

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

FILED

JUN 15 1988

DELAWARE CROSSING CONDOMINIUMS )  
ASSOCIATION, INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
HEARTLAND FEDERAL SAVINGS AND )  
LOAN ASSOCIATION, et al., )  
 )  
Defendants. )

MARK C. SWEET, CLERK  
DISTRICT COURT

NO. 88-C-1493-C

ORDER TO DISMISS

THIS MATTER having been heard before the Court on the Motion to Dismiss of Delaware Crossing Condominiums Association, Inc., Plaintiff, and Never Fail Builders, Inc., Never Fail, Jr., and Frontier Financial Services, Inc., Defendants, and the Court being fully advised in the premises finds that said Motion should be granted;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint be dismissed with prejudice, with each party to bear its own costs, including attorneys' fees.

IT IS SO ORDERED.

  
\_\_\_\_\_  
JUDGE

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

FILED

JUN 15 1988

DELAWARE CROSSING CONDOMINIUMS  
ASSOCIATION, INC.,

Plaintiff,

vs.

HEARTLAND FEDERAL SAVINGS AND LOAN  
ASSOCIATION, et al.,

Defendants.

LEOLA D. SIMON, CLERK  
U.S. DISTRICT COURT

Case No. 88-C-1493-C

ORDER

UPON joint application of the Plaintiff, Delaware Crossing Condominiums Association, Inc. and the Defendant, Frontier Financial Services, Inc., the Court hereby dismisses the Defendant, Frontier Financial Services, Inc. with prejudice from the above styled case, with Plaintiff and Defendant to bear their own costs.

By: 

JUDGE OF THE UNITED STATES DISTRICT  
COURT

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 14 1990

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 FREDERICK A. GUTIERREZ, a/k/a )  
 FREDERICK ANTHONY GUTIERREZ )  
 )  
 Defendant. )

Civil Action No. 89-C-895-B

DEFAULT JUDGMENT

This matter comes on for consideration this 14<sup>th</sup> day of June, 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, Frederick A. Gutierrez, a/k/a Frederick Anthony Gutierrez, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Frederick A. Gutierrez, a/k/a Frederick Anthony Gutierrez, was served with Summons and Complaint on May 9, 1990. 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, Frederick A. Gutierrez, a/k/a Frederick Anthony Gutierrez, for the

principal amount of \$20,904.36, plus accrued interest of \$1,396.97 as of May 31, 1989, plus interest thereafter at the rate of four (4) percent per annum until judgment, plus interest thereafter at the current legal rate of 8.24% percent per annum until paid, plus costs of this action.

S/ THOMAS R. BRETT  
United States District Judge

mmp

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,

Plaintiff,

v.

RONALD WALKER

Defendant.

JUN 14 1990

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

Civil Action No: 89-C-506-B

DEFAULT JUDGMENT

This matter comes on for consideration this 14<sup>th</sup> day of June, 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, Ronald Walker, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Ronald Walker, was served with Summons and Complaint on July 7, 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,

Default Judgment  
Page 2

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Ronald Walker, for the principal amount of \$2,490.00 plus accrued interest, plus interest thereafter at the current legal rate of 8.24% percent per annum until paid, plus costs of this action.

S/ THOMAS R. BRETT

---

United States District Judge

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CIVIL ACTION NO. 89-C-542-E

ONE PARCEL OF REAL PROPERTY,  
WITH BUILDINGS, APPURTENANCES,  
IMPROVEMENTS, AND CONTENTS,  
KNOWN AS 9520 SOUTH 193rd  
EAST AVENUE, BROKEN ARROW,  
TULSA COUNTY, OKLAHOMA;

and

ONE PARCEL OF REAL PROPERTY,  
WITH BUILDINGS, APPURTENANCES,  
IMPROVEMENTS, AND CONTENTS,  
KNOWN AS 10241 SOUTH 215th  
EAST AVENUE, BROKEN ARROW,  
WAGONER COUNTY, OKLAHOMA,

and

ONE 1988 FORD 350 PICKUP,  
VIN 2FTJW35G9JCA31896,

Defendants.

FILED

JUL 14 1990

John C. Smith, Clerk  
U.S. District Court

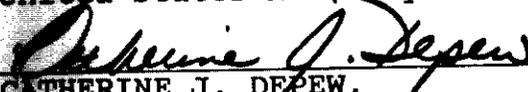
NOTICE OF DISMISSAL

Plaintiff, the United States of America, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, hereby gives notice that the following-described defendant property, and only the following-described property, is hereby dismissed from this action, without prejudice and without costs, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure:

DATED this 13th day of June, 1990.

One 1988 Ford 350 Pickup,  
VIN 2FTJW35G9JCA31896,

TONY M. GRAHAM  
United States Attorney



CATHERINE J. DEPEW, OBA #3836  
Assistant United States Attorney  
3600 U. S. Courthouse  
333 West 4th Street  
Tulsa, Oklahoma 74103  
(918) 581-7463

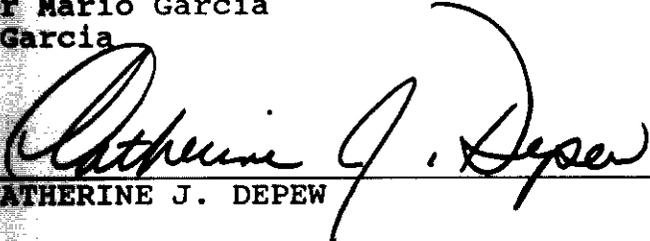
CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the within and foregoing Notice of Dismissal has been mailed this 14<sup>th</sup> day of June, 1990, with postage fully prepaid thereon, to the following:

JOHN ECHOLS, ESQ.  
P. O. Box 701196  
Tulsa, Oklahoma 74170-1196  
Attorney for Mario Garcia  
and Marina Garcia

JOHN ECHOLS, ESQ.  
P. O. Box 701196  
Tulsa, Oklahoma 74101-2984  
Attorney for Mario Garcia  
and Marina Garcia

BRUCE MALOY, ESQ.  
Maloy & Jenkins  
800 Grant Building  
44 Broad Street N.W.  
Atlanta, Georgia 30303  
Attorney for Mario Garcia  
and Marina Garcia

  
\_\_\_\_\_  
CATHERINE J. DEPEW

CJD/ch  
00716

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

FILED

JUN 18 1990

CARTWRIGHT TRANSFER AND  
STORAGE, INC., et al.,

Plaintiffs,

vs.

No. 85-C-387-E ✓

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

MISSOURI PACIFIC RAILROAD  
CO.,

Defendant.

ORDER

This matter is before the Court on the motion of Plaintiffs Cartwright Transfer and Storage and Al Mullen to vacate this Court's judgment of February 10, 1989 quieting title to a railroad crossing. Plaintiffs contend that Defendant Missouri Pacific Railroad Company perpetrated a fraud on the Court in obtaining this Court's order holding the crossing to be private. The Court heard oral argument and received evidence on March 25, 1990. Following that hearing that has reviewed the transcript of the proceedings in case nos. C-85-543 and C-89-127 (consolidated) held November 8, 1989 and December 18, 1989 in the state district court for Osage County. The Court also has reviewed the arguments and the applicable authorities, and reviewed the relevant testimony from the trial in the instant proceedings held in February 1989. Being fully advised the Court finds as follows.

This Court's Subject Matter Jurisdiction

Initially, the Court must dispense with Plaintiffs' argument that the February 10, 1989 order must be vacated under F.R.C.P.

60(b) for lack of subject matter jurisdiction because the Oklahoma Corporation Commission has exclusive jurisdiction to hear and determine whether a rail crossing is public or private. No statute cited by Plaintiffs gives exclusive jurisdiction to the commission to determine whether a crossing is in fact public. The Commission has exclusive jurisdiction to enforce the railroad's public duties at public crossings, but this neither gives the Commission exclusive jurisdiction nor divests this Court of jurisdiction to determine in the first instance whether a crossing is public. Therefore, there has been no mistake as to this Court's subject matter jurisdiction and Plaintiffs are not entitled to vacate the Court's judgment on this basis. Fed.R.Civ.P. 60(b).

#### Fraud

Grounds Two and Three of Plaintiffs' Amended Motion to Vacate (March 2, 1990) allege in substance that the order of February 10, 1989 should be vacated under Rule 60(b)(3) because Defendant perpetrated a fraud upon the Court in obtaining the Order declaring the crossing private.

A judgment may be set aside for fraud discovered after the entry of judgment, but the fraud must be substantiated by clear and convincing evidence. Wilkin v. Sunbeam Corp., 466 F.2d 714, 717 (10th Cir. 1972).

Plaintiffs' original motion to vacate contended that Defendant fraudulently procured an order dismissing it from the Osage County proceedings and then used that order to perpetrate a fraud on this

Court.' However, this Court has emphasized that it gave no res judicata or other conclusive effect to the Osage County judgment of July 29, 1987. (Order of Jan. 10, 1990). The Osage County judgment made no finding of fact or conclusion of law regarding whether the crossing was public or private. This Court was free to determine the public or private nature of the crossing; the Court was not somehow "compelled" to hold the crossing private because the Osage County court took no action on the matter. Since the state court's decision had no conclusive effect on this Court's decision, any "fraud" in procuring the decision from that court could not as a matter of law constitute a fraud on this Court. Plaintiffs are, therefore, not entitled to vacate the February 10, 1989 order on this basis.

Plaintiffs also claim that Defendant improperly concealed documents from Plaintiffs during pretrial discovery. These allegations were addressed in detail during the March 25, 1990 hearing. Additionally, the Court has reviewed the testimony of Mike Martin given during the trial of February 1989. The Court must find that there is no basis for Plaintiffs' allegations. There is no evidence of improper concealment of documents. All of the evidence allegedly concealed was in fact available to Plaintiffs before the trial. Further, there is no evidence that Mike Martin believed the crossing was public, based upon the

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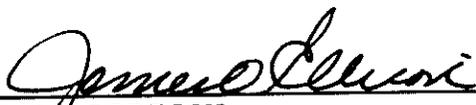
'Plaintiffs have since expanded the allegations of fraud to include a number of other allegedly fraudulent acts. The Court will address these below.

inventory records of the Oklahoma Department of Transportation, and lied to the Court despite such a belief. In sum, the Court can find no factual basis to support Plaintiffs' allegations of fraud upon the Court.

As a final matter, the Court notes that Plaintiffs initially urged "new evidence" as an additional ground upon which the Court's order should be vacated. The amended motion to vacate contains no reference to new evidence, and counsel for Plaintiffs conceded at the hearing that his evidence did not constitute new evidence. Accordingly, this ground is overruled.

IT IS THEREFORE ORDERED that Plaintiffs' motion and Amended Motion to Vacate this Court's order of February 10, 1989 declaring the railroad crossing private is overruled.

ORDERED this 13<sup>th</sup> day of June, 1990.

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

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

FILED

JUN 13 1990

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

VONA JEAN EVANS and  
VIRGIL EVANS,

Plaintiffs,

vs.

SIMPLIMATIC ENGINEERING  
COMPANY,

Defendant,

KANSAS CITY FIRE & MARINE  
INSURANCE COMPANY,

Intervenor.

No. 88-C-287-E ✓

ADMINISTRATIVE CLOSING ORDER

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

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

FILED

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

JUN 13 1990

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

McNABB COAL COMPANY, INC., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DONALD HODEL, Secretary )  
 of the U.S. Department of )  
 Interior, et al., )  
 )  
 Defendants. )

No. 88-C-1525-E

ADMINISTRATIVE CLOSING ORDER

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

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

ORDERED this 12<sup>th</sup> day of June, 1990.

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

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

FILED

JOSEPH B. THIERRY,  
Plaintiff,  
v.  
MADISON MACHINERY,  
Defendant.

JUN 13 1990 *dt*

89-C-577-E ✓ Jack C. Silver, Clerk  
U.S. DISTRICT COURT

**ORDER**

The court has for consideration the Report and Recommendation of the Magistrate filed March 20, 1990, in which the Magistrate recommended that this action be dismissed without prejudice. 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 this action is dismissed without prejudice.

Dated this 12<sup>th</sup> day of June, 1990.

*James O. Ellison*  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

*Murphy*

**FILED**

JUN 13 1990

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

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

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION, )

Plaintiff, )

vs. )

Case No. 89-C-964-B

LIFELINE HEALTHCARE GROUP, LTD., )  
MICHAEL L. ANDERSON, )  
TRAVIS G. MILLER, )  
JOHN W. BENSON, )  
CECIL S. MATHIS, and )  
CHARLES J. BAZARIAN, )

Defendants, )

JAMCO ASSET TRUST, )  
MCT ASSET TRUST I, )  
SILVERADO IRREVOCABLE TRUST II, )  
and JANICE L. BAZARIAN TRUST, )

Nominal Defendants. )

DISMISSAL OF MOTION TO BRING CIVIL PROCEEDING

COMES NOW AMTEC and dismisses its previous Motion to Bring Civil Proceeding and shows the Court as follows:

1. On February 20, 1990, Amtec filed with the Court a Motion to Bring Civil proceeding against Lifeline Healthcare Group, Ltd.

2. On June 6, 1990, Amtec and Lifeline Healthcare Group, Ltd. effected a settlement of all claims that Amtec had against Lifeline Healthcare Group, Ltd. as set forth in the motion.

SAVAGE, O'DONNELL, SCOTT,  
McNULTY & AFFELDT

By: *Timothy L. Olsen*

Timothy L. Olsen, OBA #12431  
1100 Petroleum Club Bldg.  
601 South Boulder  
Tulsa, Oklahoma 74119  
(918) 599-9000

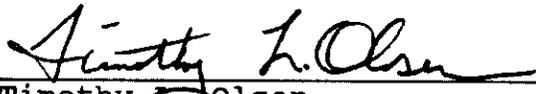
Attorneys for Creditor AMTEC

CERTIFICATE OF MAILING

This is to certify that a true, correct and exact copy of the above and foregoing instrument has been mailed to:

C. Raymond Patton, Jr.  
Houston & Klein, Inc.  
320 South Boston, Suite 700  
Tulsa, Oklahoma 74103

this 13<sup>th</sup> day of June, 1990, with proper postage thereon fully prepaid.

  
\_\_\_\_\_  
Timothy L. Olsen

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

FILED

JUN 13 1990

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

ROBERT W. LACKEY,  
Plaintiff,

vs.

DURR FILLAUER MEDICAL,  
Defendant.

CIVIL ACTION NO. 89 C 1045E

CONSENT ORDER OF DISMISSAL

By Agreement and Stipulation of Robert W. Lackey ("Plaintiff") and Durr Fillauer Medical, Inc. ("Defendant"), IT IS HEREBY ORDERED:

That pursuant to the Stipulation to Dismiss, attached as Exhibit "A" to this Consent Order of Dismissal, all pending claims and causes of action by and between Plaintiff and Defendant are hereby DISMISSED in their entirety with prejudice, each party to bear its own costs and attorneys' fees.

DONE AND ORDERED in Chambers, this 12<sup>th</sup> day of June, 1990.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

CONSENTED TO:

ROBERT W. LACKEY  
Plaintiff

By:   
One of his attorneys

Rochne E. Porter, Esquire  
O.B.A. No. 10930  
HOWARD AND WIDDOWS, P.C.  
2021 South Lewis  
Suite 570  
Tulsa, Oklahoma 74104  
(918) 744-7440

DURR FILLAUER MEDICAL, INC.  
Defendant

By:   
One of its attorneys

Mairan C. Kelly, Esquire  
FISHER & PHILLIPS  
1500 Resurgens Plaza  
945 East Paces Ferry Road  
Atlanta, Georgia 30326  
(404) 231-1400

John R. Paul, Esquire  
RICHARD, PAUL & WOOD  
Suite 400, Reunion Center  
9 East Fourth Street  
Tulsa, Oklahoma 74103  
(918) 584-2583



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

FILED

JUN 12 1990 *dx*

ROBERT KOONS,

Plaintiff,

vs.

ALLSTATE INSURANCE COMPANY,

Defendant.

No. 89-C-692-E ✓

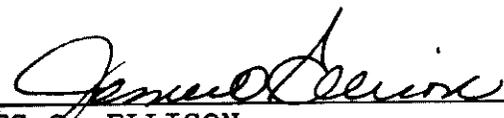
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

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

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

ORDERED this 17<sup>th</sup> day of June, 1990.



