

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

APR 30 1996

GARY NATHAN,

Plaintiff,

vs.

METROPOLITAN TULSA TRANSIT
AUTHORITY and AMALGAMATED
TRANSIT UNION LOCAL 982,

Defendants.

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

Case No. 90-C-284-B

DISMISSAL OF ACTION

COMES NOW, the Plaintiff, by and through his attorneys of record, RICHARDSON, MEIER & ASSOCIATES, P.C., pursuant to Rule 41 (a)(i), F.R.Civ.P., and enters his voluntary dismissal without prejudice in the above styled and docketed matter as against the named Defendants showing that the named defendants have not yet answered nor moved for summary judgment in the matter.

WHEREFORE, the Plaintiff voluntarily dismisses the above and foregoing action without prejudice against all Defendants.

Respectfully submitted,

By 

Gary L. Richardson, O.B.A. #7547

Ronald E. Hignight, O.B.A. #10334

RICHARDSON, MEIER & ASSOCIATES, P.C.

5727 South Lewis, Suite 520

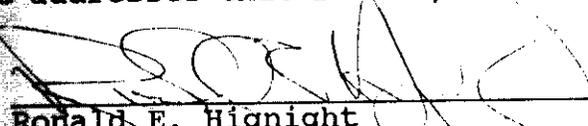
Tulsa, Oklahoma 74105

(918) 492-7674

(800) 456-2825

CERTIFICATE OF MAILING

I, Ronald E. Hignight, attorney, do hereby certify that a true and exact copy of the above and foregoing, was mailed by me through First Class U.S. Mails, with postage fully prepaid thereon, to the below listed individuals at the addresses that follow, the 30th day of April, 1990.



Ronald E. Hignight

MCCORMICK, ANDREW & CLARK
Stephen L. Andrew, O.B.A. #294
Attorneys for Defendant
MTTA
Suite 100, Tulsa Union Depot
111 East First Street
Tulsa, Oklahoma 74103
(918) 583-1111

HORNING, JOHNSON, GROVE
MOORE & HULETT
James Moore
Attorneys for Defendant
Union
204 N. Robinson Ave, Ste 1800
Oklahoma City, Oklahoma 73102

Given the evidence presented in response to the first improperly filed motion, the Court trusts that defendant's counsel will review Rule 11 F.R.Cv.P. before filing a second §2255 motion.

It is the Order of the Court that the motion of the defendant to reconsider is hereby GRANTED. The defendant's motion pursuant to 28 U.S.C. §2255 is hereby dismissed without prejudice.

IT IS SO ORDERED this 28th 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

Anderman/Smith Operating, et al.

Plaintiff(s),

vs.

Mobil Oil Corporation

Defendant(s).

No. 88-C-1451-C

FILED

APR 30 1990 *hm*

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

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

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

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

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

Dated this 27 day of April, 19 90.

[Signature]
UNITED STATES DISTRICT JUDGE

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

CANPET MARKETING LTD., a
Canadian corporation,

Plaintiff,

v.

THOMAS L. HAMMOND, an
individual d/b/a THOMAS L.
HAMMOND COMPANY,

Defendant.

FILED

APR 30 1990

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

No. 89-C-285-C

AGREED JOURNAL ENTRY OF JUDGMENT

On this 28 day of April, 1990, after having reviewed the Court file in the above-captioned case, this Court finds as follows:

1. This Court has jurisdiction over the parties and subject matter of this action.
2. Plaintiff CanPet Marketing Ltd. ("CanPet") and defendant Thomas L. Hammond d/b/a Thomas L. Hammond Company ("Hammond") have stipulated and agreed that judgment may be rendered in favor of CanPet and against Hammond in the amount of \$100,000.00 on CanPet's claims against Hammond in the above-styled proceeding.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment in the amount of \$100,000.00 is hereby granted in favor of plaintiff CanPet Marketing Ltd. and against defendant Thomas L. Hammond d/b/a Thomas L. Hammond Company.

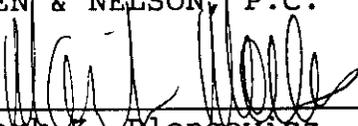
(Signed) H. Dale Cook

JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM AND CONTENT:

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

By

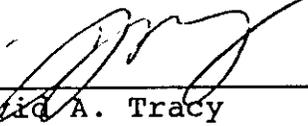


Mark K. Blongewicz
Marilyn S. Mollet
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR PLAINTIFF
CANPET MARKETING LTD.

NAYLOR & WILLIAMS, INC.

By



David A. Tracy
1701 South Boston Avenue
Tulsa, Oklahoma 74119
(918) 582-8000

ATTORNEYS FOR DEFENDANT
THOMAS L. HAMMOND

-and-



THOMAS L. HAMMOND

FILED

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

APR 30 1990
Jack C. Silver, Clerk
U.S. DISTRICT COURT

JIMMY BARRETT,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

89-C-905-B
86-CR-24-01-B

ORDER

Now before the court is movant's Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2255. Movant was convicted in the United States District Court for the Northern District of Oklahoma in Case No. 86-CR-24-01-B of Uttering a Forged United States Treasury Check and Possession of Stolen Mail and sentenced to two six-year concurrent sentences. He appealed the judgment and it was affirmed by the Tenth Circuit Court of Appeals on March 18, 1987.

Rule 4(b) of the Rules Governing Section 2255 Proceedings in the District Courts provides that the court is to examine the petition promptly and if it plainly appears from the face of the petition that the movant is not entitled to relief in the district court, the judge is to make an order for its summary dismissal.

Petitioner alleges that, at the time of the filing of his petition on October 30, 1989, he had been held in the Tulsa County Jail since February 15, 1989 on a federal detainer and had not had a Commission review of his parole revocation warrant within the one hundred eighty (180) days required by law. The United States Marshal has informed the court that petitioner was in state custody in the Tulsa County Jail from February 15, 1989 until his release into federal custody on September 6, 1989. He remained in federal

custody in the Tulsa County Jail for fifty-nine (59) days and then was transferred to a federal correctional institution for a parole revocation hearing. (See attached Exhibit "A").

The court finds that it plainly appears from the evidence before the court that movant is not entitled to relief in this court.

It is therefore ordered that the petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2255 is dismissed.

Dated this 30 day of April, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

BIZJET INTERNATIONAL SALES)
& SUPPORT, INC.,)
an Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
MULTISTATE SERVICES, INC.,)
an Oregon corporation, et al.,)
)
Defendants.)

No. 89-C-885-C ✓

F I L E D

APR 30 1990 *fm*

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

ORDER

On February 1, 1990, this Court granted default judgment against defendant Multistate Services, Inc., in the amount of \$42,551.24 plus per diem interest of \$13.57 accruing from January 13, 1990 until paid, and fees and costs.

On February 16, 1990, plaintiff filed its application to tax attorney fees and costs. No response to the application has been filed. Accordingly,

It is the Order of the Court that the plaintiff's application to tax attorney fees and costs against defendant Multistate Services, Inc. in the amount of \$7,022.40 is GRANTED.

IT IS SO ORDERED this 29th day of April, 1990.

H. Dale Cook

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

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

FILED

APR 30 1990

STEVEN A. WAKEFIELD, and
LINDA M. WAKEFIELD, personally,
and T/A BRIARCLIFFE RV RESORT
& YACHT CLUB;
FIRST INSURANCE INVESTORS, INC.,

PLAINTIFFS

VS.

CHARLIE PHIPPS, JR., AS TRUSTEE
OF TRI-SYNDICATED TRUST GROUP;
TRI-SYNDICATED TRUST GROUP,
a Trust;
THE XHTCX TRUST,
THE DYNASTY MASTER TRUST; and
THE EXPO-TRUST,

DEFENDANTS

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

NO. 89-C-396-E

ORDER OF JUDGMENT

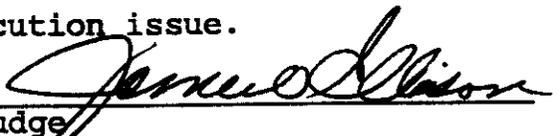
Now, on this 30th day of April, 1990, it appears
to the Court as follows:

On February 27, 1990, the Court entered its Order and
Judgment herein ordering as follows:

"if the trust Defendants do not within ten (10) days
furnish such \$9,200,000 to Plaintiffs, or if within
ten (10) days Defendants do not furnish such letter of
credit, Plaintiffs are alternatively given judgment
against the trust Defendants for the sum of
\$41,935,000.00 actual damages."

Plaintiffs have filed their Motion for Order Determining
Defendants' Non-Compliance with Order of Mandamus to which is
attached Affidavit of Steven A. Wakefield to the effect that the
\$9,200,000 had not on March 16, 1990, been furnished plaintiffs
nor had the letter of credit referred to in said Judgment been
furnished. The defendants have not responded to such motion and
have not presented any evidence that they would comply with the

Court's Order and the Court therefore treats plaintiffs' Motion as a Motion for Summary Judgment and pursuant to Court Rules, the defendant not having responded, the Court finds that defendants have not complied with the Order of the Court and that therefore the alternative judgment is in effect and that plaintiffs have as of February 27, 1990, a judgment against defendants Charlie Phipps, Jr. as Trustee of Tri-Syndicated Trust Group; Tri-Syndicated Trust Group, a Trust; The XHTCX Trust; The Dynasty Master Trust; and The Expo-Trust, in the amount of \$41,935,000 with interest at the legal rate ^{9.2% or 7.97%} from February 27, 1990, for which let execution issue.


Judge

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

FILED
APR 30 1990 *hm*

KEN SELBY,

Plaintiff,

vs.

HATTERAS YACHTS and
GENMAR INDUSTRIES, INC.,

Defendants.

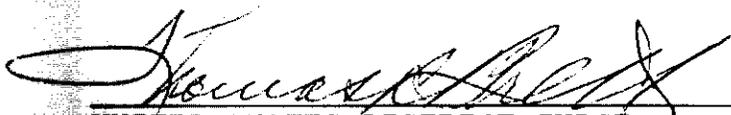
Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 89-C-1065-B ✓

ORDER

Upon Stipulation for Dismissal With Prejudice and good cause
being shown,

It is hereby ordered that the above-styled action be
dismissed with prejudice.


UNITED STATES DISTRICT JUDGE

bb

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

FILED
APR 27 1990 8
Jack C. Silver, Clerk
U. S. DISTRICT COURT

MILES I. FIDLER,

Plaintiff,

vs.

THE EQUITABLE LIFE ASSURANCE SOCIETY
OF THE UNITED STATES,

Defendant.

No. 88-E-689-E ✓

STIPULATION ^{OF} FOR DISMISSAL WITHOUT PREJUDICE

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, it is hereby stipulated and agreed by the parties that the above-entitled cause of action is dismissed without prejudice.

BEST, SHARP, HOLDEN, SHERIDAN & STRITZKE

By Joseph A. Sharp
Joseph A. Sharp, OBA #8124
Attorney for Plaintiff
Miles I. Fidler

FELDMAN, HALL, FRANDEN, WOODARD & FARRIS

By John R. Woodard III
John R. Woodard III, OBA #9852
Attorney for Defendant, The Equitable
Life Assurance Society of the United
States

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

FILED

APR 25 1990 8

HARRY ROBINSON, et al.,

Plaintiffs,

vs.

VOLKSWAGENWERK AG, et al.,

Defendants.

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

No. 88-C-367-E
and 88-C-1435-E
Consolidated

A M E N D E D
ORDER

The Order of March 21, 1990 is hereby amended to reflect that Myron Shapiro is not a movant in (1) the motion of Defendants for summary judgment; and (2) the motion of Defendants to dismiss Plaintiffs' Second Amended Complaint. The following order shall be substituted for the March 21, 1990 Order.

The following matters are before the Court:

1. The report and recommendation of the Magistrate entered August 22, 1989 recommending that cases 88-367 and 88-1435 be bifurcated, that the liability issue be tried first and damages reserved for future decision and, that case 88-1435 be dismissed. (docket no. 137).
2. Plaintiff's motion in limine addressing how damages will be proved (docket no. 113).
3. The motion of Greer & Greer for partial summary judgment (docket no. 149).
4. The motion of Defendants Volkswagenwerk AG, Herzfeld and Rubin for summary judgment (docket no. 156).

5. The motion of Volkswagenwerk AG and Defendants Herzfeld and Rubin to dismiss Plaintiffs' Second Amended Complaint (docket no. 159).

The Court has reviewed the arguments, the evidentiary materials submitted and, the applicable authorities. The Court has determined that oral argument would not materially assist the determination of these issues and that these matters can be resolved on the basis of the record before the Court. The pending matters will be addressed in turn.

1. The August 22, 1989 Report and Recommendation of the Magistrate:

No objections to the Magistrate's report and recommendation have been filed by any party. The Court has concluded that the Magistrate's report and recommendation should be adopted by the Court.

2. Plaintiff's Motion in Limine:

Plaintiffs' motion seeks a ruling determining how damages will be proved. This motion will be held in abeyance pending the determination of liability.

3. The Motion of Defendants Greer & Greer for Partial Summary Judgment:

This motion is denied. The original Complaint adequately pled the Braden issue. The Second Amended Complaint particularized this matter but did not change the theory. Greer & Greer admits it had actual notice of the theory at the time of the original complaint. It will not, therefore, be prejudiced by the amendment.

4. The Motion of Volkswagenwerk AG, Herzfeld and Rubin, for Summary Judgment:

This motion is denied. The Court finds that disputed issues of material fact exist regarding representations made to Plaintiffs' attorneys in the first lawsuit which led to the dismissal of Volkswagenwerk AG from the first lawsuit. Further, Defendants have not shown that reliance on their alleged misrepresentations was unjustifiable as a matter of law.

5. The Motion of Volkswagenwerk AG, Herzfeld and Rubin to Dismiss Plaintiffs' Second Amended Complaint:

This motion is denied. Defendants argue that the Second Amended Complaint presents an attack on the judgment in the prior litigation and that such claims are barred by res judicata, collateral estoppel and the law of the case. Plaintiffs deny that the Second Amended Complaint attempts to set aside the prior judgment or to relitigate the issues of negligence, products liability and breach of warranty which were resolved against them in the prior litigation. Plaintiffs contend that the Second Amended Complaint merely particularizes their allegations and adds references to evidence revealed in discovery which, Plaintiffs contend, supports their allegations.

This Court already has ruled that the previous products liability action will not be relitigated here. This action concerns only the issue of fraud and other intentional torts. All other claims for relief have been dismissed. By their response to this motion, Plaintiffs concede that this action is so limited. Whatever Plaintiffs' Second Amended Complaint adds to this action, it does not change the claims upon which this action will proceed.

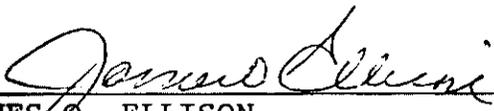
With regard to Defendants' argument that attorneys are absolute immune from liability for their statements made in court proceedings, any immunity that might attach to a private attorney's conduct does not attach to the conduct alleged in this case to be fraudulent.

In summary the Court orders as follows:

1. The report and recommendation of the Magistrate entered August 22, 1989 is adopted by the Court. Case No. 88-1435 is dismissed on the basis of the oral stipulation of counsel on record August 8, 1989. Greer & Greer will proceed with its allegations of fraud and fraudulent concealment as a cross-claim in case no. 88-C-367-E. This action will be bifurcated; the liability issue will be tried first and the issue of damages is reserved for future decision.
2. Plaintiff's motion in limine addressing how damages would be proved is held in abeyance and will be addressed if and when the damages issue is tried;
3. The motion of Greer & Greer for partial summary judgment is denied;
4. The motion of Volkswagenwerk AG, Herzfeld and Rubin for summary judgment is denied;
5. The motion of Volkswagenwerk AG, Herzfeld and Rubin to dismiss Plaintiffs' Second Amended Complaint is denied.

The hearing on these matters scheduled for April 13, 1990 is stricken.

ORDERED this 24th 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 25 1990

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

COMPUTONE, INC.,

Plaintiff,

vs.

No. 90-C-199-E

DAT SERVICES, INC., et al.,

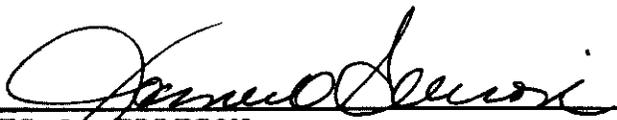
Defendants.

