identifying the names, addresses and positions of all persons upon whom this Decree has been served.

VIII. The defendants shall notify the Director, FDA Dallas District Office, 3032 Bryan Street, Dallas, Texas 75204, at least ten (10) days before any change in ownership or character of their business, such as reorganization, dissolution, assignment, sale, or any other change in the structure of Cono-Mac, Inc., or J and K Industries, or the sale or assignment of any business assets, such as buildings, equipment, or inventory. The defendants shall serve a copy of this Decree on any potential successor or assign at least five (5) days prior to the legal transfer or alteration of the corporate entity or assets, and shall furnish to the FDA Dallas District Office and to plaintiff's attorneys an affidavit setting forth compliance with this provision within fifteen (15) days of such service.

IX. This Court retains jurisdiction over this action for the purpose of enforcing and modifying this Decree and for the purpose of granting such additional relief as may be hereafter necessary or appropriate.

X. The parties shall bear their own costs and attorneys' fees.

SO ORDERED:

Dated this 5<sup>th</sup> day of April, 1990.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

We hereby consent to the entry of the foregoing Decree.

FOR THE DEFENDANTS:

Clifford R. Mackey, President  
Cono-Mac, Inc.

Clifford R. Mackey  
Clifford R. Mackey

Steven K. Balman  
Steven K. Balman, OBA #492  
Attorney for Defendants  
907 Kennedy Building  
321 South Boston Avenue  
Tulsa, Oklahoma 74103  
(918) 582-4930

FOR THE PLAINTIFF:

STUART M. GERSON  
Assistant Attorney General

TONY M. GRAHAM  
United States Attorney  
Nancy Nessbitt Blevins  
NANCY NESSBITT BLEVINS  
Assistant United States  
Attorney  
3600 United States Courthouse  
333 West Fourth Street  
Tulsa, Oklahoma 74103  
(918) 581-7463

Jeffrey B. Chasnow / NNB  
JEFFREY B. CHASNOW  
Attorney  
Office of Consumer Litigation  
U.S. Department of Justice  
P.O. Box 386  
Washington, D.C. 20044  
(202) 724-6761

Entered

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

GARY L. RICHARDSON & ASSOCIATES, )  
)  
Plaintiff, )  
)  
v. )  
)  
WESLEY R. MCKINNEY, )  
)  
Defendant. )

88-C-1588-C

FILED

APR 9 1990

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

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate filed March 14, 1990 in which the Magistrate recommended that the Plaintiff's Motion to Remand be **granted** and that Defendant's Amended Petition to Remove and Request for Change of Venue be denied on the grounds that lack of diversity leaves this Court without subject matter jurisdiction over the suit.

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

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

It is, therefore, Ordered that **the Plaintiff's Motion to Remand** is granted and that Defendant's Amended Petition to Remove and Request for Change of Venue is denied on the grounds that lack of diversity **leaves this** Court without subject matter jurisdiction over the suit.

Dated this 4<sup>th</sup> day of April, 1990.



H. DALE COOK, CHIEF JUDGE  
UNITED STATES DISTRICT COURT

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

STATE OF OKLAHOMA, ex rel,  
OKLAHOMA TAX COMMISSION

Plaintiff,

vs.

WYANDOTTE TRIBE OF OKLAHOMA,

Defendant.

No. 87-C-9-E

87-C-63-E

Consol.

**FILED**

APR 9 1990

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

**ORDER**

This matter is before the court on the mandate of the United States Court of Appeals for the Tenth Circuit remanding to this court the issue of sovereign immunity.<sup>1</sup> The Tribe moves to dismiss the State's lawsuit on the grounds of sovereign immunity. The State moves to remand the case on the authority of Oklahoma Tax Commission v. Graham, \_\_\_ U.S. \_\_\_, 109 S.Ct. 1519 (1989).

The State asks the court to revisit the issue of removal in this case. This court previously denied the State's motion to remand.<sup>2</sup> The State presented the same argument it now urges, that its action against the Tribe has been removed on the basis of a tribal immunity defense which presents a federal question only when

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<sup>1</sup>Order and Judgment of April 5, 1989. The Tenth Circuit reversed this court's order denying the motion of the Wyandotte Tribe of Oklahoma (Tribe) to voluntarily dismiss its suit for declaratory and injunctive relief. This reversal dismisses the Tribe's lawsuit and consequently the issue of sovereign immunity must be addressed.

<sup>2</sup>Order of March 31, 1987 in Case No. 87-C-63-E, consolidated with this case pursuant to the Order of the same date.

Congress expressly provides and, Congress has not expressly provided for federal court adjudication of tribal immunities.

The Tribe has maintained consistently throughout this lawsuit that although the above is true, the sovereign immunity defense is not the basis for removal in this case. The Tribe asserts that this court has original jurisdiction because the right to relief under state law--to tax Indian sales of cigarettes on Indian land--requires resolution of a substantial question of federal law in dispute between the parties. The Tribe argues that a federal court has original jurisdiction to determine whether Congress has provided for state taxation of Indians in these circumstances. The Tribe relies primarily upon Franchise Tax Board v. Laborers Vacation Trust, 463 U.S. 1, 103 S.Ct. 2841 (1983) for the proposition that a case may still arise under the laws of the United States if a right to relief under state law requires resolution of a substantial question of federal law in dispute between the parties. The Tribe relied on the authority of Franchise Tax Board in its previous opposition to remand. 463 U.S. at \_\_\_\_, 103 S.Ct. at 2848. This court also relied on that authority:

As the Court stated in Franchise Tax Board with regard to the principles for determining when a federal question is presented in a removal action, 'simply to state these principles is not to apply them to the case at hand.' Although the State's petition would at first blush appear to rely purely on state law, ultimately the State must prove that it has the power to tax the Wyandottes in order to be able to recover on its claims. 'Although the Wyandottes certainly argue federal law in defense, the right to relief of the State under state law requires resolution of a substantial question of federal law in dispute between the parties because the State must, as

an element of its claim, prove that it has the power to apply its laws to the Wyandottes. Therefore the court concludes that a federal question is presented by the State's petition, and the motion to remand should be denied.

(Order of March 31, 1987, at p. 3).<sup>3</sup>

Oklahoma Tax Commission v. Graham appears to overrule this court's earlier reasoning that the taxation issue presents a basis for removal. The Court did not refer to Franchise Tax Board but, did state:

In Caterpillar, [Caterpillar, Inc. v. Williams, 482 U.S. 386 (1987)], we ruled that application of the well-pleaded complaint rule defeated federal question jurisdiction, and therefore removability, in a case in which employees sued on personal state law employment contracts. We refused to characterize these state law claims as arising under federal law even though an interpretation of the collective bargaining agreement might ultimately provide the employer a complete defense to the individual claims, and even though employee claims on the collective bargaining agreement would have been the subject of original federal jurisdiction. Caterpillar, supra, at 396-398. The state law tax claims in the present case must be analyzed in the same manner. Tribal immunity may provide a federal defense to Oklahoma's claims. See Puyallup Tribe, Inc. v. Washington Game Dept., 433 U.S. 165 (1977). But it has long been settled that the existence of a federal

---

<sup>3</sup>Although the court did not specifically so state, it believed that the federal questions implicated by the case included at least the following: (1) the Constitution, Article I, §8 which gives the federal government, not the states, the power to regulate commerce with the Indian tribes see, Washington v. confederated Tribes, 447 U.S. 134, 100 S.Ct. 2069 (1980) (the power to tax affects the regulation of commerce with the tribes); (2) treaty rights, including the Treaty with the Wyandotte, et. al., of 1795, specifically Article VIII which states that Indians may not be imposed on their trade; and (3) section 109 of the Buck Act, 4 U.S.C. §104 et.seq., which exempts Indians from state sales or use taxes, see, Warren Trading Post Co. v. Arizona State Tax Comm'n, 85 S.Ct. 1242, 1245-1246, 380 U.S. 685, 690-691 (1965) (The Buck Act, in which Congress permits states to levy sales or use taxes within certain federal areas, does not apply to Indian reservations.")

immunity to the claims asserted does not convert a suit otherwise arising under state law into one which, in the statutory sense, arises under federal law. Gully v. First National Bank, 299 U.S. 109 (1936). The possible existence of a tribal immunity defense, then, did not convert Oklahoma tax claims into federal questions, and there was no independent basis for original federal jurisdiction to support removal.

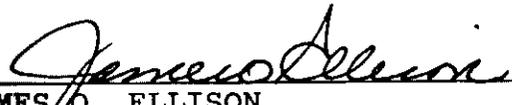
\_\_\_\_ U.S. at \_\_\_\_\_, 109 S.Ct. at 1521. Therein lies the basis upon which the State reurges its motion to remand.

Despite the authority of Graham, this court must address the case in its current procedural context. Graham was decided before the Tenth Circuit issued its mandate directing this court to address the sovereign immunity issue and, this court must assume that it is to comply with these directions despite Graham. Further, if sovereign immunity operates as a complete defense to the State's action, then neither this court nor the state court has jurisdiction to hear this suit and remand would be futile. Neither a federal nor a state court has jurisdiction over a suit against a tribe absent either "an effective waiver or consent" by the tribe, Puyallup Tribe, Inc. v. Washington Game Department, 433 U.S. 165, 172, 97 S.Ct. 2616, 2621 (1977), or an "unequivocal expression of contrary legislative intent" to waive sovereign immunity. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 59, 98 S.Ct. 1670, 1677 (1978). While tribal sovereign immunity is not absolute, waivers of sovereign immunity are strictly construed. Seneca-Cayuga Tribe of Oklahoma v. State, 874 F.2d 709, 715 (10th Cir. 1989). It is, therefore, appropriate to address the sovereign immunity issue.