JAMES G. ELLISON  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TEN THOUSAND DOLLARS  
\$10,000.00) IN UNITED  
STATES CURRENCY AND  
REAL PROPERTY KNOWN AS  
RURAL ROUTE 3, BOX 209-L,  
CITY OF SAPULPA, OKLAHOMA,  
CREEK COUNTY,  
STATE OF OKLAHOMA,

Defendants.

CIVIL ACTION NO. 89-C-208-E

FILED

JUN 12 1990

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

ORDER

Good cause having been show, it is hereby ORDERED,  
ADJUDGED, AND DECREED that the above-referenced action is hereby  
dismissed, without prejudice and without costs, as to, and only  
as to, the real property known as Rural Route 3, Box 209-L,  
Sapulpa, Creek County, State of Oklahoma, more particularly  
described on Exhibit "A" attached hereto and made a part hereof  
by reference.

DATED this 12 day of June, 1990.

JAMES O. ELLISON  
United States District Judge

CJD/ch  
006842

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

**EXHIBIT "A"**

A tract of land located in the NE 1/4 of the SE/14 of Section 29, Township 18 N, Range 12 E, described as: Beginning at a point 358.1 ft S and 40 ft W of the NE corner of said NE 1/4 of the SE 1/4; thence S 208.7 ft; thence W 208.7 ft; thence N 208.7 ft; thence E 208.7 ft to the Pt of Beginning, containing one acre, m/l, in Creek Co., State of Ok.

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 GEORGE HUMPHREY; DEE ANN )  
 HUMPHREY; STATE OF OKLAHOMA )  
 ex rel. OKLAHOMA TAX COMMISSION; )  
 COUNTY TREASURER, Tulsa County, )  
 Oklahoma; and BOARD OF COUNTY )  
 COMMISSIONERS, Tulsa County, )  
 Oklahoma, )  
 )  
 Defendants. )

FILED  
JUN 12 1990  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 89-C-880-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 12 day  
of June, 1990. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by J. Dennis Semler, Assistant District  
Attorney, Tulsa County, Oklahoma; the Defendant, State of  
Oklahoma ex rel. Oklahoma Tax Commission, appears by its attorney  
Lisa Haws; and the Defendants, George Humphrey and Dee Ann  
Humphrey, appear not, but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, George Humphrey, was  
served with Summons and Complaint on November 14, 1989; the

Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on October 20, 1989; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on October 24, 1989; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on October 20, 1989.

The Court further finds that the Defendant, Dee Ann Humphrey, was served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record of Tulsa, Oklahoma, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning March 16, 1990, and continuing through April 20, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, Dee Ann Humphrey, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, Dee Ann Humphrey. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence

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

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on November 11, 1989; the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its answer on October 27, 1989; and that the Defendants, George Humphrey and Dee Ann Humphrey, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Twenty-one (21), Block Two (2), SOUTH-BROOK, an Addition in the City of Broken Arrow, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on June 24, 1987, the Defendants, George Humphrey and Dee Ann Humphrey, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$57,500.00, payable in monthly installments, with interest thereon at the rate of eight and one half percent (8.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, George Humphrey and Dee Ann Humphrey, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated June 24, 1987, covering the above-described property. Said mortgage was recorded on June 25, 1987, in Book 5034, Page 879, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, George Humphrey and Dee Ann Humphrey, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, George Humphrey and Dee Ann Humphrey, are indebted to the Plaintiff in the principal sum of \$57,250.89, plus interest at the rate of 8.5 percent per annum from March 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property

which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$782.00, plus penalties and interest, for the year of 1989. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has liens on the property which is the subject matter of this action by virtue of income tax Warrant No. ITI8700654200 dated September 25, 1987 in the amount of \$152.86 together with interest and penalty according to law; by virtue of income tax Warrant No. ITI8801848200 dated October 17, 1988 in the amount of \$681.62 together with interest and penalty according to law; and by virtue of income tax Warrant No. ITI8901300100 dated August 18, 1989 in the amount of \$551.78 together with interest and penalty according to law. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, George Humphrey in personam and Dee Ann Humphrey in rem, in the principal sum of \$57,250.89, plus interest at the rate of 8.5 percent per annum from March 1, 1988 until judgment, plus interest thereafter at the current legal rate of 9.24 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$782.00, plus penalties and interest, for ad valorem taxes for the year of 1989, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover judgment in the total amount of \$1,386.26 together with interest and penalty according to law by virtue of income tax Warrant No. ITI8700654200 dated September 25, 1987, by virtue of income tax Warrant No. ITI8801848200 dated October 17, 1988, and by virtue of income tax Warrant No. ITI8901300100 dated August 18, 1989.

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

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

First:

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

Second:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$782.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

Fourth:

In payment of the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, in the amount of \$1,386.26 together with interest and penalty according to law.

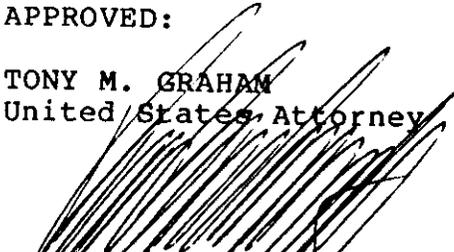
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

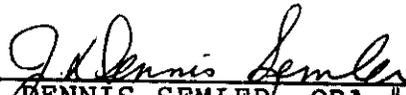
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
PETER BERNHARDT, OBA #741  
Assistant United States Attorney

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

  
LISA HAWS, OBA #12,695  
Attorney for Defendant,  
State of Oklahoma ex rel.  
Oklahoma Tax Commission

Judgment of Foreclosure  
Civil Action No. 89-C-880-B

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

FILED

JUN 12 1990

W. B. SILVER, CLERK  
DISTRICT COURT

MARY L. LONG,  
Plaintiff,

vs.

Case No. 84-C-813-C

KIDDER, PEABODY & CO.,  
INC.,

Defendant.

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW Mary L. Long and Bill B. DeGeer by and through their undersigned attorneys of record and pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, dismiss the above captioned action with prejudice.

Respectfully Submitted,

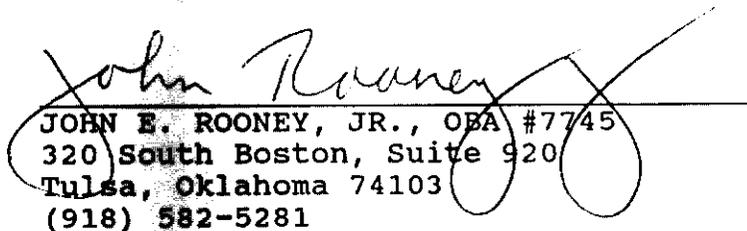
PRAY, WALKER, JACKMAN  
WILLIAMSON & MARLAR



J. WARREN JACKMAN, OBA #4577  
900 Oneok Plaza  
Tulsa, Oklahoma 74103  
(918) 584-4136

ATTORNEYS FOR MARY L. LONG

MOYERS, MARTIN, SANTEE, IMEL & TETRICK



JOHN E. ROONEY, JR., OBA #7745  
320 South Boston, Suite 920  
Tulsa, Oklahoma 74103  
(918) 582-5281

ATTORNEYS FOR KIDDER, PEABODY & CO., INC.  
AND BILL B. DEGEER, DEFENDANTS

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

JUN 11 1990

MIDAMERICA FEDERAL SAVINGS  
AND LOAN ASSOCIATION,

Plaintiff,

vs.

HAROLD W. BURLINGAME and  
BARBARA JEAN BURLINGAME,  
husband and wife; PHILLIP H.  
RYAN and CHARLOTTE M. RYAN,  
husband and wife; JOHN F.  
CANTRELL, TULSA COUNTY  
TREASURER; BOARD OF COUNTY  
COMMISSIONERS, Tulsa County,  
Oklahoma; D.P. BYERS & COMPANY,  
a corporation; and A.P. GENTRY,

Defendants.

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

Case No. 88-C-1339-B

ORDER

This matter comes on before me the undersigned Judge on this  
11 day of June, 1990, pursuant to the Joint Motion  
of the Plaintiff's Local America Bank of Tulsa, F.S.B. ("Local  
America") and the Federal Deposit Insurance Corporation, as  
manager of the Federal Savings and Loan Insurance Corporation  
Resolution Fund, as Receiver for MidAmerica Federal Savings and  
Loan Association ("FDIC-Receiver"), and the Defendants Harold W.  
Burlingame and Barbara Jean Burlingame and Phillip H. Ryan and  
Charlotte M. Ryan to dismiss the Defendant's cross-petition with  
prejudice and to remand this case back to the District Court of  
Tulsa County, State of Oklahoma.

For good cause shown the Court FINDS that the Plaintiffs'  
and Defendants' Joint Motion should be granted.

IT IS THEREFORE ORDERED that the Cross-Petition of the Defendants Harold W. Burlingame and Barbara Jean Burlingame and Phillip H. Ryan and Charlotte M. Ryan against the Plaintiffs Local America and FDIC-Receiver, and all claims stated therein, are hereby dismissed with prejudice.

IT IS FURTHER ORDERED that upon dismissal of the Defendant's Cross-Petition against the Plaintiffs, this case shall be remanded back to the District Court of Tulsa County, State of Oklahoma.

S/ THOMAS R. BRETT  
Judge of the District Court

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
JAMES E. WARNER a/k/a JAMES )  
EDWARD WARNER; JUNE E. WARNER )  
a/k/a JUNE ELLEN WARNER a/k/a )  
JUNELLEN WARNER; BENEFICIAL )  
FINANCE COMPANY OF OKLAHOMA; )  
STATE OF OKLAHOMA ex rel. )  
OKLAHOMA TAX COMMISSION; )  
COUNTY TREASURER, Rogers )  
County, Oklahoma; and BOARD )  
OF COUNTY COMMISSIONERS, )  
Rogers County, Oklahoma, )  
)  
Defendants. )

**F I L E D**

**JUN 11 1990**

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

CIVIL ACTION NO. 90-C-185-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 11<sup>th</sup> day  
of June, 1990. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendants, County Treasurer, Rogers County,  
Oklahoma, and Board of County Commissioners, Rogers County,  
Oklahoma, appear by Ernest E. Haynes, Jr., Assistant District  
Attorney, Rogers County, Oklahoma; the Defendants, James E.  
Warner a/k/a James Edward Warner and June E. Warner a/k/a June  
Ellen Warner a/k/a Junellen Warner, appear by their attorney  
Emily Kay Bales; the Defendant, State of Oklahoma ex rel.  
Oklahoma Tax Commission, appears not, having previously filed its  
Disclaimer; and the Defendant, Beneficial Finance Company of  
Oklahoma, appears not, but makes default.

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

The Court being fully advised and having examined the file herein finds that the Defendant, Beneficial Finance Company of Oklahoma, acknowledged receipt of Summons and Complaint on March 7, 1990; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on March 5, 1990; that Defendant, County Treasurer, Rogers County, Oklahoma, acknowledged receipt of Summons and Complaint on March 7, 1990; and that Defendant, Board of County Commissioners, Rogers County, Oklahoma, acknowledged receipt of Summons and Complaint on March 8, 1990.

It appears that the Defendants, County Treasurer, Rogers County, Oklahoma, and Board of County Commissioners, Rogers County, Oklahoma, filed their Answer on March 12, 1990; that the Defendants, James E. Warner a/k/a James Edward Warner and June E. Warner a/k/a June Ellen Warner a/k/a Junellen Warner, filed their Answer and Notice of Bankruptcy on April 5, 1990; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Disclaimer on March 23, 1990; and that the Defendant, Beneficial Finance Company of Oklahoma, has failed to answer and its default has therefore been entered by the Clerk of this Court.

The Court further finds that on August 13, 1987, James Edward Warner and Junellen Warner filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 87-02219-W. On January 4, 1989, Discharge of Debtor was entered releasing the debtors from all dischargeable debts. Subject bankruptcy case was closed on October 24, 1989.

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

The East 30 feet of Lot 1 and the West 35 feet of Lot 2 in Block 84 of the City of Claremore, Rogers County, Oklahoma, according to the U. S. Government Plat thereof.

The Court further finds that on October 25, 1974, James E. Warner and June E. Warner executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$16,000.00, payable in monthly installments, with interest thereon at the rate of nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, James E. Warner and June E. Warner executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated October 25, 1974, covering the above-described property. Said mortgage was recorded on October 25, 1974, in Book 482, Page 234, in the records of Rogers County, Oklahoma.

The Court further finds that the Defendants, James E. Warner a/k/a James Edward Warner and June E. Warner a/k/a June Ellen Warner a/k/a Junellen Warner, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, James E. Warner a/k/a James Edward Warner and June E. Warner a/k/a June

Ellen Warner a/k/a Junellen Warner, are indebted to the Plaintiff in the principal sum of \$14,875.08, plus accrued interest in the amount of \$1,987.66 as of June 30, 1989, plus interest accruing thereafter at the rate of 9 percent per annum or \$3.6678 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, Beneficial Finance Company of Oklahoma, is in default and has no right, title, or interest in the subject real property.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, disclaims any right, title, or interest in the subject real property.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, James E. Warner a/k/a James Edward Warner and June E. Warner a/k/a June Ellen Warner a/k/a Junellen Warner, in the principal sum of \$14,875.08, plus accrued interest in the amount of \$1,987.66 as of June 30, 1989, plus interest accruing thereafter at the rate of 9 percent per annum or \$3.6678 per day until judgment, plus interest thereafter at the current legal rate of 8.24 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Beneficial Finance Company of Oklahoma, State of Oklahoma ex rel. Oklahoma Tax Commission, and County Treasurer and Board of County Commissioners, Rogers County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

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

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

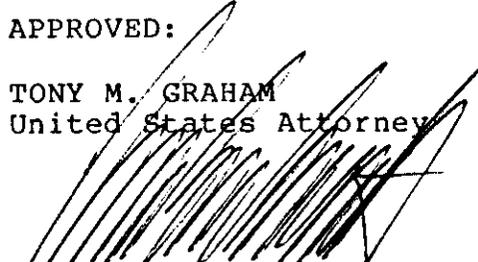
S/ THOMAS R. BRETT

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UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
PETER BERNHARDT, OBA #741  
Assistant United States Attorney

 4007  
ERNEST E. HAYNES, SR., OBA #  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Rogers County, Oklahoma

  
EMILY KAY BALES, OBA #478  
Attorney for Defendants,  
James E. Warner a/k/a James Edward Warner  
and June E. Warner a/k/a June Ellen Warner  
a/k/a Junellen Warner

Judgment of Foreclosure  
Civil Action No. 90-C-185-B

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

JAYME LEROY HAYES, )  
 )  
 ) Petitioner, )  
 )  
 v. )  
 )  
 ) GARY MAYNARD, )  
 )  
 ) Respondent. )

FILED

JUN 11 1990

89-C-1014-B ✓

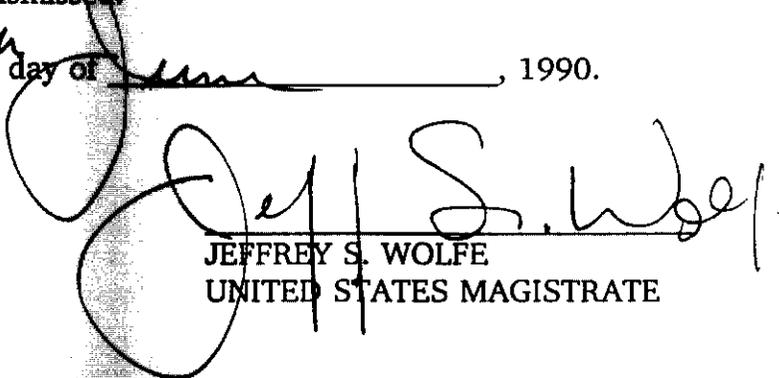
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER ALLOWING PETITIONER TO AMEND

Petitioner has moved to amend his Petition for a Writ of Habeas Corpus by withdrawing his first ground for relief, alleging an unconstitutional search and seizure leading to his convictions. Respondents have not responded to the Petition or the motion to amend.

Therefore, Petitioner's Petition to Amend Habeas Corpus is hereby, granted, and ground one shall be considered dismissed.

SO ORDERED THIS 11<sup>th</sup> day of June, 1990.

  
JEFFREY S. WOLFE  
UNITED STATES MAGISTRATE

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

FILED

JUN 11 1990

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

JOHN HENRY WILLIAMS,

Plaintiff,

vs.