ORDER

The Court has been informed by the parties that this case should be dismissed because it is the same case as Computone Inc. v. DAT Services and Al Jubitz, Case No. 90-C-188-E, also removed to this Court. There being no objection to dismiss,

IT IS THEREFORE ORDERED that this action is dismissed. This controversy between the parties shall proceed under 90-C-188-E.

ORDERED this 25th day of April, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

F I L E D

APR 25 1990

GUARANTEE SECURITY LIFE
INSURANCE CO.,

Plaintiff,

vs.

RICHARD W. SLEMAKER, III,
d/b/a INSURANCE ASSOCIATES,
INC., and VALLEY NATIONAL BANK,

Defendants.

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

Case No. 89-C-159 E

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to stipulation by and between the parties, this Court hereby dismisses all claims in this matter with prejudice, except for the claim governed by the Agreed Judgment by and between Richard W. Slemaker, III and Valley National Bank.

IT IS SO ORDERED this 25 day of April, 1990.

S/ JAMES O. ELLISON

United States District Judge

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

FILED

APR 25 1990

GUARANTEE SECURITY LIFE
INSURANCE CO.,

Plaintiff,

vs.

RICHARD W. SLEMAKER, III,
d/b/a INSURANCE ASSOCIATES,
INC., and VALLEY NATIONAL BANK,

Defendants.

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

Case No. 89-C-159 E

AGREED JUDGMENT

Upon stipulation and agreement by and between Valley National Bank and Richard W. Slemaker, III, the Court hereby enters judgment in favor of Valley National Bank and against Richard W. Slemaker, III, in the sum of \$5,650.00 for Slemaker's breach of his customer agreement with Valley National Bank.

(SIGNED AND DELIVERED)

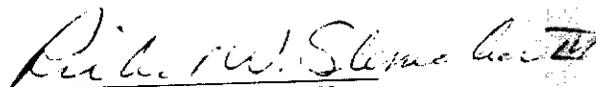
UNITED STATES DISTRICT JUDGE

AGREED TO AND APPROVED:

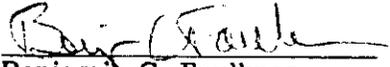


Sam P. Daniel, III
Short, Harris, Turner, Daniel
& McMahan
1924 South Utica, Suite 700
Tulsa, Oklahoma 74104

ATTORNEYS FOR VALLEY NATIONAL
BANK



Richard W. Slemaker, III
769 Bradfield Road
Houston, Texas 77060



Benjamin C. Faulkner
English, Jones & Faulkner
1700 Fourth National Bank Building
Tulsa, Oklahoma 74119

ATTORNEYS FOR RICHARD W. SLEMAKER, III

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

FILED

APR 25 1990

ROY CHANDLER,

Plaintiff,

vs.

AMERICAN AIRLINES INC.,
et al.,

Defendants.

No. 88-C-417-E

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

ORDER

NOW on this 25th day of April, 1990 comes on for hearing the above styled case and the Court, being fully advised in the premises finds that Defendant American Airlines, Inc. ("American") has moved to dismiss the case for lack of subject matter jurisdiction. Defendant Transport Workers Union of America, AFL-CIO, Local 514 ("Transport Workers") has joined in such motion. Defendants urge that this Court lacks diversity jurisdiction, an issue apparently conceded by Plaintiff. Thus the Motion to Dismiss must turn on whether federal question jurisdiction is present or lacking by reason of jurisdiction vested in the System General Board of Adjustment pursuant to the Railway Labor Act, 45 U.S.C. §§181, et seq. ("RLA").

This Court has carefully examined the positions of both sides, including the arguments made, authorities cited and exhibits submitted and finds that the case of Andrews v. Louisville & Nashville R.R.Co., 406 U.S. 320, 92 S.Ct. 1562, 32 L.Ed.2d 95 (1972) is controlling. Such case provides that the grievance and

arbitration procedures provided for minor disputes in the RLA are mandatory and specifically overrules the earlier line of cases which had left such procedures optional. Review of the Collective Bargaining Act reveals that a dispute over an interpretation of the CBA regarding discharge of employees for alleged unsatisfactory attendance, as is present in this case, is such a minor dispute and does fall within the exclusive jurisdiction of the System Board. See also Transport Workers of America v. American Airlines, Inc., 413 F.2d 746 (10th Cir. 1969).

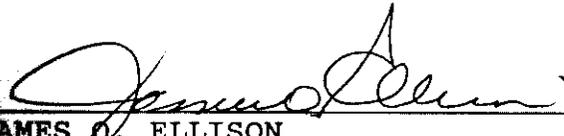
Plaintiff asserts that such jurisdiction of the System Board may be circumvented, based on Plaintiff's contention that his case fits within the "hybrid" class of exceptions and on his belief that the necessary exhaustion of remedies would be futile. The Court finds both such assertions to be groundless and directs that the administrative process be followed.

The Court is cognizant, however, that Plaintiff's claim has long been winding its way through the federal courts. To expedite Plaintiff's ultimate resolution of the matter, in the event the administrative process does not provide such resolution, this Court will not conclusively dismiss the case, but rather will direct the Clerk to administratively close the case. Any reopening of the matter could only be done within thirty (30) days of the exhaustion of Plaintiff's administrative remedies.

IT IS THEREFORE ORDERED that the Motions of Defendants to Dismiss for Lack of Subject Matter Jurisdiction are hereby granted, with the proviso that the case be administratively closed subject

to being reopened if timely notified by the parties within thirty (30) days of the exhaustion of Plaintiff's administrative remedies.

ORDERED this 25th 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 24 1990

CLERK
DISTRICT COURT

JERRY LAYMON,

Plaintiff,

vs.

Case No. 89-C-426B

PAT MAYS, GARY ROHR,
RAY REAVIS, DON BOARDWINE,
DEWEY JOHNSON, and THE CITY OF
CLAREMORE, a municipal
corporation,

Defendants.

Notice of

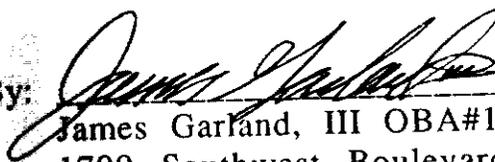
DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, Jerry Laymon, by and through his attorney, and dismisses Defendant Pat Mays and Bobby Joe Green as Defendants from this action, without prejudice to refileing pursuant to Rule 41 of the Federal Rules of Civil Procedure.

Respectfully submitted,

FRASIER & FRASIER

By:



James Garland, III OBA#12104
1700 Southwest Boulevard
P.O. Box 799
Tulsa, OK 74107
(918) 584-4724

CERTIFICATE OF MAILING

I hereby certify that on the 25th day of April, 1990, I mailed a true and correct copy of the above and foregoing instrument to:

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

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

with the correct and proper postage thereon fully prepaid.


James Garland, III

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

APR 24 1990

CREEK COUNTY SPEEDWAY, INC.,
an Oklahoma corporation, EMMETT
HAHN, and WOKEETA F. HAHN,

Plaintiffs,

vs.

TRANSAMERICA INSURANCE COMPANY,
a foreign corporation,

Defendant.

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

) No. 89-C-951-B
)
)
)
)

ORDER OF DISMISSAL

NOW on this 24 day of April, 1990, this matter comes
on upon Plaintiffs' Motion for Dismissal Without Prejudice.

The Court, having examined said Motion, finds that an
Order should issue pursuant to said Motion.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that
plaintiffs be allowed to dismiss this action without
prejudice against the defendant herein.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

FILED

APR 28 1990

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

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

FEDERAL DEPOSIT INSURANCE CORPORATION,)

Plaintiff,)

vs.)

BOBBY L. GILBERT and CONCESSION SERVICES, INC.)

Defendant.)

Case No. 89-C-1020-E

DEFAULT JUDGMENT

Judgment is hereby entered in favor of the Federal Deposit Insurance Corporation ("FDIC") on its First Cause of Action in the principal amount of \$15,210.70, accrued interest of \$4,381.05 as of March 28, 1990, and accruing thereafter at the per diem rate of \$5.83 against Bobby L. Gilbert in his individual capacity; and, judgment for the FDIC on its Second Cause of Action in the principal amount of \$11,042.65, with accrued interest of \$2,763.54 as of March 28, 1990, and accruing thereafter at the per diem rate of \$5.75 is hereby entered against Concession Services, Inc. and Bobby L. Gilbert, Guarantor; and judgment for the FDIC on its Third Cause of Action in the principal amount of \$4,560.36, with accrued interest of \$182.35 as of March 28, 1990, and accruing thereafter at the per diem rate of \$1.62 against Concession Services, Inc. and Bobby L. Gilbert, Guarantor.

DATED this 19th day of April, 1990.

S/ JAMES O. ELLISON

Judge of the United States District Court

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 20 1990

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

UNITED STATES OF AMERICA,
Plaintiff,

v.

WESLEY T. FISHER, a/k/a
WESLEY THOMAS FISHER,
Defendant.

Civil Action No. 89-C-553-E

DEFAULT JUDGMENT

This matter comes on for consideration this 19th 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, Wesley T. Fisher, a/k/a Wesley Thomas Fisher, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Wesley T. Fisher, a/k/a Wesley Thomas Fisher, acknowledged receipt of Summons and Complaint on July 10, 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, Wesley T. Fisher, a/k/a Wesley Thomas Fisher, for the principal amount of \$16,195.00, plus accrued interest of \$905.12 as of April 30, 1989, plus interest thereafter at the rate of four (4) percent per annum until judgment, plus interest thereafter at the current legal rate of 8.32 percent per annum until paid, plus costs of this action.

S/ JAMES O. ELLISON

United States District Judge

CJD/mmp

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

FILED

APR 25 1990

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

ROBERT MITCHUM WATKINS,)
)
 Petitioner,)
)
 v.)
)
 RON CHAMPION, Warden and)
 THE ATTORNEY GENERAL OF)
 THE STATE OF OKLAHOMA,)
)
 Respondents.)

89-C-593-B ✓

ORDER

Now before the court are petitioner Robert Mitchum Watkins' application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Docket #2)¹, respondents' Response (#5), and petitioner's Traverse (#6). The background of this matter was summarized by the Magistrate in his Order of 8/4/89 (#3) and is incorporated herein by reference.²

Petitioner alleges that the Attorney General of the State of Oklahoma should be dismissed because he is not a proper party respondent pursuant to Rule 2(a) of the Rules Governing Section 2254 Cases.³

¹ "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.

² The Magistrate's Order of 8/4/89 is amended to reflect that petitioner did appeal his conviction in Case No. CRF-84-199. The Oklahoma Court of Criminal Appeals in Case No. F-85-185 affirmed the judgment and sentence in Count I of the Information, but reversed and remanded with instructions to dismiss Count II of the Information. Petitioner raised this issue by way of an Application for an Order Nunc Pro Tunc which is hereby granted.

³ Rule 2(a), regarding applicants in present custody, reads as follows: "If the applicant is presently in custody pursuant to the state judgment in question, the application shall be in the form of a petition for a writ of habeas corpus in which the state officer having custody of the applicant shall be named as respondent."

2

Under Rule 2(a) of the Rules Governing Section 2254 Cases, the state officer having custody of the applicant should be named as respondent. When a habeas corpus petitioner seeks relief from state custody, he must direct his petition against those state officials holding him in restraint. Moore v. United States, 339 F.2d 448 (10th Cir. 1964). However, petitioner's pro se pleadings will be held to a less stringent standard than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 210 (1972).

In Spradling v. Maynard, 527 F.Supp. 398, 404 (W.D. Okl. 1981), the court held that the Attorney General of the State of Oklahoma is not a proper party respondent in a habeas corpus action brought by a state prisoner already in custody.⁴ The court stated:

The Attorney General of Oklahoma is simply legal counsel for the Oklahoma Department of Corrections and its employees. He is not the custodian of any prisoner incarcerated in any Oklahoma correctional institution. In the circumstances, he could not respond to a writ of habeas corpus on behalf of a prisoner even if one was issued to him.

Id.

The court is aware that the model form for use by petitioners making §2254 habeas corpus applications includes the state attorney general as an additional respondent. Practically speaking, the Attorney General of Oklahoma, as legal counsel for the Oklahoma Department of Corrections and its employees, benefits by receiving

⁴ The court notes that Rule 2(b) of the Rules Governing Section 2254 Cases in the United States District Courts pertaining to applicants subject to future custody requires the joinder of the state Attorney General: "If the applicant is not presently in custody pursuant to the state judgment against which he seeks relief but may be subject to such custody in the future, the application shall be in the form of a petition for a writ of habeas corpus with an added prayer for appropriate relief against the judgment which he seeks to attack. In such a case the officer having present custody of the applicant and the attorney general of the state in which the judgment which he seeks to attack was entered shall each be named as respondents."

immediate notice of a habeas corpus action filed when named as an additional respondent. However, the court concludes that the petitioner's request for dismissal of the Attorney General of the State of Oklahoma as a party respondent should be granted pursuant to Rule 2(a).

Petitioner now seeks federal habeas relief on the alleged grounds that: (1) the Oklahoma Court of Criminal Appeals erred in denying his writ of habeas corpus, (2) the state refiled his criminal case without a hearing before the same judge or magistrate who presided over the prior dismissal, (3) there was no new evidence offered by the state when it refiled criminal charges against him sufficient to overcome the prior dismissal, (4) the state district court erred in denying his writ of habeas corpus without a hearing, (5) the state district court failed to develop material facts at the alleged hearing, (6) the state district court failed to resolve the merits of an alleged factual dispute, (7) the pretrial and trial courts lacked both subject matter and personal jurisdiction, (8) the record does not support the state district court's Minute Order denying his writ of habeas corpus, and (9) the same judge presided at his preliminary hearing and at his trial absent consent of all parties.

The court finds that petitioner fails to raise a federal question entitling him to relief in these claims. Claims of state procedural or trial errors do not present federal questions cognizable in a federal habeas corpus suit unless they deprive petitioner of fundamental rights guaranteed by the Constitution of

the United States. See Brinlee v. Crisp, 608 F.2d 839, 843 (10th Cir. 1979). In addition, the court has reviewed petitioner's claims and finds them to be frivolous.

As his first ground for relief, petitioner alleges that the Oklahoma Court of Criminal Appeals erred in denying his writ of habeas corpus. The Court of Criminal Appeals found that petitioner had not presented his state habeas petition to the district court of the county where he was restrained as required by Oklahoma law. Notwithstanding this defect, the Court of Criminal Appeals reviewed the merits of petitioner's habeas petition and found that petitioner had failed to allege sufficient facts warranting habeas relief, because the evidence showed that this trial was not conducted by the same judge who conducted his preliminary hearing. Therefore, petitioner's first ground for relief is without merit.

As his second ground for relief, petitioner claims that the state refiled his criminal case without a hearing before the same judge or magistrate who presided over the prior dismissal. Petitioner relies on the case of Chase v. State, 517 P.2d 1142, 1143 (Okla.Crim.App. 1973), where the court stated that "[b]efore a refiling may be permitted, the charge must be brought before the same magistrate who originally dismissed the case and consideration by another magistrate is forbidden unless the first be unavailable".

The court finds that petitioner's reliance on Chase is misplaced. The docket sheets and the Order for Hearing submitted by petitioner reveal that at petitioner's initial preliminary

hearing held on 6/27/84, the Honorable J. R. Settle in Case No. CRF-84-199 granted the state's oral motion to dismiss without prejudice. The following day, on 6/28/84, the Honorable Hardy Summers permitted the state to withdraw its oral motion to dismiss without prejudice and ordered a new preliminary hearing to be held before the Honorable J. R. Settle on 7/26/84. Accordingly, both of petitioner's preliminary hearings were held before the Honorable J. R. Settle as required by the Chase court. The court therefore finds petitioner's second ground for relief is without merit.

As his third ground for relief, petitioner claims that there was no new evidence offered by the state when they refiled criminal charges against him sufficient to overcome the prior dismissal. The court fails to see the basis of petitioner's argument. The charges against petitioner at his initial preliminary hearing on 6/27/84 were dismissed on the state's motion without prejudice without presentation of any evidence. Judge Settle did not dismiss the charges for lack of sufficient evidence. This argument, then, is untenable.

As his fourth ground for relief, petitioner claims that the state district court erred in denying his writ of habeas corpus without a hearing. There is no constitutional requirement that a state grant an evidentiary hearing for a writ of habeas corpus and no merit to this argument.