The court previously has held that the convenience store over which the state seeks to impose cigarette excise taxes is Indian Country within the meaning of 18 U.S.C. §1151(a). Because the convenience store is located in Indian Country, the Tribe possesses sovereign powers with respect to the land and the store. The Citizen Band Potawatomi Indian Tribe of Oklahoma v. The Oklahoma Tax Commission, 888 F.2d 1303, 1306 (10th Cir. 1989). The State does not contend that the Tribe has in any way given its consent to suit against it, nor does it argue that Congress has abrogated the Tribe's sovereign immunity.<sup>4</sup> Neither this court nor the state courts have jurisdiction to hear the State's suit in the face of the Tribe's sovereign immunity. This case must, therefore, be dismissed.

IT IS THEREFORE ORDERED that this action is dismissed.

ORDERED this 9<sup>th</sup> day of April, 1990.

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

---

<sup>4</sup>In The Citizen Band Potawatomi, the Tenth Circuit also noted that Oklahoma has no authority to tax the transactions of a convenience store located in Indian Country unless Oklahoma has received an independent jurisdictional grant of authority from Congress, citing to Bryan v. Itasca County, 426 U.S. 373, 376-377, 98 S.Ct. 2101, 2105-2106 (1976); Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 463, 475-476, 96 S.Ct. 1634, 1645-1646 (1976); McClanahan v. Arizona Tax Comm'n, 411 U.S. 164, 175-177, 93 S.Ct. 1257, 1265-1267 (1973); United States v. Barquin, 799 F.2d 619, 621 (10th Cir. 1986). 888 F.2d 1306-1307.

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

*TT + USA only*

**FILED**

APR -9 1990

BILL CRUIKSHANK,  
Plaintiff and  
Counterclaim defendant, )

v. )

UNITED STATES OF AMERICA,  
Defendant and  
Counterclaimant, )

v. )

GARY A. JONES, VERNON D. MITCHAEAL,  
and WILLIAM E. HOWELL, )  
Counterclaim defendants. )

CIVIL NO. 88-C-585-C

CLERK U.S. DISTRICT COURT

AGREED JUDGMENT

Pursuant to an agreement between plaintiff, Bill Cruishank,  
and defendant, United States of America, it is hereby

ORDERED, ADJUDGED, and DECREED that Bill Cruikshank is  
indebted to the United States of America in the sum of \$132,653.16,  
with statutory interest thereon from February 10, 1986.

Signed this 9 day of April, 1990.

*[Signature]*  
UNITED STATES DISTRICT JUDGE

AGREED:

*[Signature]*  
JOSEPH G. SHANNONHOUSE, IV  
Andrews Davis Legg Bixler Milsten  
Murrah  
500 West Main  
Oklahoma City, Oklahoma 73102

ATTORNEY FOR BILL CRUIKSHANK

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

ATTORNEY FOR UNITED STATES

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

APR 9 1990 *DA*

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

THE ESTATE OF FRANKIE ANN PETTUS )  
DODSON, Deceased, by DANIEL ROBERT )  
DICKSON DODSON, Personal Represen- )  
tative, )

Plaintiff, )

vs. )

COMMERCIAL UNION INSURANCE COMPANY, )

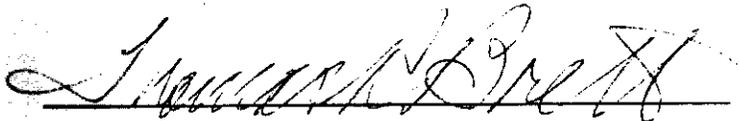
Defendant. )

No. 89-C-586-B ✓

J U D G M E N T

In keeping with this Court's Order entered this date sustaining the Defendant's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendant, Commercial Union Insurance Company, and against the Plaintiff, The Estate of Frankie Ann Dodson, Deceased, by Daniel Robert Dickson Dodson, personal representative. Plaintiff shall take nothing of his claim. Costs are assessed against the Plaintiff and each party is to pay its respective attorney's fees.

DATED, this 9<sup>th</sup> day of April, 1990.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

APR 9 1990

THE ESTATE OF FRANKIE ANN PETTUS )  
DODSON, Deceased, by DANIEL ROBERT )  
DICKSON DODSON, Personal Represen- )  
tative, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
COMMERCIAL UNION INSURANCE COMPANY, )  
 )  
Defendant. )

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

No. 89-C-586-B

ORDER

Currently before the Court is Defendant Commercial Union's Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56. This litigation was initiated in Osage County District Court on June 20, 1989, to recover under the terms of a fire insurance policy, and was removed to this Court on July 14, 1989, based upon diversity jurisdiction.

Plaintiff's decedent, Frankie Ann Pettus Dodson, was a restricted Osage Indian whose home was built on restricted Indian land. The home was insured by Defendant under policy CR-SC48310. The insurance policy declaration lists the Farmers Home Administration as mortgagee. (Exhibit C to Defendant's Brief; Exhibit D to Plaintiff's Response Brief). On August 24, 1986, a fire destroyed the dwelling and its contents, an uncontroverted fact. Paragraph 8 of the policy provides:

8. Suit Against Us. No action shall be brought unless there has been compliance with the policy provisions and the action is started within one year after the occurrence causing

loss or damage.

This contractual provision is consistent with the standard policy provisions required pursuant to Title 36 Okla. Stat. § 4803.

Relying upon the insurance contract and 36 O.S. § 4803, Defendant asserts it is contractually and statutorily entitled to summary judgment because the suit was not filed within one year of the loss. Plaintiff asserts his decedent was under a legal disability by virtue of being a Restricted Osage Indian and the applicable statute of limitations is six years and ninety days because the state's statute of limitations does not apply to restricted Indians. The Court must therefore address what statute of limitations applies and whether an Indian is under a "legal disability" if he or she has not received a Certificate of Competency.

Plaintiff argues state law does not apply to restricted Indian lands and State courts do not have jurisdiction over the property unless specifically granted or recognized. Plaintiff's argument is premised upon the suit affecting title to real property held in trust by the United States for the benefit of a restricted Osage Indian. This suit, however, does not involve title to or alienation of restricted real property.<sup>1</sup> Although Plaintiff initiated this lawsuit in state court to recover for a breach of contract, he asserts he is not bound by the limitation in the

---

<sup>1</sup>Plaintiff's Response Brief states at p. 12: "This action is not one concerning the title to Osage Indian land. However, it is one by the representative of a restricted Osage Indian concerning events which occurred on restricted Osage property."

contract requiring suit be brought within one year from the date of loss. Where an action arises out of state law, Plaintiff is bound by the same laws relating to the prosecution of suits that govern any citizen of the state, including the statute of limitations. Plaintiff cannot invoke a remedy given by a statute without being bound by the conditions upon which it is given. Seneca Nation v. Christy, 162 U.S. 283, 288 (1904); Am.Jur. 2d Indians, §20. Because Plaintiff is litigating the breach of a contract under state law, he must also abide by the applicable contractual and statutory statute of limitations.

Plaintiff also asserts the applicable statute of limitations is six years and ninety days because the United States Government could have brought the suit on Plaintiff's behalf. 28 U.S.C. § 2415(A); Captain Grande Band of Mis. Indians, v. Helix Irrigation Dist., 514 F.2d 465 (9th Cir. 1975); *cert den.*, 423 U.S. 874 (1975). The Ninth Circuit held in Captain Grande that Indians may rely upon §2415's six year statute of limitations and sue on their own behalf, with respect to property interests held in trust for them by the United States, even though the United States could have sued independently. *Id.* at 470. The Captain Grande decision does not support Plaintiff's argument. First, the Captain Grande decision rejected the argument that state statute of limitations should not apply to Indians.

"[W]e wish to indicate our approval of the trial court's express refusal to accept one of appellee's contentions viz., that the legislative history of 28 U.S.C. §1362 somehow should be read into §2415 so as to exempt the

Indians from the state statutes of limitations." (footnotes omitted)

Captain Grande, pp. 471-472. Additionally, there is no evidence the house, as opposed to the land upon which it was built, was held by the United States in trust for Frankie Dodson.<sup>2</sup> The insurance policy declaration lists the mortgagee as the Farmers Home Administration. (Exhibit C to Defendant's Brief; Exhibit D to Plaintiff's Response Brief). In United States v. Republic Ins. Co., 775 F.2d 156 (6th Cir. 1985), the Sixth Circuit held that the Veterans Administration could not rely upon §2415's six year statute of limitations on a loan secured by deed of trust and guaranteed and insured by the Veterans Administration where the state imposed a one year statute of limitations for recovery under a fire insurance contract. In rejecting the six year statute of limitations, the Court concluded "there is no significant threat to federal interest posed by the interpretation of insurance contracts between private parties pursuant to state law." Id. at 159; Industrial Indemnity Insurance Co. v. United States, 757 F.2d 982, 985 (9th Cir. 1985). The Court concludes Plaintiff is not entitled to a six year statute of limitation because the lawsuit does not affect title to property held in trust for the benefit of Plaintiff's decedent and there is no strong federal policy requiring the Court to overlook the statutory and contractual one year statute of limitation.

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<sup>2</sup>A mortgage on a home on restricted property must be approved by the Department of the Interior because a mortgage constitutes an encumbrance upon the title to the property.