BUDGET RENT-A-CAR SYSTEMS, INC., a  
Delaware Corporation, and JULIE R.  
BURNHAM, an individual,

Defendants.

No. 89-C-1023-B ✓

O R D E R

Currently before the Court is Defendant Budget Rent-A-Car Systems's Motion to Transfer and Defendant Julie Burnham's Motion to Dismiss for lack of *in personam* jurisdiction. The Court does not think oral argument is necessary; therefore, Defendants' Motion for a Hearing is denied.

Defendant Budget seeks to have the case transferred to an unspecified district court in Texas. At the time of the accident, Plaintiff was an Oklahoma resident attending school at West Texas State University and living in Canyon, Texas. Defendant Burnham is a resident of Canyon, Texas. Plaintiff and Defendant Burnham were involved in an automobile accident in Dallas, Texas. Plaintiff was initially treated at Presbyterian Hospital in Dallas, but has since been treated by doctors in Oklahoma. Defendant Budget seeks to transfer the case to Texas because the accident occurred in Dallas, Texas, all of the Defendants' witnesses to the accident are in Canyon, Texas, at the time of the accident

Plaintiff was living in Canyon, Texas, and Plaintiff was initially treated in Dallas, Texas. The only connection with Oklahoma is that Plaintiff returned to Oklahoma after the accident and received subsequent medical attention in Oklahoma. Both Dallas and Canyon are in the Northern District of Texas; however, they are in different divisions of that district.

Title 28, section 1404(a) provides:

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

The Court notes that none of the facts giving rise to this suit occurred in Oklahoma. Although Plaintiff's choice of forum should be accorded great deference, it is of limited value where none of the conduct complained of occurred in the forum selected by the Plaintiff. Koeneke v. Greyhound Lines, Inc., 289 F.Supp. 487 (W.D.Okla. 1968). After considering the relative ease of access to the sources of proof, the availability of compulsory process for attendance of unwilling witnesses, the cost of obtaining willing witnesses, and the possibility of a view of the premises, the Court concludes the Defendant has met the burden required for transferring a case. The Court concludes Dallas is the appropriate forum because that is where the accident occurred and where Plaintiff was initially treated.'

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'The Court is also concerned whether it has *in personam* jurisdiction over Defendant Burnham. There is no evidence in the record that Burnham has ever been to Oklahoma. Plaintiff's argument the Court has jurisdiction by virtue of Plaintiff's

It is therefore Ordered that the case be transferred to the United States District Court for the Northern District of Texas, Dallas Division.

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



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

---

medical care in Oklahoma is not persuasive.

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

IN RE: )  
 )  
WESLEY R. McKINNEY, )  
 )  
Debtor. )  
 )  
WESLEY R. McKINNEY, )  
 )  
Plaintiff/Appellant, )  
 )  
v. )  
 )  
B. P. LOUGHRIDGE, )  
 )  
Defendant/Appellee. )

Bky. Case No. 85-00042-W

Adv. No. 86-0124-W

**F I L E D**

**JUN 11 1990**

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

Case No. 89-C-741-B

**ORDER**

Now before the court is the appeal of Wesley R. McKinney ("McKinney") of the default judgment of the United States Bankruptcy Court for the Northern District of Oklahoma dated September 1, 1989, in favor of B. P. Loughridge ("Loughridge"). Appellant asks the court to set aside a default judgment entered against McKinney finding that a debt owed to Loughridge was not dischargeable pursuant to 11 U.S.C. § 523(a)(2), as a result of McKinney's failure to appear at a scheduled and noticed pretrial conference.

Bankruptcy Rule 8013 sets forth a "clearly erroneous" standard for appellate review of bankruptcy rulings with respect to findings of fact. In re: Morrissey, 717 F.2d 100, 104 (3rd Cir. 1983). However, this "clearly erroneous" standard does not apply to review of mixed questions of law and fact, which are subject to the de novo standard of review. In re: Ruti-Sweetwater, Inc., 836 F.2d 1263, 1266 (10th Cir. 1988); In re: Mullett, 817

F.2d 677, 679 (10th Cir. 1987). This **appeal** challenges the legal conclusion drawn from the facts presented at trial, so **de novo review** is proper.

In October, 1984, Loughridge filed an action in Tulsa County District Court against McKinney and Trinity Corporation to collect on a promissory note due and payable on September 20, 1984, styled Loughridge v. Trinity, et al., Case No. CJ-84-5426. On January 10, 1985, McKinney was forced into involuntary bankruptcy by his creditors. Six months later he was apprehended by law enforcement authorities in California. He was tried in Tulsa on a 32-count indictment, found **guilty**, and sentenced to serve two consecutive five-year prison terms in Lompoc Federal Corrections Institution in California.<sup>1</sup>

This adversary proceeding was filed in the bankruptcy case on April 18, 1986, objecting to the discharge of Loughridge's claim against McKinney pursuant to 11 U.S.C. § 523. The complaint was answered by Judith S. Brune, as counsel for McKinney. Robert S. Rizley was substituted as his counsel on July 22, 1986. On April 22, 1988, upon application of McKinney, the court struck the trial date of the adversary proceeding and continued the trial date indefinitely pending the release of McKinney from prison.

On April 1, 1989, McKinney was released from federal custody and on May 4, 1989, an Amended Scheduling Order was entered by the Bankruptcy Court, setting the pretrial conference for August 31, 1989 and trial for September 18, 1989.

On July 10, 1989, the court extended the discovery cutoff dates, but retained the pretrial date. McKinney was personally mailed a copy of this order. Rizley subsequently withdrew as counsel for McKinney, after informing McKinney of the pending pretrial

---

<sup>1</sup> Said sentence was subsequently reduced to two 5 year sentences to run concurrently in granting Defendant's Motion for Reduction of Sentence pursuant to Federal Rules of Criminal Procedure 35.

conference scheduled in this case.

On August 22, 1989, counsel for Loughridge sent a proposed pretrial order to McKinney for his approval and reminded him of the pretrial conference scheduled for August 31, 1989. That letter and proposed order were never responded to by McKinney. McKinney admitted in his brief-in-chief that he knew that the pretrial conference was scheduled to be held on August 31, but did not realize its significance (Appellant's Appeal, page 2).

On August 31, 1989, the scheduled pretrial conference was held before the Bankruptcy Court. Loughridge appeared by and through his counsel. McKinney failed to appear. The Bankruptcy Judge entered a default judgment against McKinney, saying:

[T]his complaint was first filed in April of 1986 and, of course, the Defendant was incarcerated by virtue of his conviction in the Court down the hall ... and I have taken every possible step to protect the rights of the Defendant and I must say at some cost and deference to the rights of the Plaintiff. I guess we sometimes bend over backwards to be certain that everyone has the ability to be heard.... Of course, in the scheduling of this we have set it for numerous times and continued it by virtue of the fact of the difficulties of the Defendant; I have given adequate time within which, after the release of Mr. McKinney from incarceration to partial incarceration and then on probation, to prepare.

That the Court issued its amended scheduling order in May of 1989 and it was mailed to the parties in interest. That Mr. McKinney has, I believe, faithfully told us where he is. I have tried to extend the scheduling order to attempt to accommodate parties, and that has been at some expense to the Plaintiff, which they have had to prepare their case, and I am to understand from the pleadings here that the deposition of Mr. McKinney was taken in and around the Los Angeles Airport at the courtesy of someone who holds an office, to aid and assist the matter.

That I extended even the trial date in an attempt to accommodate the parties. That the record reveals, of course, that Mr. McKinney was apprised of these matters.... Mr. McKinney was unable to afford the services of Mr. Rizley; that Mr. McKinney, in fact, desired to represent himself.

\* \* \*

That this Court is convinced that Mr. McKinney is aware of this setting. I have had no communication with Mr. McKinney. That this hearing, of course, has been scheduled for a number of months; it is vital to the Court that I have this pre-trial conference; that it is a proper part of this case, and as much as I dislike judgments for lack of showing up, and the like, I don't think there is any valid reason why the orders should be overlooked.

I am convinced that the Defendant knew of this setting, which is a very important part of this case. It is very important and necessary before I can try the case and all of the rules have to be bent in Mr. McKinney's favor just to ignore his nonappearance.

Under all of these circumstances I have no problem in granting your Motion for Default Judgment for his nonappearance, and the Default Judgment will be incorporated by reference in the Judgment itself; and, accordingly, the Court will enter Judgment as in the Plaintiff's complaint so prayed and determine that the indebtedness owed the Plaintiff by the Defendant is an exception to the discharge and is, accordingly, nondischargeable; and that said Judgment should be and is in the amount of \$600,000....

(Tr. 5-8).

Rules 16(d) and (f) of the Federal Rules of Civil Procedure state:

Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

\* \* \*

If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the

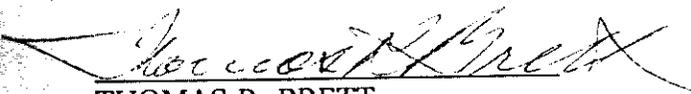
attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expense unjust.

Rule 37(b)(2)(C) allows the court to dismiss an action or render a judgment by default against the disobedient party. The Notes of The Advisory Committee on Rules Related to Rule 16 provide that the court has discretion to impose whatever sanction is appropriate under the circumstances. The Tenth Circuit has found that courts have broad discretion to fashion appropriate sanctions under Rule 16 for failure to comply with pretrial scheduling orders. In re Baker, 744 F.2d 1438, 1440 (10th Cir. 1984).

The court finds that the Bankruptcy Court accorded McKinney great deference to protect his rights throughout the proceedings, and that there was no abuse of discretion in the granting of a default judgment upon his failure to appear at the pretrial conference.

Therefore the Court dismisses this appeal seeking to set aside and vacate the default judgment entered against Wesley R. McKinney on September 1, 1989, by the United States Bankruptcy Court for the Northern District of Oklahoma in favor of B. P. Loughridge.

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

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

FILED

JUN 11 1990

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

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

SHERRY K. SHAW,

Plaintiff,

vs.

TRAVELERS INSURANCE CO.,  
a corporation,

Defendant.

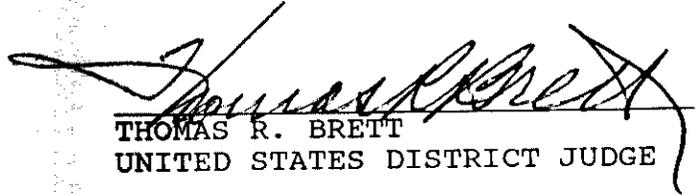
No. 89-C-765-B

ORDER OF DISMISSAL

This matter comes on for hearing on the Joint Stipulation of plaintiff, Sherry K. Shaw, and defendant, Travelers Insurance Company, for a dismissal with prejudice of the above-entitled case. This Court, being fully advised, and having reviewed said Stipulation, finds that the parties have entered into a settlement agreement which covers all claims and issues involved in this action and that this case should be dismissed with prejudice to the filing of a future action pursuant to the Stipulation.

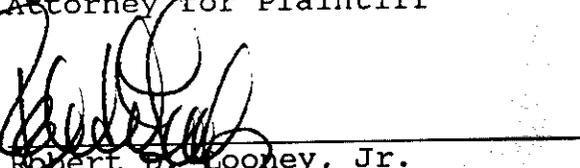
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above-styled case is hereby dismissed with prejudice to the filing of a future action with the parties to bear their own respective costs.

Dated this 11 day of June, 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
Curtis L. Culver  
Accidental Injury Lawyers, Inc.  
5136 East 21st Street  
Tulsa, OK 74114  
(918) 749-0020  
Attorney for Plaintiff

  
Robert B. Looney, Jr.  
Looney, Nichols, Johnson & Hayes  
P.O. Box 468  
Oklahoma City, OK 73101  
(405) 235-7641  
Attorney for Goodyear

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

FILED

JUN 11 1990

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

HOWARD W. FRY, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 THE STATE OF OKLAHOMA, et al, )  
 )  
 Defendant. )

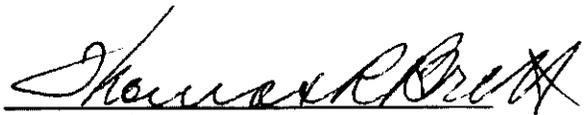
89-C-861-B ✓

ORDER

On November 22, 1989 Defendant Jack Cowley filed a Motion to Dismiss. Plaintiff did not file a response to the motion. On March 13, 1990 the Magistrate granted Plaintiff an additional twenty (20) days to respond, but warned that a second failure to respond would be considered a confession of the motion pursuant to Local Rule 15(A) of the Northern District of Oklahoma. Plaintiff has still not responded to the motion.

Therefore, it is hereby ordered that Defendant's Motion to Dismiss be granted and the action dismissed.

SO ORDERED THIS 11 day of June, 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

FILED

JUN 11 1990

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

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

IN RE:

DELBERT E. BERRY AND  
ANNA CATHERINE BERRY,  
  
Debtors,

)  
)  
) Bankruptcy No. 82-011091-W  
)  
) Chapter 7  
)

DELBERT E. BERRY AND  
ANNA CATHERINE BERRY,  
  
Plaintiffs/Appellants,

)  
)  
)  
) Adversary No. 82-0731-W  
)  
) 89-C-450-B  
)

v.

FIRST NATIONAL BANK AND  
TRUST COMPANY OF VINITA,  
VINITA, OKLAHOMA,

Defendant/Appellee.

)  
)  
)  
)  
)  
)  
)  
) Consolidated with  
)

DELBERT E. BERRY AND  
ANNA CATHERINE BERRY,  
  
Plaintiffs/Appellants,

)  
)  
) Adversary No. 82-730-W  
)  
)  
) 89-C-451-B  
)

v.

UNITED STATES OF AMERICA,  
d/b/a and acting through  
FARMERS HOME ADMINISTRATION,  
UNITED STATES DEPARTMENT OF  
AGRICULTURE,

Defendant/Appellee.

)  
)  
)  
)  
)  
)  
)  
)  
)

DELBERT E. BERRY AND  
ANNA CATHERINE BERRY,  
  
Plaintiffs/Appellants,

)  
)  
) Adversary No. 82-732-W  
)  
)  
) 89-C-452-B  
)

v.

FARMERS HOME ADMINISTRATION  
AND FIRST NATIONAL BANK AND  
TRUST COMPANY OF VINITA,

Defendants/Appellees.

)  
)  
)  
)  
)  
)  
)  
)  
)

ORDER OF DISMISSAL

NOW on this 1<sup>st</sup> day of June, 1990, this matter comes on for consideration before me, the undersigned United States District Judge, upon the Appellants', Delbert E. Berry and Anna Catherine Berry, Motion to Dismiss. This Court, upon due consideration, finds that the same should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above captioned appeal should be and the same is hereby dismissed.

S/ THOMAS R. BRETT

United States District Judge

Randolph P. Stainer OBA # 8537  
221 South Nogales  
Tulsa, Oklahoma 74127  
918/584-6404

FILED

JUN 11 1990

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

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

IN RE:	)	
	)	
DELBERT E. BERRY AND	)	Bankruptcy No. 82-011091-W
ANNA CATHERINE BERRY,	)	
	)	Chapter 7
Debtors,	)	

DELBERT E. BERRY AND	)	
ANNA CATHERINE BERRY,	)	
	)	
Plaintiffs/Appellants,	)	Adversary No. 82-0731-W
	)	
v.	)	89-C-450-B

FIRST NATIONAL BANK AND	)	
TRUST COMPANY OF VINITA,	)	
VINITA, OKLAHOMA,	)	
	)	
Defendant/Appellee.	)	Consolidated With

DELBERT E. BERRY AND	)	
ANNA CATHERINE BERRY,	)	
	)	
Plaintiffs/Appellants,	)	Adversary No. 82-730-W
	)	
v.	)	89-C-451-B

UNITED STATES OF AMERICA,	)	
d/b/a and acting through	)	
FARMERS HOME ADMINISTRATION,	)	
UNITED STATES DEPARTMENT OF	)	
AGRICULTURE,	)	
	)	
Defendant/Appellee.	)	

DELBERT E. BERRY AND	)	
ANNA CATHERINE BERRY,	)	
	)	
Plaintiffs/Appellants,	)	Adversary No. 82-732-W
	)	
v.	)	89-C-452-B

FARMERS HOME ADMINISTRATION	)	
AND FIRST NATIONAL BANK AND	)	
TRUST COMPANY OF VINITA,	)	
	)	
Defendants/Appellees.	)	

ORDER OF DISMISSAL

NOW on this 1<sup>st</sup> day of June, 1990, this matter comes on for consideration before me, the undersigned United States District Judge, upon the Appellants', Delbert E. Berry and Anna Catherine Berry, Motion to Dismiss. This Court, upon due consideration, finds that the same should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above captioned appeal should be and the same is hereby dismissed.