As his fifth ground for relief, petitioner claims that the state district court failed to develop material facts at the alleged hearing. The court has already found that there is no

constitutional requirement that a state grant an evidentiary hearing for a writ of habeas corpus. The district court reviewed the merits of petitioner's state writ of habeas corpus and found them to be frivolous because petitioner had misinterpreted cited cases and Oklahoma statutes.

As his sixth ground for relief, petitioner claims that the state district court failed to resolve the merits of an alleged factual dispute. Once again, the state district court reviewed the merits of petitioner's claims and found them to be frivolous. There was no factual dispute for the state district court to resolve.

As his seventh ground for relief, petitioner claims that the pretrial and trial courts lacked both subject matter and personal jurisdiction. There is no merit to this argument. The District Court for Muskogee County has both subject matter jurisdiction and personal jurisdiction over persons who commit crimes in its jurisdiction.

As his eighth ground for relief, petitioner claims that the record does not support the state district court's Minute Order denying his writ of habeas corpus. After carefully reviewing the entire record in this case, the court finds that the record indeed does support the state district court's Minute Order denying petitioner's writ of habeas corpus. He had not presented his state habeas petition to the proper court and has misinterpreted case law and Oklahoma statutes making his grounds for relief frivolous. Petitioner states that the "entire basis" of his habeas request is

the ruling made by the state court on his habeas petition "without findings of fact and conclusions of law" and cites a California case which states that this is required in the Seventh Circuit, United States ex rel Giese v. Chamberlin, 184 F.2d 404 (7th Cir. 1950). While 28 U.S.C. § 2255 requires the federal court to make findings of fact and conclusions of law when a prisoner challenges his sentence under federal law, there is no such requirement under Oklahoma's habeas statute, 12 O.S. § 1331 et seq., which applies to this case.

Finally, as his ninth ground for relief, petitioner claims that the same judge presided at his preliminary hearing and at his trial absent consent of all the parties. The record does not support this assertion by petitioner. The transcript of petitioner's preliminary hearing held on 7/26/84 reveals that the Honorable J. R. Settle presided. The transcript of petitioner's trial beginning on 10/1/84 reveals that the Honorable Hardy Summers presided.

It is therefore ordered the petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be dismissed.

Dated this 23rd day of April, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

APR 23 1990

TERRY WAYNE EVANS,

Plaintiff,

vs.

STATE MUTUAL LIFE ASSURANCE
COMPANY OF AMERICA, a
Massachusetts corporation,

Defendant.

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

Case No. 89-C-750-E

ORDER OF DISMISSAL WITHOUT PREJUDICE

On this 19 day of April, 1990, upon written application of the parties for an order of dismissal without prejudice of the Petition and all causes of action, the Court, having examined said application, finds that said parties have requested the Court to dismiss the Petition without prejudice to any future action and, the Court, being fully advised in the premises, finds that said Petition should be dismissed; it is, therefore,

ORDERED, ADJUDGED and DECREED by the Court that the Petition and all causes of action of the Plaintiff filed herein against the Defendant be and the same are hereby dismissed without prejudice to any future action.

JAMES O. ELLISON

UNITED STATE DISTRICT COURT
JUDGE

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

F I L E D

APR 23 1990

CROSS ROADS SAVINGS AND LOAN
ASSOCIATION, F.A., by and through
its Conservator, Resolution Trust
Corporation,

Plaintiff,

vs.

RICHARD P LOOPER and CAROL ANN
LOOPER, individually, and d/b/a
Looper Construction Company, d/b/a
Looper Custom Homes, d/b/a Looper
Construction, d/b/a Rick Looper
Custom Homes; DARRELL ARMSTRONG;
MARGARET A. ARMSTRONG; C&B CARPETS
& SERVICES, INC.; OWASSO LUMBER
COMPANY; CONCRETE INDUSTRIES OF
TULSA CORP.; KEITH H. DAWSON d/b/a
Dawson Electric; AMERICAN WINDOW,
INC.; EMCO INSULATION INC.; RICHARD
HAMILTON; HARRIS CUSTOM CABINETS,
INC.; FULLER ROOFING COMPANY; L&W
SUPPLY d/b/a Drywall Supply; CHARLIE
D. STRONG d/b/a Strong Drywall Co.;
AMERICAN OVERHEAD DOOR INC.; RAY'S
GLASS, INC.; TIMOTHY J. DETTER
d/b/a Spectrum Paint & Supply;
TRINITY BRICK SALES; DON LIGHTNER
d/b/a Lightner Heat & Air
Conditioning; AL KENNON d/b/a The
ARK Plumbers; ARROW CONCRETE
COMPANY; C&M INTERIORS INC. d/b/a
Carpet World; and TYCO ENTERPRISES,
INC.,

Defendants.

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

Case No. 90-C-0005-E

ORDER OF DISMISSAL WITHOUT PREJUDICE - COUNT I

NOW comes on before the Court the Stipulation of Dismissal Without Prejudice -
Count I filed herein by Plaintiff, Cross Roads Savings and Loan Association and
Defendants, Richard P. Looper and Carol Ann Looper, pursuant to Fed.R.Civ.P.
41(a)(1)(ii); and the Court having reviewed the Stipulation and good cause having been
stated in support thereof, ORDERS that only Count I set forth in the Complaint for

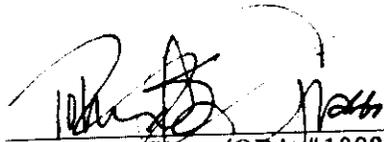
Foreclosure and To Quiet Title, filed herein on January 4, 1990, be and the same is hereby dismissed without prejudice to Plaintiff's right to reassert such claim in the future and with each party bearing their own costs herein.

IT IS SO ORDERED and DATED this 19 day of April, 1990.

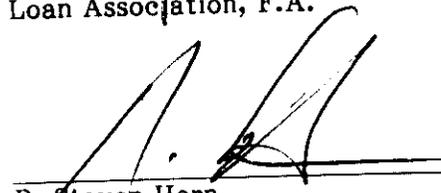
S/ JAMES O. ELLISON

UNITED STATES DISTRICT COURT JUDGE

AGREED TO AND APPROVED FOR ENTRY:



Robert S. Glass (OBA #10824)
Counsel for Cross Roads Savings and
Loan Association, F.A.



R. Steven Horn
Counsel for Richard and Carol Ann Looper

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

FILED

APR 23 1990

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

CROSS ROADS SAVINGS AND LOAN
ASSOCIATION, F.A., by and through
its Conservator, Resolution Trust
Corporation,

Plaintiff,

vs.

Case No. 90-C-0005-E

RICHARD P LOOPER and CAROL ANN
LOOPER, individually, and d/b/a
Looper Construction Company, d/b/a
Looper Custom Homes, d/b/a Looper
Construction, d/b/a Rick Looper
Custom Homes; DARRELL ARMSTRONG;
MARGARET A. ARMSTRONG; C&B CARPETS
& SERVICES, INC.; OWASSO LUMBER
COMPANY; CONCRETE INDUSTRIES OF
TULSA CORP.; KEITH H. DAWSON d/b/a
Dawson Electric; AMERICAN WINDOW,
INC.; EMCO INSULATION INC.; RICHARD
HAMILTON; HARRIS CUSTOM CABINETS,
INC.; FULLER ROOFING COMPANY; L&W
SUPPLY d/b/a Drywall Supply; CHARLIE
D. STRONG d/b/a Strong Drywall Co.;
AMERICAN OVERHEAD DOOR INC.; RAY'S
GLASS, INC.; TIMOTHY J. DETTER
d/b/a Spectrum Paint & Supply;
TRINITY BRICK SALES; DON LIGHTNER
d/b/a Lightner Heat & Air
Conditioning; AL KENNON d/b/a The
ARK Plumbers; ARROW CONCRETE
COMPANY; C&M INTERIORS INC. d/b/a
Carpet World; and TYCO ENTERPRISES,
INC.,

Defendants.

JUDGMENT AND DECREE OF FORECLOSURE

This matter comes on before the Court, the Honorable James O. Ellison presiding,
on this 19 day of ^{April} ~~March~~, 1990, pursuant to regular assignment. Plaintiff, Cross Roads
Savings & Loan Association, F.A. ("Cross Roads"), acting by and through its Conservator,
Resolution Trust Corporation, is represented by its counsel, Robert S. Glass of Gable &
Gotwals, Inc., and the Defendants in this proceeding are either represented by their

counsel whose signatures are ascribed to this Judgment, have defaulted or filed disclaimers in this proceeding. Counsel for the parties appearing herein have represented to the Court by virtue of their signatures hereinbelow that the parties have agreed to the entry of this Judgment and Decree of Foreclosure in favor of Cross Roads and against each of the Defendants hereinbelow identified in accordance with the findings and order of this Court. The Court makes the following FINDINGS pursuant to the stipulations and agreement of the parties to this Judgment and Decree of Foreclosure:

1. This Court has jurisdiction over the subject matter and the parties hereto. The issues in this case have been resolved either by default or disclaimer of certain party Defendants or agreement between the parties as herein provided.

2. Cross Roads has caused a copy of the Complaint together with Summons to be duly and properly served upon the following Defendants on the dates stated and such Defendants are in default by failing to timely answer or otherwise plead. Cross Roads is entitled to the entry of default judgment herein against the following Defendants in accordance with Fed.R.Civ.P. 4:

<u>Defendant</u>	<u>Date Served</u>	<u>Representative Accepting Service</u>
Darrell Armstrong	01/26/90	Darrell Armstrong, FRCP 4(d)(1)
Margaret Armstrong	01/26/90	Margaret Armstrong, FRCP 4(d)(1)
Keith Dawson d/b/a Dawson Electric	01/09/90	Keith Dawson, FRCP 4(d)(1)
EMCO Insulation	01/08/90	Larry D. White, officer, FRCP 4(d)(3)
Richard Hamilton	01/09/90	Richard Hamilton, FRCP 4(d)(1)
Fuller Roofing Co.	01/09/90	Jim Fuller, officer, FRCP 4(d)(3)
Ray's Glass, Inc.	02/21/90	Ray Shelton, officer and owner, FRCP 4(d)(3)
Spectrum Paint & Supply	01/12/90	Timothy J. Detter, officer, FRCP 4(d)(3)
Trinity Brick Sales	01/30/90	Steve Rose, officer, FRCP 4(d)(3)

The ARK Plumbers	01/11/90	Al Kennon, officer, FRCP 4(d)(3)
Arrow Concrete Co.	02/22/90	Jack Miller, officer, FRCP 4(d)(3)
Don Lightner d/b/a Lightner Heating & Air Conditioning	01/08/90	Becky Kennemer, FRCP 4(d)(3)
American Overhead Door, Inc.	02/22/90	Debbie Martin, officer, FRCP 4(d)(3)
Charlie D. Strong d/b/a Strong Drywall Company	01/26/90	Carrie Davis, daughter, FRCP 4(d)(1)
American Window, Inc.	02/23/90	Terry Ogle, officer, FRCP 4(d)(3)

The Defendants hereinabove identified are hereinafter collectively referred to for convenience as the "Default Defendants".

3. Returns of service have been filed in this case evidencing that a copy of the Complaint and Summons were served on the Default Defendants. The record in this case reflects that the Default Defendants have failed to timely answer in this proceeding pursuant to Fed.R.Civ.P. 12(a) after due and proper service of process upon the Default Defendants by Cross Roads in compliance with Fed.R.Civ.P. 4(d)(1) and (3).

4. The following Defendants were duly and properly served with a copy of the Complaint and Summons and have disclaimed any interest in and to the property made the subject of this action:

<u>Defendant</u>	<u>Date of Service</u>	<u>Date of Disclaimer</u>
L&W Supply d/b/a Drywall Supply	01/12/90	02/07/90
Tyco Enterprises, Inc.	01/09/90	02/06/90

5. Cross Roads will voluntarily dismiss without prejudice its Count I against the Defendants herein and the relief requested in Count I is not subject to further adjudication by this Court.

6. All of the allegations of Cross Roads' Complaint are true and correct and Cross Roads is entitled to judgment under its respective Count II and Count III against all of the Defendants herein, and each of them as prayed for, except as otherwise provided in this Judgment, as follows:

(a) On its Count II Cross Roads is entitled to judgment in rem against all of the Defendants herein in the sum of \$82,220.28, calculated as of December 20, 1989, together with all other charges, expenses, attorneys' fees and accrued and accruing interest to the date of this Judgment at the rate of Bank of Oklahoma Prime plus 6% per annum, together with interest accruing on the unpaid indebtedness from the date of this Judgment at the rate of ~~8.36%~~^{8.32%} per annum until paid in full (the "Cross Roads First Mortgage Claim"). The Cross Roads First Mortgage Claim is secured by a first mortgage lien encumbering the real property together with improvements described as follows:

Lot Four (4) in Block Fourteen (14) of WEST WOOD ESTATES
THE FOURTH, a Subdivision within the City of Claremore,
Rogers County, Oklahoma, according to the Plat thereof,

hereinafter referred to as the "Note II Collateral".

(b) On its Count II Cross Roads is entitled to judgment in rem against all of the Defendants herein in the aggregate sum of \$15,181.92, calculated as of December 20, 1989, together with all other charges, expenses, attorneys' fees and accrued and accruing interest to the date of this Judgment at the rate of Bank of Oklahoma Prime plus 6% per annum, together with interest accruing on the unpaid indebtedness from the date of this Judgment at the rate of ~~8.36%~~^{8.32%} per annum until paid in full (the "Cross Roads Second Mortgage Claim"), subject only to the Cross Roads First Mortgage claim and the materialman lien claim of C&M Interiors, Inc. d/b/a Carpet World in the sum of \$6,429.59.

(c) The Cross Roads' **Mortgage II** and **Second Mortgage II**, described in the Complaint, have **been breached** by Defendants, Richard and Carol Looper (collectively "**Looper**"), and Cross Roads' mortgages may be foreclosed by Cross Roads at this time.

(d) The Cross Roads' **Mortgage II** is a valid first priority lien encumbering the Note II **Collateral** **prior** and superior to the interests of all of the Defendants herein and all **persons** and entities claiming under them.

(e) The mechanics' and **materialman's** lien of C&M Interiors, Inc., d/b/a Carpet World, is a valid **second priority** lien encumbering the Note II **Collateral** subject to the first **priority** lien of Cross Roads' **Mortgage II**.

(f) The Cross Roads' **Second Mortgage II** is a valid third priority lien encumbering the Note II **Collateral**, subject only to the first and second priority liens above described, but **otherwise** prior and superior to all other interests of the Defendants and all **persons** and entities claiming under them.

(g) Cross Roads is **entitled** to the issuance of an Order of Special Execution and Sale which shall be **issued** commanding the Sheriff of Rogers County, Oklahoma to **advertise and sell** upon execution the Note II **Collateral**.

(h) The Note II **Collateral** may be sold and the proceeds shall be applied to the payment of:

(i) first, all **costs**, including attorneys' fees incurred by Cross Roads in **connection** with this action;

(ii) second, the **Cross Roads** First Mortgage Claim;
and

(iii) third, the **balance**, if any remaining, shall be paid into this Court to be **held** until further order of the Court.

(i) Looper and the Defendants in this case, and all persons and entities claiming under them, shall be barred, restrained and enjoined from having or asserting any right, title, interest or right of redemption in or against the Note II Collateral after sale thereof.

(j) A Writ of Assistance shall issue in favor of the purchaser of the Note II Collateral at sale.

(k) On its Count III Cross Roads is entitled to Judgment in rem against all of the Defendants herein in the sum of \$65,459.01, calculated as of December 20, 1989, together with all other charges, expenses, attorneys' fees and accrue and accruing interest to the date of this judgment at the rate of Bank of Oklahoma Prime plus 6% per annum, plus interest accruing on the unpaid indebtedness from the date of this Judgment at the rate of 8.36% per annum until paid in full (the "Cross Roads Count III Claim"). The Cross Roads Count III Claim is secured by a first priority mortgage lien encumbering the real property together with improvements described as follows:

Lot Three (3) in Block Three (3) of FOSTER ADDITION NO. 2,
to the Town of Catoosa, Rogers County, Oklahoma, according
to the recorded Plat thereof

(hereinafter the "Note III Collateral").