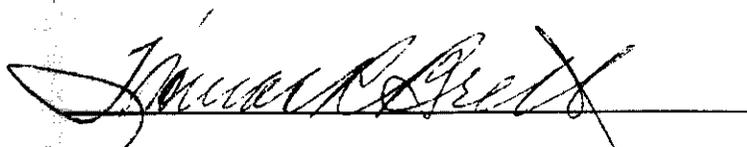
Plaintiff finally argues the statute of limitations was tolled because his decedent was under a legal disability and did not begin to run until that disability was removed at her death. Plaintiff asserts that Frankie Dodson was under a legal disability and could not have brought the suit because she had not been given a Certificate of Competency. A Certificate of Competency does not affect a person's ability to enter into contracts, but only removes any restrictions upon the alienation or transfer of restricted Indian land. F. Cohen, Handbook of Federal Indian Law, p. 789 n.181 (1982). However, as Plaintiff notes, this action does not concern title to Osage Indian land, only events occurring on the land. Absent any statutory or judicial authority, the Court is not ready to construe the term "legal disability" to include a person who does not have a Certificate of Competency.

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 (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, 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, the nonmoving party "must establish that there is a genuine issue of material facts...." The nonmoving party "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). For the reasons stated herein, the Court concludes that Plaintiff's suit was not brought within the statutory or contractual limitation period and that Defendant's Motion for Summary Judgment should be SUSTAINED and the case dismissed.

IT IS SO ORDERED, this 9<sup>th</sup> day of April, 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

MCF:lc  
4/5/90

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

ST. PAUL FIRE & MARINE  
INSURANCE COMPANY,  
  
Plaintiff,

vs.

No. 90-C-159B

J.W. MORGAN, INC., d/b/a  
CROSTOWN DISCOUNT FOODS;  
GREGORY M. WHITE; STACIE LYNNE  
SANDERS, by and through her  
parents and guardians,  
JAMES FRANKLIN SANDERS and  
JEANNE MARIE SANDERS;  
FRED C. LATHAM and  
CROSTOWN MARKET, INC.,  
  
Defendants.

**FILED**

APR 9 1990

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

*Notice of* DISMISSAL WITHOUT PREJUDICE

Comes now the plaintiff, The St. Paul Fire & Marine Insurance Company, and pursuant to the provisions of Rule 41 of the Federal Rules of Civil Procedure, dismisses the above captioned action for declaratory relief without prejudice to future refileing. Neither answer nor summary judgment has been filed by any defendant.

*Michael C. Felty*  
Larry D. Ottaway/Michael C. Felty

FOLIART, HUFF, OTTAWAY & CALDWELL  
20th Floor  
First National Center  
Oklahoma City, OK 73102  
Telephone: (405) 232-4633

ATTORNEYS FOR PLAINTIFF

FILED

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

APR 9 1990

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

UNITED STATES OF AMERICA, )  
Plaintiff, )  
vs. )  
ROBERT D. MOSS )  
a/k/a ROBERT DALE MOSS, SR. )  
Defendant. )

CIVIL ACTION NO: 90-C-168-E

AGREED JUDGMENT

This matter comes on for consideration this 5<sup>th</sup> day of April, 1990, the plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, and the Defendant, Robert D. Moss, appearing pro se.

The Court, being fully advised and having examined the court file finds that the Defendant, Robert D. Moss, acknowledges receipt of Summons and Complaint and agrees that he is indebted to the plaintiff in the amount alleged in the Complaint and that judgment may accordingly be entered against him in the principal amount of \$5,219.76 plus accrued interest of \$211.67 as of December 31, 1989, plus interest thereafter at the rate of 4.00 percent per annum until judgment, plus interest thereafter at the legal rate until paid, plus the costs of this action.

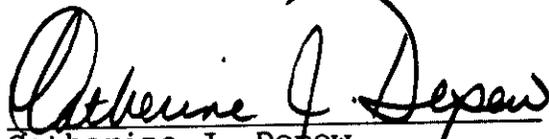
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the plaintiff have and recover judgment against the Defendant, Robert D. Moss, in the principal amount of \$5,219.76, plus accrued interest of \$211.67 as of December 31, 1989, plus interest thereafter at the rate of 4.00 percent per annum until judgment, plus interest thereafter at the current legal rate of 8.36 percent per annum until paid, plus the costs of this action.

S/ JAMES O. ELLISON

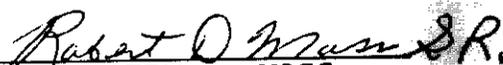
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA

TONY M. GRAHAM  
United States Attorney



Catherine J. Depew  
Assistant U.S. Attorney

  
Defendant, ROBERT D. MOSS

mlc

*Entered*

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

**FILED**

**APR 9 1990**

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

UNITED ENTERTAINMENT, INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MEINHARD-COMMERCIAL WESTERN, )  
INC., a corporation, )  
 )  
Defendant. )

No. 88-C-502-C

(Consolidated With)

THE CIT GROUP/FACTORING )  
MEINHARD-COMMERCIAL WESTERN, )  
INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BILL BLAIR, )  
 )  
Defendant. )

No. 88-C-1655-C

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

This matter came on for nonjury trial on October 10, 1989, solely on the issue of damages suffered by Meinhard-Commercial Western, Inc., a/k/a The CIT Group/Factoring Meinhard-Commercial Western, Inc., (CIT) from the conversion committed by United Entertainment (United) and Bill Blair (Blair). All other issues were resolved in this Court's Order filed October 5, 1989. In accordance with Rule 52 F.R.Cv.P., the Court now enters its Findings of Fact and Conclusions of Law.

*95/7*

## FINDINGS OF FACT

1. On December 30, 1986, United, by its President, Blair, entered into a Factoring Agreement with CIT wherein United expressly represented that

If any checks, drafts, notes, acceptances or other money instruments or cash in payment of any of the accounts assigned to us [CIT] hereunder should come to you [United], they shall be received in trust by you [United] as our [CIT] property, and shall be turned over promptly to us [CIT], with proper endorsements.

This same agreement further provided that

Termination of this Agreement will not affect any of your [United] obligations with respect to accounts purchased by us [CIT], and pending final accounting we [CIT] may withhold your [United] balance as a reserve which at our [CIT] option we [CIT] may release to you [United] in exchange for a written indemnity satisfactory to us [CIT].

(Defendant's Exhibit 1).

2. At the same time as the execution of the Factoring Agreement referred to in the foregoing paragraph, United, by its President Blair, executed an amendment to the Agreement entitled Advances under Factoring Agreement, by which amendment to the Factoring Agreement CIT agreed, in its sole discretion, to advance certain sums of money to United on such of the accounts receivable of United as were acceptable to CIT. Such advances which were made by CIT were to be treated, in effect, as a loan to United, to be repaid out of the payments of the accounts receivable by the various account debtors; provided, however, that if the various account debtors failed to pay any and all amounts due, then United remained ultimately liable upon the amounts advanced. (Defendant's Exhibit 1-A).

3. Under the Advances under Factoring Agreement amendment to the Factoring Agreement, any and all payments sent by an account

debtor of United to CIT would first be credited to any outstanding loan balance and only when the loan balance was completely satisfied, would the balance of the account debtor's payment, if any, be paid over to United.

4. In addition to the specific warranties and representations referred to in Finding of Fact No. 1, above, Blair, as President of United, expressly acknowledged that in the event that any account debtor checks were mistakenly sent to United, United would endorse the checks and forward them directly to CIT with a proper endorsement showing that payment is to be made to CIT. (Defendant's Exhibit 5).

5. On various occasions, including January 21, 1987, November 20, 1987, and May 19, 1988, Blair, as President of United, corresponded directly with all of the customers of United and advised those customers that checks for payment of United invoices were to be mailed directly to CIT rather than to United. (Defendant's Exhibits 9, 19, and 27).

6. At all times during the months of April, May, and June, 1988, the loan balance under the Advances under Factoring Agreement amendment to the Factoring Agreement, owing by United to CIT exceeded the sum of \$250,000. Consequently, had CIT received checks from account debtors aggregating up to and including \$250,000, all of those checks would have been credited to the account of CIT and would have reduced, dollar for dollar, the loan balance under the Advances under Factoring Agreement amendment to the Factoring Agreement.

7. On each of the dates indicated below, at the personal direction of Blair, the listed checks, which represented payments by account debtors for accounts factored to CIT and for which there were outstanding amounts due which would have reduced the loan balance of United with CIT on the Advances under Factoring Agreement amendment to the Factoring Agreement, checks were cashed and wrongfully deposited to the bank account of United:

	<u>Account Debtor</u>	<u>Check Cashed Date</u>	<u>Amount of Check</u>
a.	Metro Video Dist., Inc.	April 7, 1988	\$ 19,707.47
b.	Ingram Distribution Group, Inc.	May 9, 1988	\$ 12,087.01
c.	Ingram Distribution Group, Inc.	May 12, 1988	\$104,633.74
d.	Waldenbooks	May 12, 1988	\$ 13,664.09
e.	The Stars and Stripes Fund	May 12, 1988	\$ 15,731.63
f.	Home Video Distributors, Inc.	May 19, 1988	\$ 6,962.14
g.	Waldenbooks	May 24, 1988	\$ 5,036.10
h.	National Catholic Reporter Publishing Company	June 1, 1988	\$ 1,857.95
i.	Wax Works, Inc.	June 8, 198	<u>\$ 10,425.10</u>
		TOTAL	\$190,105.16

8. The cashing of the foregoing checks by United and the depositing of the proceeds of the checks to the bank account of United, done and mandated at the direction of Blair, resulted in the improper conversion by United and Blair, and each of them of \$190,105.16 of funds properly payable to CIT.

9. Blair claimed that there existed an agreement between the parties to the effect that CIT would make advances on invoices factored to CIT by United up to a ratio of 50% of the then existing loan balance to the collateral balance as reflected on the account current reports generated monthly by CIT. Blair testified that during April, May, and June of 1988 he was having on-going disputes and disagreements with CIT, had ill feelings toward CIT, and believed that CIT was not advancing on accounts receivable up to the 50% allegedly agreed upon ratio. Consequently, Blair, without advising CIT or obtaining its independent agreement, claimed that he intended to "self-fund" on the outstanding accounts receivable in order to reach the 50% loan balance to collateral balance ratio. Despite this claim of Blair, the checks referred to in the foregoing paragraph 7 a-e were all cashed on dates when the loan balance to collateral balance ratio exceeded 50% so that, even under Blair's purported agreement with CIT, no additional funds would have been advanced by CIT.