S/ THOMAS R. BRETT

United States District Judge

Randolph P. Stainer OBA # 8537  
221 South Nogales  
Tulsa, Oklahoma 74127  
918/584-6404

FILED

JUN 11 1990

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

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

IN RE:

DELBERT E. BERRY AND  
ANNA CATHERINE BERRY,  
  
Debtors,

)  
)  
) Bankruptcy No. 82-011091-W  
)  
) Chapter 7  
)

DELBERT E. BERRY AND  
ANNA CATHERINE BERRY,  
  
Plaintiffs/Appellants,

)  
)  
)  
) Adversary No. 82-0731-W  
)  
) 89-C-450-B  
)

v.

FIRST NATIONAL BANK AND  
TRUST COMPANY OF VINITA,  
VINITA, OKLAHOMA,

Defendant/Appellee.

)  
)  
)  
)  
) Consolidated With  
)

DELBERT E. BERRY AND  
ANNA CATHERINE BERRY,  
  
Plaintiffs/Appellants,

)  
)  
) Adversary No. 82-730-W  
)  
) 89-C-451-B  
)

v.

UNITED STATES OF AMERICA,  
d/b/a and acting through  
FARMERS HOME ADMINISTRATION,  
UNITED STATES DEPARTMENT OF  
AGRICULTURE,

Defendant/Appellee.

)  
)  
)  
)  
)  
)

DELBERT E. BERRY AND  
ANNA CATHERINE BERRY,  
  
Plaintiffs/Appellants,

)  
)  
) Adversary No. 82-732-W  
)

v.

FARMERS HOME ADMINISTRATION  
AND FIRST NATIONAL BANK AND  
TRUST COMPANY OF VINITA,

Defendants/Appellees.

)  
)  
) 89-C-452-B  
)  
)  
)

ORDER OF DISMISSAL

NOW on this 1<sup>st</sup> day of June, 1990, this matter comes on for consideration before me, the undersigned United States District Judge, upon the Appellants', Delbert E. Berry and Anna Catherine Berry, Motion to Dismiss. This Court, upon due consideration, finds that the same should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above captioned appeal should be and the same is hereby dismissed.

S/ THOMAS R. BRETT

United States District Judge

Randolph P. Stainer OBA # 8537  
221 South Nogales  
Tulsa, Oklahoma 74127  
918/584-6404

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

JUN -8 1998

ROBERT E. UNDERWOOD,

Plaintiff,

v.

THE CITY OF GROVE, OKLAHOMA,  
et al.,

Defendants.

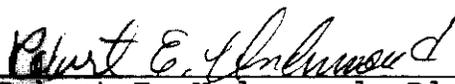
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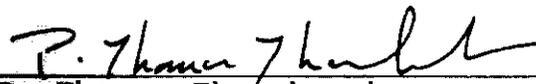
Case No. 89-C-038-B

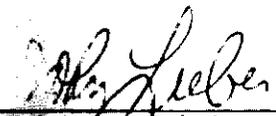
JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

STIPULATION OF DISMISSAL WITH PREJUDICE

All the parties to this action hereby stipulate that any and all causes of action and claims against the Defendants, City of Grove, Oklahoma, Mark Sheridan, Danny O'Daniel, Mark Roach and Raymond Johnson, are hereby dismissed with prejudice.

  
\_\_\_\_\_  
Robert E. Underwood, Plaintiff

  
\_\_\_\_\_  
P. Thomas Thornbrugh  
HOOD, THORNBRUGH & RAYNOLDS  
1914 South Boston  
Tulsa, Oklahoma 74119  
(918) 583-5825  
Attorney for Plaintiff

  
\_\_\_\_\_  
John H. Lieber  
ELLER AND DETRICH,  
A Professional Corporation  
2727 East 21st Street  
Suite 200, Midway Building  
Tulsa, Oklahoma 74114  
(918) 747-8900  
Attorney for Defendants

FILED

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

JUN 7 1990

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

BILLY FRANKLIN WILLIAMS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 EAGLE-PICHER INDUSTRIES, INC., )  
 and OWENS-CORNING FIBERGLAS )  
 CORPORATION, )  
 )  
 Defendants. )

No. 88-C-716-B ✓

AMENDED JUDGMENT

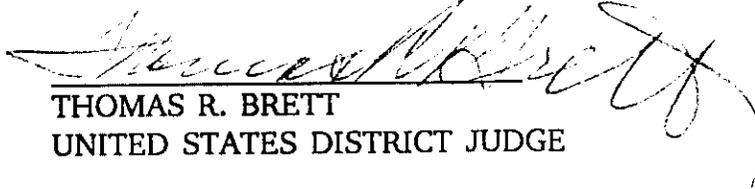
In accordance with the verdict of the jury, rendered on January 29, 1990, and Plaintiff's acceptance of remittitur, Judgment is hereby entered in favor of Plaintiff, Billy Franklin Williams, and against the Defendants, Eagle-Picher Industries, Inc. and Owens-Corning Fiberglass Corporation, in the amount of Six Hundred Thousand Dollars (\$600,000.00), less Twenty-Six Thousand Six Hundred Twenty One and No/100 Dollars (\$26,621.00), for a total judgment of Five Hundred Seventy-Three Thousand Three Hundred Seventy-Nine Dollars (\$573,379.00), plus pre-judgment interest at the rate of 12.35% per annum (12 O.S. §727) from the date of July 28, 1988 to the date of Judgment, and post-judgment interest at the rate of 7.74% per annum (28 U.S.C. §1961) from the date of judgment on the total of said principal sum and pre-judgment interest, and his costs of the action.

DATED this 7<sup>th</sup> day of June, 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



Dated this 7<sup>th</sup> day of June, 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

KANSAS CITY LIFE INSURANCE  
COMPANY, a Missouri corporation,

Plaintiff,

v.

TULSA OFFICE WAREHOUSE INVESTORS  
III, LIMITED PARTNERSHIP, d/b/a  
Tulsa Office Warehouse Investors  
III, Ltd., a Missouri limited  
Partnership, TULLY L. DUNLAP, JR.,  
WILLIAM W. RAMSEY, THOMAS G.  
SCALZO, JOHN F. CANTRELL (County  
Treasurer of Tulsa County,  
Oklahoma) and THE BOARD OF COUNTY  
COMMISSIONERS OF TULSA COUNTY,  
OKLAHOMA,

Defendants.

Case No. 89-C-244 B

erk  
DURT

ORDER OF DISMISSAL

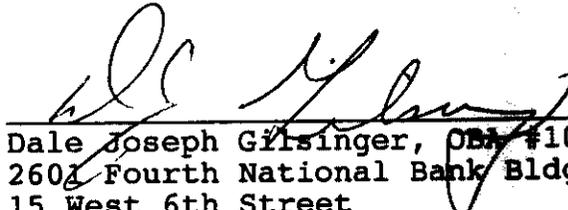
On motion of defendants, and good cause having been shown,  
IT IS ORDERED, ADJUDGED AND DECREED that the above action be  
and hereby is dismissed with prejudice.

DATED this 7th day of June, 1990.

S/ THOMAS R. BRETT  
HONORABLE THOMAS R. BRETT

APPROVED AS TO FORM:

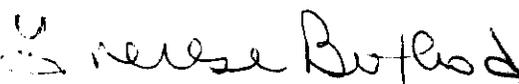
ALBRIGHT & ASSOCIATES

By: 

Dale Joseph Gfisinger, OBA #10821  
2604 Fourth National Bank Bldg.  
15 West 6th Street  
Tulsa, Oklahoma 74119  
(918) 583-5800

ATTORNEYS FOR PLAINTIFF  
KANSAS CITY LIFE INSURANCE COMPANY

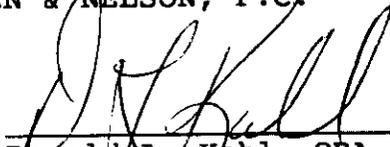
JAMES R. GOTWALS & ASSOCIATES, INC.

By: 

James R. Gotwals, OBA #3499  
Therese J. Buthod, OBA #10752  
525 South Main, Suite 1130  
Tulsa, Oklahoma 74103  
(918) 599-7088

ATTORNEYS FOR DEFENDANTS  
TULSA OFFICE WAREHOUSE INVESTORS III,  
LIMITED PARTNERSHIP, TULLY L. DUNLAP  
JR. AND THOMAS G. SCALZO

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

By: 

Donald L. Kahl, OBA #4855  
4100 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, Oklahoma 74172  
(918) 588-2700

ATTORNEYS FOR DEFENDANT  
WILLIAM W. RAMSEY

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

JERRY L. HAYDEN, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 PILOT LIFE INSURANCE COMPANY, )  
 )  
 Defendant. )  
 )  
 PILOT LIFE INSURANCE COMPANY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JERRY HAYDEN, )  
 )  
 Defendant. )

Case No. 85-C-1029-C

**FILED**

**JUN 7 1990**

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

Case No. 86-C-687-C  
Consolidated

ORDER OF DISMISSAL

This matter comes before the Court on the Settlement Agreement and Stipulation for Dismissal of the parties. The parties represent to the Court that they have entered into an agreement for an Order of Dismissal with Prejudice in this matter.

IT IS THEREFORE ORDERED as follows:

1. Each cause of action brought under this consolidated matter is dismissed with prejudice.
2. The obligations and requirements assumed by the parties in their Settlement Agreement and Stipulation for Dismissal with Prejudice shall be entered and made a part of the instant order.
3. Each party shall bear its own attorney fees and costs.

4. The Settlement Agreement and Stipulation for Dismissal with Prejudice of the parties is ordered placed under seal not to be disclosed absent further order of the Court.

Entered this 6 day of <sup>June</sup>~~May~~, 1990.

(Signed) H. Dale Cook

---

H. DALE COOK

UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA JUN 7 1990

WILLIAM C. COOPER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 NATIONAL UNION FIRE INSURANCE )  
 COMPANY OF PITTSBURGH, )  
 PENNSYLVANIA; and )  
 G.A.B. SERVICES, INC., )  
 )  
 Defendants. )

Jack C. Silver, Clerk  
DISTRICT COURT

Case No. 90-C-2-B

ORDER

This matter comes on for consideration upon the Motion to Remand filed by Plaintiff, William C. Cooper. Additionally considered is the Motion to Dismiss, filed by the Defendants, National Union Fire Insurance Company of Pittsburgh, Pennsylvania and G.A.B. Services, Inc..

This action was initially filed in the District Court for Tulsa County, State of Oklahoma, the Plaintiff alleging bad faith insurance practices and intentional/negligent infliction of emotional distress. The matter grew out of a Workers' Compensation claim made by Plaintiff due to an injury suffered while an employee of Loffland Brothers, a corporation located in Tulsa, Oklahoma. Loffland Brothers was insured by Defendant National Union Fire Insurance Company, with Defendant G.A.B. administering the workers' compensation benefits under the policy. Plaintiff alleges Defendants failed to continue payments due him under the Workers' Compensation Award.<sup>1</sup>

---

<sup>1</sup> Plaintiff was awarded permanent disability benefits for 317.5 weeks at a rate of \$163.00 per week, a total of \$51,752.50, plus medical benefits and vocational rehabilitation benefits.

Defendants removed the matter to this court alleging diversity of citizenship and an amount in dispute being in excess of \$50,000.00. Defendants simultaneously filed a Motion to Dismiss based upon lack of subject matter jurisdiction. The gravamen of Defendants' dismissal effort is that the Workers' Compensation Court of the State of Oklahoma has exclusive jurisdiction of cases arising out of state workmen's compensation laws.

Defendants have positioned themselves contradictorily. Either their removal from state court was improper or their current motion to dismiss is meritless.

Defendants could only validly remove this matter to federal court if it was not an action arising under the workmen's compensation laws of the State of Oklahoma. Civil actions arising under the state workmen's compensation laws are nonremovable. 28 U.S.C. §1445 (c). Diversity of citizenship does not abrogate §1445.<sup>2</sup> However, it has been held §1445 does not prevent removal from a state court of an action which involves another states workmen's compensation laws. See Jackson v. Diamond M Co., D.C. Miss. 1983, 575 F. Supp. 995, where an action in a Mississippi state court arising under the workmen's compensation laws of Louisiana was held removable to federal district court. The Jackson Court concluded that §1445, prohibiting removal of workmen's compensation cases, applied only to actions arising under that forum state's compensation laws.

---

<sup>2</sup> Notwithstanding this, had the case originally been lodged in federal court, citizenship diversity would have been sufficient to vest the Court with jurisdiction to hear the matter. Prescott v. U.S. D.C. Nev. 1981, 523 F.Supp 918, affirmed 731 F.2d 1388.

In the instant matter, the threshold issue is whether Plaintiff's claim arises under the workmen's compensation laws of the State of Oklahoma. Apparently there is no dispute that Plaintiff has received all of the compensation award due him.<sup>3</sup> Plaintiff argues the facts giving rise to Plaintiff's claims for bad faith insurance practices and intentional infliction of emotional distress are directly connected to and arose under the payment of a Workers' Compensation Order. The Court agrees. In a similar case, this Court ruled that the Oklahoma Workers' Compensation Act provides the exclusive remedy for all claims of an injured worker until the Oklahoma legislature provides otherwise. Joseph Edwin Roberts, et al vs. Commercial Union Insurance Company, Case No. 88-C-540-B, D.C. N.D. of Oklahoma, Order entered October 20, 1988.

Having determined Plaintiff's claims arise under the Workers' Compensation laws of the State of Oklahoma,<sup>4</sup> the Court is logically drawn to the conclusion that removal from state court was improvident and remand should be granted.

It will be the Order of the Court that this matter be and the same is hereby REMANDED to the District Court for Tulsa County.

---

<sup>3</sup> The Workers' Compensation Court entered an Order requiring the insurance carrier to pay the remainder of the award in a lump sum which, the Court presumes, has been done in that the parties treat the matter as a fait accompli.

<sup>4</sup> Defendant attempts a tenuous distinction between a claim arising under the Workers Compensation laws and a claims arising out of a Workers' Compensation suit. The Court finds this distinction, under these facts, disingenuous.

Defendant's Motion to Dismiss is therefore OVERRULED as moot.

IT IS SO ORDERED this 7<sup>th</sup> day of June, 1990.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA JUN - 6 1990

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

SHERIL MITCHELL, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ZAPATA INDUSTRIES, INC., a )  
 Pennsylvania corporation, )  
 )  
 Defendant. )

Case No. 87-C-784-B

DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff Sheril Mitchell and hereby  
dismisses the above styled cause of action with prejudice in  
its entirety, with each party bearing its own costs,  
attorney fees and expenses.

*Sheril Mitchell*   
\_\_\_\_\_  
SHERIL MITCHELL  
Plaintiff

*Greg Morris*  
\_\_\_\_\_  
GREG MORRIS  
Attorney for Plaintiff

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

TIMOTHY C. BARNETT,

Plaintiff,

v.

DAVID HOSTETER AND CATHY  
BRIDGES,

Defendants.

89-C-404-B

Clerk  
 COURT

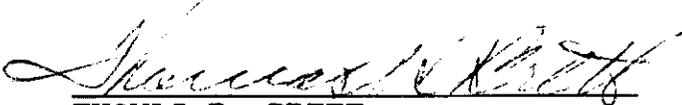
**ORDER**

The court now has before it defendant Bridges' Motion to Dismiss plaintiff's civil rights complaint, which was filed on September 5, 1989. By letter dated February 24, 1990, plaintiff "hereby grant[ed] the motion to dismiss Cathy Bridges from the Civil Rights Complaint".

The Magistrate inadvertantly granted the Motion to Dismiss on March 1, 1990 by Minute Order.

The Court finds that defendant Bridges' Motion to Dismiss should be and is granted.

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

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



discrimination against her because of a physical handicap, a hearing impairment.

The Court is hampered by the failure of Plaintiff, through her counsel, to respond to Defendant's Motion to Dismiss. As the matter stands, Plaintiff's failure to comply with Rule 15 (A), Local Rules of the District Court for the Northern District of Oklahoma, constitutes a waiver of objection by Plaintiff to Defendant's Motion and further constitutes a confession of the matters raised by such pleadings.