(l) The Cross Roads Mortgage III, described in the Complaint, has been breached by Looper and the Cross Roads Mortgage III may be foreclosed by Cross Roads at this time.

(m) The Cross Roads Mortgage III is a valid first priority lien encumbering the Note III Collateral prior and superior to the interests of all of the Defendants and all persons and entities claiming under them.

(n) Cross Roads is **entitled** to the issuance of an Order of Special Execution and Sale which shall be **issued** commanding the Sheriff of Rogers County, Oklahoma to advertise and sell upon execution the Note III Collateral.

(o) The Note III Collateral may be sold and the proceeds shall be applied to the payment of:

(i) first, all costs, including attorneys' fees incurred by Cross Roads in connection with this action;

(ii) second, the Cross Roads Count III Claim; and

(iii) third, the balance, if any remaining, shall be paid into this Court to be held until further order of the Court.

(p) Looper and the Defendants in this case, and all persons and entities claiming under them, shall be **barred**, restrained and enjoined from having or asserting any right, title, interest or right of redemption in or against the Note III Collateral after sale thereof.

(q) A Writ of Assistance shall issue in favor of the purchaser of the Note III Collateral at sale.

(r) Upon confirmation of the sale(s) of the Note II Collateral and Note III Collateral hereinabove ordered, the Sheriff of Rogers County, Oklahoma shall execute and deliver a good and sufficient Sheriff's Deed to the respective purchasers of the property, which shall convey all the right, title, interest, estate and equity of redemption of all the parties to this action, and all persons and entities claiming under them, and each of them.

IT IS THEREFORE ORDERED and DECREED by this Court that Cross Roads shall recover of and from the Defendants **in rem** Judgment in the sums hereinabove specified on its Count II and Count III; that interest shall accrue on the unpaid indebtedness at the rate of ^{8.32%}~~8.36%~~ per annum, pursuant to 28 U.S.C. §1961, from the date of this Judgment

until paid in full; and Cross Roads shall recover all costs of this action, including attorneys' fees, for all of which special execution shall issue.

IT IS SO ORDERED.

S/ JAMES O. ELLISON

HONORABLE JAMES O. ELLISON
UNITED STATES DISTRICT COURT JUDGE

APPROVED AND AGREED TO:

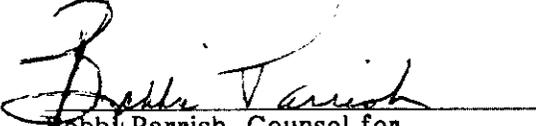


Robert S. Glass (OBA #10824),
Counsel for Plaintiff, Cross Roads
Savings and Loan Association, F.A.

Joe Lappan, Appearance for this purpose
as counsel for Don Lightner d/b/a
Lightner Heating & Air Conditioning

R. Steven Horn, Counsel for
Richard and Carol Looper

Allen C. Cowdery, Counsel for
C&B Carpets & Services, Inc.



Bobbi Parrish, Counsel for
C&M Interiors, Inc. d/b/a
Carpet World

Jeannie C. Henry, Counsel for
Owasso Lumber Company

Philip W. Redwine, Counsel for
Trinity Brick Sales

David Nelson, Counsel for
Harris Custom Cabinets, Inc.

APPROVED AND AGREED TO:

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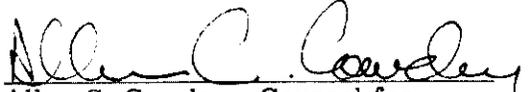
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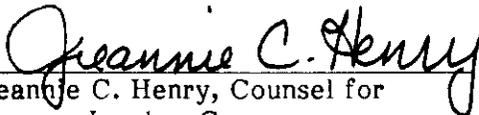
Robert S. Glass (OBA #10824),
Counsel for Plaintiff, Cross Roads
Savings and Loan Association, F.A.

Joe Lappan, Appearance for this purpose
as counsel for Don Lightner d/b/a
Lightner Heating & Air Conditioning

R. Steven Horn, Counsel for
Richard and Carol Looper

Allen C. Cowdery, Counsel for
C&B Carpets & Services, Inc.

Bobbi Parrish, Counsel for
C&M Interiors, Inc. d/b/a
Carpet World



Jeannie C. Henry, Counsel for
Owasso Lumber Company

Philip W. Redwine, Counsel for
Trinity Brick Sales

David Nelson, Counsel for
Harris Custom Cabinets, Inc.

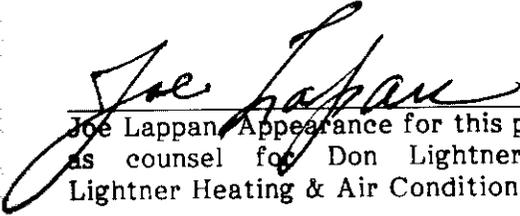
APPROVED AND AGREED TO:

Robert S. Glass (OBA #10824),
Counsel for Plaintiff, Cross Roads
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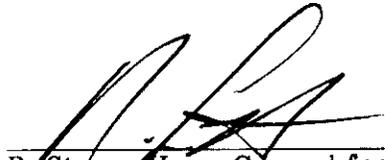
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Philip W. Redwine, Counsel for
Trinity Brick Sales



David Nelson, Counsel for
Harris Custom Cabinets, Inc.

FILED

Apr 23 1990 *old*

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

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

ROY L. JACKSON,
Plaintiff,
v.
INTEGRA, INC. d/b/a, RESIDENCE
INN, AND MARRIOTT, INC.,
Defendants.

Case No. 89-C-816E ✓

JOURNAL ENTRY OF JUDGMENT

On March 30, 1990, the above-captioned matter came before this Court on two motions to dismiss, filed by Defendant Integra and Defendant Marriott. As alleged in Paragraph One (1) of Plaintiff's Amended Complaint filed on February 7, 1990, Plaintiff's action is one for breach of contract, wrongful discharge. Plaintiff complains of various wrongful actions and conduct stemming from purported violations of an implied contract arising from an employee handbook and/or a covenant of good faith and fair dealing. Both Motions to Dismiss urged that the action be dismissed pursuant to Fed.R.Civ.P. 12(b)(6) on the grounds that Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted.

The Court, having carefully reviewed Plaintiff's Amended Complaint, being fully advised in all premises, and construing all allegations in a light most favorable to the Plaintiff, finds that Defendant Marriott cannot be held

57

vicariously liable for any alleged acts of Defendant Integra and the action must therefore be dismissed with prejudice as to Defendant Marriott.

The Court, having carefully reviewed Plaintiff's Amended Complaint, being fully advised in all premises, and construing all allegations in a light most favorable to Plaintiff, further finds that under Oklahoma law as pronounced by the Oklahoma Supreme Court in Burk v. K-Mart Corp., 720 P.2d 24 (Okla. 1989) and Hinson v. Cameron, 742 P.2d 549 (Okla. 1987) : none of Plaintiff's claims support a cause of action against Defendant Integra and the action must therefore be dismissed with prejudice as to Defendant Integra.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this case is dismissed with prejudice as against both Defendant Marriott and Defendant Integra and judgment is entered against the Plaintiff and for Defendant Marriott and Defendant Integra on Plaintiff's claims.

Signed this 19th day of April, 1990.



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

Approved as to form and content:

David E. Strecker

David E. Strecker, OBA #8687
CONNER & WINTERS
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

Attorneys for Defendants
INTEGRA, INC. and MARRIOTT CORPORATION

Roy L. Jackson
P.O. Box 691306
Tulsa, Oklahoma 74169-1306
(918) 592-3665

Pro Se Plaintiff

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANTHONY P. LAUCHNER; SUSAN
SWINNEY LAUCHNER; PAUL A.
LOPEZ; JEAN LOPEZ; COUNTY
TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

APR 20 1990

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

CIVIL ACTION NO. 87-C-607-B

DEFICIENCY JUDGMENT

This matter comes on before the Court this 20 of April, 1990, on the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment which Motion was filed on the 31st day of August, 1989, and a copy of the Motion was mailed to Anthony P. Lauchner and Susan Swinney Lauchner, 4917 South Poplar Avenue, Broken Arrow, Oklahoma 74012 and Roy Hinkle, Attorney for Defendants, Anthony P. Lauchner and Susan Swinney Lauchner, 1515 East 71st Street, Suite 307, Tulsa, Oklahoma 74136, and all other counsel of record. The Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, appeared by Tony M. Graham, United States Attorney for the Northern District of Oklahoma through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendants, Anthony P. Lauchner and Susan Swinney Lauchner, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on April 11, 1988, in favor of the Plaintiff United States of America, and against the Defendants, Anthony P. Lauchner and Susan Swinney Lauchner, with interest and costs to date of sale is \$74,730.39.

The Court further finds that the appraised value of the real property at the time of sale was \$30,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered April 11, 1988, for the sum of \$26,811.00 which is less than the market value.

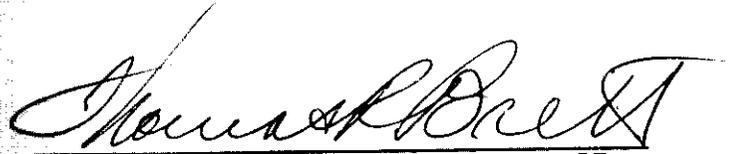
The Court further finds that the said Marshal's sale was confirmed pursuant to the Order of this Court on the 21st day of March, 1990.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Anthony P. Lauchner and Susan Swinney Lauchner, as follows:

Principal Balance as of 4/11/88	\$54,284.82
Interest	19,355.65
Late Charges to Date of Judgment	469.92
Appraisal by Agency	175.00
Management Broker Fees to Date of Sale	260.00
Abstracting	<u>185.00</u>
TOTAL	\$74,730.39
Less Credit of Appraised Value	- <u>30,000.00</u>
DEFICIENCY	\$44,730.39

plus interest on said deficiency judgment at the legal rate of 8.32 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, Anthony P. Lauchner and Susan Swinney Lauchner, a deficiency judgment in the amount of \$44,730.39, plus interest at the legal rate of 8.32 percent per annum on said deficiency judgment from date of judgment until paid.


UNITED STATES DISTRICT JUDGE

NNB/css

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

FILED

APR 20 1990

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

SHERIL MITCHELL,
Plaintiff,

vs.

ZAPATA INDUSTRIES, a Pennsylvania
Corp., DIAMOND NATIONAL
CORPORATION, The Gardner Division,
an Ohio Corp., FAMCO, INC., a
Kentucky Corp., AMERICAN AIR
FILTER COMPANY, INC., A Delaware
Corporation,

Defendants.

No 87-C-784-B

ORDER

By Order entered March 15, 1990, this Court directed the Plaintiff to respond to the Motion for Summary Judgment filed by American Air Filter Company, Inc. (American Air) on September 6, 1989. The Order stated that, in the absence of timely response, the Court would deem the issues raised in American Air's Motion for Summary Judgment confessed and an appropriate would follow. The Court also stated in the Order that if the Plaintiff and American Air desire to execute and file a joint Stipulation of Dismissal, which provides for each party to bear its own attorneys fee, the Court would not disapprove.

Plaintiff has not filed a response to American Air's Motion for Summary Judgment nor have the parties filed a joint Stipulation of Dismissal. Plaintiff has filed, on March 30, 1990, a Motion to Voluntarily Dismiss American Air from this action, noting that

American Air had refused to join in a joint Stipulation of Dismissal. Under these circumstances, the Court is inclined to deem the Summary Judgment confessed. However, in further review of American Air's Motion and Brief, the Court determines that American Air did not comply with Rule 15 B., Rules of the District Court for the Northern District of Oklahoma¹

Therefore, the Court concludes Plaintiff's Motion to Dismiss American Air should be and the same is hereby SUSTAINED. Each party is to bear its own attorneys fees.

IT IS SO ORDERED this 20th day of April, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹. American Air's Motion and Brief failed to set forth a statement of material facts as to which movant contends no genuine issue exists. The Court concludes the affidavit of Thomas F. Jones, Vice-President of American Air's successor, does not overcome this deficiency.

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

APR 20 1990

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

CRAIG BLACKSTOCK, Guardian of the)
Estates of Ann Frances Whitehill,)
Daniel Barnard Whitehill and)
Howard Christian Whitehill,)
Minors and NORA RUTH WHITEHILL,)
an individual,)

Plaintiffs,)

v.)

Case No. 89-C-992-E

SHEARSON LEHMAN HUTTON INC.,)
a Delaware corporation,)

Defendant/Third-Party)
Plaintiff,)

v.)

CHRISTIANE SEGER WHITEHILL, an)
individual, DAVID BARNARD WHITEHILL,)
an individual, and THOMAS E. WARREN,)
III, an individual,)

Third-Party)
Defendants.)

STIPULATION OF DISMISSAL

Plaintiffs Nora Ruth Whitehill and Craig Blackstock as
Guardian of the Estates of Ann Frances Whitehill, Daniel Barnard
Whitehill, and Howard Christian Whitehill, defendant/third-party
plaintiff Shearson Lehman Hutton Inc., and third-party defendants
Christiane Seger Whitehill, David Barnard Whitehill, and Thomas E.
Warren, III, hereby stipulate to the dismissal with prejudice of
this action pursuant to Fed. R. Civ. Proc. 41(a)(1).

Respectfully submitted,

Jack R. Givens

Jack R. Givens, OBA #3395
Michelle L. Schultz, OBA #13771
JONES, GIVENS, GOTCHER, BOGAN &
HILBORNE
3800 First National Tower
Tulsa, Oklahoma 74103-4309
(918) 581-8200

ATTORNEYS FOR PLAINTIFFS

Claire V. Eagan

Claire V. Eagan, OBA #554
Frank M. Hagedorn, OBA #3693
Barbara L. Woltz, OBA #12535
HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR DEFENDANT/THIRD-PARTY
PLAINTIFF SHEARSON LEHMAN HUTTON
INC.

Ollie W. Gresham

Ollie W. Gresham, OBA #3599
2727 E. 21st Street, Suite 206
Tulsa, Oklahoma 74114
(918) 743-8884

ATTORNEY FOR THIRD-PARTY DEFENDANT
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Joel L. Wohlgemuth, OBA #9811
Bruce A. McKenna, OBA #6021
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2900 Mid-Continent Tower
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(918) 583-7571

ATTORNEYS FOR THIRD-PARTY DEFENDANT
DAVID BARNARD WHITEHILL

CASZ

Sam P. Daniel, Jr., OBA #2153
Charles S. Plumb, OBA #7194
Jon E. Brightmire, OBA #11623
DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211

ATTORNEYS FOR THIRD-PARTY DEFENDANT
THOMAS E. WARREN, III

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

FILED
APR 26 1989

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

CRAIG BLACKSTOCK, Guardian of the)
Estates of Ann Frances Whitehill,)
Daniel Barnard Whitehill and)
Howard Christian Whitehill,)
Minors and NORA RUTH WHITEHILL,)
an individual,)

Plaintiffs,)

v.)

Case No. 89-C-1062-E

SHEARSON LEHMAN HUTTON INC.,)
a Delaware corporation,)

Defendant/Third-Party)
Plaintiff,)

v.)

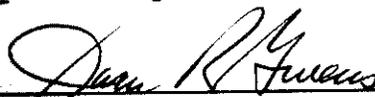
CHRISTIANE SEGER WHITEHILL, an)
individual, DAVID BARNARD WHITEHILL,)
an individual, and THOMAS E. WARREN,)
III, an individual,)

Third-Party)
Defendants.)

STIPULATION OF DISMISSAL

Plaintiffs Nora Ruth Whitehill and Craig Blackstock as Guardian of the Estates of Ann Frances Whitehill, Daniel Barnard Whitehill, and Howard Christian Whitehill, defendant/third-party plaintiff Shearson Lehman Hutton Inc., and third-party defendants Christiane Seger Whitehill, David Barnard Whitehill, and Thomas E. Warren, III, hereby stipulate to the dismissal with prejudice of this action pursuant to Fed. R. Civ. Proc. 41(a)(1).

Respectfully submitted,



Jack R. Givens, OBA #3395
Michelle L. Schultz, OBA #13771
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3800 First National Tower
Tulsa, Oklahoma 74103-4309
(918) 581-8200

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Barbara L. Woltz, OBA #12535
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ATTORNEYS FOR DEFENDANT/THIRD-PARTY
PLAINTIFF SHEARSON LEHMAN HUTTON
INC.