10. With respect to the checks indicated in paragraph 7, f-i, those checks were cashed by Blair after he had specifically advised all of his customers, on May 19, 1988, that all of their checks should be sent to CIT and not to United and had further, by advising CIT that all customers had so been advised, impliedly represented that any checks received by United through and including June 9, 1988, would be immediately forwarded to CIT for endorsement and application to the outstanding loan balance.

11. Under the business relationship which existed between United and CIT for approximately 18 months during 1987 and 1988, Blair both personally and through his employees, directly contacted, by telephone and telefax, CIT on a very frequent basis to discuss any and all of the matters regarding the business relationship between United and CIT. Blair acknowledged that on any given day he could, if he so chose, contact CIT to determine the existing loan balance to collateral balance ratio.

12. Despite the fact that Blair could have contacted CIT to determine the loan balance to collateral balance ratio, he never did so on any of the dates when the checks referred to in paragraph 7, above, were wrongfully cashed and deposited to the account of United.

13. Although Blair claimed that he was cashing the checks under a belief that he was entitled to "self-fund" because the loan balance to collateral balance ratio was less than 50%, he could have, by telephoning CIT on the dates that the checks were cashed, immediately determined that the loan balance to collateral balance ratio exceeded 50%, at least on the dates of the cashing of checks listed in paragraph 7 a-e, inclusive.

14. With respect to the checks listed in paragraph 7 f-i, inclusive, United and Blair had, by their conduct, both expressly and impliedly warranted that the checks of those account debtors, when received by United, would have been forwarded to CIT for endorsement to the CIT loan account. These warranties and representations were breached by Blair and United.

15. While Blair claims that the accounts were "charged-back" to United, all of the "chargebacks" occurred after the conversion of the check proceeds referred to in paragraph 7 and cannot, therefore, in any way affect or mitigate the actual damages for conversion.

#### CONCLUSIONS OF LAW

For the reasons more fully enumerated in the Findings of Fact, above, as well as those addressed in the Court's Order of October 5, 1989, granting summary judgment in favor of CIT on its conversion claims against United and Blair, and each of them, the Court concludes that United and Blair, and each of them, are liable to CIT for conversion for the cashing of the checks referred to in Finding of Fact No. 7, above, and the depositing of the proceeds of those checks to the bank account of United, and fixes the actual damages for such conversion in the amount of \$190,105.16, as against United and Blair, and each of them, jointly and severally.

United has argued that any recovery by CIT from United's account debtors must be deducted from plaintiff's recovery. CIT has not disputed the proposition, but merely asserts that such recovery does not bar a conversion action. See Read v. Downey State Bank, 392 P.2d 681 (Idaho 1964). The Court rejects the proposition that the action is barred on this ground. Further, United argues that the conversion action is barred by the doctrine of election of remedies. This proposition is also rejected. See Red Eagle Oil Co. v. ITT Eason Oil Co., 693 P.2d 1280 (Okla.

Ct.App. 1984). Finally, the Court rejects as irrelevant United's discussion of the definition of proceeds.

CIT also seeks punitive damages against United and Blair. If there is a conversion, and the actions are malicious or wilful, punitive damages may be awarded. Davidson v. First Bank and Trust Co., 609 P.2d 1259, 1261 (Okla. 1977). While the actions in this case were misguided, the Court is not persuaded that they rise to the level where punitive damages are appropriate. Therefore, this request is denied.

It is the Order of the Court that judgment be entered in favor of Meinhard-Commercial Western, Inc., and against United Entertainment, Inc., and Bill Blair. Meinhard-Commercial Western, Inc., is granted ten days in which to submit a proposed Judgment, taking into account amounts also recited in the Court's Order of October 5, 1989.

IT IS SO ORDERED this 9th day of April, 1990.

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

*entered*

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

APR -9 1990

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

KATONA TAYLOR, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SKAGGS ALPHA BETA, )  
 )  
 Defendant. )

No. 88-C-424-C

**ORDER**

Before the Court is plaintiff's objection to the Report and Recommendation of the Magistrate wherein the Magistrate recommended that defendant's motion for partial summary judgment be granted. On March 5, 1990, the Magistrate entered his recommendation that plaintiff's claim under the Equal Pay Act, 29 U.S.C. §215(a) be dismissed as time barred under the applicable statute of limitations. For the reason set forth below the Magistrate's recommendation is reversed.

On May 11, 1988 plaintiff filed her original complaint with this Court. In paragraph three, plaintiff asserts:

The Plaintiff's claim for sex discrimination under Title VII is based on the Defendant's acts and policies resulting in disparate treatment, disparate impact, intentional discrimination and retaliation in the Plaintiff's compensation, seniority and promotion.

The original complaint alleges defendant Skaggs did not promote women equally with men, did not conduct annual evaluations of women but did evaluate men, breached its settlement agreement with plaintiff, promoted plaintiff to assistant manager in name only but failed to give her any authority, assigned her primarily to late

shifts but provided male managers a variety of shifts, and subjected her to derogatory comments by her supervisors. The complaint alleges that plaintiff suffered continuing discrimination.

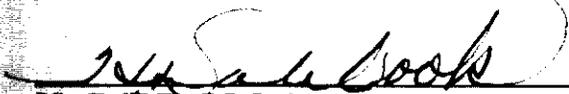
On August 7, 1989, plaintiff filed her amended complaint setting forth a separate claim under the Equal Pay Act.

The Magistrate correctly concluded that plaintiff's claim is subject to a two (2) year statute of limitation under 29 U.S.C. §255(a)(3).

However, this Court finds that plaintiff's amended complaint relates back to the date the original action was filed and is, therefore, not time barred under Rule 15(c) F.R.Cr.P. Rule 15(c) applies if the claim asserted in the amended complaint "arose out of the conduct, transaction, or occurrence set forth ... in the original pleading." The Court concludes that the conduct plead in the original complaint sufficiently sets forth claims of unequal treatment, including disparity in compensation to permit a timely claim under the Equal Pay Act.

Accordingly, defendant's motion for partial summary judgment is DENIED.

IT IS SO ORDERED this 9<sup>th</sup> day of April, 1990.

  
H. DALE COOK

Chief Judge, U. S. District Court

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

FILED

APR -9 1990

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

CASSANDRA COBBS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 LINDA A. SCOTT, )  
 )  
 Defendant. )

Case #89-C-772 -C

ORDER OF DISMISSAL WITH PREJUDICE

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.

  
JUDGE OF THE UNITED STATES  
DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

*Entered*

**FILED**

OBA #5026

APR -9 1990

*fw*

ajg

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

JACQUELYNNE S. CLERK  
U.S. DISTRICT COURT

FARMERS INSURANCE COMPANY,  
INC.,

Plaintiff,

vs.

Case No: 89-C-401-C

CLYDE A. KEIZOR, CAROLYN  
KEIZOR, TOMMY WILSON,  
and STATE FARM FIRE AND  
CASUALTY COMPANY,

Defendants.

CONSOLIDATED

CLYDE KEIZOR and CAROLYN  
KEIZOR,

Plaintiffs

vs.

Case No: 89-C-818-C

TOMMY WILSON,

Defendant,

and,

FARMERS INSURANCE COMPANY

Garnishee.

ORDER

On this 9 day of April, 1990, the joint application for an order of dismissal with prejudice came on before the court for hearing. The Court finds that the parties have settled all issues between them.

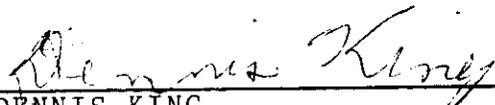
IT IS THEREFORE, ORDERED AND DECREED, that Case No:

25/5

89-C-401-C is dismissed with prejudice and Case No: 89-C-818-C is dismissed with prejudice.

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DENNIS KING  
Attorney for Farmers Insurance  
Company, Inc.,

  
\_\_\_\_\_  
JERRY FRALEY  
Attorney for Clyde A. Keizer,  
Carolyn Keizer and State Farm  
Fire & Casualty Company

  
\_\_\_\_\_  
DAVID COLE  
Attorney for Tommy Wilson

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

JOHN A. DESALVO,  
Plaintiff,  
v.  
INTERNAL REVENUE SERVICE,  
Defendant.

85-C-22-E

FILED

APR 9 1990

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

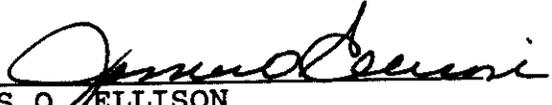
**ORDER**

The court has for consideration the Report and Recommendation of the Magistrate filed March 1, 1990, in which the Magistrate recommended that plaintiff's Motion to Compel and For Cost/Fees be denied, and this case be dismissed as moot. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that plaintiff's Motion to Compel and for Cost/Fees is denied and this case is dismissed as moot.

Dated this 5<sup>th</sup> day of April, 1990.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

FILED

APR 9 1990

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

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

LANDAU VENTURES, LTD.,

Plaintiff,

vs.

VESTAL L. PATTERSON, et al,

Defendants.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

NO. 89-C-178-E ✓

ORDER

Now on this 6<sup>th</sup> day of April, 1990, the joint application to dismiss this action comes on before the undersigned Judge. After reviewing the undersigned application, noting that all parties join in said request and that the parties have reached a full, final and complete settlement on their own accord, the Court finds that the application should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this action is dismissed with prejudice as to all parties, each party to bear their own attorney's fees and costs.

James D. Allen  
UNITED STATES DISTRICT JUDGE

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

APR 9 1990

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

The Reliable Automatic Sprinkler Co. )  
 )  
Plaintiff(s), )  
 )  
vs. )  
 )  
Firetech Automatic Sprinklers, Inc. )  
 )  
Defendant(s). )

No. 89-C-366-E

ORDER

Rule 35(a) of the Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

(a) In any case in which no action has been taken by the parties for six (6) months, it shall be the duty of the Clerk to mail notice thereof to counsel of record or to the parties, if their post office addresses are known. If such notice has been given and no action has been taken in the case within thirty (30) days of the date of the notice, an order of dismissal may in the Court's discretion be entered.

In the action herein, notice pursuant to Rule 36(a) was mailed to counsel of record or to the parties, at their last address of record with the Court, on February 27, 1990. No action has been taken in the case within thirty (30) days of the date of the notice.

Therefore, it is the Order of the Court that this action is in all respects dismissed.

Dated this 6<sup>th</sup> day of April, 1990.

  
UNITED STATES DISTRICT JUDGE

**FILED**

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

APR 9 1990

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

LIBERTY NATIONAL FIRE INSURANCE  
COMPANY,

Plaintiff,

-vs-

SHIRLEY BOWMAN d/b/a FAIRFAX  
PACKING COMPANY,

Defendant.

NO. 89-C-425 E

**AGREED ENTRY OF JUDGMENT**

Plaintiff filed a Motion for Partial Summary Judgment on February 9, 1990. Defendant filed a Response and Counter-Motion for Summary Judgment on February 28, 1990.

Upon reviewing the file, Motions and argument of counsel, the Court finds there is no substantial controversy as to any facts and that plaintiff is entitled to judgment as a matter of law. The Court further finds that Plaintiff's Motion for Partial Summary Judgment is dispositive of all issues and that no further issues are left for adjudication. The Court finds that Defendant's Counter-Motion for Summary Judgment should be and is hereby denied.

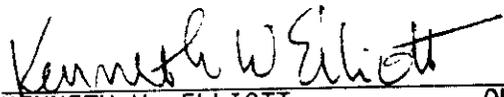
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Partial Summary Judgment is dispositive of all issues and it is hereby sustained. Defendant's Counter-Motion for Summary Judgment is denied. The parties have previously been notified of this ruling by the Court's Order dated March 9, 1990.

WHEREFORE, judgment is entered in favor of the plaintiff, Liberty National Fire Insurance Company, and against the defendant, Shirley Bowman d/b/a Fairfax Packing Company.

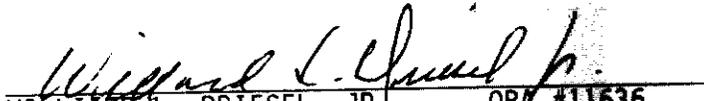
S/ JAMES O. ELLISON

JAMES O. ELLISON, U.S. DISTRICT JUDGE

APPROVED:



KENNETH W. ELLIOTT OBA #2686  
of ELLIOTT AND MORRIS  
119 N. ROBINSON, SUITE 310  
OKLAHOMA CITY, OK 73102-4601  
Telephone: 405/236-3600  
ATTORNEYS FOR PLAINTIFF



WILLIARD L. DRIESEL, JR. OBA #11636  
of McCOMBS, BROCK AND DRIESEL  
17 SOUTH CENTRAL  
IDABEL, OK 74745  
Telephone: 405/286-3363  
ATTORNEYS FOR DEFENDANT

4854.jud

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

APR 9 1990

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 RICHARD L. BURTON; SALLY S. )  
 BURTON; COUNTY TREASURER, )  
 Washington County, Oklahoma; )  
 BOARD OF COUNTY COMMISSIONERS, )  
 Washington County, Oklahoma; )  
 66 FEDERAL CREDIT UNION, )  
 )  
 Defendants. )

CIVIL ACTION NO. 89-C-466-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 6<sup>th</sup> day  
of April, 1990. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States  
Attorney; the Defendant, 66 Federal Credit Union, appears not,  
having previously filed its Disclaimer; and the Defendants,  
Richard L. Burton, Sally S. Burton, 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 the Defendant, Richard L. Burton,  
acknowledged receipt of Summons and Complaint on June 8, 1989;  
that Defendant, County Treasurer, Washington County, Oklahoma,  
acknowledged receipt of Summons and Complaint on June 21, 1989;  
that Defendant, Board of County Commissioners, Washington County,  
Oklahoma, acknowledged receipt of Summons and Complaint on

June 23, 1989; and that the Defendant, 66 Federal Credit Union, acknowledged receipt of Summons and Amended Complaint on January 30, 1990.

The Court further finds that the Defendant, Sally S. Burton, was served by publishing notice of this action in the Examiner-Enterprise, a newspaper of general circulation in Washington County, Oklahoma, once a week for six (6) consecutive weeks beginning December 21, 1989, and continuing to January 25, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, Sally S. Burton, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstractor filed herein with respect to the last known address of the Defendant, Sally S. Burton. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Farmers Home Administration, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins,

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

It appears that the Defendant, 66 Federal Credit Union, filed its Disclaimer on February 15, 1990; that the Defendants, Richard L. Burton, Sally S. Burton, 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 on January 15, 1985, Richard Burton and Sally Suzanne Burton filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 85-00052. On July 11, 1985, the United States Bankruptcy Court for the Northern District of Oklahoma entered a Discharge of Debtors releasing the debtors from all dischargeable debts. On February 12, 1988, this bankruptcy case was closed.

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:

Lot Twelve (12), Block One (1), Leona Heights  
Addition, Dewey, Washington County, Oklahoma.

The Court further finds that on December 2, 1977, the Defendants, Richard L. Burton and Sally S. Burton, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$20,000.00, payable in monthly installments, with interest thereon at the rate of eight percent (8%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Richard L. Burton and Sally S. Burton, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated December 2, 1977, covering the above-described property. Said mortgage was recorded on December 5, 1977, in Book 702, Page 295, in the records of Washington County, Oklahoma.

The Court further finds that the Defendants, Richard L. Burton and Sally S. Burton, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Richard L. Burton and Sally S. Burton, are indebted to the Plaintiff in the principal sum of \$18,402.45, plus accrued interest in the amount of \$1,629.72 as of April 11, 1989, plus interest accruing thereafter at the rate of 8 percent per annum or \$4.0334 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, 66 Federal Credit Union, disclaims all right, title, or interest in the subject real property.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Washington County, Oklahoma, have no right, title, or interest in the subject real property by virtue of their default herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendants, Richard L. Burton and Sally S. Burton, in the principal sum of \$18,402.45, plus accrued interest in the amount of \$1,629.72 as of April 11, 1989, plus interest accruing thereafter at the rate of 8 percent per annum or \$4.0334 per day until judgment, plus interest thereafter at the current legal rate of 8.32 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, 66 Federal Credit Union, 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 appraisal 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

  
NANCY NESBITT BLEVINS, OBA #6634  
Assistant United States Attorney

Judgment of Foreclosure  
Civil Action No. 89-C-466-E

**F I L E D**

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

APR 9 1990

STEVEN TRENT HARRIS,  
Plaintiff,

§  
§  
§  
§  
§  
§  
§  
§  
§

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

V.

Case No. 89 C 519-E

ATLAS POWDER COMPANY, INC.,  
a Delaware corporation, and  
EXPLO-MIDWEST, INC., a  
Delaware corporation,  
Defendants.

**ORDER OF DISMISSAL WITH PREJUDICE**

This matter comes before the Court on the Joint Stipulation of Dismissal with Prejudice of the parties. The parties represent to the Court that they have entered into an agreement for an Order of Dismissal in this matter with no admission of liability on the part of the Defendants.

IT IS THEREFORE ORDERED that this matter is hereby dismissed with prejudice and with no admission of liability on the part of Atlas Powder Company, Inc. or Explo-Midwest, Inc. Each party shall bear its own attorneys' fees and costs.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

C. Clay Roberts, III  
Richard D. Marris  
ROBERTS, MARRS & CARSON  
110 South Hartford, Suite 111  
Tulsa, Oklahoma 74120  
ATTORNEYS FOR PLAINTIFF

Joe B. Harrison  
GARDERE & WYNNE  
1500 Maxus Energy Tower  
717 North Harwood  
Dallas, Texas 75201  
ATTORNEYS FOR DEFENDANTS

HAP:bj

FILED

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

APR 9 1990

BILLY GEORGE MITCHELL, SR.,  
Administrator of the Estate of  
BRIAN EDWARD MITCHELL, deceased,

Plaintiff,

vs.

AMERICAN ECONOMY INSURANCE COMPANY,  
a foreign insurance company,

Defendant and  
Third Party Plaintiff,

vs.

ESTATE OF BETH ANN BURNETT, STATE  
FARM MUTUAL AUTOMOBILE INSURANCE  
COMPANY, OKLAHOMA FARM BUREAU  
MUTUAL INSURANCE COMPANY and  
FARMERS INSURANCE COMPANY, INC.,

Third Party Defendants.

Case No.: 89 C 559 E

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

ORDER OF DISMISSAL

NOW on this 6<sup>th</sup> day of April, 1990, upon the  
written application of the Defendant and Third Party Plaintiff, American  
Economy Insurance Company, for a Dismissal Without Prejudice of Third Party  
Defendant State Farm Mutual Automobile Insurance Company. The Court being  
fully advised in the premises finds it is to the best interest of the  
parties that State Farm Mutual Automobile Insurance Company should be  
dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that State  
Farm Mutual Automobile Insurance Company only be and is hereby dismissed  
without prejudice to the refileing of same.

S/ JAMES O. ELLISON

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

**FILED**

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

APR 9 1990

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

VERNON L. HOBBS,

Plaintiff,

vs.