Plaintiff's counsel's indifference notwithstanding, the Court is vitally concerned with a litigant's real right to pursue an alleged grievance. Plaintiff complains she was denied use of an audio-amplifier on her work telephone although provided by her personally. She claims denial of promotion because of her hearing impairment. She makes other claims of negative treatment by the Defendant as a result of her physical impairment, assumed for the purposes of the Motion to Dismiss to be true. Lastly, she claims retaliation for filing a grievance, in 1986, with the Oklahoma Human Rights Commission, which retaliation took the form of additional duties and assignments of demeaning office jobs. The Complaint states the OHRC issued a determination that there was reasonable cause to believe that Defendant engaged in a discriminatory act as alleged by the Plaintiff but an explanation of what the discriminatory act consisted of has not been provided the Court.

42 U.S.C. §1983 "creates no substantive rights; it merely provides remedies for deprivations of rights established

elsewhere." City of Oklahoma City v. Tuttle, 471 U.S. 808, 105 S. Ct. 2427, 85 L.Ed. 2d. 791 (1985). It is unclear to the Court how refusing to allow a hearing impaired employee use of an audio-amplifier on her work telephone fits within the parameters of First Amendment guarantees. Again, Plaintiff, through her counsel, fails to assist the Court in this query. The Court fails to see any nexus between the alleged handicap discrimination and the rights to exercise freedom of speech, freedom of assembly and freedom of association under the First Amendment.

To dismiss a complaint and action for failure to state a claim upon which relief can be granted it must appear beyond doubt that Plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41 (1957). Motions to dismiss under Rule 12(b), Fed.R.Civ.P. admit all well-pleaded facts. Jones v. Hopper, 410 F.2d 1323 (10th Cir. 1969), *cert. denied*, 397 U.S. 991 (1970). The allegations of the Complaint must be taken as true and all reasonable inferences from them must be indulged in favor of complainant. Olpin v. Ideal National Ins. Co., 419 F.2d 1250 (10th Cir. 1969), *cert. denied*, 397 U.S. 1074 (1970).

The Court concludes, as to Count One, Plaintiff has failed to state a claim upon which relief can be granted. Plaintiff's Count One should be and the same is hereby DISMISSED.

Plaintiff's Third Count alleges employment discharge without a pretermination hearing and other due process protections. Plaintiff fails to allege the existence of a property interest and therefore the claim fails. In order to invoke the protections of

the fourteenth amendment, it must first be established that a protected property interest is at stake. Graham v. City of Oklahoma City, 859 F.2d 142, (10th Cir-1988); Richardson v. City of Albuquerque, 857 F.2d 727 (10th Cir-1988). Under Oklahoma law, a deputy county clerk has no property interest. 19 O.S.A. §242; Starrett v. Wadley, 876 F.2d 808, (10th Cir-1988). The Court concludes Plaintiff's Third Count should be and the same is hereby DISMISSED.

Plaintiff's Second and Fourth Counts are pendent state claims subject to retention or dismissal within the Court's discretion. The Court believes the better course of action, in view of the disposition of Counts One and Three, is to dismiss these counts. Therefore, the Court directs that Plaintiff's Second and Fourth Counts should be and the same are hereby DISMISSED WITHOUT PREJUDICE.

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

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

JUN -6 1990

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

FDI, a corporation, and ED  
LINS, an individual,

Plaintiffs,

vs.

NN INVESTORS LIFE INSURANCE  
COMPANY, INC., an Iowa  
Corporation,

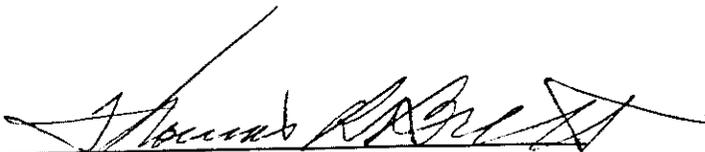
Defendant.

Case No. 89-C-684-B

J U D G M E N T

In accordance with the Order entered herein on June <sup>7th</sup> 6<sup>th</sup> 1990, sustaining the Defendant's Motion for Summary Judgment, the Court hereby enters Judgment in favor of the Defendant, NN Investors Life Insurance Company, Inc., and against the Plaintiffs, FDI, a corporation, and Ed Lins. Costs are assessed against the Plaintiffs if timely applied for. Each party is to pay its or his respective attorney's fees.

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

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

**FILED**

**JUN 6 1990** *g*

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

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

SHELTER INSURANCE COMPANIES,  
a Missouri corporation,

Plaintiff,

vs.

No. 89-C-089-B ✓

WANELLA JEAN ANGIERI, DANIEL  
ANGIERI and ANN MARIE  
RODRIGUES,

Defendants.

**J U D G M E N T**

In accordance with the jury verdict rendered this date, Judgment is hereby entered in favor of the Defendants, Wanella Jean Angieri, Daniel Angieri and Ann Marie Rodrigues and against the Plaintiff, Shelter Insurance Companies, a Missouri Corporation; holding that there is coverage extended to Daniel Angieri under Homeowners Insurance Policy No. 35-71-2598936-1 issued by Shelter Insurance Companies on June 18, 1986, reissued on June 18, 1987, extending liability coverage according to its terms to Daniel Angieri regarding a claim of alleged personal injury of Ann Marie Rodrigues on July 4, 1987.

Costs are assessed against Plaintiff, Shelter Insurance Companies, if timely applied for under Local Rule 6, each party to bear their own attorney's fees.

Dated this 5th day of June, 1990.



**THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE**

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

FILED

JUN 6 1990

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

NOWASTE,

Plaintiff,

vs.

CHIEF SUPPLY COMPANY, INC., et al.,

Defendants.

No. 88-C-1630-B

ORDER

Currently before the Court is Plaintiff's Application for Dismissal Without Prejudice pursuant to Fed.R.Civ P. 41(a)(2) and Defendants' Motion to Dismiss to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6) and Motion for Sanctions.

Subsequent to the time in which Plaintiff initiated this suit, the United States Supreme Court in Hallstrom v. Tillamook County, 109 S.Ct. 3153 (1989) announced that notice requirements of the Resource Conservation and Recovery Act are jurisdictional and must be complied with before initiating a suit in federal court. Plaintiff then moved to dismiss the action so that it could comply with the notice requirements. Defendants do not object to the suit being dismissed, provided Plaintiff pays the expenses it incurred in defending the action. Much of the work Defendants assert is now moot can be used in any subsequent litigation after the statutory notice has been given. As the Court does not address the merits of the action, it would be inappropriate for the Court to decide whether Plaintiff's lawsuit was well grounded in fact and warranted by existing law.

It is therefore ORDERED, that Plaintiff's Application for a Dismissal without Prejudice is SUSTAINED, and Defendants' Application for Costs and Attorney's Fees is OVERRULED.

IT IS SO ORDERED, this 6<sup>TH</sup> day of June, 1990.

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

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

JUN -6 1990

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

THE WILLOWS CONDOMINIUMS  
OWNERS' ASSOCIATION, INC.,

Plaintiff,

vs.

No. 88-C-1286-B

FEDERAL DEPOSIT INSURANCE  
CORPORATION, in its capacity  
capacity as liquidating agent;  
FEDERAL DEPOSIT INSURANCE  
CORPORATION, in its corporate  
capacity; ROBERT E. PARKER;  
IKRAM KAHN; JAMES BISHOFF;  
SUELLYN and ANNIE MARIE SIEGRIST,

Defendants.

STIPULATION OF DISMISSAL

Plaintiff, The Willows Condominiums Owners' Association, Defendant Federal Deposit Insurance Corporation, in both of its capacities, and Defendant Robert E. Parker, pursuant to Federal Rule of Civil Procedure, Rule 41(a)(1)(ii), hereby stipulate to dismissal of the above styled and numbered action, with prejudice, for the reason that all issues involved in the action, including attorney fees and expenses, have been settled.

Defendants Ikram Kahn, James Bishoff, Suellyn Siegrist, and Annie Marie Siegrist, have not joined in this Dismissal for the reason that they never entered an appearance in this matter and therefore, pursuant to Rule 41 (a)(1)(ii), are not required to so stipulate.

*Leslie Zieren*

---

Leslie Zieren, OBA No. 9999  
Boesche McDermott & Eskridge  
800 ONEOK Plaza  
100 West 5th Street  
Tulsa, Oklahoma 74103

ATTORNEYS FOR FEDERAL DEPOSIT  
INSURANCE CORPORATION

*Paul E. Swain*

---

J. Schaad Titus  
Paul E. Swain, III  
Boone, Smith, Davis, Hurst &  
Dickman  
500 ONEOK Plaza  
100 West 5th Street  
Tulsa, Oklahoma 74103

ATTORNEYS FOR PLAINTIFF

*Robert E. Parker*

---

Robert E. Parker  
Southern Hills Plaza  
Suite 100  
2431 East 61st Street  
Tulsa, OK 74136  
PRO SE

FILED

JUN -6 1990

CLERK  
U.S. DISTRICT COURT

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

WESTLAND EXPLORATION COMPANY,  
INC., an Oklahoma corporation,

Plaintiff,

v.

COLUMBIA GAS TRANSMISSION  
CORPORATION, a Delaware  
corporation,

Defendant.

No. 89-C-247-C

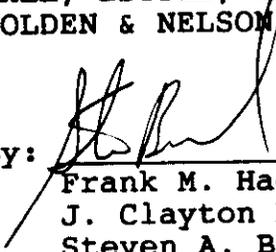
STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff, Westland Exploration Company, Inc., dismisses with prejudice the within action. Defendant, Columbia Gas Transmission Corporation, the only other party appearing in this action, hereby agrees to said dismissal with prejudice. Both Plaintiff and Defendant stipulate and agree that each party will bear its own respective costs and attorney's fees associated with this claim.

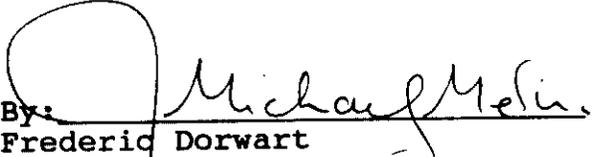
Respectfully submitted,

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

HOLLIMAN, LANGHOLZ, RUNNELS &  
DORWART, P.C.

By: 

Frank M. Hagedorn,  
J. Clayton LaGrone,  
Steven A. Broussard  
4100 Bank of Oklahoma  
Tower  
One Williams Center  
Tulsa, Oklahoma 74172  
(918) 588-2700

By: 

Frederic Dorwart  
J. Michael Medina  
Suite 700 Holarud Building  
Ten East Third Street  
Tulsa, Oklahoma 74103

ATTORNEYS FOR PLAINTIFF  
WESTLAND EXPLORATION COMPANY,  
INC.

ATTORNEYS FOR DEFENDANT  
COLUMBIA GAS TRANSMISSION  
CORPORATION

FILED

JUN -6 1990

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

RECEIVED  
COURT

RIAD EL SOLH,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 89-C-976-B
	)	
PAUL THOMAS, a/k/a PAUL THOMAS	)	
JR., Individually and d/b/a	)	
THOMAS AGENCY, and also d/b/a	)	
FRONTIER MOTORS,	)	
	)	
Defendant,	)	

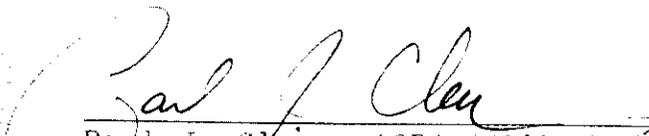
STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the parties hereto, by and through their attorneys, and stipulate that the above captioned action has been compromised and settled, and that the same is hereby dismissed with prejudice to the refiling thereof.

Respectfully submitted,



Joe M. Fears (OBA #2850)  
Marsh, Shacklett & Fears  
525 South Main, Suite 201  
Tulsa, Oklahoma 74103  
918/587-0141  
Attorneys for Plaintiff



Paul J. Cleary (OBA #1727)  
Boone, Smith, Davis, Hurst  
& Dickman  
500 ONEOK Plaza  
100 West 5th Street  
Tulsa, Oklahoma 74103  
918/587-0000  
Attorneys for Defendant

FILED

JUN 6 1990 hm

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

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

ROCKWELL ENERGY CORPORATION, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BILLY RAY KIRK, )  
 )  
 Defendant. )

No. 90-C-262-B✓

O R D E R

Currently before the Court is Defendant Billy Ray Kirk's Motion to Dismiss for lack of *in personam* jurisdiction. Upon review of the file, the Court notes that jurisdiction is based upon diversity of citizenship, Plaintiff being an Oklahoma resident and Defendant being a Texas resident. Plaintiff alleges the amount in controversy exceeds \$10,000. Reading the Complaint, Plaintiff seeks total damages in the amount of \$42,437.38 (\$13,937.38 actual damages and \$28,500 exemplary damages). Assuming Plaintiff recovers all damages sought, such would be insufficient to satisfy the jurisdictional requirements of 28 U.S.C. § 1332.<sup>1</sup> Therefore, the Court dismisses the suit *sua sponte* for want of diversity jurisdiction.

IT IS SO ORDERED, this 6<sup>th</sup> day of June, 1990.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

<sup>1</sup>28 U.S.C. §1332 was amended, effective May 1989, to require an amount in controversy in excess of \$50,000.

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

FILED

JUN -6 1990

CLERK  
U.S. DISTRICT COURT

DONALD STUBBLEFIELD, WILLIAM )  
L. WYNN, RUDDY EARNES, PERRY )  
STOCKTON, EVERETT PARDUE, )  
BILL R. HUTCHENS, and PAT )  
MCEWENS, )

Plaintiffs, )

v. )

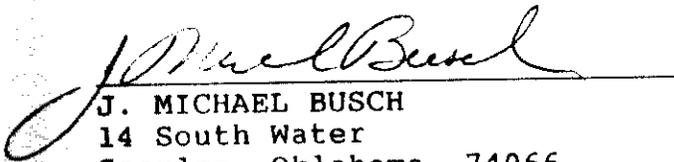
No. 90 C-0144C

E. I. DU PONT DE NEMOURS )  
AND COMPANY, a Delaware )  
corporation, and VENTECH )  
ENGINEERS, a Texas )  
corporation, VULCAN BOILER )  
WORKS, INC., an Oklahoma )  
corporation, )

Defendants. )

**STIPULATION OF DISMISSAL**

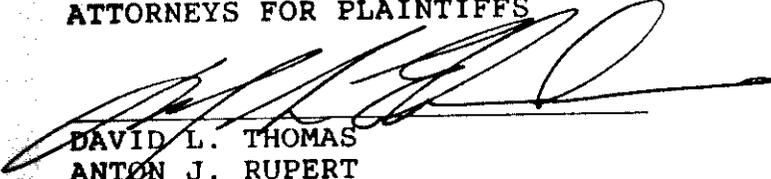
All parties having entered appearance in the above styled case hereby stipulate to the dismissal of this action pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure. Therefore, pursuant to this stipulation by the parties, the above styled action is hereby for all purposes dismissed.

  
J. MICHAEL BUSCH  
14 South Water  
Sapulpa, Oklahoma 74066

and

JEFFERSON SELLERS  
P.O. Box 730  
Sapulpa, Oklahoma 74067

ATTORNEYS FOR PLAINTIFFS



---

DAVID L. THOMAS  
ANTON J. RUPERT  
MARK S. EDMONDSON  
1800 Mid-America Tower  
20 North Broadway  
Oklahoma City, Oklahoma 73102

ATTORNEYS FOR DUPONT



---

JOHN H. TUCKER  
2800 Fourth National Bank Bldg.  
Tulsa, Oklahoma 74104

ATTORNEYS FOR VENTECH

256.90AMSE



The Court concludes Plaintiff's Motions for Attorney's Fees should be and is hereby sustained. Plaintiff's attorney, Mark E. Buchner, is awarded an attorney's fee in the amount of \$1,202.98 under Section 406 and an attorney fee of \$5,590.00 Section 2412(b) and costs in the amount of \$17.50. The smaller of the two attorney fees is to be paid to the Plaintiff, Christine Tucker, by the attorney. Weakley vs Bowen, 803 F2d 575 (10th Cir., 1986).

It is so ordered this 4 day of <sup>June</sup> ~~May~~, 1990.