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2727 E. 21st Street, Suite 206
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Jon E. Brightmire, OBA #11623
DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211

ATTORNEYS FOR THIRD-PARTY DEFENDANT
THOMAS E. WARREN, III

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

FILED

APR 20 1990

JAYNE REED, for herself
and as next friend of
GLENN REED, her daughter,

Plaintiff,

vs.

THE TRAMMELL CROW COMPANY,

Defendant.

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

Case No. 88-C-1118-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. 30, 1990

THOMAS R. SILVER

UNITES STATES DISTRICT JUDGE

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

FILED

APR 20 1990

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

DONALD GENE ALLEN and,
DONNA FAYE ALLEN, Husband
and Wife,

Plaintiffs

vs.

Case No. 90-C0007 C

COLONIAL PENN INSURANCE
COMPANY, A FOREIGN
Corporation,

Defendant

ORDER OF DISMISSAL WITHOUT PREJUDICE

Comes on this 20 day of April, 1990, for hearing the Motion for Non-Suit and Dismissal Without Prejudice of Plaintiffs, Donald Gene Allen and Donna Faye Allen, Husband and Wife, and from the evidence presented, the Court doth find:

1. That this Court has jurisdiction over this matter.
2. That no previous motions for Non-Suit have been filed nor been granted.
3. That pursuant to the Federal Rules of Civil Procedure, a Non-Suit should be granted in this case.
4. That the Petition of the Plaintiff filed herein should be dismissed without prejudice and a Non-Suit granted.

WHEREAS, it is ordered that the Plaintiffs' Motion for Non-Suit and Dismissal Without Prejudice is hereby granted.

IT IS SO ORDERED.

DALE COOK

Judge of the District Court

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 20 1999

CLERK
DISTRICT COURT

ELIZABETH DOLE, Secretary of
Labor,

Plaintiff,

vs.

UNITED AUTOMOBILE AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, LOCAL 1093,

Defendant.

CIVIL ACTION NO. 90-C-224-B

NOTICE OF DISMISSAL

Plaintiff, Elizabeth Dole, Secretary of Labor, by
Tony M. Graham, United States Attorney for the Northern District
of Oklahoma, through Nancy Nesbitt Blevins, Assistant United
States Attorney, hereby gives notice that the above-styled action
is hereby dismissed without prejudice pursuant to Rule 41(a)(1)
of the Federal Rules of Civil Procedure.

UNITED STATES OF AMERICA

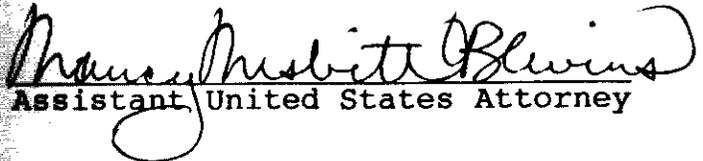
TONY M. GRAHAM
United States Attorney

Nancy Nesbitt Blevins
NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE v p

This is to certify that on the 20th day of April, 1990, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

James E. Frasier, Esquire
1700 Southwest Boulevard, Suite 100
P.O. Box 799
Tulsa, Oklahoma 74101


Assistant United States Attorney

ldp

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Bill of Costs filed by Defendant, Wal-Mart Stores, Inc. in the amount of \$1,401.75, is hereby reduced in the amount of \$699.35; and, costs are hereby taxed against Fleming in the amount of \$702.40 and included in the judgment.

DATED this 18 day of April, 1990.

(Signed) H. Dale Cook

H. DALE COOK
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

By: Tom Tannehill
Tom Tannehill, OBA #8840
P.O. Box 700209
Tulsa, OK 74170
(918) 493-2996

Attorney for Plaintiff,
Debra Lynn Fleming

ROSENSTEIN, FIST & RINGOLD
By: Jon B. Comstock
Jon B. Comstock, OBA #1836
525 S. Main, Suite 300
Tulsa, OK 74103
(918) 585-9211

Attorneys for Defendant, Wal-
Mart Stores, Inc.

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

FILED

APR 19 1990

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

MID-CENTURY INSURANCE COMPANY,
A Foreign Corporation,

Plaintiff,

vs.

Case No. 89-C-269-E

KENNETH LEE WYNN and ANNA LEE
WYNN, As Guardians of MATTHEW
PAUL DAVIS and DEXTER RAY
CAMERON, JR., and JOHN PAUL
DAVIS,

Defendants.

JUDGMENT

This matter came before the Court on the Motion for Summary Judgment and the Application for Summary Disposition on Defendants' Default in Failing to File a Response Brief to Plaintiff's Motion for Summary Judgment. The Court having ruled that Defendants waived any objection or opposition to the Motions in not filing responses and a decision having been duly rendered on the merits of the Motion for Summary Judgment in accordance with the Order filed March 27, 1990,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff, Mid-Century Insurance Company, is entitled to judgment over and against the Defendants Kenneth Lee Wynn and Anna Lee Wynn, as Guardians of Matthew Paul Davis and Dexter Ray Cameron, Jr., and John Paul Davis on Plaintiff's claim for declaratory judgment.

IT IS SO ORDERED this 19th day of April,
1990.

S/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

APR 19 1990

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

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

WILLIS E. WARREN and VERGINIA
WARREN, husband and wife,
Plaintiffs,)

vs.)

G. F. LACAEYSE TRANSPORT INC.,)
R. L. FRENCH CORP., dba Kenworth)
Mid-Iowa, FWF-INC., dba FWF)
Truck Sales, JERRY DAVIS, GARY)
FLEMING, and TOM J. RICHARDSON,)
Defendants.)

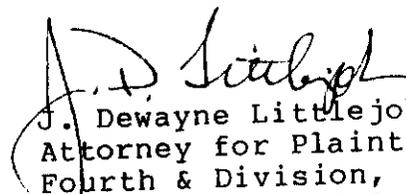
90-C0091-C

NOTICE OF DISMISSAL

To: G. F. LACAEYSE TRANSPORT, INC., Defendant and JOHN M. IMEL, his attorney.

The undersigned counsel for Plaintiffs, Willis E. Warren and Verginia Warren, hereby dismisses without prejudice the Complaint in the above-entitled action as to Defendant G. F. Lacaeyse Transport, Inc., who was erroneously sued, and reserves all of the Plaintiff's rights against all other Defendants who were properly sued and who have filed responsive pleadings to Plaintiff's Complaint.

Dated this 19th day of April, 1990.


J. Dewayne Littlejohn
Attorney for Plaintiffs
Fourth & Division, SW
Stilwell, OK 74960
(918) 696-2172
OBA # 5463

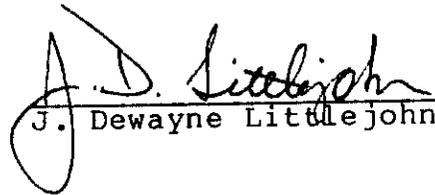
CERTIFICATE OF MAILING

I, J. Dewayne Littlejohn, certify that on the 19th day of April, 1990. I mailed a true and correct copy of the above and foregoing Notice of Dismissal with postage prepaid thereon to-wit.

HOWARD AND WIDDOWS, P.C.
Rockne E. Porter
Attorney for Defendant, R. L. French Corp.
2021 South Lewis, Suite 570
Tulsa, OK 74104

HUFFMAN, ARRINGTON, KIHLE, GABERINO & DUNN
Johnathon C. Neff
Attorney for Defendants, FWF-Inc., Davis & Fleming
1000 Oneok Plaza
Tulsa, OK 74103

MAOYERS, MARTIN, SANTEE, IMEL & TETRICK
John M. Imel
Attorney for Defendant, Lacayese
320 South Boston, Suite 920
Tulsa, OK 74103



J. Dewayne Littlejohn

DISMISSAL WITHOUT PREJUDICE
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
APR 19 1990

Clerk
U.S. DISTRICT COURT

COMPUTONE, INC., an Oklahoma corporation,
Plaintiff,
vs.
DAT SERVICES, INC., an Oregon corporation; and AL JUBITZ, individually,
Defendants.

No. 90-C-188-E

PARTIAL DISMISSAL WITHOUT PREJUDICE

Plaintiff, Computone, Inc., dismisses without prejudice its second cause of action in its entirety.

JOYCE AND POLLARD

BY: B. J. R.
Brian J. Rayment, OBA #7441
Sheila M. Bradley, OBA #13449
515 S. Main Mall, Suite 300
Tulsa, Oklahoma 74103
(918) 585-2751

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 19th day of April, 1990, I mailed a true and correct copy of the above and foregoing Brief to James C. Lang and Kevin C. Leitch of SNEED, LANG, ADAMS, HAMILTON & BARNETT, Attorneys for Defendants, at 2300 Williams Center Tower II, Two West Second Street, Tulsa, Oklahoma 74103 with proper postage thereon.

B. J. R.

FILED

APR 19 1990

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

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

WILLIS E. WARREN and VERGINIA)
WARREN, husband and wife,)
Plaintiffs,)

vs.)

G. F. LACAEYSE TRANSPORT INC.,)
R. L. FRENCH CORP., dba Kenworth)
Mid-Iowa, FWF-INC., dba FWF)
Truck Sales, JERRY DAVIS, GARY)
FLEMING, and TOM J. RICHARDSON,)
Defendants.)

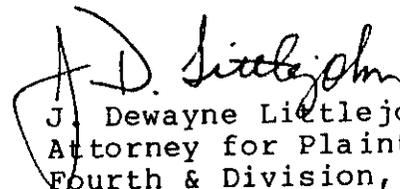
90-C0091-C

NOTICE OF DISMISSAL

To: R. L. FRENCH CORP., dba Kenworth Mid-Iowa, Defendant
and ROCKNE E. PORTER, his attorney.

The undersigned counsel for Plaintiffs, Willis E. Warren and
Verginia Warren, hereby dismisses without prejudice the Complaint
in the above-entitled action as to Defendant R. L. French Corp.,
dba Kenworth Mid-Iowa , who was erroneously sued, and reserves
all of the Plaintiff's rights against all other Defendants who
were properly sued and who have filed responsive pleadings to
Plaintiff's Complaint.

Dated this 19th day of April, 1990.


J. Dewayne Littlejohn
Attorney for Plaintiffs
Fourth & Division, SW
Stilwell, OK 74960
(918) 696-2172
OBA # 5463

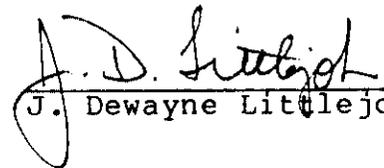
CERTIFICATE OF MAILING

I, J. Dewayne Littlejohn, certify that on the 19th day of April, 1990. I mailed a true and correct copy of the above and foregoing Notice of Dismissal with postage prepaid thereon to-wit.

HOWARD AND WIDDOWS, P.C.
Rockne E. Porter
Attorney for Defendant, R. L. French Corp.
2021 South Lewis, Suite 570
Tulsa, OK 74104

HUFFMAN, ARRINGTON, KIHLE, GABERINO & DUNN
Johnathon C. Neff
Attorney for Defendants, FWF-Inc., Davis & Fleming
1000 Oneok Plaza
Tulsa, OK 74103

MAOYERS, MARTIN, SANTEE, IMEL & TETRICK
John M. Imel
Attorney for Defendant, Lacayese
320 South Boston, Suite 920
Tulsa, OK 74103



J. Dewayne Littlejohn

IN THE NORTHERN DISTRICT COURT OF OKLAHOMA
UNITED STATES DISTRICT COURT

LORA ROBINSON,
Plaintiff,

vs.

GAIL BRANSTETTER and the
Estate of ROBERT B. WALLACE,

Defendants.

No. 90-C-153-C

FILED
APR 19 1990
Jack C. Silver, Clerk
U.S. DISTRICT COURT

NOTICE OF DISMISSAL

NOW COMES the Plaintiff, Lora Robinson, by and through her attorney of record, James K. Deuschle and pursuant to F.R.C.P. Rule 41 hereby dismisses the above captioned case without prejudice.

The Plaintiff
By her attorney,


James K. Deuschle, OBA #011593
1518 South Cheyenne Ave.
Tulsa, Oklahoma 74119
Tel. (918) 592-2275

CERTIFICATE OF SERVICE

I, James K. Deuschle, hereby certify that on the 19th day of April, 1990, I mailed a true and correct copy of the above and foregoing document to: Phillips Breckinridge, 500 West 7th Street, Suite #150, Tulsa, Oklahoma 74119 by U.S. mail, first class with proper postage fully prepaid thereon.


James K. Deuschle

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ELIZABETH DOLE, Secretary of
Labor,

Plaintiff,

vs.

UNITED AUTOMOBILE AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, LOCAL 952,

Defendant.

FILED

APR 19 1990

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

CIVIL ACTION NO. 90-C-223-E

NOTICE OF DISMISSAL

Plaintiff, Elizabeth Dole, Secretary of Labor, by
Tony M. Graham, United States Attorney for the Northern District
of Oklahoma, through Nancy Nesbitt Blevins, Assistant United
States Attorney, hereby gives notice that the above-styled action
is hereby dismissed without prejudice pursuant to Rule 41(a)(1)
of the Federal Rules of Civil Procedure.

UNITED STATES OF AMERICA

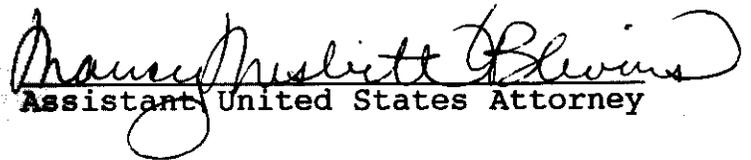
TONY M. GRAHAM
United States Attorney

Nancy Nesbitt Blevins
NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 14th day of April, 1990, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

Steven R. Hickman, Esquire
1700 Southwest Boulevard, Suite 100
P.O. Box 799
Tulsa, Oklahoma 74101


Assistant United States Attorney

ldp

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

FILED

APR 19 1990 *DA*

WEST AMERICAN INSURANCE COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 CANDACE CONLEY TROMBKA,)
)
 Defendant.)

Jack C. Silver, Clerk
U.S. DISTRICT COURT
No. 89-C-104-B /

J U D G M E N T

In keeping with the Court's Findings of Fact and Conclusions of Law entered this date, the Court hereby enters Judgment in favor of the Plaintiff, West American Insurance Company, and against the Defendant, Candace Conley Trombka. It is therefore ORDERED, ADJUDGED AND DECREED that Plaintiff owes no duty or obligation to defend or indemnify Defendant for the Counterclaim of Abuse of Process asserted in Case No. CJ-88-5033 filed in the Tulsa County District Court. Each party is to pay its respective costs and attorney's fees.

DATED, this 19th 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 19 1990

OK

WEST AMERICAN INSURANCE COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
)
 CANDACE CONLEY TROMBKA,)
)
)
 Defendant.)

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

No. 89-C-104-B

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This case came on for hearing on the Plaintiff's Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56. This Court conducted a hearing on the 11th day of January, 1990, where the parties agreed to submit the case on the record. (Pre-Trial Order, ¶ 8.01). After hearing oral arguments and considering all briefs of the parties, as well as the statements of counsel, exhibits, proposed Findings of Fact and Conclusions of Law and relevant legal authority, the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff West American Insurance Company ("West American") is a California corporation with its principal place of business in Anaheim, California. Defendant Candace Conley Trombka ("Trombka") is a citizen of the State of Oklahoma, residing in Tulsa County within the Northern Judicial District. The amount in controversy is in excess of \$110,000 exclusive of interest, costs,

26

and penalties. (Complaint and Answer).

2. West American issued its Homeowners' Liability Insurance Policy (the "Policy") to Trombka providing coverage for the period of June 19, 1987 to June 29, 1988. (Complaint ¶ 6; Answer ¶ 2).

3. The Policy Agreement in Section II - Exclusions provides that "Coverage E - Personal Liability . . . do[es] not apply to bodily injury . . . which is expected or intended by the insured." (Page 11 of 15 of Agreement in Policy attached to Complaint).

4. The Policy included a Homeowners Additional Coverages Endorsement ("Endorsement") which contains the following language:

. . . this policy is broadened to cover as follows:

2. Under Section II, Coverage E-Personal Liability, the definition Bodily injury is amended to include personal injury.

"Personal injury" means injury arising out of one or more of the following offenses:

(a) . . . malicious prosecution

. . .