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

Defendants.

Civil Action No. 89-C-740-E

**ORDER**

Upon Plaintiff's Motion to Remand, to which there is no objection, and for good cause shown, it is hereby ORDERED that the above-styled case be remanded to the Defendant.

Dated this 6<sup>th</sup> day of April, 1990.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

SUBMITTED BY:

TONY M. GRAHAM  
United States Attorney

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

DSF/var

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

KENNETH G. ALEXANDER, )  
and GRACE ALEXANDER, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
LONG JOHN SILVER'S, INC., )  
 )  
Defendants. )

No. 88-C-670-B

ORDER OF DISMISSAL

Upon the application of the plaintiff and for good  
cause shown, this action is dismissed with prejudice.

S/ THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

*Entered  
does not  
close*

**FILED**

**APR 5 1990**

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

DAN KENT WILLIAMS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THE UNITED STATES OF AMERICA, )  
 )  
 Defendants. )

Case No. 90-C-0018-C

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

It is hereby stipulated by the Plaintiff, Dan Kent Williams,  
and the Defendant, United States of America, that the above  
entitled and numbered cause be dismissed without prejudice as to  
Charley William Richey and the United States Postal Service.

Respectfully submitted,

**SAVAGE, O'DONNELL, SCOTT,  
McNULTY & AFFELDT**

By: Eddie L. Carr  
John P. Scott OBA# 8019  
Eddie L. Carr OBA# 12601  
1100 Petroleum Club Bldg.  
601 South Boulder  
Tulsa, Oklahoma 74119  
(918) 599-9000

Attorneys for Plaintiff

By: Paul Powell  
United States Attorney for  
the Northern District of  
Oklahoma  
3600 U.S. Courthouse  
Tulsa, Oklahoma 74103

Attorney for United States  
of America

W

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

JERRY LAYMON, )  
)  
Plaintiff, )  
)  
vs. )  
)  
PAT MAYS, GARY ROHR, )  
RAY REAVIS, DON BOARDWINE, )  
DEWEY JOHNSON, and THE CITY OF )  
CLAREMORE, a municipal )  
corporation, )  
)  
Defendants. )

Case No. 89-C-426B

FILED  
1990  
Jack C. ... Clerk  
U.S. DISTRICT COURT

21-6-90

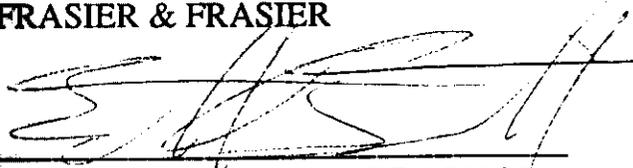
**DISMISSAL BY STIPULATION WITHOUT PREJUDICE**

COMES NOW the Plaintiff, Jerry Laymon, by and through his attorney, Everett R. Bennett, Jr. of the law firm of Frasier & Frasier, the Defendants, the City of Claremore, Gary Rohr, and Ray Reavis, by and through its attorney, John Lieber of the law firm of Eller And Detrich, and Defendants Don Boardwine and Dewey Johnson, by and through their attorney, Timothy Best of the law firm of Best, Sharp, Holden, Sheridan & Stritzke, pursuant to Rule 41A(ii), and hereby stipulate and dismiss the above-styled action without prejudice to the refiling of this case at a later date. Any outstanding costs which are due and owing to the Court Clerk of the United States District Court for the Northern District of Oklahoma shall be born by the Plaintiff. Any and all other costs at this time shall be born by each of the respective parties.

15

Respectfully submitted,

**FRASIER & FRASIER**

By: 

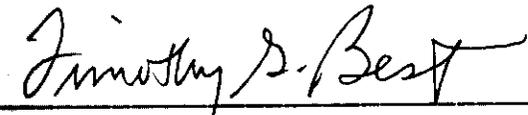
Evertt R. Bennett, Jr. OBA#11224  
1700 Southwest Boulevard  
P.O. Box 799  
Tulsa, OK 74107  
(918) 584-4724

**ELLER AND DETRICH**

By: 

John Lieber  
2727 E. 21st St.  
Suite 200  
Tulsa, OK 74114

**BEST, SHARP, HOLDEN, SHERIDAN  
& STRITZKE**

By: 

Timothy Best  
321 S. Boston  
Suite 700  
Tulsa, OK 74103

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

IN RE: OTASCO

Smith-Jenkins Co. of Minden,  
Plff.

vs.  
Otasco, Inc., deft.

EMPLOYER TAX  
I.D. #13-2855286

CHAPTER 11

CASE NO. 89-03410-W

DISTRICT COURT APPEAL  
NO. 90-C0038 B ✓

**F I L E D**

APR 5 1990

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

O R D E R

Considering the foregoing Motion:

IT IS ORDERED that the appeal filed by Smith-Jenkins Company of Minden d/b/a Community Development Corporation on January 19, 1990, be dismissed.

Tulsa, Oklahoma this 5<sup>th</sup> day of Apr., 1990.

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

APR 5 1990

Cindy K. Groves,  
Plaintiff,

vs.

Spears World Travel Service,  
Inc., an Oklahoma corporation,  
Defendant/Third-Party Plaintiff,

vs.

Corporate Benefit Services of America,  
Inc., a Minnesota corporation, and  
Ask Mr. Foster Associates, Inc., a  
Minnesota corporation,  
Third-Party Defendants.

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

Court File No. 90-C0068 B

DISMISSAL  
STIPULATION

STIPULATION

It is hereby stipulated by Cindy K. Groves; Spears World Travel Service, Inc., an Oklahoma corporation; Corporate Benefit Services of America, Inc., a Minnesota corporation; and Ask Mr. Foster Associates, Inc., a Minnesota corporation, that the above-entitled action be dismissed with prejudice as to all claims, third-party claims, cross claims and counter claims, and that each party bear its own attorneys' fees and other costs including court costs advanced.

Cindy K. Groves 2-26-90  
Cindy K. Groves, Plaintiff Date

Michael W. Seymour 2-26-90  
Michael W. Seymour, Bar No. 8098 Date  
Attorney for Cindy K. Groves  
1717 East 15th Street  
Tulsa, OK 74104  
(918) 749-1202

SPEARS WORLD TRAVEL SERVICE, INC.,  
an Oklahoma Corporation

By Charles R. Spears 2/27/90  
Charles R. Spears, President Date

KANE, KANE, KANE AND ROARK

By Patrick H. Roark 11/28/90  
Patrick H. Roark, OBA #7618 Date  
Attorney for Spears World Travel Service, Inc.  
Osage & Adams, P. O. Box 2566  
Bartlesville, OK 74005  
(918) 336-2310

CORPORATE BENEFIT SERVICES OF AMERICA, INC.,  
a Minnesota corporation

By J. Bery Clifford 3/27/90  
J. Bery Clifford, President Date

GORDON MILLER O'BRIEN

By Richard A. Miller 3/5/90  
Richard A. Miller Date  
Attorney for Corporate Benefit Services of America, Inc.  
1208 Plymouth Building  
12 South Sixth Street  
Minneapolis, MN 55402-1529  
(612) 333-5831

Ask Mr. Foster Associates, Inc.,  
a Minnesota corporation

By Terry Robertson 3/2/90  
Terry Robertson Date  
Executive Vice President and general Manager

RECEIVED MAR 23 1990

CROWE & DUNLEVY

By *Terry S. O'Donnell* 4/5/90 Date  
Terry S. O'Donnell, OBA #13110  
Mark O. Costley, OBA #11273  
Madalene A.B. Witterholt, OBA #10528  
Attorneys for Ask Mr. Foster Associates, Inc.  
320 So. Boston  
Tulsa, OK 74103  
(918) 582-9800

BRIGGS AND MORGAN

By *Patrick Garry* 3/16/90 Date  
Patrick Garry #151002  
R. Scott Davies #21337  
Michael Thomas Miller #168774  
Attorneys for Ask Mr. Foster Associates, Inc.  
2400 IDS Center  
Minneapolis, MN 55402  
(612) 339-0661

FILED

APR 9 1990

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

ORDER

On the above stipulation filed herein on the 5<sup>th</sup> day of Apr, 1990, it is so ordered.

Dated Apr. 9, 1990.

SI. THOMAS R. BRETT

Judge

spears.stp

FILED MAR 23 1990

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

FILED

APR 5 1990

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

FEDERAL DEPOSIT INSURANCE )  
CORPORATION, acting in its )  
corporate capacity, )

Plaintiff, )

vs. )

Case No. 88-C-1642-E

LEE I. LEVINSON; JO ANN LEVINSON; )  
SILVAN E. LEVINSON; FEDERAL )  
SAVINGS AND LOAN INSURANCE )  
CORPORATION, Conservator of )  
Cross Roads Savings and Loan )  
Association, F.A.; WILLIAM B. )  
JONES, Executor of the Estate of )  
Raymond L. King, Deceased; )  
THE FIRST NATIONAL BANK & TRUST )  
COMPANY OF TULSA; TULSA MASONRY )  
AND CONSTRUCTION, INC.; and KAY )  
LEVINSON a/k/a MARY KAY WEATHERS, )

Defendants. )

JUDGMENT BY CONFESSION

This matter comes on before the Court pursuant to regular assignment. The cross-claimant, Federal Savings and Loan Insurance Corporation, Conservator of Cross Roads Savings and Loan Association, F.A. (hereinafter "FSLIC"), is represented by its counsel, Robert S. Glass of Gable & Gotwals, Inc., and the cross-defendant, Lee I. Levinson ("Levinson"), is representing himself, pro se; and said parties, having represented to the Court by virtue of their signatures below that they have agreed to the entry of this Judgment by Confession of liability in favor of FSLIC and against Levinson in the sum of \$27,468.10, calculated as of August 23, 1989, together with interest continuing to accrue on such sum at the rate of 12% per annum until paid in full together with a reasonable attorneys' fee and all accrued and accruing costs of this action. The Court makes the following FINDINGS pursuant to the stipulations and agreement of the parties to this Judgment by Confession:

1. This Court has jurisdiction over the subject matter and the parties hereto. The issues raised in FSLIC's cross-claim against Levinson have been resolved either by agreement between the parties or by virtue of the confession of judgment by Levinson herein.

2. All of the allegations of FSLIC's cross-claim are true and correct and FSLIC is entitled by agreement to in personam judgment against Levinson in the sum of \$27,468.10, calculated as of August 23, 1989, together with interest accruing on such sum at the rate of 12% per annum until paid in full, plus reasonable attorneys' fee and all accrued and accruing costs of this action, which sums by agreement shall be paid by Levinson to FSLIC on or before March 6, 1990, in consideration for FSLIC's agreement to refrain from executing upon this Judgment for such term. In the event Levinson fails to timely perform by delivering payment in full of the Judgment indebtedness under the terms and conditions of his agreement with FSLIC specified herein, FSLIC shall be free to proceed with general execution upon this Judgment and collect accruing attorneys' fees and collection costs.

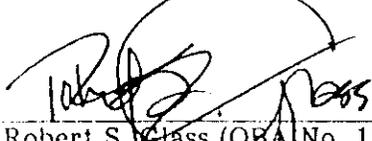
IT IS THEREFORE ORDERED AND DECREED by this Court that FSLIC shall recover of and from the Defendant, Levinson, the sum of \$27,468.10, calculated as of August 23, 1989, together with interest accruing on such sum at the rate of 12% per annum until paid in full, plus reasonable attorneys' fee and all accrued and accruing costs of this action, for all of which general execution shall issue subject to the limitations hereinabove provided.

IT IS SO ORDERED AND DATED this 5<sup>th</sup> April, 1990 day of ~~September, 1989~~, at Tulsa, Oklahoma.

**S/ JAMES O. ELLISON**

**UNITED STATES DISTRICT COURT JUDGE**

APPROVED AND AGREED TO:



Robert S. Glass (OBA No. 10824)  
Gable & Gotwals, Inc.  
Counsel for Federal Savings and  
Loan Insurance Corporation,  
Conservator of Cross Roads Savings  
and Loan Association, F.A.



Lee I. Levinson, Pro Se

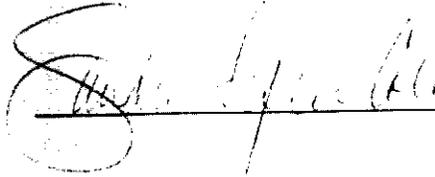


CERTIFICATE OF MAILING

Apr. This is to certify that on this 5th day of  
April, 1990, a true and correct copy of the above and  
foregoing Dismissal Without Prejudice was mailed with postage  
prepaid thereon to the following:

Steven R. Hickman, Esq.  
P.O. Box 799  
Tulsa, Oklahoma 74101-0799

Thomas D. Robertson  
NICHOLS, WOLFE, STAMPER, NALLY  
& FALLIS, INC.  
Suite 400, Old City Hall Building  
124 East Fourth Street  
Tulsa, Oklahoma 74103-4004

  
\_\_\_\_\_

FILED

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

APR 4 1990

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

ORVILLE PIERCE, JR. and NICKI PIERCE,

Plaintiffs,

vs.

UNITED STATES FIDELITY & GUARANTY, an  
insurance corporation,

Defendant,

vs.

MARTI DYAN MCGINNIS,

Third-Party Defendant,

vs.

EMPLOYERS NATIONAL INSURANCE CORPORATION,

Intervenor.

Case No. 88-C-1417-B

ORDER OF DISMISSAL

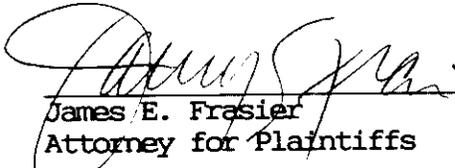
For good cause shown, and upon stipulation of the parties, it is hereby ordered that this matter be dismissed with prejudice as to United States Fidelity & Guaranty and Employers National Insurance Corporation.

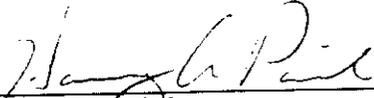
It is further ordered that this matter be voluntarily dismissed without prejudice as to Marti Dyan McGinnis, pursuant to Rule 41 of the Federal Rules of Civil Procedure.

S/ THOMAS R. BRETT

HONORABLE THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

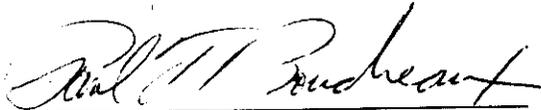
  
James E. Frasier  
Attorney for Plaintiffs



Harry Parrish  
Attorney for United States Fidelity  
& Guaranty



Stanley D. Monroe  
Attorney for Marti Dyan McGinnis



Paul T. Boudreaux  
Attorney for Employers National  
Insurance Corporation

**FILED**

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

FEDERAL DEPOSIT INSURANCE CORPORATION, )  
as Receiver for FIRST NATIONAL BANK & )  
TRUST COMPANY, CUSHING, OKLAHOMA, )

Plaintiff, )

v. )

Case No. 90-C0039 B

ASBESTOS DISPOSAL SERVICES, INC., an )  
Oklahoma corporation; REX RUDY, a/k/a )  
REX R. RUDY, an individual; REX RUDY, )  
d/b/a ASBESTOS DISPOSAL SERVICE; )  
REX RUDY II, an individual; BONNIE )  
RUDY, a/k/a BONNIE L. RUDY, an )  
individual; FEDERAL NATIONAL MORTGAGE )  
ASSOCIATION; AMERICAN FLORAL SERVICES, )  
INC.; FOUNDERS BANK & TRUST COMPANY; )  
UNITED STATES OF AMERICA, DEPARTMENT )  
OF THE TREASURY, INTERNAL REVENUE )  
DIVISION; STATE OF OKLAHOMA, OKLAHOMA )  
TAX COMMISSION; and TIVOLI VENTURES, )  
INC. )

Defendants. )

DISMISSAL OF FEDERAL DEPOSIT INSURANCE CORPORATION,  
AS RECEIVER FOR FIRST NATIONAL BANK & TRUST COMPANY,  
CUSHING, OKLAHOMA'S, CLAIMS AND ALLEGATIONS AGAINST  
FOUNDERS BANK & TRUST COMPANY AND TIVOLI VENTURES, INC.

The Plaintiff, Federal Deposit Insurance Corporation, as Receiver for First National Bank & Trust Company, Cushing, Oklahoma ("FDIC"), pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure, dismisses the Ninth Cause of Action asserted in its January 22, 1990 Complaint, as subsequently amended by the March 23, 1990 Amendment To Complaint, insofar and only insofar as the Ninth Cause of Action alleges and asserts a claim against Founders Bank & Trust Company and Tivoli Ventures, Inc. The

dismissal of FDIC's claims and allegations against the Defendants, Founders Bank & Trust Company and Tivoli Ventures, Inc. is not intended to in any way effect the remaining claims and allegations asserted in its January 22, 1990 Complaint.

Respectfully submitted,



---

Donald P. Fischbach (OBA #12290)

Of the Firm:

EDWARDS, SONNERS & PROPESTER  
2900 First Oklahoma Tower  
210 West Park Avenue  
Oklahoma City, Oklahoma 73102-5605  
Telephone: (405) 239-2121

ATTORNEYS FOR PLAINTIFF, FEDERAL DEPOSIT  
INSURANCE CORPORATION, as Receiver for  
First National Bank & Trust Company,  
Cushing, Oklahoma

CERTIFICATE OF MAILING

This is to certify that on this 3<sup>rd</sup> day of April, 1990, true and correct copies of the above and foregoing document were mailed, postage prepaid, to:

Allen Mitchell  
P.O. Box 190  
Sapulpa, Oklahoma 74067

ATTORNEY FOR DEFENDANT, ASBESTOS DISPOSAL  
SERVICES, INC., REX RUDY d/b/a ASBESTOS  
DISPOSAL SERVICE and BONNIE RUDY

Phil Pinnell  
Assistant United States Attorney  
3600 United States Courthouse  
Tulsa, Oklahoma 74103

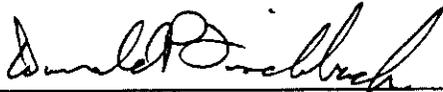
ATTORNEY FOR DEFENDANT, UNITED STATES  
OF AMERICA

Carl Bagwell  
1000 Robinson Renaissance Bldg.  
119 North Robinson  
Oklahoma City, Oklahoma 73102

ATTORNEY FOR DEFENDANT, AMERICAN  
FLORAL SERVICES, INC.

Lisa Haws  
Assistant General Counsel  
2501 Lincoln Boulevard  
Oklahoma City, Oklahoma 73194-0111

ATTORNEY FOR DEFENDANT, STATE OF OKLAHOMA  
ex rel OKLAHOMA TAX COMMISSION



---

Donald P. Fischbach

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

MOSE STEPHENS, JR.,  
Petitioner,  
v.  
UNITED STATES OF AMERICA,  
Respondent.

89-C-879-C FILED

APR 4 1990

Jack C. Silver, Clerk  
DISTRICT COURT

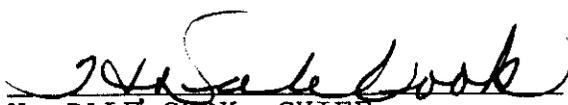
ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed February 15, 1990, in which the Magistrate recommended that petitioner's petition for a writ of quo warranto and a writ of mandamus be dismissed. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that petitioner's petition for a writ of quo warranto and a writ of mandamus is dismissed.

Dated this 3 day of ~~April~~ April, 1990.

  
H. DALE COOK, CHIEF  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

APR 3 1990

UNITED STATES OF AMERICA,  
Plaintiff,

v.

SALINA NO EAR  
a/k/a SALINA E. NO EAR  
Defendant.

U.S. District Clerk  
U.S. DISTRICT COURT

Civil Action No: 89-C-512-B

DEFAULT JUDGMENT

This matter comes on for consideration this 3rd day of April, 1990, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, and the Defendant, Salina No Ear, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Salina No Ear, was served with Summons and Complaint on November 1, 1989. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

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

Salina No Ear, for the principal amount of \$417.52, plus accrued interest of \$19.71 as of March 21, 1989, plus interest thereafter at the rate of 3.00 percent per annum until judgment. The defendant is further indebted to Plaintiff in the principal amount of \$625.00, plus accrued interest of \$162.19 as of March 21, 1989, at the rate of 5.00 percent per annum until judgment, plus interest thereafter at the current legal rate of 8.36 percent per annum until paid, plus costs of this action.

S/ THOMAS R. BRETT  

---

United States District Judge

mlc

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

FILED

APR 3 1990

JAMES CLAYTON WATSON,

Plaintiff,

vs.

RETAIL MERCHANTS ASSOCIATION  
AND CREDIT BUREAU OF TULSA,  
INC., an Oklahoma corporation,

Defendant.

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

Case No. 90-C-156-B

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, James Clayton Watson, by and through his attorneys of record, Vandivort & Associates, Inc., by Richard E. Elsea and hereby dismisses with prejudice pursuant to F.R.C.P. Rule 41(a)(1)(i) all counts set forth in Plaintiff's Complaint filed in this matter against the Defendant, Retail Merchants Association and Credit Bureau of Tulsa, Inc.

DATED this 2 day of April, 1990.

VANDIVORT & ASSOCIATES, INC.

By Richard E. Elsea  
Richard E. Elsea, OBA #10285  
Mid-Continent Building, Suite 425  
401 South Boston Avenue  
Tulsa, Oklahoma 74103-4017

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing has been served on each of the parties to this case by the undersigned on the

3rd day of April, 1990

Richard E. Elsea by Audrey Taylor

W

2

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 1 1990

Judge: Steven Clark  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

Plaintiff,

vs.

WANDA A. BRYANT,  
a/k/a WANDA A. DICKENSON,  
a/k/a WANDA A. BAGBY,

Defendant.

CIVIL ACTION NO. 89-C-795-B

ORDER OF DISMISSAL

Now on this 2nd day of April, 1990, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve her have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Wanda A. Bryant, a/k/a Wanda A. Dickenson, a/k/a Wanda A. Bagby, be and is dismissed without prejudice.

S/ THOMAS R. BRETT  
United States District Judge

CJD/mp

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

FILED

APR 5 1990

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

RAYMOND HERSCHEL JOHNSON )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 THE DISTRICT COURT OF TULSA COUNTY, )  
 et al, )  
 )  
 Defendants. )

89-C-802-B

✓

ORDER

Petitioner's Motion to Proceed In Forma Pauperis was granted and Petitioner's pleading entitled "Writ of Mandamus, Injoinder Therewith: Habeas Corpus in Toto" was filed. Petitioner brings this action **alleging** jurisdiction under 28 U.S.C. §1361.

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

Johnson apparently seeks **some kind** of writ compelling a state judge to grant Johnson the hearing he seeks. **Specifically**, the pleading alleges:

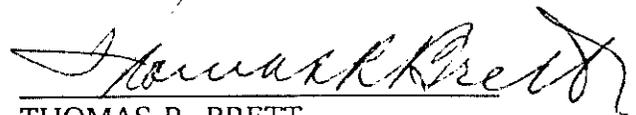
Comes now, the above and **aforenamed** Pro se-Petitioner [sic], thus; contending, that I am hereby **being** both arbitrarily and unconstitutionally denied a full fair and impartial **hearing**, by the States District Court [sic], of the County of Tulsa, for the **State** of Oklahoma, upon first having it file

... my case on and about September 18, 1989, and then literally return my Application for Post Conviction Relief, without actually ruling upon said case ...<sup>1</sup> (Ellipses in original.)

In effect, Johnson seeks this Court to **compel** the Tulsa County District Court, a court of the State of Oklahoma, to grant Johnson "a full and impartial hearing" on his state application for post-conviction relief.

This, the federal court cannot do. Actions in the nature of mandamus to direct state courts or their judicial officers in performance of their duties are not within the jurisdiction of United States District Courts under 28 U.S.C. §1361. McMahan v. Oklahoma, 412 F.Supp. 639 (W.D. Okla. 1975). Therefore, Johnson's application for a "Writ of Mandamus, Injoinder Therewith; Habeas Corpus in Toto" is hereby dismissed as frivolous.

SO ORDERED THIS 2<sup>nd</sup> day of April, 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

---

<sup>1</sup> Johnson has included in the style of his writ application: "Case No. CRF-82-1009". This case number is identical to the number assigned to Johnson's state court conviction which Johnson is presently attacking by way of federal habeas corpus proceedings in the Northern District of Oklahoma (Case No. 89-C-686-E).

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

FILED

APR 2 1990

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

GRANT MANLEY, an individual, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 AMFAC DISTRIBUTION CORPORATION, )  
 d/b/a AMFAC SUPPLY COMPANY, a )  
 California Corporation, )  
 )  
 Defendant. )

No. 89-C-770-B

ORDER OF DISMISSAL WITH PREJUDICE

Before the Court is the Stipulation of Dismissal with Prejudice of the Plaintiff, Grant Manley, and Defendant, Amfac Distribution Corporation. The Court finds based on the above-described Stipulation that these parties have entered into an agreement resolving all issues raised in the Second Amended 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 Plaintiff's Second Amended Complaint against Defendant Amfac Distribution Corporation is hereby dismissed with prejudice, with each party to bear his or its own attorney fees and costs.

DATED this 2nd day of April, 1990.

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

FILED

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

APR 1990

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

GREGORY A. LAMBERT,  
  
Plaintiff,  
  
vs.  
  
AMFAC DISTRIBUTION CORPORATION,  
d/b/a AMFAC SUPPLY COMPANY, a  
California Corporation,  
  
Defendant.

No. 89-C-875-B

ORDER OF DISMISSAL WITH PREJUDICE

Before the Court is the Stipulation of Dismissal with Prejudice of the Plaintiff, Gregory A. Lambert, and Defendant, Amfac Distribution Corporation. The Court finds based on the above-described Stipulation that these parties have entered into an agreement resolving all issues raised in the Amended 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 Plaintiff's Amended Complaint against Defendant Amfac Distribution Corporation is hereby dismissed with prejudice, with each party to bear his or its own attorney fees and costs.

DATED this 2nd day of April, 1990.

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

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

APR -2 1990

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

GERALD H. ZIMMER, GLENDA KAY }  
BULLARD, and THOMAS P. NESTOR, }

Plaintiffs, }

vs. }

ROCKWELL INTERNATIONAL }  
CORPORATION, }

Defendant. }

No. 89-C-476-C

**ORDER**

Before the Court is the objection to the Report and Recommendation of the Magistrate. For the reason set forth below, the Magistrate's recommendation is reversed.

Plaintiffs, former employees of Rockwell International Corporation, bring this action seeking money damages for alleged discriminatory discharge by Rockwell due to their ages. Plaintiffs allege that during a division-wide layoff, defendant discriminated against them by laying off plaintiffs and retaining less senior employees in the same job classification or in other job classifications for which plaintiffs were allegedly qualified and entitled to reassignment.

Plaintiffs invoke federal question jurisdiction seeking a claim under the Age Discrimination in Employment Act, 29 U.S.C. §621 et seq.

Additionally plaintiffs seek pendent jurisdiction in an effort to assert a state claim under Burk v. K-Mart, 770 P.2d 24 (Okla. 1989). In relying on Burk, plaintiffs allege their respective discharges, based on their advanced ages, were tortious under state law. Plaintiffs rely on an Oklahoma statute, 25 O.S. §1302, which states, inter alia, "It is a discriminatory practice for an employer ... to discharge ... because of ... age."

In Burk, the Oklahoma Supreme Court stated that it adopted the exception to the terminable-at-will doctrine in a narrow class of cases. Id. at 28. This Court in White v. American Airlines, Inc., 82-C-755-C (September 15, 1987) recognized a viable claim for the tort of wrongful discharge wherein plaintiff asserted he was discharged for his refusal to commit perjury. The act of committing perjury is against public policy as codified in Oklahoma statutory law. However, there is no independent cause of action for a person who is discharged for refusing to commit perjury.

Where the law does not provide a remedy, for discharge which violates public policy, the court in Burk recognized a remedy and framed it as a cause of action for tortious discharge. Where the law provides a remedy, there is no need for an implied-in-law parallel remedy. As this Court has stated in Carlis v. Sears Roebuck, 89-C-184-C, (July 7, 1989) to hold otherwise would result in the public policy exception being asserted in an expansive class of cases. Such a result is directly contrary to the Oklahoma Supreme Court's language in Burk.

In the case sub judice plaintiffs have an adequate remedy under the Age Discrimination in Employment Act. Burk applies when plaintiffs have an inadequate remedy although the alleged harm is in clear violation of public policy as articulated by constitutional, statutory or decisional law.

Accordingly, it is the Order of the Court that the motion of defendant to dismiss plaintiffs' second cause of action is hereby GRANTED.

IT IS SO ORDERED this 2<sup>nd</sup> day of April, 1990.

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