(Signed) H. Dale Cook

---

United States District Judge

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 MARK W. BALFOUR; JO L. BALFOUR; )  
 1st BANK OF CATOOSA; COUNTY )  
 TREASURER, Tulsa County, )  
 Oklahoma; and BOARD OF COUNTY )  
 COMMISSIONERS, Tulsa County, )  
 Oklahoma, )  
 )  
 Defendants. )

FILED

JUN 5 1990

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

CIVIL ACTION NO. 89-C-616-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 4 day  
of June, 1990. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by J. Dennis Semler, Assistant District  
Attorney, Tulsa County, Oklahoma; and the Defendants, Mark W.  
Balfour, Jo L. Balfour, and 1st Bank of Catoosa, appear not, but  
make default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, 1st Bank of Catoosa,  
acknowledged receipt of Summons and Complaint on July 28, 1989;  
that Defendant, County Treasurer, Tulsa County, Oklahoma,  
acknowledged receipt of Summons and Complaint on July 31, 1989;  
and that Defendant, Board of County Commissioners, Tulsa County,  
Oklahoma, acknowledged receipt of Summons and Complaint on  
July 31, 1989.

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

The Court further finds that the Defendants, Mark W. Balfour and Jo L. Balfour, were served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning February 1, 1990, and continuing to March 8, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Mark W. Balfour and Jo L. Balfour, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstractor filed herein with respect to the last known addresses of the Defendants, Mark W. Balfour and Jo L. Balfour. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by

publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on August 15, 1989; and that the Defendants, Mark W. Balfour, Jo L. Balfour, and 1st Bank of Catoosa, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on November 3, 1988, Mark Willard Balfour and Jo Lynn Balfour filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 88-03385-C. On February 15, 1989, the United States Bankruptcy Court for the Northern District of Oklahoma entered a Discharge of Debtor which released the debtors from all dischargeable debts.

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

Lot Fifteen (15), Block Four (4), SOUTHTOWN ESTATES, an Addition to the Town of Bixby, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on May 11, 1987, the Defendants, Mark W. Balfour and Jo L. Balfour, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$51,000.00, payable in monthly installments, with interest thereon at the rate of nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Mark W. Balfour and Jo L. Balfour, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated May 11, 1987, covering the above-described property. Said mortgage was recorded on May 11, 1987, in Book 5022, Page 1132, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Mark W. Balfour and Jo L. Balfour, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Mark W. Balfour and Jo L. Balfour, are indebted to the Plaintiff in the principal sum of \$50,590.35, plus interest at the rate of 9 percent per annum from July 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, 1st Bank of Catoosa, is in default and has no right, title, or interest in the subject real property.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Mark W. Balfour and Jo L. Balfour, in the principal sum of \$50,590.35, plus interest at the rate of 9 percent per annum from July 1, 1988 until judgment, plus interest thereafter at the current legal rate of 8.24 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, 1st Bank of Catoosa and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

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

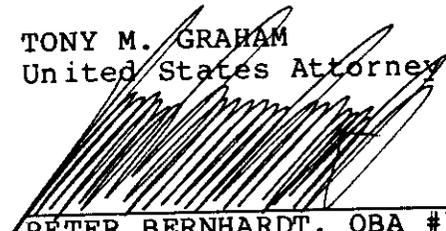
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from  
and after the sale of the above-described real property, under  
and by virtue of this judgment and decree, all of the Defendants  
and all persons claiming under them since the filing of the  
Complaint, be and they are forever barred and foreclosed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

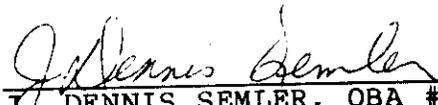
(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
PETER BERNHARDT, OBA #741  
Assistant United States Attorney

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

Judgment of Foreclosure  
Civil Action No. 89-C-616-C

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 RICHARD H. ARMSTRONG; )  
 CHRYSLER FIRST BUSINESS CREDIT )  
 CORPORATION f/k/a BA BUSINESS )  
 CREDIT CORPORATION; CHARLES F. )  
 CURRY COMPANY; COUNTY TREASURER, )  
 Tulsa County, Oklahoma; and )  
 BOARD OF COUNTY COMMISSIONERS, )  
 Tulsa County, Oklahoma, )  
 )  
 Defendants. )

FILED

JUN 5 1990

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

CIVIL ACTION NO. 89-C-227-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 4 day  
of June, 1990. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by J. Dennis Semler, Assistant District  
Attorney, Tulsa County, Oklahoma; the Defendant, Chrysler First  
Business Credit Corporation f/k/a BA Business Credit Corporation,  
appears by its attorney Larry Glenn Ball; the Defendant,  
Charles F. Curry Company, appears not, having previously filed  
its Disclaimer; and the Defendant, Richard H. Armstrong, appears  
not, but makes default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, Richard H. Armstrong, was

served with Summons and Complaint on January 24, 1990; that the Defendant, Chrysler First Business Credit Corporation f/k/a BA Business Credit Corporation, acknowledged receipt of Summons and Complaint on March 30, 1989; that the Defendant, Charles F. Curry Company, acknowledged receipt of Summons and Complaint on March 29, 1989; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 29, 1989; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 29, 1989.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on April 17, 1989; that the Defendant, Chrysler First Business Credit Corporation f/k/a BA Business Credit Corporation, filed its Answer on April 19, 1989; that the Defendant, Charles F. Curry Company, filed its Disclaimer on May 22, 1989; and that the Defendant, Richard H. Armstrong, has failed to answer and his default has therefore been entered by the Clerk of this Court.

The Court further finds that on July 12, 1989, Richard H. Armstrong and Terri Armstrong filed their voluntary petition in bankruptcy in the United States Bankruptcy Court, Western District of Oklahoma, Case No. 89-04332-BH. On October 18, 1989, Discharge of Debtor was entered releasing the debtors from all dischargeable debts.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage

securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Ten (10), Block Nineteen (19), VALLEY VIEW ACRES ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on March 21, 1978, the Defendant, Richard H. Armstrong, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, his mortgage note in the amount of \$10,500.00, payable in monthly installments, with interest thereon at the rate of eight and one-half percent (8.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Richard H. Armstrong, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated March 21, 1978, covering the above-described property. Said mortgage was recorded on March 22, 1978, in Book 4317, Page 521, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Richard H. Armstrong, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Richard H. Armstrong, is indebted to the Plaintiff in the principal sum of \$9,513.07, plus interest at the rate of 8.5 percent per annum from March 1, 1987

until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, Chrysler First Business Credit Corporation f/k/a BA Business Credit Corporation, has a lien on the property which is the subject matter of this action in the principal amount of \$35,871.43, plus interest through March 12, 1990 in the amount of \$14,826.84, plus abstracting expenses in the amount of \$900.00, plus interest accruing at the rate of 18 percent per annum until the date of judgment, plus attorney fees in the amount of \$3,341.83 by virtue of a mortgage and security agreement dated August 25, 1983 and recorded on September 26, 1983, in Book 4730 at Page 1489 in the records of the County Clerk of Tulsa County, Oklahoma. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Charles F. Curry Company, disclaims all right, title, and interest in the subject real property.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendant, Richard H. Armstrong, in the principal sum of \$9,513.07, plus interest at the rate of 8.5 percent per annum from March 1, 1987 until judgment, plus interest thereafter at the current legal

rate of 8.24 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Chrysler First Business Credit Corporation f/k/a BA Business Credit Corporation, have and recover judgment in rem in the principal amount of \$35,871.43, plus interest through March 12, 1990 in the amount of \$14,826.84, plus abstracting expenses in the amount of \$900.00, plus interest accruing at the rate of 18 percent per annum until the date of judgment, plus attorney fees in the amount of \$3,341.83.

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

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

First:

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

Second:

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

Third:

In payment of the judgment rendered herein in  
favor of the Defendant, Chrysler First  
Business Credit Corporation f/k/a BA Business  
Credit Corporation.

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

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

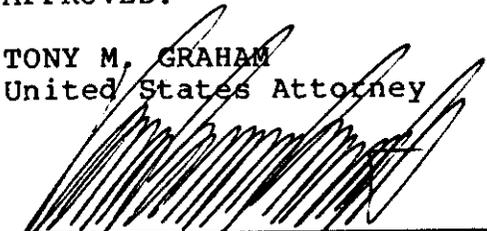
(Signed) H. Dale Cook

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UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney



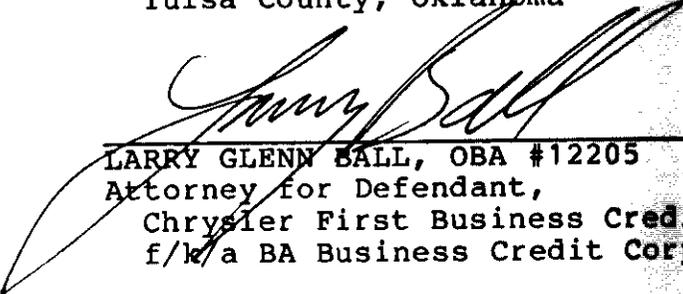
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PETER BERNHARDT, OBA #741  
Assistant United States Attorney



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



---

LARRY GLENN BALL, OBA #12205  
Attorney for Defendant,  
Chrysler First Business Credit Corporation  
f/k/a BA Business Credit Corporation

Judgment of Foreclosure  
Civil Action No. 89-C-227-C

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

RHONDA NANCE and ELLEN BARTLEY,

Plaintiffs,

v.

MERVYN'S, INC., a foreign corporation,  
et al.,

Defendants.

No. 87-C-184-C

CONSOLIDATED WITH

No. 88-C-438-C

**FILED**

JUN 5 1990

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

JUDGMENT

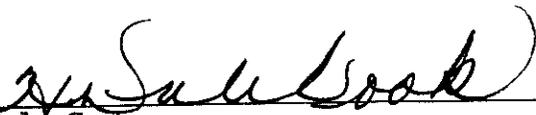
NOW ON this, the 20th day of April, 1990, comes on to be heard the oral motion of Defendant Montgomery Elevator Company, Inc., to enter judgment upon the jury verdict in this matter. The Court, being well advised in the premises, finds that judgment should be and hereby is entered in favor of Defendant Montgomery Elevator Company, Inc., and against Plaintiffs, Rhonda Nance and Ellen Bartley, upon said jury verdict.

NOW ON this, the 18th day of May, 1990, comes on to be heard the Bill Of Costs filed by Defendant Montgomery Elevator Company, Inc. The Court Clerk, upon being well advised in the premises, assessed costs against Rhonda Nance and Ellen Bartley, jointly and severally, in the sum of Two Thousand Three Hundred Ninety-One and 50/100ths Dollars (\$2,391.50).

IT IS, THEREFORE, THE ORDER, JUDGMENT, AND DECREE of this Court that Defendant Montgomery Elevator Company, Inc., have and receive judgment against Rhonda Nance and Ellen Bartley, jointly and severally, in the sum of Two Thousand Three Hundred Ninety-One and 50/100ths Dollars (\$2,391.50), and that Plaintiffs receive nothing by way of their Complaint filed against Defendant Montgomery Elevator Company, Inc.

UPON SAID JUDGMENT, LET EXECUTION ISSUE!

118 | 29



H. Dale Cook  
United States District Court Judge

APPROVED AS TO FORM AND CONTENT:

  
Rick Paynter  
Attorney for Plaintiffs

  
Walter D. Haskins  
Attorney for Defendant  
Montgomery Elevator Company, Inc.

20-100/WDH/ch

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

RICHARD EUGENE HARRIS,  
Petitioner,

v.

THE STATE OF OKLAHOMA, STEVE  
HARGETT, et al.  
Respondents.

90-C-183-B

FILED  
1990  
Clerk  
COURT

ORDER

Now before the Court is petitioner Richard Eugene Harris' Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. §2254 (Docket #1),<sup>1</sup> petitioner's motion for amendment of petition, confining the issue in the case to ground one of the original petition (Docket #3), and respondent's response to petition of writ of habeas corpus (Docket #7). The background of this matter was summarized by the Magistrate in his order of May 20, 1990 (Docket #2) and is incorporated herein by reference.

After having exhausted the available state remedies, petitioner is entitled to the court's consideration of this petition.

Petitioner's only ground alleges that he has been denied due process and equal protection due to the State of Oklahoma's failure to apply current statutory law to his sentencing. Petitioner was found guilty of second-degree murder and sentenced by a jury to an indefinite term of ten (10) years to life imprisonment on May 6, 1977. The

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

Oklahoma Legislature repealed the **second-degree** murder sentencing statute, 21 O.S. §701.4<sup>2</sup> and replaced it with 21 O.S. §701.9(B)<sup>3</sup> on July 24, 1976. Petitioner contends in his habeas corpus petition that 21 O.S. § 701.9(B) is applicable to his case and does not permit indeterminate sentencing, and therefore his indeterminate sentence of from ten (10) years to life should be **modified** to a determinate sentence of ten (10) years under this new version of the statute.

Generally speaking, the law in force at the time that the crime is committed is the law governing the classification of the **offense** and the punishment that can be imposed. Pollard v. State, 521 P.2d 400, 402 (Okla. Crim. App. 1974). It has long been established that unless a legislative enactment by its very own nature is to apply retroactively, it can apply prospectively only. 22 O.S. §3; Acme Oil & Gas Co., Limited, et al. v. Cooper, Judge, 33 P.2d 191 (Okla. 1934). Therefore, the trial court correctly applied the law in effect at the time that the petitioner committed his crime, 21 O.S. §701.4, which provided for a mandatory indeterminate sentence of from ten (10) years to life for the crime of second degree murder.

The difference between the 1973 statute, 21 O.S. 701.4, and the 1976 version, 21 O.S. 701.9(B), is that the earlier statute allowed an indeterminate sentence of not less than ten (10) years nor more than life to be set upon a jury finding of guilty of murder

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<sup>2</sup> 21 O.S. §701.4 reads:

Every person convicted of murder in the second degree shall be punished by imprisonment in the State Penitentiary for not less than ten (10) years nor more than life. The trial court shall set an indeterminate sentence in accordance with this section upon a finding of guilty by the jury of murder in the second degree.

<sup>3</sup> 21 O.S. 701.9(B) reads:

A person who is convicted of or pleads guilty or nolo contendere to murder in the second degree shall be punished by imprisonment in a state penal institution for not less than ten (10) years nor more than life.

in the second degree. Cowles v. State, 636 P.2d 342, 346 (Okla. Crim. App. 1981). The new statute no longer requires imposition of such an indeterminate sentence, nor does it even authorize an indeterminate sentence for second-degree murder; 57 O.S. §353 alone authorizes indeterminate sentences. Underwood v. State, 786 F.2d 707 (Okla. Crim. App. 1990). There is no constitutional prohibition against indeterminate sentences when provided by law. United States v. Baer, 575 F.2d. 1295, 1299 (10th Cir. 1978).

Petitioner also contends that, while 57 O.S. §353<sup>4</sup> is the statute that controls indeterminate sentences, this statute is not applicable to second-degree murder cases. In the instant case, however, the indeterminate ten (10) years to life imprisonment was imposed by a jury. The language is clear that § 353 "shall not limit or alter" the right of juries to impose a penalty of confinement as long as the maximum confinement is not in excess of the maximum provided by law, so that section is inapplicable here. Petitioner implies that §353 has been amended, but this is not true. The Oklahoma Court of Criminal Appeals recently held that §353 may be used in conjunction with §701.9(B) where a maximum sentence of life imprisonment is imposed by the jury or where the jury has imposed a minimum term in excess of one-third (1/3) of the maximum term. Underwood v. State, 786 P.2d 707 (Okla. Crim. App. 1990).

This Court concludes that the petitioner has not demonstrated any court error

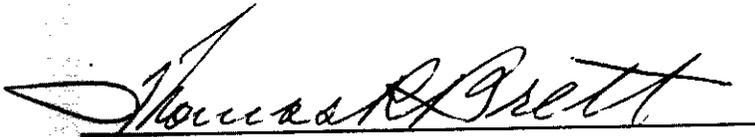
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<sup>4</sup> The 1987 enactment of 57 O.S. §353 is identical to the 1976 enactment and reads:

In all cases where a sentence of imprisonment in the penitentiary is imposed, the court, in assessing the term of the confinement, may fix a minimum and a maximum term, both of which shall be within the limits now and hereafter provided by law as the penalty for conviction of the offense. The minimum term may be less than, but shall not be more than one third (1/3) of the maximum sentence imposed by the court. Provided however, that the terms of this act shall not limit or alter the right in trials in which a jury is used for the jury to assess the penalty of confinement and fix a minimum and maximum term of confinement, so long as the maximum confinement be not in excess of the maximum term of confinement provided by law for conviction of the offense.

that deprived him of fundamental rights guaranteed by the United States Constitution and therefore his petition for habeas corpus pursuant to 28 U.S.C. §2254 should be and is dismissed. Petitioner's Motion to Reduce or Modify Sentence Pursuant to Rule 35 (Docket #8) and Motion to Hear Motion for Modification and or Evidentiary Hearing Docket #9) are therefore moot.

Dated this 4<sup>th</sup> June day of ~~May~~, 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

HUBERT J. TAYLOR,

Plaintiff,

vs.

AMFAC DISTRIBUTION CORPORATION,  
d/b/a AMFAC SUPPLY COMPANY, a  
California Corporation, and  
IRON-OAK SUPPLY CORPORATION, a  
California corporation, successor  
in interest to AMFAC DISTRIBUTION  
CORPORATION,

Defendant.

No. 89-C-771-EB

clerk  
COURT

**ORDER OF DISMISSAL WITH PREJUDICE  
AS TO DEFENDANT AMFAC DISTRIBUTION CORPORATION**

Before the Court is the Stipulation of Dismissal with Prejudice of the Plaintiff, Hubert J. Taylor, and Defendant, Amfac Distribution Corporation ("Amfac"). The Court finds based on the above-described stipulation that these parties have entered into an agreement resolving all issues raised in the Second Amended Complaint and that pursuant to said agreement, this action should be dismissed with prejudice as to Defendant Amfac, with each party to bear his or its own attorney fees and costs.

IT IS THEREFORE ORDERED that the Plaintiff's Second Amended Complaint against Defendant Amfac Distribution Corporation is hereby dismissed with prejudice, with Plaintiff and Defendant Amfac to bear his or its own attorney fees and costs.

DATED this 4<sup>th</sup> day of June, 1990.

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

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

FILED

JUN 1 1990

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

ROBERT L. TOTTEY,  
d/b/a TOD-E PRODUCTIONS,

Plaintiff(s),

vs.

No. 89-C-862-B

PROFIT MAKERS, INC. and  
ROBERT BERRY

Defendant(s).

**JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT**

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

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

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

IT IS SO ORDERED this 1st day of JUNE, 1990.

  
United States District Judge  
THOMAS R. BRETT

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

FILED

JUN 1 1990

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

THERESA LYNN VOLPE

Plaintiff(s),

vs.

No. 89-C-814-B

MEADENA LARUE BOWERS

Defendant(s).

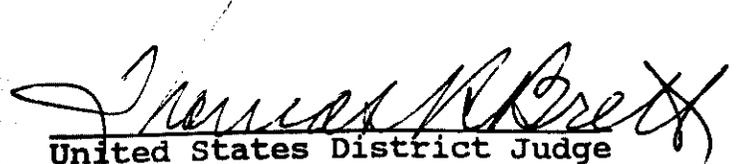
**JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT**

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

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

IT IS SO ORDERED this 1st day of JUNE, 1990.

  
United States District Judge

THOMAS R. BRETT

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

FILED

JUN 1 1990

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

BOBBY FISHER

Plaintiff(s),

vs.

BURLINGTON NORTHERN  
RAILROAD

Defendant(s).

No. 89-C-12-B

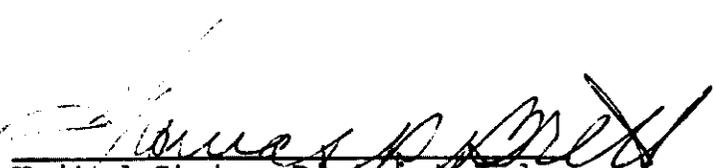
**JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT**

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

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

IT IS SO ORDERED this 1st day of JUNE, 1990.

  
United States District Judge  
THOMAS R. BRETT

OUR FILE: P38.3-1

OBA #6833  
OBA #7753

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

**FILED**  
JUN 1 1990 *old*

FLOYD G. CHAMBERLAIN, et al.,  
Plaintiffs,

vs.

PRINTED PRODUCTS, INC., KENNETH  
D. MOYES, PETER A. MANHART and  
MARGARET NOFIRE a/k/a MARGO  
NOFIRE, et al.,

Defendants,

and

UTICA NATIONAL BANK & TRUST  
COMPANY,

Defendant and Third-Party  
Plaintiff,

vs.

BANK OF OKLAHOMA, CITY PLAZA,

Third-Party Defendant.

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

Case No.: 88-C-1248-E *yes*

(Consolidated with  
Case No. 89-C-155-E)

**FILED**

JUN 9 1990

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

*orig filed in  
88-C-1248-E)*

**STIPULATED AND AGREED JOURNAL ENTRY OF JUDGMENT**

This matter came on before the undersigned Judge of the District Court on the 1<sup>st</sup> day of June, 1990. The Court, being fully advised in the premises and having reviewed the stipulation contained herein, finds as follows:

1. The Court has jurisdiction of the subject matter hereof and of the parties hereto.

*23*

2. The FDIC is the Receiver of Utica National Bank & Trust Company, Tulsa, Oklahoma, a national banking association. Utica National Bank & Trust Company was a named Defendant in one of the captioned cases.

3. Commencing on or about December 1, 1986, the Defendant Kenneth D. Moyes embezzled funds which belonged to the Profit Sharing Trust for Employees of Printed Product, Inc. (the Trust).

4. In the criminal case styled, The United States of America vs. Kenneth D. Moyes, case number 89-CR-08-B, the Honorable Thomas E. Brett ordered restitution to be paid by Kenneth D. Moyes in the amount of Four Hundred Seventy-two Thousand Nine Hundred Ninety-one and .56/100 Dollars (\$472,991.56). The criminal case was based upon the same facts as are now before the Court in the captioned cases.

5. The individual Plaintiffs are persons having vested but unpaid accounts with the Trust.

6. Additionally, the present Trustees of the Trust, Alan D. Anderson and Thomas E. Armstrong, are Plaintiffs in the captioned cases representing the interests of the participants in the Profit Sharing Plan for Employees of

Printed Products, Inc., who have vested accounts with the Trust and are not named Plaintiffs.

7. Individual Plaintiffs together with those persons represented by the presently acting Trustees represent one hundred percent (100%) of the accounts with the Trust.

8. The Defendants Peter A. Manhart and Bank of Oklahoma, City Plaza, have asserted claims against Kenneth D. Moyes and cross-claims against each other as well as some of the other Defendants.

9. Defendants Printed Products, Inc., an Oklahoma corporation, and Northeastern Investments, Inc., an Oklahoma corporation, have asserted claims against various other Defendants.

10. At the time of the embezzlement, the Board of Directors of Printed Products, Inc., and Northeastern Investments, Inc., was composed of Defendants Peter A. Manhart, Kenneth D. Moyes and Margo Nofire. Kenneth D. Moyes also served as a Trustee of the Trust during the time of the embezzlement.

11. Defendant Peter A. Manhart and Bank of Oklahoma have asserted cross-claims against Floyd G. Chamberlain, one of the Plaintiffs as well as the presently acting Trustees of the

Trust, Alan D. Anderson and Thomas E. Armstrong.

12. The Plaintiffs are entitled to judgment against Kenneth D. Moyes in the amount of Four Hundred Seventy-Two Thousand Nine Hundred Ninety-one and 56/100 Dollars (\$472,991.56) to recover the sums of money he embezzled.

13. Aetna Casualty & Surety Company has paid the Trust the sum of Sixty Thousand and No/100 Dollars (\$60,000.00) in satisfaction of the provisions of an indemnity bond. Aetna Casualty & Surety Company is entitled to be subordinated to the rights of the Plaintiffs and to receive judgment against Kenneth D. Moyes payable after the judgment of the Plaintiffs has been satisfied in full.

14. Peter A. Manhart has paid money to the Plaintiffs to settle their claims against him and is entitled to be subordinated to the rights of the Plaintiffs and to receive judgment against Kenneth D. Moyes payable after the judgment of the Plaintiffs has been satisfied in full.

15. Bank of Oklahoma, City Plaza, has paid money to the Plaintiffs to settle their claims against it and is entitled to be subordinated to the rights of the Plaintiffs and to receive judgment against Kenneth D. Moyes payable after the judgment of the Plaintiffs has been satisfied in full.

16. All the claims and cross-claims asserted by any of the parties against each other with exception of those claims reflected in the judgments against Kenneth D. Moyes are to be dismissed with prejudice.

WHEREFORE, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant Kenneth D. Moyes be ordered to pay the respective parties identified below the sum of Four Hundred Seventy-Two Thousand Nine Hundred Ninety One and 56/100 Dollars (\$472,991.56) in the manner hereafter specified and to receive as credit thereon payments made prior to April 10, 1990, in restitution which amount to Sixty-eight Thousand and No/100 Dollars (\$68,000.00):

a. Of the remaining balance due in the amount of Four Hundred Four Thousand Nine Hundred Ninety-one and 56/100 Dollars (\$404,991.56), the next Ninety-five Thousand Eight Hundred Four and 14/100 Dollars (\$95,804.14) paid in restitution by Kenneth D. Moyes shall be paid to the Trustees of the Profit Sharing Trust of Printed Products, Inc., to be disbursed by them for the proportional benefit of all individual and represented Plaintiffs.

b. After the Plaintiffs have received the additional Ninety-five Thousand Eight Hundred Four and 14/100 Dollars (\$95,804.14) all future restitution payments

will be divided between Bank of Oklahoma, City Plaza, Peter A. Manhart and Aetna Casualty & Surety Company as follows:

i. Bank of Oklahoma City Plaza will receive sixty-five percent (65%) of all restitution payments made;

ii. Peter A. Manhart will receive twenty-two percent (22%) of all such restitution payments; and

iii. Aetna Casualty & Surety Company shall receive thirteen percent (13%) of all such restitution payments.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, Kenneth D. Moyes shall pay the judgments rendered herein against him in the manner and in conformity with the schedule of payments specified in the sentence imposed upon him in case 89-CR-08-B, provided that the judgment awarded herein shall be paid in full on or before May 9, 1994, that all payments made in restitution shall be credited against the judgment awarded herein and, that upon full restitution by Moyes, all claims against him shall be dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiffs shall retain the Sixty-eight Thousand and No/100 Dollars (\$68,000.00) heretofore paid to the Trust in restitution by Kenneth D. Moyes and shall retain the Sixty Thousand and No/100 Dollars (\$60,000.00) paid to the Trust by Aetna Casualty & Surety Company.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all the claims of the Plaintiffs asserted against the Defendants Peter

A. Manhart, Bank of Oklahoma, City Plaza, Printed Products, Inc., Northeastern Investments, Inc., Margo Nofire, Board of Directors of Printed Products, Inc., the Board of Directors of Northeastern Investments, Inc. and the Trustees of the Profit Sharing Trust for the Employees of Printed Products, Inc., are dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all the claims and cross-claims asserted by Peter A. Manhart against Plaintiffs, any third parties or any of the other Defendants except Kenneth D. Moyes are dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all the claims asserted by Bank of Oklahoma, City Plaza, against Plaintiffs, any third parties or any of the other Defendants except Kenneth D. Moyes are dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all the claims asserted by any of the parties against the FDIC as Receiver for Utica National Bank & Trust Company, are dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party of this action shall bear its own costs, expenses and attorney fees incurred in connection with this cause of action.

  
James O. Ellison  
United States District Judge

STIPULATED AND APPROVED AS  
TO FORM AND CONTENT:

**PLAINTIFFS**

Alan Anderson  
Alan Anderson

Thomas E. Armstrong  
Thomas E. Armstrong

Floyd G. Chamberlain  
Floyd G. Chamberlain

Doris Bastion  
Doris Bastion, Individually  
and as designated beneficiary  
of Grover C. Bastion

Terry Bright  
Terry Bright

Pansy Case  
Pansy Case

Jimmy L. Copeland  
Jimmy L. Copeland

John Curtis  
John Curtis

(Signature on separate page - 20)  
Connie Evans

Terri Franke  
Terri Franke

Sheila C. Heiman  
Sheila C. Heiman

Linda Dianne Horn  
Linda Dianne Horn

Judy James  
Judy James

Sharon K. Lambdin  
Sharon K. Lambdin

Larry G. Moniz  
Larry G. Moniz

Melvin L. Nance  
Melvin L. Nance

Margaret B. Nance  
Margaret B. Nance

Milton C. Norris  
Milton C. (Nick) Norris

(Signature on separate page - 10)  
Sandra K. Rauchholz

David R. Riggs  
David R. Riggs

Marvin E. Roberts  
Marvin E. Roberts

William R. Runk  
William R. Runk

Randal L. Seales  
Randal L. Seales

Carlenna J. Spriggs  
Carlenna J. Spriggs

J. M. (Jane) Kelly  
J. M. (Jane) Kelly

OWENS & MCGILL, INC

BY George W. Owens

George W. Owens,  
OBA 6833  
1606 1st National  
Bank Building  
Tulsa, Oklahoma 74103

EMPLOYEES

Marie Angieri  
Marie Angieri

Sharon Bunch  
Sharon Bunch

Janet Clement  
Janet Clement

Rosemary Cobb  
Rosemary Cobb

Sammy Coppenger  
Sammy Coppenger

Chris Cornwell  
Chris Cornwell

Ellis Haikey  
Ellis Haikey

Stanley Hayward  
Stanley Hayward

Lee A. Horst, Jr.  
Lee A. Horst, Jr.

Barbara Huggins  
Barbara Huggins

Carroll E. Mercer  
Carroll E. Mercer

Mildred Jessie Nugent  
Mildred Jessie Nugent

Mickey D. Scheiner  
Mickey D. Scheiner

Ken Starkweather  
Ken Starkweather

Brian R. Stevens  
Brian R. Stevens

James C. Tincher  
James C. Tincher

Clay Ward  
Clay Ward

J. M. (Jane) Kelly  
J. M. (Jane) Kelly

OWENS & MCGILL, INC.

By George W. Owens  
George W. Owens, OBA 6833  
1606 First National Bank Building  
Tulsa, Oklahoma 74103

DEFENDANTS:

*Peter A. Manhart*

Peter A. Manhart

*James E. Weger*

James E. Weger  
c/o Jones, Givens, Gotcher,  
Bogan & Hilborne  
3800 First National Tower  
Tulsa, Oklahoma 74103  
Attorney for Peter A. Manhart

BANK OF OKLAHOMA CITY PLAZA

BY \_\_\_\_\_  
President

*Kenneth D. Moyes*

Kenneth D. Moyes

Ms. Patricia Neel  
c/o Robinson, Boese, Orbison  
& Lewis  
Box 1046  
Tulsa, Oklahoma 74101  
Attorney for Bank of Oklahoma,  
City Plaza

*Frank H. McCarthy*

Mr. Frank H. McCarthy  
2700 MidContinent Tower  
401 South Boston  
Tulsa, Oklahoma 74103  
Attorney for Kenneth D. Moyes

FEDERAL DEPOSIT INSURANCE  
CORPORATION

BY \_\_\_\_\_

*Oliver Howard by Oliver Howard*

Mr. Oliver Howard  
c/o Gable & Gotwals  
20th Floor  
Fourth National Bank Building  
Tulsa, Oklahoma 74119  
Attorney for Federal Deposit  
Insurance Corporation

**DEFENDANTS:**

\_\_\_\_\_  
Peter A. Manhart

*James E. Weger*  
\_\_\_\_\_  
James E. Weger  
c/o Jones, Givens, Gotcher,  
Bogan & Hilborne  
3800 First National Tower  
Tulsa, Oklahoma 74103  
Attorney for Peter A. Manhart

BANK OF OKLAHOMA CITY PLAZA,  
*Association by merger*

BY *Steph. Neel*  
*82 Vice* President

*Patricia Neel*  
\_\_\_\_\_  
Ms. Patricia Neel  
c/o Robinson, Lewis, Orbison  
Smith & Coyle  
Box 1046  
Tulsa, Oklahoma 74101  
Attorney for Bank of Oklahoma,  
City Plaza

\_\_\_\_\_  
Kenneth D. Moyes

\_\_\_\_\_  
Mr. Frank H. McCarthy  
2700 MidContinent Tower  
401 South Boston  
Tulsa, Oklahoma 74103  
Attorney for Kenneth D. Moyes

**FEDERAL DEPOSIT INSURANCE  
CORPORATION**

BY \_\_\_\_\_

\_\_\_\_\_  
Mr. Oliver Howard  
c/o Gable & Gotwals  
20th Floor  
Fourth National Bank Building  
Tulsa, Oklahoma 74119  
Attorney for Federal Deposit  
Insurance Corporation

PRINTED PRODUCTS, INC.

BY

*[Handwritten signature]*

*[Handwritten signature]*

Mr. Gary H. Baker  
c/o Baker, Hoster, McSpadden,  
Clark, Rasure & Slicker  
800 Kennedy Building  
Tulsa, Oklahoma 74103  
Attorney for Printed Products,  
Inc.

NORTHEASTERN INVESTMENTS, INC.

BY

*[Handwritten signature]*

*[Handwritten signature]*

Mr. Gary H. Baker  
c/o Baker, Hoster, McSpadden,  
Clark, Rasure & Slicker  
800 Kennedy Building  
Tulsa, Oklahoma 74103  
Attorney for Northeastern  
Investments, Inc.

*Margo Nofire*  
Margo Nofire

*[Handwritten signature]*

Mr. Ross Swimmer  
c/o Hall, Estill, Hardwick,  
Gable, Golden & Nelson  
4100 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, Oklahoma 74172  
Attorney for Margaret Nofire

3225t

PRINTED PRODUCTS, INC.

BY

*Floyd A. Gambetta*

*Gary H. Baker*

Mr. Gary H. Baker  
c/o Baker, Hoster, McSpadden,  
Clark, Rasure & Slicker  
800 Kennedy Building  
Tulsa, Oklahoma 74103  
Attorney for Printed Products,  
Inc.

NORTHEASTERN INVESTMENTS, INC.

BY

*Gary H. Baker*

Mr. Gary H. Baker  
c/o Baker, Hoster, McSpadden,  
Clark, Rasure & Slicker  
800 Kennedy Building  
Tulsa, Oklahoma 74103  
Attorney for Northeastern  
Investments, Inc.

Margo Nofire

Mr. Ross Swimmer  
c/o Hall, Estill, Hardwick,  
Gable, Golden & Nelson  
4100 Bank of Oklahoma Tower  
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Attorney for Margaret Nofire

AETNA LIFE & CASUALTY

BY

*Richard E. Comfort*

Mr. Timothy Trump  
c/o Comfort, Lipe & Green  
Attorneys at Law  
Mid-Continent Tower  
401 South Boston Avenue  
Tulsa, Oklahoma 74103

3225t

STIPULATED AND APPROVED AS  
TO FORM AND CONTENT:

**PLAINTIFFS**

\_\_\_\_\_  
Alan Anderson

Thomas E. Armstrong  
Thomas E. Armstrong

\_\_\_\_\_  
Floyd G. Chamberlain

Doris Bastion  
Doris Bastion, Individually  
and as designated beneficiary  
of Grover C. Bastion

Terry Bright  
Terry Bright

Pansy Case  
Pansy Case

Jimmy L. Copeland  
Jimmy L. Copeland

John Curtis  
John Curtis

Connie Evans  
Connie Evans

Terri Franke  
Terri Franke

\_\_\_\_\_  
Sheila C. Heiman

Linda Dianne Horn  
Linda Dianne Horn

STIPULATED & AGREED JOURNAL ENTRY OF  
JUDGEMENT

Judy James

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Sharon K. Lambdin

Larry G. Moniz  
Larry G. Moniz

Melvin L. Nance  
Melvin L. Nance

Margaret B. Nance  
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Milton C. (Nick) Norris

Sandra K. Rauchholz  
Sandra K. Rauchholz

David R. Riggs  
David R. Riggs

Marvin E. Roberts  
Marvin E. Roberts

William R. Runk

Randal L. Seale  
Randal L. Seale

Carlenna J. Spriggs

J. M. (Jane) Kelly

OWENS & MCGILL, INC.

BY George W. Owens

George W. Owens,  
OBA 6833  
1606 1st National  
Bank Building  
Tulsa, Oklahoma 74103

OUR FILE: P38.3-1

OBA #6833  
OBA #7753

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

FLOYD G. CHAMBERLAIN, et al., )

Plaintiffs, )

vs. )

PRINTED PRODUCTS, INC., KENNETH )  
D. MOYES, PETER A. MANHART and )  
MARGARET NOFIRE a/k/a MARGO )  
NOFIRE, et al., )

Defendants, )

and )

UTICA NATIONAL BANK & TRUST )  
COMPANY, )

Defendant and Third-Party )  
Plaintiff, )

vs. )

BANK OF OKLAHOMA, CITY PLAZA, )

Third-Party Defendant. )

Case No.: 88-C-1248-E

(Consolidated with  
Case No. 89-C-155-E)

**F I L E D**

**JUN 1 1990**

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

STIPULATED AND AGREED JOURNAL ENTRY OF JUDGMENT

This matter came on before the undersigned Judge of the District Court on the 1 day of June, 1990. The Court, being fully advised in the premises and having reviewed the stipulation contained herein, finds as follows:

1. The Court has jurisdiction of the subject matter hereof and of the parties hereto.

2. The FDIC is the Receiver of Utica National Bank & Trust Company, Tulsa, Oklahoma, a national banking association. Utica National Bank & Trust Company was a named Defendant in one of the captioned cases.

3. Commencing on or about December 1, 1986, the Defendant Kenneth D. Moyes embezzled funds which belonged to the Profit Sharing Trust for Employees of Printed Product, Inc. (the Trust).

4. In the criminal case styled, The United States of America vs. Kenneth D. Moyes, case number 89-CR-08-B, the Honorable Thomas E. Brett ordered restitution to be paid by Kenneth D. Moyes in the amount of Four Hundred Seventy-two Thousand Nine Hundred Ninety-one and .56/100 Dollars (\$472,991.56). The criminal case was based upon the same facts as are now before the Court in the captioned cases.

5. The individual Plaintiffs are persons having vested but unpaid accounts with the Trust.

6. Additionally, the present Trustees of the Trust, Alan D. Anderson and Thomas E. Armstrong, are Plaintiffs in the captioned cases representing the interests of the participants in the Profit Sharing Plan for Employees of

Printed Products, Inc., who have vested accounts with the Trust and are not named Plaintiffs.

7. Individual Plaintiffs together with those persons represented by the presently acting Trustees represent one hundred percent (100%) of the accounts with the Trust.

8. The Defendants Peter A. Manhart and Bank of Oklahoma, City Plaza, have asserted claims against Kenneth D. Moyes and cross-claims against each other as well as some of the other Defendants.

9. Defendants Printed Products, Inc., an Oklahoma corporation, and Northeastern Investments, Inc., an Oklahoma corporation, have asserted claims against various other Defendants.

10. At the time of the embezzlement, the Board of Directors of Printed Products, Inc., and Northeastern Investments, Inc., was composed of Defendants Peter A. Manhart, Kenneth D. Moyes and Margo Nofire. Kenneth D. Moyes also served as a Trustee of the Trust during the time of the embezzlement.

11. Defendant Peter A. Manhart and Bank of Oklahoma have asserted cross-claims against Floyd G. Chamberlain, one of the Plaintiffs as well as the presently acting Trustees of the

Trust, Alan D. Anderson and Thomas E. Armstrong.

12. The Plaintiffs are entitled to judgment against Kenneth D. Moyes in the amount of Four Hundred Seventy-Two Thousand Nine Hundred Ninety-one and 56/100 Dollars (\$472,991.56) to recover the sums of money he embezzled.

13. Aetna Casualty & Surety Company has paid the Trust the sum of Sixty Thousand and No/100 Dollars (\$60,000.00) in satisfaction of the provisions of an indemnity bond. Aetna Casualty & Surety Company is entitled to be subordinated to the rights of the Plaintiffs and to receive judgment against Kenneth D. Moyes payable after the judgment of the Plaintiffs has been satisfied in full.

14. Peter A. Manhart has paid money to the Plaintiffs to settle their claims against him and is entitled to be subordinated to the rights of the Plaintiffs and to receive judgment against Kenneth D. Moyes payable after the judgment of the Plaintiffs has been satisfied in full.

15. Bank of Oklahoma, City Plaza, has paid money to the Plaintiffs to settle their claims against it and is entitled to be subordinated to the rights of the Plaintiffs and to receive judgment against Kenneth D. Moyes payable after the judgment of the Plaintiffs has been satisfied in full.

16. All the claims and cross-claims asserted by any of the parties against each other with exception of those claims reflected in the judgments against Kenneth D. Moyes are to be dismissed with prejudice.

WHEREFORE, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant Kenneth D. Moyes be ordered to pay the respective parties identified below the sum of Four Hundred Seventy-Two Thousand Nine Hundred Ninety One and 56/100 Dollars (\$472,991.56) in the manner hereafter specified and to receive as credit thereon payments made prior to April 10, 1990, in restitution which amount to Sixty-eight Thousand and No/100 Dollars (\$68,000.00):

a. Of the remaining balance due in the amount of Four Hundred Four Thousand Nine Hundred Ninety-one and 56/100 Dollars (\$404,991.56), the next Ninety-five Thousand Eight Hundred Four and 14/100 Dollars (\$95,804.14) paid in restitution by Kenneth D. Moyes shall be paid to the Trustees of the Profit Sharing Trust of Printed Products, Inc., to be disbursed by them for the proportional benefit of all individual and represented Plaintiffs.

b. After the Plaintiffs have received the additional Ninety-five Thousand Eight Hundred Four and 14/100 Dollars (\$95,804.14) all future restitution payments

will be divided between Bank of Oklahoma, City Plaza, Peter A. Manhart and Aetna Casualty & Surety Company as follows:

- i. Bank of Oklahoma City Plaza will receive sixty-five percent (65%) of all restitution payments made;
- ii. Peter A. Manhart will receive twenty-two percent (22%) of all such restitution payments; and
- iii. Aetna Casualty & Surety Company shall receive thirteen percent (13%) of all such restitution payments.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, Kenneth D. Moyes shall pay the judgments rendered herein against him in the manner and in conformity with the schedule of payments specified in the sentence imposed upon him in case 89-CR-08-B, provided that the judgment awarded herein shall be paid in full on or before May 9, 1994, that all payments made in restitution shall be credited against the judgment awarded herein and, that upon full restitution by Moyes, all claims against him shall be dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiffs shall retain the Sixty-eight Thousand and No/100 Dollars (\$68,000.00) heretofore paid to the Trust in restitution by Kenneth D. Moyes and shall retain the Sixty Thousand and No/100 Dollars (\$60,000.00) paid to the Trust by Aetna Casualty & Surety Company.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all the claims of the Plaintiffs asserted against the Defendants Peter

A. Manhart, Bank of Oklahoma, City Plaza, Printed Products, Inc., Northeastern Investments, Inc., Margo Nofire, Board of Directors of Printed Products, Inc., the Board of Directors of Northeastern Investments, Inc. and the Trustees of the Profit Sharing Trust for the Employees of Printed Products, Inc., are dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all the claims and cross-claims asserted by Peter A. Manhart against Plaintiffs, any third parties or any of the other Defendants except Kenneth D. Moyes are dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all the claims asserted by Bank of Oklahoma, City Plaza, against Plaintiffs, any third parties or any of the other Defendants except Kenneth D. Moyes are dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all the claims asserted by any of the parties against the FDIC as Receiver for Utica National Bank & Trust Company, are dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party of this action shall bear its own costs, expenses and attorney fees incurred in connection with this cause of action.

**S/ JAMES O. ELLISON**

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James O. Ellison  
United States District Judge

STIPULATED AND APPROVED AS  
TO FORM AND CONTENT:

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Alan W. Anderson  
Alan Anderson

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Thomas E. Armstrong

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Floyd G. Chamberlain

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Doris Bastion, Individually  
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Terry Bright

Pansy Case  
Pansy Case

Jimmy L. Copeland  
Jimmy L. Copeland

John Curtis  
John Curtis

(Signature on separate page - MC)  
Condie Evans

Terri Franke  
Terri Franke

Sheila C. Heiman  
Sheila C. Heiman

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Judy James

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Margaret B. Nance  
Margaret B. Nance

Milton C. Norris  
Milton C. (Nick) Norris

(Signature on separate page - MD)  
Sandra K. Rauchholz

David R. Riggs  
David R. Riggs

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Marvin E. Roberts

William R. Runk ✓  
William R. Runk

Randal L. Seales  
Randal L. Seales ~~es~~ ~~es~~

Carllena J. Spriggs  
Carllena J. Spriggs

J. M. (Jane) Kelly  
J. M. (Jane) Kelly

OWENS & MCGILL, INC

George W. Owens

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EMPLOYEES

Marie Angieri  
Marie Angieri

Barbara Huggins  
Barbara Huggins

Sharon Bunch  
Sharon Bunch

Carroll E. Mercer  
Carroll E. Mercer

Janet Clement  
Janet Clement

Mildred Jessie Nugent  
Mildred Jessie Nugent

Rosemary Cobb  
Rosemary Cobb

Mickey D. Scheiner  
Mickey D. Scheiner

Sammy Coppenger  
Sammy Coppenger

Ken Starkweather  
Ken Starkweather

Chris Cornwell  
Chris Cornwell

Brian R. Stevens  
Brian R. Stevens

Ellis Haikey  
Ellis Haikey

James C. Tincher  
James C. Tincher

Stanley Hayward  
Stanley Hayward

Clay Ward  
Clay Ward

Lee A. Horst, Jr.  
Lee A. Horst, Jr.

J. M. (Jane) Kelly  
J. M. (Jane) Kelly

OWENS & MCGILL, INC.

By George W. Owens  
George W. Owens, OBA 6833  
1606 First National Bank Building  
Tulsa, Oklahoma 74103

DEFENDANTS:

Peter A. Manhart  
Peter A. Manhart

James E. Weger  
James E. Weger  
c/o Jones, Givens, Gotcher,  
Bogan & Hilborne  
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Attorney for Peter A. Manhart

BANK OF OKLAHOMA CITY PLAZA

BY \_\_\_\_\_  
President

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Ms. Patricia Neel  
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& Lewis  
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City Plaza

Kenneth D. Moyes  
Kenneth D. Moyes

Frank H. McCarthy  
Mr. Frank H. McCarthy  
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FEDERAL DEPOSIT INSURANCE  
CORPORATION

BY \_\_\_\_\_

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Kerrie L. Moss  
Mr. Oliver Howard  
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Attorney for Federal Deposit  
Insurance Corporation

DEFENDANTS:

\_\_\_\_\_  
Peter A. Manhart

*James E. Weger*  
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James E. Weger  
c/o Jones, Givens, Gotcher,  
Bogan & Hilborne  
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Attorney for Peter A. Manhart

BANK OF OKLAHOMA CITY PLAZA,  
*Association by merger*

BY *Steph Martin*  
\_\_\_\_\_  
*82 Vice* President

*Patricia Neel*  
\_\_\_\_\_  
Ms. Patricia Neel  
c/o Robinson, Lewis, Orbison  
Smith & Coyle  
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City Plaza

\_\_\_\_\_  
Kenneth D. Moyes

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Mr. Frank H. McCarthy  
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Attorney for Kenneth D. Moyes

FEDERAL DEPOSIT INSURANCE  
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Fourth National Bank Building  
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Attorney for Federal Deposit  
Insurance Corporation

PRINTED PRODUCTS, INC.

BY

*Richard W. Wether*

*Gary H. Baker*

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Clark, Rasure & Slicker  
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Attorney for Printed Products,  
Inc.

NORTHEASTERN INVESTMENTS, INC.

BY

*Richard W. Wether*

*Gary H. Baker*

Mr. Gary H. Baker  
c/o Baker, Hoster, McSpadden,  
Clark, Rasure & Slicker  
800 Kennedy Building  
Tulsa, Oklahoma 74103  
Attorney for Northeastern  
Investments, Inc.

*Margo Nofire*

Margo Nofire

*Ross Swimmer*

Mr. Ross Swimmer  
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Attorney for Margaret Nofire

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PRINTED PRODUCTS, INC.

BY

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c/o Baker, Hoster, McSpadden,  
Clark, Rasure & Slicker  
800 Kennedy Building  
Tulsa, Oklahoma 74103  
Attorney for Printed Products,  
Inc.

NORTHEASTERN INVESTMENTS, INC.

BY

*Gary H. Baker*

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Margo Nofire

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Attorney for Margaret Nofire

AETNA LIFE & CASUALTY

BY

*[Signature]*  
*Richard E. Cooper*

Mr. Timothy Trump  
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