Section II Exclusions do not apply to this coverage. This coverage does not apply to:

d. injury arising out of the business pursuits of an insured;

3. Under DEFINITIONS Item 2 "business" is changed to read:

2. "business" includes trade, profession or occupation . . .

(Exhibit 3 to Defendant's Response Brief).

5. On November 25, 1987 Trombka filed an action styled

"Application for Order to Compel Production of Corporate Records of Conley Corporation for Shareholders Inspection" in Tulsa County District Court, Case No. CJ-87-7762. ("1987 lawsuit") (Exhibit 3 to Defendant's Response Brief).

6. On July 11, 1988 Trombka filed a petition in the 1987 lawsuit along with an application for a temporary injunction. Subsequently, on August 11, 1988, the 1987 lawsuit was dismissed without prejudice. (Defendant's Response Brief, p. 2 and Exhibit 2, pp. 5-6).

7. Six days after the dismissal of the 1987 lawsuit, on August 17, 1988, Trombka, as one of the plaintiffs, brought a stockholders' derivative action in the Tulsa County District Court, Case No. CJ-88-5033, against the Conley Corporation and others for breach of fiduciary duty and fraud. ("1988 lawsuit") (Plaintiff's Summary Judgment Brief, p. 1 ¶ 2 of Undisputed Facts; Defendant's Response Brief, p. 1).

8. Trombka states and West American does not dispute that both the 1987 and the 1988 lawsuits arise out of the same operative facts. (Defendant's Response Brief, p. 1 ¶ 1 of Additional Undisputed Material Facts).

9. On October 3, 1988, Defendants in the 1988 lawsuit filed an Answer and a Counterclaim for "abuse of process."

10. The allegations in the Answer and Counterclaim of the 1988 lawsuit describe Trombka as a minority stockholder who has taken no active part in the activities or management of the Conley Corporation - a passive investor. (Defendant's Response Brief,

11. Defendants in the 1988 lawsuit allege in their Answer:

Plaintiffs [including Trombka] through their prior counsel (Glennela Doss) have made demands upon the Defendants to buy back their stock at a grossly inflated price. Plaintiffs have demanded of Defendants [sic] separate business counsel (Richard Marrs) that Defendants pay the sum of \$250,000 to Plaintiffs with the admonition that if such amount were paid, these Plaintiffs would "go away". If not paid Plaintiffs threatened long, protracted and expensive litigation in which Plaintiffs claimed to have more resources than Defendants in pursuing litigation.

Again, the suit is a transparent effort to coerce payment of money many times the actual value of the stock. This tactic is commonly described as "green mail." When Defendants rejected Plaintiff's [sic] astronomical demands, Plaintiffs filed a series of suits and claims, the present action being the third attempt to coerce green mail from the Defendants.

. . .

[The 1987 lawsuit] . . . was unnecessary and motivated to perpetuate unreasonable demands the Plaintiff had made upon the Defendant. Prior to filing of the suit, Defendants provided all documents requested of them to their business counsel (Richard Marrs) for transmittal to counsel for Plaintiffs. . . .

- (a) Case CJ-87-7762 was a so-called "warning shot" to coerce "green mail" of \$250,000.
- (b) The second "warning shot" came in the form of a "bogus" effort to file a derivative suit against defendants in the previously terminated case of CJ-87-7762. . . .

Plaintiffs later recognized their error, and voluntarily dismissed their bogus claims in case CJ-87-7762, only to fire their third warning shot, which is this action. [CJ-88-5033].

- . . .
- (d) The method and manner in which these plaintiffs have sought to conduct their actions makes it clear that they intend to "spend" the defendants into a corner by using the courts to coerce outrageous demands for money.

. . .

Plaintiffs' counsel were accused of wasting the Conley Corporation's resources by bringing claims that were obviously bogus (and dismissible on their face). In response to such assertions both counsel for plaintiffs stood mute. [Immediately thereafter, in response to a motion to dismiss, plaintiffs voluntarily dismissed their claims before defendant's [sic] motion could be heard.]

. . .

8. [Their] allegations are not only erroneous but made in bad faith.

By plaintiffs' own admission, they attempted to gain advantage through erroneous filings made in case CJ-87-7762 on July 11, 1988. The effort to "tack on" to the earlier case, is knowingly bogus, and further illustrates the lengths to which plaintiffs will go to perpetuate litigation of false and stale claims to coerce concessions from defendants.

(Defendant's Response Brief, Exhibit 2, p. 4 ¶ 4(b), pp. 5-7 ¶ 5, p. 7 ¶ 7, p. 8 ¶ 8 of the Answer).

12. Allegations in Defendants' Counterclaim against Trombka in the 1988 lawsuit include:

4. In 1987 these Plaintiffs through their counsel (Mrs. Doss) demanded that the Defendants buy out the Plaintiffs for \$250,000 and the Plaintiffs would "go away". By this, the Plaintiffs threatened serious disruptions of corporate operations by repeated document demands followed by lawsuits. ...

5. Plaintiffs, prior to their abortive attempts to file a derivative action on July 11, 1988, and their subsequent "new" suit filed August 17, 1988, never demanded that any of the transactions now complained of should be altered, reversed or changed in any way.

This is not to say that demands were not made. They were. The demand was the unlawful and wrongful coercive demand that \$250,000 be paid and the Plaintiff's would "go away"....

6. The plaintiffs hope to threaten (and destroy if allowed to) the sole source of livelihood of the defendants, as a means to enhance themselves financially, and those they act in concert with.

(Defendant's Response Brief, Exhibit 2, p. 22-23).

CONCLUSIONS OF LAW

1. Venue is properly established herein and subject matter jurisdiction over this action is present pursuant to 28 U.S.C. §1332.

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

3. The Counterclaim for abuse of process cannot be construed as one for malicious prosecution because the necessary elements for malicious prosecution have not been pled. The plaintiff in a malicious prosecution action has the burden of affirmatively proving five elements: (1) the bringing of the original action by the defendant; (2) its successful termination in plaintiff's favor; (3) want of probable cause to join the plaintiff; (4) malice; and

(5) damages. Young v. First State Bank, 628 P.2d 707, 709 (Okla. 1981); Glasgow v. Fox, 757 P.2d 836 (Okla. 1988). A voluntary dismissal without prejudice of the underlying action will not support an action for malicious prosecution. Glasgow, at p. 839. Trombka dismissed the 1987 suit without prejudice and is still pursuing the 1988 suit. Therefore, Conley has not prevailed on the merits of any suit that would give rise to an action for malicious prosecution.

4. Because Conley has not prevailed on the merits of any underlying action, it can only maintain an action for abuse of process. In an abuse of process claim, the plaintiff need not show that the suit was groundless or terminated in his favor or that the process complained of was obtained without probable cause. See, Prosser on Torts §121, at 856 (4th ed. 1971). The essential elements of an action for abuse of process are: (1) issuance of process, (2) an ulterior purpose, and (3) a wilful act in the use of process not proper in the regular conduct of the proceeding. Tulsa Radiology Associates, Inc. v. Hickman, 683 P.2d 537, 539 (Okla.App. 1984); Ellison v. An-Son Corp., 751 P.2d 1102, 1105 (Okla.App. 1987). Conley has made allegations in the Counterclaim that support an abuse of process claim, but not a claim for malicious prosecution.

5. Trombka argues the insurance contract is ambiguous and that "malicious prosecution" can be interpreted to include "abuse of process". In construing contracts, words are to be given their

ordinary and usual meaning. Premier Resources, Ltd. v. Northern Natural Gas Co., 616 F.2d 1171 (10th Cir. 1980); cert. denied, 449 U.S. 827 (1981); Okl.St. tit. 15, §154. Malicious prosecution actions are not favored by the court, and they should not be encouraged by lax rules favoring them. Glasgow v. Fox, at p. 838; Williams v. Frey, 182 Okl. 556, 78 P.2d 1052 (1938). The insurance contract providing for coverage for "malicious prosecution" but not "abuse of process" is not ambiguous because there is a clear distinction between the claims and elements of "abuse of process" and "malicious prosecution".

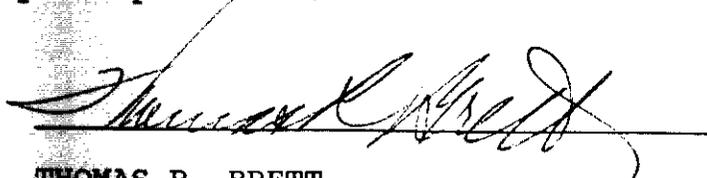
6. Trombka's argument that abuse of process is covered under the policy because it was not specifically excluded from the policy endorsement is not persuasive. The Court rejects the argument because abuse of process would be excluded from coverage as an action "expected or intended". The endorsement that expanded coverage to specified expected or intended actions did not include abuse of process, only malicious prosecution.

7. The Court concludes the Counterclaim asserts an action for abuse of process and not malicious prosecution. The Counterclaim cannot be construed as a claim for malicious prosecution because there was not a determination on the merits in favor of Conley. The insurance contract is not ambiguous and cannot be construed to include abuse of process within its scope of coverage. Based upon these conclusions, Plaintiff has no duty to defend or indemnify Defendant for the Counterclaim asserted in

Case CJ-88-5033, filed in Tulsa County District Court.'

A separate Judgment in keeping with the Findings of Fact and Conclusions of Law will be filed contemporaneously herewith.

ENTERED, this 19th day of April 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

'Plaintiff also asserts it is not obligated to defend or indemnify Defendant because the policy was not in effect at the time the Counterclaim was filed, and if the Counterclaim could be construed as one for malicious prosecution, the business pursuits exclusion would apply. The Court notes the parties agree the 1987 and 1988 lawsuits are based upon the same operative facts; however, the parties have not addressed whether the Counterclaim is based upon the facts giving rise to the Petition to Compel Production of Corporate Records filed in 1987. Further, the parties have failed to provide the Court with copies of the state court Petitions from which it is asked to determine whether the action is one for a business pursuit. Notwithstanding these omissions, the Court need not address these issues because it concludes the Counterclaim is one for abuse of process and is not covered under the homeowners' insurance policy.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 13 1990

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

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CIVIL ACTION NO. 89-C-893-B

ONE 1984 DODGE CARAVAN LE,
VIN 2B4FK51GXER247744;
and
25 POUNDS OF EPHEDRINE,
Defendants.

ORDER DISMISSING CLAIMS AND DECREE OF FORFEITURE

IT NOW APPEARS that the claims filed herein have been fully compromised and settled. Such settlement more fully appears in the written Stipulation for Compromise entered into between the Claimants, Fredy Charles Goeske and Jimmy Goeske, and the plaintiff, United States of America on the 16th day of April, 1990, which is filed of record in this case and incorporated by reference herein. Therefore, the claims filed herein should be dismissed with prejudice, and the Clerk of the Court should be authorized and directed to enter such dismissal of record in this civil action.

IT FURTHER APPEARS that no other claims to said property have been filed since such property was seized.

NOW, THEREFORE, on motion of Catherine J. Depew, Assistant United States Attorney for the Northern District of Oklahoma, and with the consent of Fredy Charles Goeske and Jimmy Goeske, and Everett R. Bennett, their attorney, it is

ORDERED that the claims of Fredy Charles Goeske and Jimmy Goeske in this action be, and the same hereby are, dismissed with prejudice and without costs, and it is

FURTHER ORDERED that the Clerk of this Court is hereby authorized and directed to enter in the records of this Court the dismissal of the claims filed herein by Fredy Charles Goeske and Jimmy Goeske, with prejudice, and it is

FURTHER ORDERED AND DECREED that the defendant properties be, and they hereby are, condemned as forfeited to the United States of America for disposition according to law, and it is

FURTHER ORDERED that the United States Marshals Service shall return to Jimmy Goeske the bond posted by him in the administrative action in the amount of \$710.00, and it is

FURTHER ORDERED that the bond posted by Fredy Charles Goeske in the administrative action, in the amount of \$455.00, be, and it is, hereby forfeited to the United States of America for disposition according to law.

ENTERED this 18th day of April, 1990.

S/ THOMAS R. BRETT

THOMAS R. BRETT
United States District Judge

CJD/ch
00626

FILED

APR 18 1990

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

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

WESTERN GUARDRAIL & SUPPLY OF
OKLAHOMA, INC.,

Plaintiff,

v.

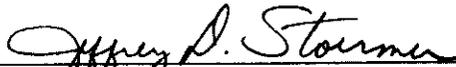
UNITED STATES OF AMERICA,

Defendant.

)
)
)
)
) Civil Action No. 89-C-164B
)
)
)
)
)

STIPULATION OF DISMISSAL

Pursuant to Fed. R. Civ. P. 41(a)(1)(ii), the parties to this action hereby stipulate that this case is DISMISSED WITH PREJUDICE, each party to bear its own costs of litigation, including attorneys' fees.



JEFFREY STOERMER
Jarboe & Stoermer
1810 MidContinent Tower
Tulsa, Oklahoma 74103
(918) 582-6131

Attorney for Plaintiff



STUART D. GIBSON
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 227
Ben Franklin Station
Washington, D.C. 20044
(202) 724-6586

Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 18 1990

THE FEDERAL DEPOSIT INSURANCE
CORPORATION,

Plaintiff,

vs.

JACK B. SELLERS, DWIGHT W.
MAULDING, BOB W. JOHNSON,
CHARLES B. COX, HULDA F. COX,
HELEN SIPES COX, AND JOHN R.
COX,

Defendants.

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

Case No. 90-C-190-B

NOTICE OF DISMISSAL

COMES NOW the plaintiff, Federal Deposit Insurance Corpora-
tion, and pursuant to Rule 41(a)(1) of the Federal Rules of Civil
Procedure dismisses without prejudice as against the defendants
Charles B. Cox, Hulda F. Cox, Helen Sipes Cox and John R. Cox
only. Said dismissal is filed without prejudice and upon notice
since said defendants have not served an answer.

Dated: April 18, 1990.

GABLE & GOTWALS, INC.

By 

Ronald N. Ricketts (OBA #7563)
20th Floor
Fourth National Bank Building
15 West Sixth Street
Tulsa, Oklahoma 74119-5447
(918) 582-9201
ATTORNEYS FOR THE FEDERAL
DEPOSIT INSURANCE CORPORATION

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that on this 18th day of April, 1990, a true and exact copy of the within and foregoing instrument was placed in the U.S. Mails, postage fully prepaid, addressed to:

Sam T. Allen, III
P.O. Box 230
Sapulpa, OK 74067

Richard Carpenter
SAUNDERS & CARPENTER
624 S. Denver
Suite 202
Tulsa, OK 74119



Ronald N. Ricketts

basic fact pattern in all of these proceedings is virtually identical. Each debtor signed a written agreement, described as a lease, with a Ford or Lincoln-Mercury dealership. Under this agreement, the debtor acquired the use of a vehicle for a specified period of time (usually 48 months). The debtor agreed to make monthly payments during the term of the "lease" and to make various other payments for insurance and maintenance on the vehicle.

Upon reaching agreement with a debtor to "lease" its vehicle, the Ford or Lincoln-Mercury dealership immediately assigned the agreement to Ford Motor Credit Company (FMCC), who purchased the vehicle from the dealership. The debtor thus made his monthly payment to FMCC. However, each debtor filed a voluntary petition for relief under Chapter 7 before making all of the required monthly payments pursuant to his written agreement.

The Trustee brought these adversary proceedings, pursuant to 11 U.S.C. §544, to avoid the interests of FMCC in the vehicles it allegedly leased to each of the debtors. The Trustee argued that the agreements were not true leases, but rather were intended to create security interests in FMCC, which were unperfected due to FMCC's failure to file lien entry forms, as required by Oklahoma law. Under §544, the Trustee asserted a priority in the vehicles over the allegedly unperfected liens held by FMCC.

Nine of the adversary proceedings were consolidated for trial before one bankruptcy judge; a later adversary proceeding was heard by the District's other bankruptcy judge. The bankruptcy judges issued memorandum decisions and orders in which they reached

completely opposite conclusions concerning the nature of the agreements between the debtors and FMCC. In In Re Cole, 100 B.R. 561 (Bkrcty. N.D.Okla. 1989), the judge held that the debtor's agreement with FMCC was a lease, giving FMCC an ownership interest in the vehicle. Id. at 565. The district's other bankruptcy judge issued his order two months later, In Re Thompson, 101 B.R. 658 (Bkrcty. N.D.Okla. 1989), finding the agreements to be "disguised" secured installment sales contracts, thereby leaving FMCC an unperfected security interest which the Trustee could avoid under 11 U.S.C. §544. Id. at 677. Both orders were appealed. Based upon an identity of facts and issues, the two appeals were consolidated for consideration by this Court.

A review of the agreement in issue discloses that all are on essentially the same printed form, entitled "Net (Closed End) Lease", and contain virtually identical provisions. Each agreement provided that the debtor or "lessee" would pay a basic monthly payment comprised of the monthly rental fee and the use or rental tax. The monthly rental fee was composed of two elements: (1) depreciation of the vehicle over the term of the lease, and (2) charges for the use of the vehicle. At the agreement's inception, the "lessee" was also required to pay a refundable reconditioning reserve, a sort of security deposit to offset any abnormal wear and tear on the vehicle. A "lessee" also was required to pay an excess mileage charge, consisting of several cents per mile for each mile driven in excess of a specified maximum; this charge was to be paid at the end of the agreement's term. A "lessee" agreed to provide

all necessary maintenance to keep his vehicle in good working order and to maintain damage and liability insurance on his vehicle during the term of the agreement. A "lessee" also agreed to pay all taxes and registration, title and licensing fees for his vehicle.

Each of the agreements also provided that the "lessee" could not unilaterally terminate his obligations before the expiration of the agreement's term, without having to pay all amounts owed to FMCC over the full term of the agreement. At the end of the term, a "lessee" had the option to purchase his vehicle at a price determined at the agreement's inception. This price was equal to the vehicle's forecasted fair market value at the end of the term. The "lessee" could exercise the purchase option only at the end of the agreement term. If the "lessee" chose not to exercise the purchase option, he returned the vehicle to FMCC and had no further obligation to FMCC for the remaining economic value of the vehicle.¹ FMCC had no duty under the agreements to sell the vehicle returned to it by the "lessee". FMCC's employee testified, however, that FMCC had found no rental market for the subsequent re-leasing of these returned vehicles. It is therefore FMCC's practice to sell the returned vehicles at auction. See Partial Transcript of Trial Proceeding: Testimony of Clifford R. Damaska, pp.30-31 [hereinafter cited as "Damaska"].

¹At the end of the agreement's term, the "lessee" may be required to pay for any excess mileage or abnormal wear and tear on the vehicle. Once these amounts are settled, however, the "lessee" then "walks away" from the vehicle. Damaska, at 27.

The Court turns now to the allegations of error raised against the Cole and Thompson decisions. In reviewing these two conflicting decisions, the Court must accept the findings of fact of the bankruptcy judge, unless they are clearly erroneous. Bankruptcy Rule 8013; In Re Reid, 757 F.2d 230, 233 (10th Cir. 1985). The bankruptcy judge's legal conclusions are reviewed de novo. In Re Mullet, 817 F.2d 677, 679 (10th Cir. 1987).

The Trustee has alleged four errors in Cole for the Court's review. First the Trustee criticizes Cole for its application of the 1988 amended version of Okla.Stat. tit.12A §1-201(37). Second, the Trustee deems erroneous the judge's failure in Cole to recognize FMCC's lack of a reversionary interest in the vehicles returned to FMCC. The Trustee argues that any such reversionary interest is extinguished by FMCC's practice of selling the vehicles soon after the agreements' terms end. The Trustee next ascribes error to Cole's treatment of the vehicles' "residual value". The Trustee contends the judge treated "residual value" as always being equal to or greater than the actual fair market value, yet the judge was oblivious to FMCC's willingness and ability to reduce the vehicle's "residual value" below fair market value by imposing higher monthly payments. Finally, the Trustee argues that Cole overlooked the possibility that the "lessee" could decline to exercise the purchase option under the agreement, but might later appear and bid for the vehicle at auction.

According to the Trustee, the judge in Cole should have refused to apply the amended version of §1-201(37) to the

proceedings pending before him, as did the bankruptcy judge in Thompson.² In 1988, the Oklahoma legislature added Article 2A, governing lease transactions in goods, to the State's version of the Uniform Commercial Code. At the same time it enacted Article 2A, the legislature also amended §1-201(37), which contained guidelines for distinguishing a lease transaction from a security interest. In Cole, the bankruptcy judge held the 1988 amendment to §1-201(37) to be applicable to the debtor's agreement with FMCC, finding that the 1988 amendment made no substantive changes, but only "clarified" a "confusing" area of the law. 100 B.R. at 563. Conversely, the other bankruptcy judge declined, in Thompson, to apply the 1988 amended version of §1-201(37), on grounds that the agreements were made in 1984 and 1985. The Thompson court cited commentary to Article 2A, which noted that the Article applied to transactions entered into and events occurring after its effective date. 101 B.R. at 668. The Thompson Court also concluded that the amended §1-201(37) changed prior case law from the Tenth Circuit which had applied the previous version of §1-201(37) distinguishing leases from agreements creating security interests. Id. at 669. The Thompson court therefore elected to use that pre-1988 case law to characterize the agreements, instead of proceeding under the 1988 amended version of §1-201(37). Id.

The Court has reviewed the previous and the amended versions of Okla.Stat. tit.12A §1-201(37), the uniform law version of that

²In its appeal of Thompson, FMCC has alleged error in the judge's refusal to apply the amended Okla.Stat. tit.12A §1-201(37) to the consolidated proceedings. The Court therefore also will consider here whether Thompson erred in refusing to apply that amended statute.

statute and the Oklahoma and uniform law commentary interpreting it. From its review, the Court can discern no express prohibition to applying the 1988 amended version of §1-201(37) to the various debtors' agreements made with FMCC in 1984, 1985 and 1986. The Oklahoma commentary cautions that Article 2A should not be applied to transactions occurring before that Article's effective date. See Okla.Stat. tit.12A §2A-101 et seq. (Supp.1989), Miller, "Commentary on Uniform Commercial Code Article 2A - Lease as Enacted in Oklahoma", at 78. [hereinafter cited as "Miller"]. However, Article 2A's provisions are not in issue here, and the Court finds no reason to extend that cautionary note to the concurrently amended §1-201(37), which had a prior and separate existence before the addition of Article 2A to the Oklahoma Commercial Code.

It appears to the Court that the 1988 amendment merely revised §1-201(37) to further aid courts in drawing lines between leases and agreements creating security interests. The amendment did not change the substantive law. The Oklahoma commentary to Article 2A noted that "the revised definition of security interest in §1-201(37) codifies the better case law construing the former provision so as to provide additional statutory guidance as to the relevant considerations in making the determination of whether a lease instead is a security interest." Miller, at 83. The official comments to the uniform version of the amended §1-201(37) also observe that "the task of sharpening the line between true leases and security interests disguised as leases continues to be

a function of this section." See U.C.C. §1-201(37) official comment (1988).

The Thompson court considered the application of the 1988 amendment of §1-201(37) to FMCC's agreements made in 1984 and 1985 to be retroactive and therefore impermissible. 101 B.R. at 669. From this Court's comparison of §1-201(37) and its 1988 amended version, the Court finds that no substantive changes were made to that statute which would prevent the application of the amended version in pending proceedings such as these. The amendment to §1-201(37) does not remove or impair any potential vested rights of the parties, nor create any new obligations, duties or disabilities with respect to the FMCC agreements made in 1984, 1985 or 1986. The Court concurs in the commentators' observations, as well as the Cole court's statement, that the 1988 amendment merely clarified the factors that distinguish a lease from a secured transaction which already had been enunciated in various decisions. See Miller at 83; U.C.C. §1-201(37) official comment (1988); Cole, 100 B.R. at 563. The Court thus does not view the application of the amended §1-201(37) to these proceedings to present any "dangers" which may occur in a retroactive statutory application. See Thompson, 101 B.R. at 669.

The Thompson court declined to apply the 1988 amendment to §1-201(37) because the amendment purportedly changed previous Tenth Circuit case law and decisions from this District's bankruptcy court distinguishing a lease from a secured transaction. Id. This Court did not locate any Oklahoma state court decisions construing

§1-201(37). While the federal court decisions cited in Thompson are helpful in providing those courts' interpretations of Oklahoma law, they cannot be substituted for the state statute. The Court concludes that amended Okla.Stat. tit.12A §1-201(37) (1988) should have been applied in all of these proceedings.

The facts do not support the Trustee's argument that FMCC's reversionary interest in the vehicles returned to it is extinguished by FMCC's subsequent sale of those vehicles. At the end of an agreement's term, a "lessee" who does not exercise the purchase option must return the vehicle to FMCC. Upon the vehicle's return, FMCC regains the rights of use and possession of the vehicle which had been enjoyed by the "lessee". At that point, FMCC's reversionary interest to the use and possession of the vehicle is vested. The "lessee" has no further claim to or interest in the vehicle, and the transaction between FMCC and the "lessee" has been concluded. With all rights to the vehicle vested in FMCC, FMCC's subsequent disposition of its vehicle has no bearing upon or relevance to the concluded transaction with the "lessee". The Court finds no legal compulsion for FMCC to sell the returned vehicle; rather, the decision to sell appears to be made only for FMCC's economic self-interest. Of course, FMCC's sale of the returned vehicle extinguishes all of FMCC's interest in and rights to the vehicle, but that subsequent extinguishment bears no relationship to the prior transaction to affect its characterization as a lease or secured sale. The Court thus finds no merit in the Trustee's second allegation of error.

The Trustee's criticisms of the Cole court's treatment of "residual value" are similarly unsupported by the evidence. The Trustee cited no evidence to contradict the testimony of FMCC's employee that the purchase option price must be equal to or greater than the lease end value, thereby making it equal to or greater than the estimated fair market value at the agreement's termination. See Damaska, at 22-23. The Trustee's conjecture that FMCC could reduce a vehicle's "residual value" below fair market value by setting a higher monthly payment does not refute the testimony of FMCC's employee, who noted that competition in the vehicle leasing marketplace provided FMCC with the incentive to offer the lowest monthly payment rates possible. Id. at 32-33. That employee also cited low monthly payment rates as one of the touted advantages for a consumer to use FMCC's leasing program, rather than purchasing the vehicle Id. at 32. The Court thus finds no clear error in Cole's treatment of the "residual value" issue.

Finally, no evidence appears in the record to support the Trustee's speculation that a "lessee" might decline to exercise the agreement's purchase option, but would later appear and bid for the vehicle when FMCC consigned it for auction. Even if such evidence were present, it would be irrelevant.

The Court turns now to examine FMCC's allegations of error in Thompson. The Court has already addressed FMCC's assertions of error in Thompson's failure to apply the 1988 amended version of §1-201(37) in the consolidated proceedings there. FMCC also

asserts that even if the pre-1988 version of §1-201(37) were applicable here, the bankruptcy court in Thompson nevertheless committed several errors which caused it to wrongly conclude that FMCC agreements were not leases. First, FMCC argues that Thompson erred in its emphasis upon and application of the test set out by the Tenth Circuit in In Re Fashion Optical, Ltd., 653 F.2d 1385 (10th Cir. 1981). Secondly, FMCC contends that Thompson erred in its finding that the FMCC agreements were in "economic reality" the equivalent of "open-end" leases. Finally, FMCC alleges that Thompson erred in its method of computing the amounts FMCC was to have received under the agreements, which thus caused Thompson to characterize the "overages" it computed as "interest".

In its Fashion Optical decision, the Tenth Circuit, construing Okla.Stat. tit.12A §1-201(37) (1971), set forth a test for determining whether an agreement was a lease or a secured transaction. 653 F.2d at 1388-89. The Tenth Circuit offered the following four-step approach to making that determination: 1) "the presence of a purchase option does not automatically preclude a finding of [a] true lease"; 2) "if a purchase option exists and it or other terms in the 'lease' permit the 'lessee' to become full owner by merely paying no or nominal consideration after complying with its terms, the inquiry ends" and the "lease" is considered to be a secured transaction; 3) "if the option does require greater than nominal consideration for full ownership, a true lease is usually found"; 4) the absence of a purchase option does not automatically imply a true lease; even if the agreement does not

permit purchase at nominal consideration, "the 'lease' will be deemed one intended as security if the facts otherwise expose economic realities tending to confirm that a secured transfer of ownership is afoot". Id.

The agreement in issue in Fashion Optical provided a purchase option. However the test could not be applied because the evidence gave no indication of whether the consideration required was nominal. Id. at 1390. The same four-step approach was taken later by the Tenth Circuit in In Re Tulsa Port Warehouse Co., Inc., 690 F.2d 809 (10th Cir. 1982). In that case, the Tenth Circuit specifically addressed a purported automobile lease, which had no purchase option. The Tenth Circuit then used the fourth step to evaluate the "economic realities" of the agreement to find a secured transaction. Id. at 811-812.

FMCC argues that Thompson improperly applied the fourth step "economic realities" test to the agreements in issue here, all of which contain a purchase option. According to FMCC, the fourth step should be applied only to agreements which have no purchase option. FMCC points to the Tenth Circuit's construction of the Fashion Optical test in Tulsa Port, when the court stated that "[w]e pointed out that when a lease does not contain a purchase option, the lease will still be deemed as security if the facts otherwise expose economic realities tending to confirm that a secured transfer of ownership is afoot." In Re Tulsa Port Warehouse Co., Inc., 690 F.2d at 811 (emphasis added). In the Tulsa Port decision, however, the agreements lacked purchase

options and it may be that the Tenth Circuit was specifically addressing that fact in the statement of the test just quoted.

The language in Fashion Optical's fourth step appears to permit two interpretations: the one argued by FMCC which restricts the test's application to non-option agreements, and that apparently taken in Thompson, which applies the test to agreements containing options for greater than nominal consideration. The Court has found no subsequent guidance from the Tenth Circuit on whether the fourth step "economic realities" test should be restricted to non-option agreements. The Court therefore categorically cannot pronounce as error Thompson's application of the "economic realities" test to these agreements containing purchase options.

The Court, however, is more sympathetic to FMCC's criticism that Thompson emphasized and relied upon the "economic realities" test as the determinative factor in characterizing the agreements as creating security interests, almost to the exclusion of the other factors. Although the bankruptcy court had concluded that the Trustee had failed to prove that the purchase option prices were nominal and failed to establish that the "lessee" had an equity in the vehicle, the court indicated the priority it gave the Fashion Optical fourth step in declaring, "let battle be joined at the decisive point", as it prepared to delve into the "economic realities" of the transactions here. 101 B.R. at 672. Neither the Fashion Optical nor the Tulsa Port decision suggests that the "economic realities" step should be the predominant test to finding

a lease or secured transaction. The Court therefore finds that Thompson erred in making its evaluation of "economic realities" the decisive factor in characterizing the FMCC agreements, especially where other factors indicated a lease.

FMCC additionally argues that even if Thompson's application of the "economic realities" test was proper, Thompson erred in misconstruing facts in evaluating the "real-world operation" of the FMCC agreements. FMCC alleges that Thompson ignored the evidence that demonstrated that the agreements here were "closed-end" leases and instead determined that the agreements should be treated as "open-end" leases, similar to those deemed secured transactions in Tulsa Port.

In its Tulsa Port decision, the Tenth Circuit explained the difference between the two types of leases.

Under the closed-end lease, the lessee returns the vehicle to the lessor at the end of the lease term and the obligations of both come to an end. Under the open-end lease, however, the relationship between the lessor and the lessee does not end. Rather, it involves the sale of the vehicle and an adjustment between the lessor and lessee based on the [vehicle's] sale price

690 F.2d at 810 n.1.

The Court finds nothing from its review of the evidence to indicate any obligation remaining on the "lessee" for the economic value of the vehicle once he returns it to FMCC at the end of the agreement's term. In Thompson, the bankruptcy court specifically found that the Trustee had not shown that the "lessee" bears any risk of loss or expectancy of gain in the vehicle's value at the end of the agreement's term. 101 B.R. at 671. However, Thompson focused upon FMCC's practice of selling the vehicles returned to

it as a basis for finding the agreements should be treated as "open-end" leases. Despite the recognition that FMCC here was not legally required to sell the returned vehicles as it would have been under an actual "open-end" lease, Thompson nevertheless found that FMCC was under an "economic" compulsion to sell as forceful in operation as an express contractual requirement to do so.

In these cases, the leases do not legally require sale of the vehicles, and the vehicles retain some economic life beyond expiration of the lease periods -- yet FMCC does not keep the vehicles to enjoy their remaining useful life, but sells them, either under the option purchases or, if the options are not exercised, at auction As a matter of fact, FMCC neither has nor wants any meaningful reversionary interest in these vehicles. FMCC is determined to sell them, quickly, to the former lessees or to anyone else who will buy them. Since there is no market of interest to FMCC for lease of used vehicles, the initial lease effectively commits FMCC to sale of the vehicles as soon as the initial lease ends.

Here, there is a legal semblance of a reversion, made to appear simply by deleting from the lease contracts any express requirement or acknowledgement that the vehicles will be sold after the expiration of the lease term. But the semblance is without substance - it lacks economic reality. In economic reality, there is no reversion; the fact that FMCC sells the vehicles as a matter of course despite the lack of legal compulsion to do so only emphasizes the compelling economic reality.

Thompson, 101 B.R. at 673-74.

Thompson clearly erred in concluding that FMCC lacks a reversionary interest in the vehicles returned to it because it thereafter sells those vehicles. Once the "lessee" has returned the vehicle and "walked away", his transaction with FMCC is concluded, and the reversionary interest in the use and possession of the vehicle is vested again in FMCC. So long as the "lessee" does not realize any loss or gain from FMCC's sale of the returned vehicle, it is completely immaterial to that concluded transaction whatever disposition FMCC chooses to make of the returned vehicle. Under the Tenth Circuit's definition of an "open-end" lease, it is not the mere fact of a sale alone that marks an agreement as an

"open-end" lease; some accounting must be made between the "lessee" and FMCC with regard to the vehicle's sale price. See Tulsa Port, 690 F.2d at 810 n.1. No evidence indicates that such an accounting occurs under the agreements in issue.

A court may not rewrite the parties' contract, nor read terms or provisions into the contract. See Houston Oilers, Inc. v. Neely, 361 F.2d 36, 42 (10th Cir. 1966); Sloan v. Mud Products, 114 F.Supp. 916, 923 n.20 (N.D.Okla. 1953); King-Stevenson Gas & Oil Co. v. Texam Oil Corp., 466 P.2d 950, 954 (Okla. 1970). Although Thompson acknowledges that no express contractual requirement compels FMCC to sell the returned vehicles, Thompson suggests that the deletion of that requirement was made to give the "semblance" of a reversion and avoid the label of an "open-end" lease. Through its evaluation of the "economic reality" of FMCC's business practice of selling its returned vehicles, Thompson reads FMCC's "compulsion" to sell into the agreements in issue, and then treats that "compulsion" as the absent contractual requirement to sell³ indicative of an "open-end" lease. The Court has found no evidence of an "economic compulsion" to sell upon FMCC. Thompson's treatment of the alleged "compulsion" as an unwritten term of the agreements in issue was clearly erroneous.

Finally, Thompson is alleged to have erred in computing the amounts FMCC would have received for its vehicles under the agreements. Thompson's alleged error was in adding the purchase

³Thompson noted that FMCC's practice of selling the vehicles returned to it was "as regular and predictable as if it were specified in the contracts, although it is compelled by economic rather than legalistic considerations." 101 B.R. at 673.

option price to the rental payments made by the "lessee" over the agreement's term. Thompson found that sum totalled more than the manufacturer's suggested retail price for the vehicle and deemed that overage to be "functionally equivalent" to interest paid in a secured installment sales contract. 101 B.R. at 672.

The Court agrees with FMCC that the purchase option price should not have been added to the rental payments made under the agreement. Although the agreement specifies the option price if the option is exercised, that amount is not an obligation upon the "lessee" under the agreement. The "lessee" is free to choose not to exercise the option and to "walk away" from the vehicle.

Thompson also misconstrued the option price as a "balloon" payment which the "lessee" would have to make to free his vehicle from FMCC's "security interest". Thompson noted that the "lessee" "may finance the final 'balloon' payment by re-selling the car to another buyer, with the secured creditor [FMCC] as his auction agent." 101 B.R. at 674. This analysis is flawed, in that the "lessee" is not obligated to pay the option price under the agreements here. No evidence demonstrates any sort of agency relationship between FMCC and the "lessee", or that FMCC in any way acts on behalf of the "lessee" in selling the vehicle after the "lessee" returns it to FMCC. Rather, the evidence indicates that FMCC's sales of its returned vehicles are made strictly in its economic self-interest.

CONCLUSION

From its review of the record, the Court concludes that these agreements are true leases, and not secured purchase contracts. FMCC thus has an ownership interest in the vehicles, which cannot be avoided by the Trustee.⁴

The Court finds no error in the findings of fact and conclusions of law made by the bankruptcy court in In Re Cole. The appeal of the Trustee should be DENIED. The order of the bankruptcy court in that case is hereby AFFIRMED.

From errors found in certain of the findings of fact and conclusions of law made by the bankruptcy court in the consolidated proceedings in In Re Thompson, the Court finds that the order of the bankruptcy court in that case should be REVERSED, with judgment to be entered in favor of appellant, Ford Motor Credit Company.

IT IS SO ORDERED this 18th day of April, 1990.


H. DALE COOK

Chief Judge, U. S. District Court

⁴Because it has determined that FMCC has an ownership interest in the vehicles, rather than a security interest, the Court will not address the issues concerning the perfection of security interests in vehicles under Oklahoma law.

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

FILED

APR 18 1990

Walt C. Silver, Clerk
DISTRICT COURT

FDIC
Plaintiff(s),

vs.

No. 88-C-7-C

JAMES FREEMAN
Defendant(s).

ORDER

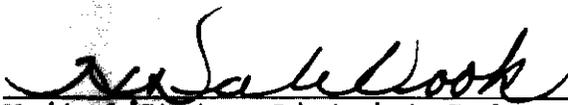
Rule 35A of the Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

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 35A was mailed to counsel of record or to the parties, at their last address of record with the Court, on January 11, 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 18th day of April,
1990.


United States District Judge

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

APR 17 1990

US WEST FINANCIAL SERVICES,)
INC., a Colorado corporation,)
)
Plaintiff,)
)
vs.)
)
MOORAD MANAGEMENT, INC.,)
an Oklahoma corporation,)
et al.,)
)
Defendants.)

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

Case No. 88-C-1075-B

NOTICE OF DISMISSAL WITHOUT PREJUDICE

Plaintiff, US West Financial Services, Inc. ("US West"), herewith dismisses from this action the Defendant, William K. Hicks ("Hicks"), pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure, and hereby dismisses all claims asserted by US West against Hicks in its Complaint, without prejudice.

Dated this 17th 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
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Tulsa, Oklahoma 74103
(918) 586-5711

Attorneys for Plaintiff,
US WEST FINANCIAL SERVICES, INC.

CERTIFICATE OF SERVICE

The undersigned certifies that on this 17th day of April, 1990, a true and correct copy of the above and foregoing document was mailed with proper postage thereon to:

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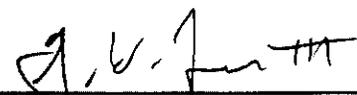
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Tulsa, Oklahoma 74135



G. W. Turner, III

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

UNITED ENTERTAINMENT, INC.,
a corporation,

Plaintiff,

vs.

MEINHARD-COMMERCIAL WESTERN, INC.,
a corporation,

Defendant,

THE CIT GROUP/FACTORING MEINHARD-
COMMERCIAL WESTERN, INC.,

Plaintiff,

vs.

BILL BLAIR,

Defendant.

Case No. 88-C-502-C

Consolidated with
88-C-1655-~~E~~C

FILED
APR 11 1990
JAMES C. ...
DISTRICT OF

JUDGMENT

This matter comes before the Court for consideration of Meinhard-Commercial Western, Inc., a/k/a The CIT Group/Factoring Meinhard-Commercial Western, Inc.'s ("CIT") Motion for Summary Judgment filed August 11, 1989, and non-jury trial which was held on October 10, 1989. The issues having been duly considered and tried and a decision having been rendered in accordance with the Court's Order filed October 5, 1989, and the Court's Findings of Fact and Conclusions of Law filed April 9, 1990, both of which are incorporated herein by reference,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment be entered for CIT and against United Entertainment, Inc. ("United") on all of United's causes of action against CIT.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment be entered for CIT and against United for breach of contract in the amount of \$201,063.85 as of June 30, 1989, together with interest thereon, from June 30, 1989, until paid in full, at the statutory judgment rate of interest, plus all costs and attorneys fees. Any sums received by CIT from United, Bill Blair, or United's account debtors from and after June 30, 1989, shall be credited by CIT to reduce this judgment, the guaranty judgment, and the judgment for conversion, referred to hereinafter.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment be entered for CIT and against Bill Blair on his guaranty in the amount of \$201,063.85 as of June 30, 1989, plus interest accruing thereon from June 30, 1989, until paid in full, at the statutory judgment rate of interest, and, in accordance with the terms of the guaranty, all costs and expenses, including attorney fees. CIT is directed to comply with Rule 6G, Rules of the United States District Court for the Northern District of Oklahoma, with respect to recovering its attorneys fees and costs.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment be entered for CIT and against United and Bill Blair, jointly and severally, for conversion in the amount of \$190,105.16.

This JUDGMENT is a final, appealable order of this Court and the Clerk is directed to close this case file.

/s/ H. DALE COOK

H. DALE COOK
Judge of the United States
District Court for the
Northern District of Oklahoma

APPROVED AS TO FORM:

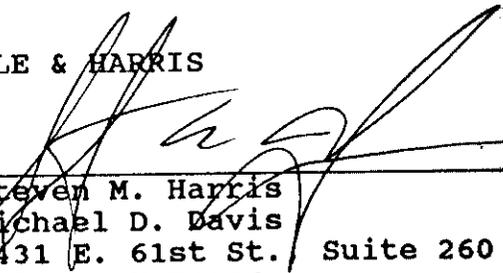
DOERNER, STUART, SAUNDERS,
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Attorneys for Meinhard-Commercial
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Attorneys for United Entertainment,
Inc. and Bill Blair

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

FILED

APR 16 1990

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

PHOENIX FEDERAL SAVINGS AND
LOAN ASSOCIATION,

Plaintiff,

v.

ROBERT NEAL McGUIRE and SHARON
E. McQUIRE, husband and wife;
LAKELAND REAL ESTATE
DEVELOPMENT, INC.; JAMES M.
HENRY and KAREIN HENRY,
husband and wife, et al.,

Defendants.

Case No. 89-C-753-C

(Consolidated With)

Case No. 89-C-754-C

Case No. 89-C-755-C

Case No. 89-C-756-C

Case No. 89-C-758-C

Case No. 89-C-759-C

ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed March 26, 1990, in which the Magistrate recommended that the Motion to Dismiss of the Federal Deposit Insurance Corporation, as Manager of the Federal Savings and Loan Insurance Corporation Resolution Funds, as Receiver for Phoenix Federal Savings and Loan Association, and the Motion for Summary Judgment of Substituted Party-Plaintiff, Cimarron Federal Savings and Loan Association, 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 the Motion to Dismiss of the Federal Deposit Insurance Corporation, as Manager of the Federal Savings and Loan Insurance Corporation Resolution Fund, as Receiver for Phoenix Federal Savings and Loan Association, and the Motion

Classified
FDIC

for Summary Judgment of Substituted Party-Plaintiff, Cimarron
Federal Savings and Loan Association are granted.

Dated this 16th day of April, 1990.



H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

Entered

FILED

APR 16 1990

JACQUES SIVELY, CLERK
U.S. DISTRICT COURT

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

PAVITER CORPORATION,
Plaintiff,

v.

89-C-1017-C

C & S EQUIPMENT SALES, INC.,
et al,
Defendants.

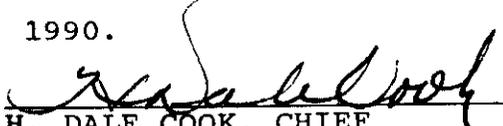
ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed March 26, 1990, in which the Magistrate recommended that defendant C & S Equipment Sales, Inc.'s Motion to Dismiss or Abstain and the Motion to Dismiss of defendants Michael T. Rawlins and Rawlins Manufacturing, Inc. be denied. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that defendant C & S Equipment Sales, Inc.'s Motion to Dismiss or Abstain and the Motion to Dismiss of defendants Michael T. Rawlins and Rawlins Manufacturing, Inc. are denied.

Dated this 16th day of April, 1990.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 16 1990

J. L. ... CLERK
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

CIVIL ACTION NO. 89-C-994-C

ONE PARCEL OF REAL PROPERTY,)
WITH BUILDINGS, APPURTENANCES,)
AND IMPROVEMENTS, LOCATED IN)
SECTION 2, TOWNSHIP 13 NORTH,)
RANGE 8 EAST OF THE INDIAN)
BASE AND MERIDIAN,)
OKFUSKEE COUNTY,)
STATE OF OKLAHOMA,)

Defendant.)

JUDGMENT OF FORFEITURE

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

ORDERED, ADJUDGED, AND DECREED that Judgment be entered against the following-described defendant real property, with buildings, appurtenances, and improvements, known as:

One parcel of real property, with buildings, appurtenances, and improvements, described as follows:

The Northeast Quarter of the Southwest Quarter (NE/4 SW/4) and the Northwest Quarter of the Southeast Quarter (NW/4 SE/4) of Section 2, Township 13 North, Range 8 East of the Indian Base and Meridian, Okfuskee County, State of Oklahoma, LESS AND EXCEPT

all oil, gas, and other minerals and **SUBJECT TO** a Right-of-Way Easement for a roadway for the purpose of ingress and egress to the above-described premises.

This Right-of-Way Easement is described as follows: A 20 foot wide strip running North and South along the West boundary of the Southwest Quarter of the Southeast Quarter (SW/4 SE/4) of Section 2, Township 13 North, Range 8 East, Okfuskee County, State of Oklahoma,

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

(Signed) H. Dale Cook

**H. DALE COOK, CHIEF JUDGE
OF THE UNITED STATES COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

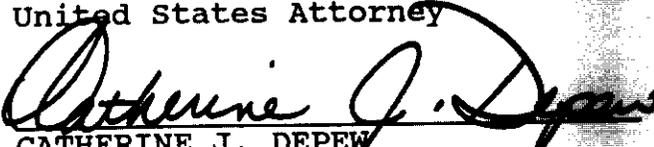
APPROVED:

THE NORTHERN DISTRICT OF OKLAHOMA

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney


CATHERINE J. DEPEW
Assistant United States Attorney

CJD/ch
00639

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

FILED

PIONEER ALUMINUM, INC.,
a corporation,

Plaintiff,

APR 16 1990

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

v.

Case No. 90-C-167-B

PATTY PRECISION PRODUCTS
COMPANY, a corporation,

Defendant.

JUDGMENT

This matter came on for consideration on the 10th day of April, 1990, before the undersigned. Plaintiff appears by and through its attorneys, Mike Voorhees of Phillips McFall McCaffrey McVay Sheets & Lovelace, P.C., and Defendant appears not.

The Court, having reviewed the pleadings filed herein, finds:

1. This Court has jurisdiction over the parties and jurisdiction over the subject matter.
2. The Defendant was served with Summons and Complaint on March 7, 1990, by private process server.
3. The Defendant has failed to appear, move, answer, or file any other pleading, and the time to answer or otherwise plead has expired.
4. The Defendant is in default, and Plaintiff is entitled to judgment as prayed for in its Complaint filed herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff, Pioneer Aluminum, Inc., a corporation, have judgment against

Defendant, Patty Precision Products Company, a corporation, in the amount of \$97,589.76, plus interest at the rate of 8.32% from the date hereof, and judgment for attorney fees and costs if timely applied for under Rule 6 of the Rules of the United States District Court for the Northern District of Oklahoma.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

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

FILED

APR 16 1990

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

RANDY ABERCROMBIE,)
)
Plaintiff,)
)
vs.)
)
CITY OF CATOOSA, OKLAHOMA, a muni-)
cipal corporation, MAYOR CURTIS)
CONLEY; POLICE CHIEF BENNY DIRCK,)
)
Defendants.)

No. 84-C-55-B

ORDER

Consistent with the Tenth Circuit Court of Appeals' Opinion of February 16, 1990, and Judgment of April 4, 1990, the Court hereby Orders the Judgment based upon the Jury verdict entered on August 1, 1985, in the amount of \$185,000 be reinstated.

IT IS SO ORDERED, this 16th day of April, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE