

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

MOSES HUBERT METOYER
MUHAMMAD,

Petitioner,

v.

STEPHEN KASIER and The
Attorney General of the
State of Oklahoma,

Respondents.

FILED

JUL 10 1990

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

89-C-695-B

ORDER

Now before the court are petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Docket #2)¹, petitioner's Motion of Correctness and/or Motion of Nunc Pro Tunc (#4), respondents' Response (#5), petitioner's Traverse (#6), and petitioner's Motion to Supplement and/or Consolidate Proposition VI to Petitioner's Original Application for Writ of Habeas Corpus (#7). The background of this matter was summarized by Magistrate John Leo Wagner in his Order of October 5, 1989 (#3) and is incorporated herein by reference.

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

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

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

Under Rule 2(a) of the Rules Governing Section 2254 Cases, the state officer having custody of the applicant should be named as respondent. When a habeas corpus petitioner seeks relief from state custody, he must direct his petition against those state officials holding him in restraint. Moore v. United States, 339 F.2d 448 (10th Cir. 1964). However, petitioner's pro se pleadings will be held to a less stringent standard than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U. S. 519, 520 (1972).

In Spradling v. Maynard, 527 F.Supp. 398, 404 (1981), the court held that the Attorney General of the State of Oklahoma is not a proper party respondent in a habeas corpus action brought by a state prisoner already in custody.² The court stated:

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

Id.

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

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

concludes that the respondents' request for dismissal of the Attorney General of the State of Oklahoma as a party respondent should be and is granted pursuant to Rule 2(a).

In his Motion of Correctness and/or Motion of Nunc Pro Tunc, petitioner requests that the Magistrate's Order of October 5, 1989 be amended to incorporate his grounds for relief exactly as they read in the petition for writ of habeas corpus.

Federal courts have long disregarded legalistic requirements in examining petitions for writ of habeas corpus and judged the papers, often prepared by uneducated prisoners without friends or funds, "by the simple statutory test of whether facts are alleged that entitle the applicant to relief." Darr v. Burford, 339 U.S. 200, 203-04 (1950). The court finds the petition to be inartistically drawn, including obtuse language and considerable redundancies.

The respondent has already been served with the petition with all factual allegations, however ambiguous, contained therein. It has long been established that high standards of the legal art cannot be imposed on prisoners acting as their own counsel. Price v. Johnson, 334 U.S. 226, 292 (1948). However, the courts have not concluded that inarticulate language contained in a petition be incorporated verbatim into federal court documents. Therefore, petitioner's Motion of Correctness and/or Motion of Nunc Pro Tunc is denied.

For his first allegation, petitioner claims that it was fundamental error for the trial judge in his case to be assigned to consider his original application for post-conviction relief, as the judge was biased by information not in the record. His third claim is that the trial judge had a personal interest in the denial of a new trial for petitioner and in the

disposal of petitioner's application for post-conviction relief. Petitioner's ground two (2) alleges that the trial judge should not have presided at the evidentiary hearing on petitioner's Batson claim because his testimony was material to that hearing in that he ruled on the challenges to jury selection and questioned the black veniremen. Petitioner's ground four (4) alleges that the trial judge was biased against the petitioner at that evidentiary hearing as well as with respect to his petition for post-conviction relief because petitioner filed a complaint against him with the Judicial Council in 1983. Petitioner's ground five (5) alleges that constitutional error occurred when he was not appointed counsel for the evidentiary hearing on his Batson claim to collect affidavit depositions.

Title 20 O.S. § 1401A³ specifies that an Oklahoma state court judge must disqualify himself in any cause or proceeding in which he may be interested, or in the result of which he may be interested. The Oklahoma Court has held that personal knowledge of a judge of former proceedings before him does not disqualify the judge from hearing a matter. Sawyer v. State, 119 P.2d 256, 259 (Okla. Crim. App. 1941). In order to disqualify the judge, "it must be shown that he is biased against, or entertains ill will or hostility toward" a party. Id. The Tenth Circuit has also found that the fact that a judge has previously rendered a decision against a party is not sufficient to show prejudice. U.S. v. Irwin, 561 F.2d 198, 200 (10th Cir.) cert. den. 434 U.S. 1012 (1977) ("the bias must be of a personal nature and must be such as would likely result in a decision on some basis other than what

³20 O.S. §1401 A. reads as follows:

No judge of any court shall sit in any cause or proceeding in which he may be interested, or in the result of which he may be interested, or when he is related to any party to said cause within the fourth degree of consanguinity or affinity, or in which he has been of counsel for either side, or in which is called in question the validity of any judgment or proceeding in which he was of counsel or interested, or the validity of any instrument or paper prepared or signed by him as counsel or attorney, without the consent of the parties to said action entered of record.

the judge learned from his participation in the case"). If ill will or hostility toward a party is to be found, it must be of such a character as might prevent the judge from being fair and impartial, and this must be shown as a matter of fact, and not as a matter of opinion of the defendant. Dowell v. Hall, 185 P.2d 232, 235 (Okla. Crim. App. 1947).

The court finds that petitioner's petition consists entirely of conclusions and expressions of opinion as to the judge's bias and personal interest in the petitioner's various appellate actions. Petitioner has done nothing more than make accusations that the judge was aware of a complaint lodged against him by the petitioner with the Judicial Council, that at trial the judge had questioned two jurors who were later removed on preemptory challenge, and that the judge was knowledgeable of the petitioner's challenge to the removal of these jurors. It is the petitioner's claim that the judge ruled at the evidentiary hearing and disposed of the petition for post-conviction relief on the basis of this information, rather than on the merits of the claims. However, petitioner presents absolutely no facts to support his opinions and conclusions.

Petitioner relies on the holding in Thomas v. Hopper, 770 P.2d 901 (Okla. Crim. App. 1989), as requiring the disqualification of a trial judge who is later called upon to rule on a petition for post-conviction relief. However, this narrow ruling merely construed 22 O.S. § 576⁴ to preclude a judge who hears a state appeal from conducting the trial unless all parties agree. Id. at 903. The ruling in Thomas is therefore inapplicable.

⁴22 O.S. §576 reads as follows:

The judge who conducts the preliminary examination shall not try the case except with permission of the parties.

Under Oklahoma's Post-Conviction Procedure Act, 22 O.S. §1080 et. seq. a petitioner is required to submit his claim that his **sentence** violated the law to "the court in which the judgment and sentence on conviction **was imposed**" to secure relief. 22 O.S. §1080. It was therefore proper for the trial judge to consider petitioner's post-conviction relief application, and the judge's decision **was reviewed** by the Oklahoma Court of Criminal Appeals and found to be proper. Petitioner's first and third claims have no merit.

Petitioner alleges in grounds two and four that there was a violation of 22 O.S. §1084⁵ when the trial judge presided at the evidentiary hearing of his Batson claim. However, the hearing in question was **not an evidentiary hearing** resulting from the judge's inability to dispose of a petition for post-conviction relief under 22 O.S. § 1084. Rather, during the pendency of petitioner's **direct appeal** to the Oklahoma Court of Criminal Appeals, the matter was remanded to the Tulsa County District Court for an evidentiary hearing on petitioner's claim that **there were** no blacks on the jury panel. The § 1084 disqualification requirement cited by the **petitioner** pertains only to post-conviction relief matters and does not apply to an order of the Court of Appeals directly to the trial judge to reconsider a matter. Petitioner's **second and fourth** claims have no merit.

As to petitioner's fifth claim, the **transcript** of petitioner's evidentiary hearing on his Batson claim shows that he was **represented** by counsel at that hearing. Neither petitioner nor his counsel requested the trial judge to **disqualify** himself at that hearing. There was

⁵22 O.S. §1084 reads as follows:

If the application cannot be disposed of on the pleadings and record, or there exists a material issue of fact, the court shall conduct an evidentiary hearing at which time a record shall be made and preserved. The court may receive proof by affidavits, depositions, oral testimony, or other evidence and may order the applicant brought before it for the hearing. A judge should not preside at such a hearing if his testimony is material. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment.

no Constitutional requirement that **petitioner's** attorney collect "affidavit depositions" for that hearing, as the preparation for **the hearing** was a matter left to the attorney's discretion.

The petitioner's Traverse to **respondent's** Response reiterates his Batson arguments presented in his Petition-In-Error in **support** of his appeal to the Oklahoma Court of Criminal Appeals. These arguments are **moot** in that petitioner did not state a Batson claim regarding the racial composition of his **trial jury** as a ground for his petition for writ of habeas corpus.

The court concludes that **petitioner** has not demonstrated any court error that deprived him of fundamental rights **guaranteed** by the United States Constitution and therefore petitioner's application for a **writ of habeas corpus** pursuant to 28 U.S.C. § 2254 is denied. Petitioner's Motion to **Supplement** and/or Consolidate Proposition VI to Petitioner's Original Application for **Writ of Habeas Corpus** is therefore moot.

Dated this 13 day of July, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

MAZZIO'S CORPORATION,)
an Oklahoma Corporation,)

Plaintiff,)

v.)

No. 90-C-523-E

RICHARD A. PENDLETON,)
RONALD K. STENGER, and)
PIZZA VENTURES, INC., a)
Missouri Corporation,)

Defendants.)

ORDER

On this the 12th day of July, 1990, came on to be considered the Plaintiff's Application to dismiss its action without prejudice and after careful consideration, the Court is of the opinion and finds that said Application is meritorious.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's action is hereby dismissed without prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party is to bear their own costs.

Signed and entered this the 12th day of July, 1990.

S/ JAMES O. BELL

UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA

vs.

BEN E. SIKES
a/k/a BEN SIKES

Defendant.

CIVIL ACTION NO: 90-C-445-E

AGREED JUDGMENT AND ORDER OF PAYMENT

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

1. This Court has jurisdiction over the subject matter of this litigation and over all parties thereto. The Complaint filed herein states a claim upon which relief can be granted.

2. The defendant hereby acknowledges and accepts service of the Complaint filed herein.

3. The defendant hereby agrees to the entry of Judgment in the sum of \$1,869.75, plus accrued interest of \$135.79 thereafter at the legal rate until paid, plus costs of this action, until paid in full.

4. Plaintiff's consent to the entry of this Judgment and Order of Payment is based upon certain financial information which defendant has provided and the defendant's express representation to Plaintiff that he is unable to presently pay the amount of indebtedness in full and the further representation

of the defendant that he will well and truly honor and comply with the Order of Payment entered herein which provides terms and conditions for the defendant's payment of the Judgment, together with costs and accrued interest, in regular monthly installment payments, as follows:

(a) Beginning on or before the 15th day of July, 1990, the defendant shall tender to the United States a check or money order payable to the U.S. Department of Justice, in the amount of \$75.00, and a like sum on or before the 15th day of each following month until the entire amount of the Judgment, together with the costs and accrued postjudgment interest, is paid in full.

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

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

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

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

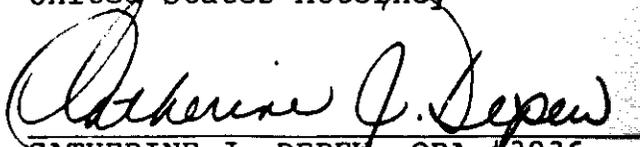
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Ben E. Sikes, in the principal amount of \$1,869.75, until judgment, plus accrued interest of \$135.79 thereafter at the current legal rate of 8.09 percent per annum until paid, plus the costs of this action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM;

TONY M. GRAHAM
United States Attorney



CATHERINE J. DEPEU, OBA #3836
Assistant United States Attorney



BEN E. SIKES, DEFENDANT
6-24-90

CD:mlc

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

JUL 1990

NOCO INVESTMENT CO., INC., an)
Oklahoma corporation, and YALE)
AVENUE, LTD., an Oklahoma)
corporation,)

Plaintiffs,)

vs.)

Case No. 90-C-282-E

SUN REFINING AND MARKETING)
COMPANY, a Pennsylvania)
corporation, et al.,)

Defendants.)

ZGEN, INC. a/k/a BURKHART)
PETROLEUM CORPORATION,)

Third Party Defendants.)

DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiffs' Application for Dismissal With Prejudice of Plaintiffs' complaint in this action. The Court being fully advised in the premises finds that said Dismissal With Prejudice should be entered.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiffs complaint against Sun Refining and Marketing Company, Phillips 66 Natural Gas Company, Atlantic Richfield Company, Conoco, Inc., Union Pacific Resources, Mustang Fuel Corporation, and OXY NGL, Inc. is hereby dismissed with prejudice as to the filing of a new action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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

GREAT AMERICAN INSURANCE COMPANY)
and HIGHLANDS INSURANCE COMPANY,)

Plaintiffs,)

vs.)

NICK WOLFE, d/b/a WOLFE)
CONSTRUCTION COMPANY; NICK WOLFE)
as an individual; PATRICIA WOLFE)
as an individual; UNITED STATES)
OF AMERICA on behalf of Army)
Corps of Engineers,)

Defendants,)

UNITED STATES OF AMERICA on)
behalf of Internal Revenue)
Service,)

Intervenor.)

Case No. 75-C-355-P
Case No. 75-C-364-P
(Consolidated)

FILED

JUL 13 1990

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

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to the Stipulation of Dismissal with Prejudice filed by the United States of America as Intervenor herein and the Defendants, Nick Wolfe d/b/a Wolfe Construction Company, Nick Wolfe and Patricia Wolfe, parties in this action,

IT IS HEREBY ORDERED that the claim of the United States of America as Intervenor herein be dismissed with prejudice and each party to bear their own costs and attorney fees.

SO ORDERED this 13th day of July, 1990.


United States District Judge

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

FILED

JUL 7 1990

CENTRAL PENN LIFE INSURANCE
COMPANY,

Plaintiff,

vs.

PROFESSIONAL INVESTORS LIFE
INSURANCE COMPANY,

Defendant.

Case No. M-1561-E

ORDER OF DISMISSAL WITH PREJUDICE

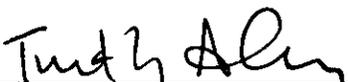
Pursuant to the Stipulation between the parties, Central Penn Life Insurance Company and Professional Investors Life Insurance Company, and for good cause shown, and upon approval of the Joint Application by Central Penn Life Insurance Company and Professional Investors Life Insurance Company for Release of Garnished Funds, the Court hereby dismisses this matter with prejudice.

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

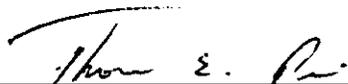
S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

AGREED TO AND APPROVED:


James M. Sturdivant
Timothy A. Carney
GABLE & GOTWALS
2000 Fourth National Bank Bldg.
Tulsa, Oklahoma 74119
(918) 582-9201

ATTORNEYS FOR PLAINTIFF,
CENTRAL PENN LIFE INSURANCE
COMPANY



E. Paul Ferguson
Thomas E. Prince
FERGUSON & PRINCE
641 Northeast 39th Street
Oklahoma City, OK 73105

ATTORNEYS FOR DEFENDANT,
PROFESSIONAL INVESTORS LIFE
INSURANCE COMPANY

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

UNITED STATES, ex rel.)
AIR CAPITOL CONTRACTORS, INC.,)

Plaintiff,)

vs.)

FIDELITY AND DEPOSIT COMPANY)
OF MARYLAND, and ZIEGLER)
CORPORATION,)

Defendant.)

FIDELITY & DEPOSIT COMPANY OF)
MARYLAND,)

Third-Party Plaintiff,)

vs.)

L. A. KNEBLER CONSTRUCTION CO.,)
INC., DEWAYNE ZIEGLER and DORIS)
J. ZIEGLER,)

Third-Party Defendants.)

No. 89-C-377-B ✓

FILED

JUL 16 1990

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

ORDER

On March 16, 1990, the Defendant, Fidelity & Deposit Company of Maryland (F&D), filed a Motion for Summary Judgment against the use Plaintiff, Air Capitol Contractors, Inc. Local Rule 15A states:

"Each motion, application and objection filed in every civil ... case shall set out the specific point or points upon which the motion is brought and shall be accompanied by a concise brief. Memoranda in opposition to such motion and objection shall be filed within fifteen (15) days in a civil case ... after the filing of the motion or objection.... Failure to comply with this paragraph will constitute waiver of objection by the party not complying, and such failure to comply will constitute a confession of the matters raised by such pleadings."

Plaintiff did not oppose the motion within 15 days as required by Rule 15A of the United States District Court for the Northern District of Oklahoma. Therefore, the Motion is deemed confessed.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Widon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

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

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

The undisputed facts are as follows:

On August 21, 1985, the United States of America entered into a construction contract with Defendant Ziegler Corporation under which the latter was to repair and paint powerhouse gates at Robert S. Kerr Locke & Dam Reservoir, Arkansas River, Oklahoma.

On August 28, 1985, Ziegler Corporation, as principal, and

Fidelity and Deposit Company, as surety, executed a Miller Act payment bond covering the above described construction project.

On or about May 8, 1986, Ziegler Corporation, as prime contractor, and Air Capitol Contractors, Inc., as subcontractor, executed a subcontract dated April 28, 1986, under which Air Capitol was to clean and paint the powerhouse gates.

Air Capitol did not perform any work or furnish any materials on the bonded construction project within one year prior to filing the Complaint on May 5, 1989. Similarly, none of Air Capitol's equipment was rented to or used by Ziegler Corporation on the project within one year prior to the filing of the Complaint.

Therefore, Air Capitol's action on the Miller Act payment bond is untimely and judgment should be entered in favor of Defendant, Fidelity & Deposit Company of Maryland.

The Court hereby enters a final judgment in favor of the Defendant Fidelity & Deposit Company of Maryland denying Air Capitol Contractors, Inc., any relief on its Miller Act payment bond action. Fidelity & Deposit Company is granted its court costs.

IT IS SO ORDERED this 13th day of July, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

UNITED STATES, ex rel.
AIR CAPITOL CONTRACTORS, INC.,

Plaintiff,

vs.

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND, and ZIEGLER
CORPORATION,

Defendant.

FIDELITY & DEPOSIT COMPANY OF
MARYLAND,

Third-Party Plaintiff,

vs.

L. A. KNEBLER CONSTRUCTION CO.,
INC., DEWAYNE ZIEGLER and DORIS
J. ZIEGLER,

Third-Party Defendants.

No. 89-C-377-B ✓

FILED

JUL 18 1990

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

ORDER

On March 16, 1990, the Defendant, Fidelity & Deposit Company of Maryland (F&D), filed a Motion for Partial Summary Judgment against the Defendant, Ziegler Corporation, and the Third-Party Defendants, L. A. Knebler Construction Co., Inc., Dewayne Ziegler and Doris J. Ziegler. Local Rule 15A states:

"Each motion, application and objection filed in every civil ... case shall set out the specific point or points upon which the motion is brought and shall be accompanied by a concise brief. Memoranda in opposition to such motion and objection shall be filed within fifteen (15) days in a civil case ... after the filing of the motion or objection.... Failure to comply with this paragraph will constitute waiver of objection by the party not complying, and such failure to comply will constitute a confession of the matters raised by such

pleadings."

Neither the Defendant nor the Third-Party Defendants filed any opposition thereto within the time required by Rule 15A of the United States District Court for the Northern District of Oklahoma. Therefore, the Motion for Partial Summary Judgment is deemed confessed.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Windon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

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

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

The undisputed facts are:

On April 23, 1985, Defendant Ziegler Corporation and the Third-Party Defendants executed in favor of F&D an Agreement of

Indemnity in which they agreed to exonerate, indemnify and hold harmless F&D of and from any and all liability, loss, costs, expenses and attorney fees which it might incur by reason of having executed contract bonds on behalf of Defendant Ziegler Corporation.

On August 8, 1985, in partial consideration for and in good faith reliance upon the Agreement of Indemnity referred to above, F&D, as surety, executed on behalf of Ziegler Corporation, as principal, a Miller Act payment bond covering the construction contract which is the subject matter of this litigation (Corps of Engineers Contract No. DACW56-85-C-0151).

The Agreement of Indemnity also obligates Ziegler Corporation and the Third-Party Defendants to reimburse F&D for all expenses, court costs and attorney fees which it incurs in enforcing the agreement.

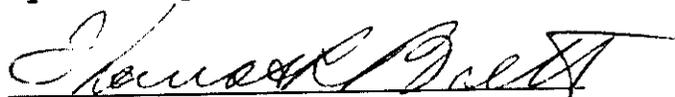
Use Plaintiff, Air Capitol Contractors, Inc., asserted in this case an action against F&D based on the Miller Act payment bond referred to above.

F&D has and will continue to incur costs, expenses and attorney fees in this litigation until the same is finally terminated as to F&D.

Based upon the foregoing undisputed facts the Court sustains F&D's Motion for Partial Summary Judgment against the Defendant, Ziegler Corporation, and the Third-Party Defendants, L. A. Knebler Construction Co., Inc., Dewayne Ziegler and Doris J. Ziegler. Should Air Capitol Contractors, Inc. recover a judgment against F&D then it is entitled to a judgment over and against Defendant

Ziegler Corporation and the Third-Party Defendants for the same amount. In addition, F&D is entitled to judgment against Defendant Ziegler Corporation and the Third-Party Defendants for all the costs, expenses and attorney fees incurred by it in this litigation. The amounts for which F&D is entitled to judgment cannot be determined until the Court has entered a final judgment covering all the issues and controversies between Air Capitol Contractors, Inc. and F&D.

IT IS SO ORDERED this 13th day of July, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

JUL 1990

JOHN S. ATHENS and CARL R. WEBB,)
Co-Trustees of The Berget H.)
Blocksom Revocable Trust and The)
Marjorie J. Blocksom Living Trust,)
)
Plaintiffs,)

v.)

SHEARSON LEHMAN HUTTON INC.)
and JOSEPH W. McCOY,)
)
Defendants.)

Case No. 90-C-402-E

ORDER

The Court has before it for consideration defendants' Motion to Compel Arbitration and defendants' Application for Mandatory Stay of Action Pending Arbitration, filed May 29, 1990. Plaintiff has not filed a response or an objection to defendants' Motion and Application, and the time for filing such response or objection has expired.

After careful consideration of the record and the issues, the Court has concluded that defendants' Motion and Application should be, and hereby are, granted.

IT IS, THEREFORE, ORDERED that defendants' Motion to Compel Arbitration is granted, and plaintiffs are ordered to submit their claims to arbitration, based on contractual agreements between the parties stating that all disputes will be submitted to arbitration.

IT IS FURTHER ORDERED that defendants' Application for Mandatory Stay of Action Pending Arbitration is granted pursuant to 9 U.S.C. § 3.

DATED this 12th day of July, 1990.

S/ JAMES O. ELLISON

James O. Ellison
United States District Judge

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

DORIS ABERCROMBIE; THERESA BOOKOUT;)
ED PRUITT; EDDIE PRUITT; JERRY PRUITT;)
LEWIS PRUITT; RICKY PRUITT; RONNIE)
PRUITT; TERRY PRUITT; and WANDA ROBAY,)
individually, and as surviving)
children and next of kin of EILEEN W.)
PRUITT, deceased,)

Plaintiffs,)

Case No. 89-C-390-P

OSTEOPATHIC HOSPITAL FOUNDERS)
ASSOCIATION, an Oklahoma corporation,)
d/b/a OKLAHOMA OSTEOPATHIC HOSPITAL;)
ROY GUTHRIE, D.O., and THOMAS)
SCHOOLEY, D.O.,)

Defendants.)

F I L E D

JUL 13 1990

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

JOURNAL ENTRY OF JUDGMENT

NOW, on this 26th day of June, 1990, there came on for jury trial before me, the undersigned United States District Judge in the above-captioned case. Plaintiffs appeared in person and by their attorneys, Matt Melone and Jerry Melone; Defendant Oklahoma Osteopathic Hospital, appeared by and through its Chief Executive Officer, James MacCallum, and by the hospital's attorneys, Stephen J. Rodolf and Scott B. Wood; Defendant Thomas Schooley, D.O., appeared in person and by Stephen J. Rodolf and Scott B. Wood; and Defendant Roy Guthrie, D.O., appeared in person and by his attorneys, Dan A. Rogers and Douglas Golden. All parties announced ready for trial, and a jury of six was empaneled and sworn to try the issues in the case. The Plaintiffs introduced

evidence on June 26th and completed their evidence on June 28th. At the conclusion of the Plaintiffs' evidence, all Defendants moved for directed verdicts, which the Court overruled.

Defendants then introduced evidence on June 28th and rested. Plaintiffs offered no rebuttal testimony or evidence. All Defendants renewed their Motions for Directed Verdicts and same were overruled. On June 28th, a jury instruction conference was held outside of the presence of the jury with counsel for all parties being present and objections to the instructions were made. Closing arguments were then made. On June 29, 1990, further conference was had outside the presence of the jury and Plaintiffs renewed their specific objections to the instructions. The jury was then instructed. The jury then retired to deliberate, and after due deliberation returned into open Court with a verdict in favor of the Defendants and against the Plaintiffs. Judge Ellison, sitting for Judge Phillips, accepted the verdict and thereupon the jury was then given, without objection by any party, the following Special Interrogatories to answer and did answer same as indicated:

SPECIAL INTERROGATORIES

1. Do you find by a preponderance of the evidence that Dr. Schooley provided substandard, that is, negligent, care to Eileen Pruitt?

- Yes
- No

2. If you answered "yes" to number 1, answer this question,

otherwise skip this question: Do you find Dr. Schooley's negligence was a direct cause of Eileen Pruitt's injuries?

Yes

No

3. Do you find by a preponderance of the evidence that Dr. Guthrie provided substandard, that is, negligent care to Eileen Pruitt?

Yes

No

4. If you answered "yes" to number 3, answer this question, otherwise, skip this question: Do you find Dr. Guthrie's negligence was a direct cause of Eileen Pruitt's injury?

Yes

No

5. Do you find by a preponderance of the evidence that Oklahoma Osteopathic Hospital provided an appropriate medical screening examination within the capability of the emergency department, of Eileen Pruitt, to determine whether an emergency medical condition existed?

Yes

No

6. Do you find by a preponderance of the evidence that Oklahoma Osteopathic Hospital discharged Eileen Pruitt when she was in an unstable condition?

Yes

No

Said Special Interrogatories conformed to the jury's initial

verdict in favor of Defendants and against Plaintiffs.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED BY THE COURT that the Defendants take judgment in their favor and against Plaintiffs, the Plaintiffs taking nothing by way of their Complaint.

15/ Lynn R. Phillips
U. S. DISTRICT JUDGE

APPROVED AS TO FORM:

Jerry & Matt Melone
Jerry Melone and
Matt Melone,
Attorneys for Plaintiffs

Stephen J. Rodolf
Stephen J. Rodolf and
Scott B. Wood,
Attorneys for Defendants,
Oklahoma Osteopathic Hospital
and Thomas Schooley, D.O.

Dan A. Rogers
Dan A. Rogers and
Douglas Golden,
Attorneys for Defendant,
Roy Guthrie, D.O.

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

FILED

JUL 12 1990

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

RONNIE J. HOLT,

Plaintiff,

vs.

Case No. 89-C-731-E

CITY OF OWASSO, a political
subdivision; et al.,

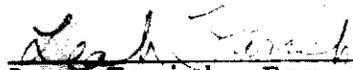
Defendants.

STIPULATION OF DISMISSAL WITH PREJUDICE

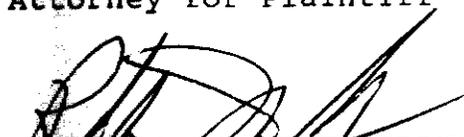
All the parties to this action hereby stipulate that any and all causes of action and claims against the Defendants, City of Owasso, Oklahoma, Terry Laflin, Ken Yount, Randy Brock and Eric Baker, are hereby dismissed with prejudice.



Ronnie J. Holt



Leah Farish, Esq.
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(918) 747-8900
Attorney for Defendants

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

FILED
JUL 12 1990
JACQUELYN BOWEN, CLERK
U.S. DISTRICT COURT

GOLDEN GAS ENERGIES, INC.,
an Oklahoma corporation,

Plaintiff,

vs.

COLORADO INTERSTATE GAS
COMPANY, a Delaware Corporation,

Defendant.

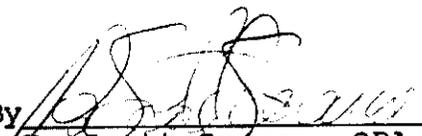
Case No. 89-C-203-E

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Fed. R. Civ. P. 41(a)(1), the parties hereby stipulate to the dismissal of the above-styled action, with prejudice.

DATED this 5th day of July, 1990.

MOYERS, MARTIN, SANTEE,
IMEL & TETRICK

By 
R. Scott Savage, OBA #7926
D. Stanley Tacker, OBA #8819
320 S. Boston, Suite 920
Tulsa, OK 74103
(918) 582-5281

ATTORNEYS FOR PLAINTIFF
GOLDEN GAS ENERGIES, INC.


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Ms. Teresa B. Adwan
M. Benjamin Singletary, Esq.
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ATTORNEYS FOR DEFENDANT
COLORADO INTERSTATE GAS COMPANY

William J. Hornbostel,
Senior Attorney
Colorado Interstate Gas Company
P. O. Box 1087
Colorado Springs, CO 80944

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

JUL 1 1990

ROBERT LEE PRICE,)
)
) Petitioner,)
)
 v.) 89-C-1073-E
)
) UNITES STATES OF AMERICA, et al,)
)
) Respondents.)

ORDER

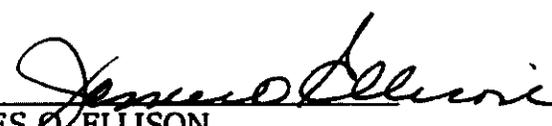
The Court has for consideration the Report and Recommendation of the United States Magistrate filed June 14, 1990 in which the Magistrate recommended that Petitioner's Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. §2241, be denied.

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

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

It is, therefore, Ordered that Petitioner's Petition for a Writ of Habeas Corpus pursuant to 28 U.S.c. §2241, is denied.

Dated this 12th day of July, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

W

FILED

JUL 12 1990

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

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

KATHERINE KING,

Plaintiff,

vs.

No. 90-C-384-B

PRINCIPAL CASUALTY INSURANCE
COMPANY, a foreign insurance
corporation,

Defendant.

STIPULATION OF DISMISSAL

COME NOW the Plaintiff, Katherine King, and the Defendant, Principal Casualty Insurance Company, by and through their respective attorneys, and in accordance with Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedures, hereby stipulate to the dismissal with prejudice of all claims and causes of action involved herein with prejudice for the reason that all matters, causes of action and issues in the Complaint have been settled, compromised and released herein, with each party to bear its own costs.

JAMES E. FRASIER

James E. Frasier

Attorney for Plaintiff

HARRY A. PARRISH

Harry A. Parrish

Attorney for Defendant

Entered

FILED

JUL 12 1990

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

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

RAYMOND SNYDER, Individually,
and on behalf of all those
similarly situated,

Plaintiff,

vs.

ONEOK, INC., et al.,

Defendants.

L
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L

No. 88-C-1500-C

ORDER

Now before the Court for its consideration is plaintiff's motion for class certification pursuant to F.R.Cv.P. 23(a) and (b)(3). Having reviewed the parties' briefs and exhibits and the applicable statutory and case law, the Court is now ready to rule upon the motion.

Plaintiff brings this action for damages for alleged misrepresentations and omissions made by defendant Oneok, Inc. (Oneok) and its individual directors in disseminating certain documents filed with the Securities and Exchange Commission. Plaintiff claims these documents were materially misleading in falsely portraying Oneok's financial condition by minimizing Oneok's contingent liabilities and the impact of various take-or-pay claims and litigation upon Oneok's financial condition.

101

Plaintiff alleges that these misleading documents caused the price of Oneok's stock to be artificially inflated. According to plaintiff, the price of Oneok's common stock fell during December, 1987 from \$25.50 per share to \$17 1/8 per share, when Oneok allegedly revealed the "true" extent of its take-or-pay problems in briefs filed with the Oklahoma Supreme Court on December 7, 1987. Plaintiff has also named Peat, Marwick Main & Co. (now known as KPMG Peat Marwick, and hereinafter referred to as "Peat") as a defendant for Peat's certification of the financial information contained in the allegedly misleading Oneok documents.

In his complaint, plaintiff has alleged violations of sections 10(b) and 20 of the Securities Exchange Act of 1934, 15 U.S.C. §§78(b), 78(t) and Rule 10b-5. Plaintiff has also alleged causes of action for common law fraud and negligent misrepresentation against all defendants.

Plaintiff's motion seeks to certify as a class

all persons who purchased or acquired the common stock of Oneok, Inc. from October 21, 1986 through and including December 7, 1987, and held such stock on December 7, 1987.

Plaintiff's Motion for Class Certification, p. 1.

Plaintiff would exclude from the class any named defendants and persons acting in concert with them, members of the immediate families of the individual defendants and the officers and directors of the corporate defendants.

F.R.Cv.P. 23(a) requires that a plaintiff prove four elements to maintain a class action: (1) that the putative class of

plaintiffs is so numerous that joinder of all members is impracticable, (2) that there are questions of law or fact common to the class, (3) that the claims of the class representative are typical of those of the class, and (4) that the representative plaintiff will fairly and adequately protect the interests of the class. A plaintiff also must demonstrate the existence of one factor listed in F.R.Cv.P. 23(b). Here, plaintiff contends that Rule 23(b)(3) is met, in that the common issues of fact and law predominate over individual issues.

Defendants have directed their challenges of plaintiff's motion to four issues.¹ Defendants question the typicality of plaintiff's claims with those of the putative class. Defendants also question plaintiff's adequacy as a class representative. Defendants additionally contend that plaintiff's common law claims of fraud and negligent misrepresentation cannot be certified for class action treatment because those claims present individual issues which will predominate over any common issues. Finally, defendant Peat suggests that should certification be granted, that the Court certify two classes, each with separate representatives and counsel, divided according to the time period in which a class

¹ Defendants have not challenged plaintiff's showing with respect to numerosity or commonality. Although plaintiff could have been more specific in his allegations of numerosity and could have provided better delineation of the common issues, the Court finds that plaintiff nonetheless has satisfied his burden of proof on these factors.

member purchased his Oneok stock. The Court will address defendants' contentions in order.

1. Typicality

Defendants contend that plaintiff's claims are not typical of those of the putative class. Specifically, defendants argue that plaintiff's purchase after reviewing financial sheets furnished by his broker raises reliance issues different from those of class members who actually relied upon the allegedly misleading Oneok documents in purchasing their shares.

In response, plaintiff suggests that the "fraud-on-the-market" theory should be applied in this action to allow a presumption of reliance. That theory is "based on the hypothesis that, in an open and developed securities market, the price of a company's stock is determined by the available material information regarding the company and its business." Basic, Inc. v. Levinson, 485 U.S. 224, 241-42 (1988). Thus, misleading statements or omissions of material facts presumably would affect the market price of the stock and thereby defraud purchasers who rely on the integrity of the market when making investment choices. In Basic, the Supreme Court reasoned that "[r]equiring proof of individual reliance from each member of the proposed plaintiff class effectively would have prevented [plaintiffs] from proceeding with a class action, since individual issues would then have overwhelmed the common ones." Id. at 242. The Supreme Court thus held that a rebuttable presumption of reliance by the investor on any public

misrepresentation is permissible in a Rule 10b-5 action. Id. at 247.

However, the Supreme Court also recognized that the presumption of reliance could be rebutted by "[a]ny showing that severs the link between the alleged misrepresentation and the price received (or paid) by the plaintiff, or his decision to trade at a fair market price" Id. at 248. Defendants here argue that any presumption of reliance made in this action is rebutted by plaintiff's deposition testimony of his reliance upon financial analysis sheets furnished to him by his broker. Thus rebutted, the fraud-on-the-market theory is unavailable to plaintiff, according to defendants.

In support of their argument, defendants cite several decisions which have held that a plaintiff's reliance upon a third parties' information or expertise renders his claim atypical. See, Markewich v. Ersek, 98 F.R.D. 9, 11 (S.D.N.Y. 1982) (reliance on third parties' recommendation renders plaintiff's claims atypical); Greenspan v. Brassler, 78 F.R.D. 130, 132 (S.D.N.Y. 1978) (reliance on brother's expertise vitiates typicality of plaintiff's claim).

Other decisions, however, have not found a plaintiff's derivative reliance to be atypical, and thus fatal to certification of a class. For example, one court has observed that "[r]eliance on third parties such as investment counselors or knowledgeable family members is likely to be typical, rather than atypical, of the circumstances under which a substantive number of class members

purchased their stock." Kronfeld v. Trans World Airlines, Inc., 104 F.R.D. 50, 53 (S.D.N.Y. 1984). Another court has noted that

[D]iffering types of reliance are present in almost every securities class action. There will always be some individuals who read the financial statements directly, others who read secondary analyses such as Moody's or Value Line, and many others who relied on the advice of stockbrokers or friends. If defendants' argument were to prevail that factual differences of this nature were sufficient to defeat class action certification, there could never be a class action of securities purchasers. In the present case, moreover plaintiff's modes of reliance -- on stockbrokers, friends, and published financial information -- is not atypical.

In re Data Access Systems Securities Litigation,
103 F.R.D. 130, 139 (D.N.J. 1984).

In Garfinkel v. Memory Metals, Inc., 695 F. Supp. 1397 (D. Conn. 1988), the court found that the claims of the three proposed class representatives there were not atypical, despite their admitted reliance upon their broker's or husband's advice or upon favorable newspaper articles, rather than upon the alleged misleading press releases issued by the defendant company. Id. at 1404. In light of these decisions, the Court does not find plaintiff's reliance upon financial sheets received from his broker renders his claims atypical for class representation purposes.

In assessing a challenge to typicality, "[t]he proper inquiry is whether other members of the class have the same or similar injury, whether the action is based on conduct not special or unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." Dura-Bilt Corp. v. Chase Manhattan Corp., 89 F.R.D. 87, 99 (S.D.N.Y. 1981). The Court finds that plaintiff has alleged a course of conduct by the defendants in making misrepresentations and omissions of material

fact, which resulted in injury to plaintiff and other class members. No showing has been made that the injury alleged by plaintiff is unique to him, or has not been suffered by other class members.

Additionally, at this stage of the action, the Court cannot inquire into the merits of plaintiff's case. Eisen v. Carlile & Jacquelin, 417 U.S. 156, 177-78 (1973). To consider issues of plaintiff's reliance here risks evaluation of the merits of plaintiff's case.

Accordingly, the Court finds that plaintiff's claims meet the typicality requirement of F.R.Cv.P. 23(a)(2).

2. Adequacy of Representation

Defendants also have alleged that class certification should be denied because plaintiff has shown deficiencies in knowledge about this lawsuit which make him unfit to represent the putative class. More specifically, defendants have alleged that plaintiff has conducted no personal investigation of the alleged wrongdoing, relying instead upon one of his attorneys to conduct that investigation for him before the complaint was filed. Defendants also complain that plaintiff has not read the documents he alleges to be misleading and has not made even a general investigation into the gas industry's take-or-pay problems. Rather than plaintiff's actively participating in the conduct of this action, defendants maintain that he passively has relied upon his attorneys to plan and manage his lawsuit. Defendants point to the fact that

plaintiff's attorneys prepared the complaint, which plaintiff did not read until just before or after it had been filed. Defendants also call attention to plaintiff's confusion about the complaint's allegations concerning the parties, class status, the basis for damages and whether experts had yet been retained.

Plaintiff replies to defendants' allegation by emphasizing his knowledge and commitment to the action as a class representative.

Class certification has been denied when the purported representative appears to lack familiarity with his case. See Kassover v. Computer Depot, Inc., 691 F. Supp. 1205, 1212-13 (D. Minn. 1987) (plaintiff admitted in deposition that he had "no facts" to support essential allegations made in his complaint); Levine v. Berg, 79 F.R.D. 95, 97-98 (S.D.N.Y. 1978) (plaintiff unfamiliar with defendants' filed reports and unwilling to learn basic facts); Greenspan v. Brassler, 78 F.R.D. 130, 131 (S.D.N.Y. 1978) (plaintiff lacked knowledge of facts in complaint).

However, the representative need not understand all the complexities of a securities case to provide adequate representation, so long as "he knows what his lawsuit is about." Katz v. Comdisco, Inc., 117 F.R.D. 403, 410 (N.D. Ill. 1987). See also Harman v. Lyphomed, Inc., 122 F.R.D. 522, 528 (N.D. Ill. 1988) (in a complex securities case, "it is irrational to expect plaintiffs to exhibit a detailed knowledge of the issues."); In Re Storage Technology Corp., 113 F.R.D. 113, 119 (D. Colo. 1986) (plaintiff was an adequate class representative who knew the

underlying legal basis of his action, although he did not know specific misrepresentations alleged in his complaint.)

The Court has reviewed plaintiff's deposition testimony with regard to his knowledge of this action. From its review, the Court does not find that plaintiff lacks familiarity with this lawsuit. Unlike the plaintiff in Levine, who could not recall any of the facts and circumstances prompting her purchase of stock, plaintiff was able to give a reasonably detailed account of his purchase of Oneok stock. See Snyder deposition, p. 40, lines 9-23. In a decision cited by all defendants, Kelley v. Mid-America Racing Stables, Inc., No. 89-1362-A (W.D. Okla. Feb. 13, 1990), the court there found that the investor did not know how he had been allegedly cheated, other than what his attorney had told him. In contrast, plaintiff here has described his perception of the wrongs he alleges have been committed by the defendants, and has determined a basis for his damages. See Snyder deposition, p. 64, lines 19-25; p. 65, lines 1-13; p. 68, lines 14-22; p. 112-13; p. 179, lines 12-22; p. 196, lines 16-25; p. 217, lines 19-23. Additionally, plaintiff appears to comprehend the responsibilities, financial and otherwise, required of a class representative, and appears willing to shoulder those responsibilities. See id., p. 69, lines 7-23; p. 72, lines 8-25; p. 75 lines 12-16; p. 166, lines 15-19.

The degree of reliance a class representative may place upon his counsel in prosecuting the action is unclear. On the one hand,

the courts have cautioned against "blind reliance upon even competent counsel by uninterested and inexperienced representatives." In Re Gold Chip Funding Company, 61 F.R.D. 592, 594 (M.D. Pa. 1974). Such "blind reliance" permits the attorney prosecuting the action to act with "unfettered discretion," thereby becoming the class representative and creating the potential for conflicts of interest. Id. at 595. See also Kassover v. Computer Depot, Inc., 691 F.Supp. 1205, 1214 (D.Minn. 1987) (plaintiff relying entirely on his attorney's direction of action creates unacceptable possibility of conflict of interest).

On the other hand, courts have also recognized that the representatives rely on their attorneys to formulate strategies in complex litigation involving intricate details, which the representative may not be able to master. Koenig v. Benson, 117 F.R.D. 330, 337 (E.D.N.Y. 1987). See also Klein v. A.G. Becker Paribus Inc., 109 F.R.D. 646, 651 (S.D.N.Y. 1986) (ordinary investor cannot reasonably be expected to have requisite legal background and sophistication to assist counsel in assessing liability). Another court has stated,

[T]he court would be naive to apply a rule that lay persons purporting to represent a class, cannot rely heavily on their attorneys for guidance, advice, and financial assistance. Lay persons rely on attorneys for such purposes in individual actions, and there appears to be no strong policy reason to preclude them from doing so in class actions. Just as a plaintiff, otherwise adequate, with inadequate counsel might be deemed to be an inadequate representative, an unsophisticated plaintiff with competent counsel may be deemed to be an adequate representative.

Ross v. Bank South, N.A., (CCH) Fed.Sec.L.Rep. ¶ 92,526, p. 93,149, 93,150 (N.D. Ala. 1986).

Defendants claim that plaintiff has relinquished his responsibilities as class representative to his attorneys, who are running the lawsuit as de facto plaintiffs. The Court notes, however, that while plaintiff may defer to his counsel's legal judgment, he has not totally surrendered his interest in the case nor his role as representative. For example, plaintiff questioned his counsel about legal language in the complaint which he didn't understand. See Snyder deposition, p. 31, lines 1-14. Plaintiff appears to stay in contact with his counsel regarding the lawsuit. See id., p. 23, lines 18-20. Plaintiff has demonstrated an interest in and commitment to this action and appears to take seriously his duties as a class representative.

"[I]n securities cases ... where the class is represented by competent and zealous counsel, class certification should not be denied simply because of a perceived lack of subjective interest on the part of the named plaintiffs unless their participation is so minimal that they virtually have abdicated to their attorneys the conduct of the case." Kirkpatrick v. J.C. Bradford & Co., 827 F.2d 718, 728 (11th Cir. 1987). The Court is not persuaded that plaintiff lacks either the familiarity with or interest in this action to find him inadequate to serve as a class representative.

3. Certification of Common Law Claims

In Counts II and III of his complaint, plaintiff has alleged causes of action for common law fraud and negligent misrepresentation. The complaint does not recite the state law

under which plaintiff brings these claims. Defendants object to certification of these pendent common law claims, contending that individual reliance issues will predominate over common issues.

"There is no consensus among the federal courts as to the propriety of certifying F.R.Cv.P. 23(b)(3) classes in common law securities fraud cases, even when such claims are pendent to 10b-5 claims." Peil v. Speiser, 806 F.2d 1154, 1159 n.8 (3d Cir. 1986). Some decisions have found that, without the fraud on the market theory - which typically has not been recognized in state law - individual issues of reliance will predominate over common issues. See e.g., Kelley v. Mid-America Racing Stables, Inc., No. 89-1362-A, slip op. at 12-13 (W.D. Okla. Feb. 13, 1990) (fraud-on-market theory not yet developed in state courts); Moskowitz v. Lopp, 128 F.R.D. 634, 632 (E.D. Pa. 1989) (claims involving theories novel to state law should be left to state courts).

Other decisions have certified class actions as to common law fraud and negligence claims, finding that common questions of law and fact would predominate over questions of individual reliance. In Gruber v. Price Waterhouse, 117 F.R.D. 75 (E.D. Pa. 1987), the court noted,

Proof that a material misrepresentation was made and that the defendants intended the representation to be made will be common to all members of the class. Moreover, these elements as well as the question of damages are common to both the federal and state law claims.

Id. at 81.

Where misrepresentations and omissions were alleged to have stemmed from misleading reports, forms and news releases, rather than from

personal contacts between defendants and class members, another court has found a limited factual basis for fraud and misrepresentation claims, reducing the significance of the reliance issue. In Re ORFA Securities Litigation, 654 F.Supp. 1449, 1461 (D.N.J. 1987). Moreover, reliance issues have not been found to impede a class action, when the court, with the parties' help, could devise procedures to handle separately individualized issues. See, In Re ORFA, 654 F.Supp. at 1461 (suggesting use of separate hearings, special masters and questionnaires as procedures to handle questions of individual reliance); Dekro v. Stern Bros. & Co., 540 F.Supp. 406, 418 (W.D. Mo. 1982) ("where reliance is genuinely disputed, the parties and the court should be able to fashion a workable arrangement for trying the issue without destroying the efficacy of class proceedings on other issues").

Defendant Peat has noted that differences in laws of various states in which class members reside will predominate over common issues in this action. However, no showing has been made as to how many states would be involved, and whether a conflict exists among the various states' laws. The Court will not undertake a conflict of laws analysis in its consideration of the present motion.

At this stage in the present action, the Court finds the decisions in favor of certification of the pendent claims to be more persuasive. Plaintiff's common law claims are predicated upon the same conduct on which his federal securities claims are based. The pendent claims thus "derive from a common nucleus of fact" with

the federal claims. See United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966). Evidence and proofs of plaintiff's common law claims and federal securities claims will likely overlap, aiding in an economical trial presentation of the pendent claims. Moreover, to require class members to bring separate actions in various state courts on their state law causes of action, while proceeding here with the federal securities claims, appears at this time to contravene considerations of judicial economy and fairness and convenience to the parties.

However, the Court also recognizes that as this action progresses, the potential exists for issues of reliance and variations in state laws on fraud and negligent misrepresentation to predominate and render a class treatment of the pendent common law claims unmanageable. Accordingly, the Court will provisionally certify the pendent claims for class treatment. The class will be decertified if class treatment of the pendent claims proves to be unworkable.

4. Creation of Subclasses

Defendant Peat has suggested that if the Court approves a class treatment of this action, the facts of this case require the creation of two classes with separate representatives and counsel. Peat claims that two classes of purchasers of Oneok stock are present in this action, depending upon the time in which their stock was purchased. Under the subclass division Peat advocates, the first class would be composed of those purchasing Oneok common

stock on or after October 21, 1986 and before the issuance of Oneok's Form 10-K on August 31, 1987 but who held their stock on December 7, 1987; these purchasers thus would have had only the audited financial statements for 1986 available to them. The second class, who would have had Oneok's audited 1987 financial statement available to them, would be comprised of those purchasing their Oneok shares after the August 31, 1987 publication of Oneok's 10-K and who held their shares on December 7, 1987. Peat contends that since the information provided regarding Oneok's take-or-pay problems varied between the 1986 and 1987 financial statements, the reliance by the purchasers upon those statement in buying their Oneok shares would also vary, creating conflict among class members.

F.R.Cv.P. 23(c)(4) authorizes a court to divide a class into appropriate subclasses. However, at this time, the Court will defer its consideration of the need to create subclasses until an actual conflict in interests among class members becomes apparent.

Conclusion

For the reasons stated above, the Court finds that plaintiff Raymond Snyder's motion should be GRANTED, with the proviso that the pendent common law claims will be provisionally certified for class treatment. Plaintiff is hereby ordered to prepare a form of notice which will comply with the requirements of F.R.Cv.P. 23(c)(2) and to present that form for the Court's approval within thirty (30) days of the date of this Order. Plaintiff is also

ordered to file with the Court the names and addresses of the alleged members of the putative class.

IT IS SO ORDERED this 11th day of July, 1990.



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

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

SOONER FEDERAL SAVINGS ASSOCIATION,)
by and through its Conservator,)
Resolution Trust Corporation,)
Plaintiff,)

vs.)

JACK D. FARMER, PATRICIA A.)
FARMER, GURPREET K. ATWALL,)
INDER R. SINGHAL,)
SWARNA L. SINGHAL,)
RAJESHWAR PAL S. SANGHA and)
RANBIR PAL K. SANGHA,)

Defendants.)

Case No. 90-C-132-C

FILED
JUL 12 1990 *psl*

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

**ORDER APPROVING FINAL RECEIVER'S REPORT,
DIRECTING DISBURSEMENT OF FUNDS, DISCHARGING THE
RECEIVER AND RELEASING AND DISCHARGING THE RECEIVER'S BOND**

Upon the Application for Order Approving Final Receiver's Report, Directing Disbursement of Funds, Discharging Receiver and Releasing and Discharging Receiver's Bond filed herein by Sooner Federal Savings Association, by and through its Conservator Resolution Trust Corporation ("Sooner"), and for good cause shown,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Final Receiver's Report filed herein is approved, that any funds and deposits held by the Receiver or in the Receiver's name shall be delivered to the purchaser of the Mortgaged Property, Victor R. Turner and Stanley Pesner, a general partnership, that upon delivery of such funds and deposits and accounting therefor, Bryan Wilkinson is hereby

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

released and discharged from any obligation or liability as Receiver in this action, and that the Receiver's Bond posted herein is hereby released and discharged.

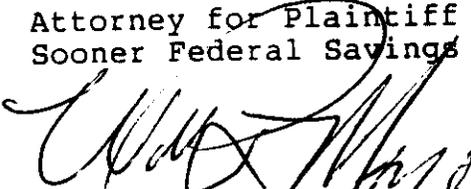
ORDERED this 5th day of July, 1990.


DISTRICT JUDGE

APPROVED:


Gary R. McSpadden, Esq.
Baker, Hoster, McSpadden,
Clark, Rasure & Slicker
800 Kennedy Building
Tulsa, OK 74103

Attorney for Plaintiff
Sooner Federal Savings Association


William R. Mayo, Esq.
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Siloam Springs, AR 72761

Attorney for Defendants
Jack D. Farmer and Patricia A. Farmer

PAW

Entered

F I L E D

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

JUL 14 1990

John T. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA)

vs.)

Docket No. 78-CR-23-C

Dale Ray Waller)

ORDER

The Court finds that the defendant's Motion for Reduction of Sentence pursuant to Rule 35, Federal Rules of Criminal Procedure, which was filed on June 15, 1990, should be and is hereby denied.

At sentencing, the Court possessed adequate information to impose sentence and finds that the sentence imposed is justified.

It is ordered this 11 day of July, 1990.


H. Dale Cook, Chief
United States District Judge

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

FILED
JUL 12 1990
Jack L. [unclear], Clerk
U.S. DISTRICT COURT

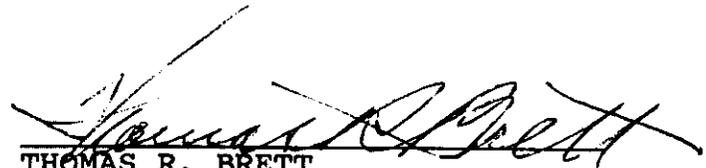
JUDY ROSS BELL,)
)
 Plaintiff,)
)
 vs.)
)
 ALLSTATE LIFE INSURANCE COMPANY,)
)
 Defendant.)

No. 89-C-398-B ✓

J U D G M E N T

Pursuant to the Order Sustaining Defendant's Motion for Summary Judgment filed herewith, Judgment is hereby entered in favor of Allstate Life Insurance Company and against the Plaintiff, Judy Ross Bell, and the Plaintiff's action is hereby dismissed. The Defendant is awarded costs of this action if timely applied for pursuant to Local Rule 6(E).

DATED this 12th day of July, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

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

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

JUDY ROSS BELL,)
)
 Plaintiff,)
)
 vs.)
)
 ALLSTATE LIFE INSURANCE COMPANY,)
)
 Defendant.)

No. 89-C-398-B ✓

ORDER SUSTAINING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

The Motion for Summary Judgment Pursuant to Fed.R.Civ.P. 56 of the Defendant, Allstate Life Insurance Company, is before the Court for decision. The record before the Court consists of the subject life insurance policy, the deposition of Dr. Robert Lynch, and the death certificate presented by Defendant. For the record the Plaintiff has submitted medical reports of Dr. Michael D. Farrar, D.O. and Dr. J. D. McKenzie, pursuant to 28 U.S.C. § 1746, and a copy of the Hillcrest Medical Center operative report of December 29, 1986.

The issue presented is whether insured Larry Dale Bell's death, occurring on December 29, 1986, was accidental within the terms of the subject life insurance policy. The subject accidental death life insurance policy states it will pay for loss of life resulting from injury and defines injury as follows:

" 'Injury' means bodily injury caused by an accident occurring while the insurance is in force and which injury results, within 365 days after the date of the accident, directly and independently of all other causes, in any of the losses to which the insured applies, to-wit, death"

Therefore, the insured's death must result from accidental bodily injury, directly and independently of all other causes.

The undisputed facts taken from the record and developed by the testimony of Dr. Lynch and reports of Drs. Farrar and McKenzie establish the following: The deceased, Larry Dale Bell, was a 40-year old male employed by Ingersoll Rand as a welder. On December 10, 1986, he was working on a large oil tank in a paint room while a similar tank was being painted nearby. Mr. Bell did not have a respirator and the paint fumes were quite strong. When Mr. Bell arrived home that evening he was covered with a lot of the paint. Mr. Bell was extremely fatigued, complained of nausea, weakness, and stated he was having difficulty getting his breath and rested the balance of the evening. The following day when his symptoms persisted Mrs. Bell took him to a local hospital in Sapulpa, Oklahoma. The x-ray and electrocardiogram taken by the emergency room physician were reported to be normal and that physician followed Mr. Bell until December 16, 1986, when the physician desired to refer Mr. Bell to a cardiologist but due to mechanical difficulties of Mr. Bell's automobile this could not be accomplished. Mr. Bell's symptoms of chest pain, shortness of breath, and "viral" syndrome persisted. On December 26, 1986, Mr. Bell was taken to the Doctors' Hospital emergency room in Tulsa, Oklahoma where he was subsequently admitted to the hospital in the early morning hours of December 27, 1986. He was attended by Robert Lynch, M.D., a cardiologist, and during the hospitalization

it was noted he had an abnormal EKG. There were incidents of nocturnal episodes of sinus arrest and complete heart block. Mr. Bell was therefore transferred to the Hillcrest Medical Center on December 29, 1986, for coronary angiography. The coronary angiography showed a 95% segmental stenosis or blockage of the left anterior descending artery. Dr. Lynch recommended and performed an angioplasty on December 29, 1986. During this procedure, the left anterior descending artery occluded and was attempted to be re-opened, but occluded a second time. Mr. Bell was rushed to surgery for coronary artery bypass grafting and upon arrival at the operating suite he was seen to be in distress becoming dusky and hypotensive. A crash procedure was performed of a bypass graft to the left anterior descending artery but in spite of numerous heroic efforts Mr. Bell was pronounced deceased at 9:18 P.M. on December 29, 1986.

An autopsy was performed on December 31, 1986, that showed thrombosis and complete occlusion of the left anterior artery with probable myocardial infarction.

Significant past history of Mr. Bell showed that he had a three year history of hypertension that had been medicinally controlled. There was a family history of coronary artery disease. Before December 10, 1986, he was otherwise asymptomatic and functioning in normal health.

There is a suggestion that the acute symptomatology of December 10, 1986, may have been precipitated by the excessive paint fumes in the paint room. All of the physicians recognized

that Mr. Bell had an undiagnosed significant coronary atherosclerosis, which had pre-existed although asymptomatic for a long time. Arteriosclerosis is a progressive development of deposits of cholesterol, other fat substances, that layer into the blood vessel itself, progressively narrow the blood vessel, accumulate other factors in the blood, predominantly, some of the clotting factors; and the exact cause is unknown. The immediate cause of Mr. Bell's death was electromechanical dissociation of the heart which was the result of acute myocardial infarction which was the immediate result of an acute thrombus formation of the left anterior descending artery and an indirect result of long standing arteriosclerotic coronary artery disease.

Thus, it is clear from the record that no material issue of fact remains to submit to the trier of fact that Mr. Bell's death resulted from accidental bodily injury, directly and independently of all other causes. The undisputed facts establish that Mr. Bell had a long standing atherosclerotic cardiovascular disease that contributed to his death. Bewley v. American Home Assur. Co., 450 F.2d 1079 (10th Cir. 1971); Minyen v. American Home Assur. Co., 443 F.2d 788 (10th Cir. 1971); Hume v. Standard Life and Accident Ins. Co., 365 P.2d 387 (Okla. 1961); and McCarty v. Occidental Life Insurance Company of California, 268 P.2d 221 (Okla. 1954).

In Bewley v. American Home Assur. Co., *supra*, the court stated:

"In view of the fact that his heart condition was a contributing cause of his death, the court considered that it was obliged to take the case from the jury since the quoted provision in the policy limited recovery to

instances in which the injury itself produced death.

"The applicable law is that of Oklahoma, and the Supreme Court of that state has on numerous occasions construed language such as that which appears in the instant policies. Generally speaking, Oklahoma has followed the generally accepted rule that where the insured is afflicted with a disease or infirmity which substantially contributes to death or injury, the death or injury is not within the coverage of a policy which insures against death or bodily injury by accidental means, direct and independent of other causes. See Vowell v. Great American Insurance Co., 428 P.2d 251 (Okl. 1966), and Hume v. Standard Life and Accident Ins. Co., 365 P.2d 387 (Okl. 1961)."

Dr. McKenzie states that if one defines an accident as a sudden or unexpected event that brings about a change the coronary occlusion due to recent thrombus and particles of atheromatous plaque which produced the myocardial infarction and electromechanical dissociation could be considered an accident. Notwithstanding Dr. McKenzie's offered opinion concerning the accidental nature of the occlusion of Mr. Bell's left anterior descending artery, the facts are undisputed that Mr. Bell's pre-existing atherosclerotic cardiovascular disease contributed to the cause of his death. The reasons given in support of an expert's opinion, rather than the abstract opinion itself, is of importance and must be examined. Downs v. Longfellow, 351 P.2d 999 (Okl. 1960), and 32 C.J.S. Evidence § 569.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

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

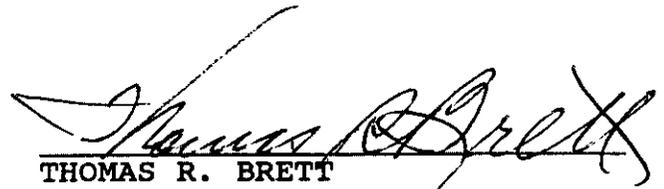
"The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of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

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

For the reasons stated herein no genuine issue of material fact remains that the insured's cause of death resulted from accidental bodily injury, directly and independently of all other causes. The Defendant's Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56 is therefore SUSTAINED.

A separate Judgment is entered in keeping herewith.

DATED this 12th day of July, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

JUL 11 1990

JACOB N. SILVER, CLERK
U.S. DISTRICT COURT

EMMETT NICK,

Plaintiff,

vs.

Case No. 90-C-136-B

CONTINENTAL BAKING COMPANY,
a Delaware corporation
domesticated in the State
of Oklahoma, d/b/a WONDER
BREAD,

and,

TEAMSTERS LOCAL 886, an
AFL/CIO affiliated labor
union,

Defendants.

ORDER

The Defendant, Continental Baking Company (Continental), filed its motion for summary judgment entitled DEFENDANT CONTINENTAL BAKING COMPANY'S MOTION FOR SUMMARY JUDGMENT/MOTION TO STRIKE. In the Motion and the Memorandum Brief filed in support thereof, Continental requests the Court, for reasons specified, to dismiss Plaintiff's Complaint. Additionally, Continental asks the Court to strike Plaintiff's claims for damages for emotional distress, exemplary or punitive damages and front pay as not recoverable under Section 301 of the Labor Management Relations Act (LMRA). Continental also moves to strike Plaintiff's demand for a jury

trial as not available under LMRA.¹ Notwithstanding Continental's request for dismissal of Plaintiff's claims, since it has referred to matters outside the pleadings, the Court will treat Continental's Motion as one for summary judgment.²

This is a "hybrid" Section 301/fair representation suit, being both an action under LMRA, 29 U.S.C. §185, *et seq.*, against Continental for alleged breach of a collective bargaining agreement, and an action under the National Labor Relations Act (NLRA) against Defendant Teamsters Local 886 (Teamsters) for alleged breach of the duty of fair representation. This dual approach has case law authority. See Sosbe v. Delco Electronics Division of General Motors Corp., 830 F.2d 83 (7th Cir. 1987); See also Vaca v. Sipes, 386 U.S. 171 (1967). While Section 301 does not include a statute of limitations, the Supreme Court has held the six-month statute of limitations found in Section 10(b) of the NLRA also governs actions brought under Section 301. DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151, 103 S.Ct. 2281 (1983).

Plaintiff's NLRA cause of action accrued when, in the exercise of reasonable diligence, he knew or should have known his union

¹ Continental's Motion to Strike Jury Trial has been withdrawn. See this Court's Order of April 9, 1990.

² Continental has failed to comply with the requirements of Rule 15 (b), Local Rules of the Northern District of Oklahoma, regarding motions for summary judgment in that Continental has not set forth a statement of material facts, numbered, to which there exists no genuine dispute. In the interest of judicial economy the Court will endeavor to off-set this lack of proper pleading.

would not assist him in his dispute with Continental. Freeman v. Local Union No. 135, Chauffeurs, Teamsters, Warehousemen and Helpers, 746 F.2d 1316 (7th Cir. 1984); Metz v. Tootsie Roll Indus., Inc., 715 F.2d 299 (7th Cir. 1983), *cert. denied*, 464 U.S. 1070 (1984). Plaintiff's Section 301 cause of action accrued when, as in any breach of contract action, the alleged breach actually occurred. The Court must next determine these matters factually, if possible under the record before it.

Plaintiff, a Wonder Bread route salesman, was terminated by Continental on or about June 9, 1989, for his alleged inability to get along with one of his route customers, Git & Go Stores. Plaintiff was a member in good standing in the Defendant Teamsters Local 886. Plaintiff challenged the termination and an August 2, 1989, grievance hearing was held, which resulted in the termination being upheld.

The August grievance panel consisted of two Continental representatives and two Teamsters representatives as provided in the collective bargaining agreement. One of the Teamsters representatives was Ken Taylor, who had been a supervisor of Plaintiff with Continental until late June, 1989. Plaintiff filed his initial grievance on June 13, 1989.

On January 26, 1990, Plaintiff filed a complaint with the National Labor Relations Board (NLRB) charging both Continental and Teamsters had each committed an unfair labor practice by permitting its supervisor to sit on the arbitration panel, and that, further Teamsters failed to enforce Plaintiff's right to progressive

discipline under the collective bargaining agreement. After Plaintiff filed the instant action he dismissed the unfair labor practice charge.

Plaintiff's termination was upheld August 2, 1989, by, Plaintiff alleges, a tainted panel.³ Plaintiff filed this action on Feb. 20, 1990, 6 months and 18 days later. Plaintiff contends he was foreclosed by contract⁴ from suing Continental until Teamsters breached its duty, towards Plaintiff, of fair representation. This duty, Plaintiff argues, was breached on February 2, 1990, at the expiration of the six month limitations period. Plaintiff's argument is sophistic. If Teamsters is subject to a six month period within which to file an action against Continental on behalf of Plaintiff, this period would only begin to run if and when an unfair-labor-practice cause of action arose in Plaintiff's favor against Continental. But Plaintiff's cause of action against Continental is based upon an alleged breach of the collective bargaining agreement juxtaposed to Plaintiff's cause of action against Teamsters being based upon alleged lack of fair representation (when brought in the same suit, the so-called "hybrid action").

The Court concludes that, factually, Plaintiff's alleged breach of the collective bargaining agreement cause of action

³ Plaintiff states Ken Taylor was demoted from supervisor for the purpose of sitting on Plaintiff's grievance panel, later to be reinstated as supervisor. It does not appear from the present record whether Taylor was so reinstated.

⁴ The contract was the collective bargaining agreement.

against Continental arose, if at all, no later than August 2, 1989. It is therefore time barred, not having been prosecuted within the requisite six month period. DelCostello, supra.

Plaintiff's alleged cause of action, for lack of fair representation, against Teamsters is not before the Court for decision since not within the ambit of Continental's Motion for Summary Judgment. The Court is of the opinion, however, Plaintiff faces a burdensome task on the issue of statute of limitations relative to his claim against Teamsters in view of Teamsters Answer raising such issue as an affirmative defense. It is the Court's view DelCostello, supra, Freeman v. Local Union No. 135, Chauffeurs, Teamsters, Warehousemen and Helpers, supra, and additional cited authorities do not teach otherwise.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Winton Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

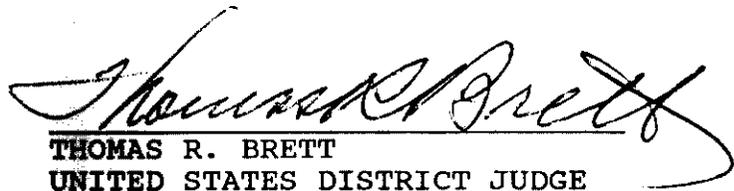
"The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which

that party will bear the burden of proof at trial."

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

The Court concludes Continental's Motion for Summary Judgment should be and the same is hereby SUSTAINED. In view of the Court's determination of the statute of limitations issue, the Court will not address, as moot, Plaintiff's claims against Continental relative to punitive damages for emotional distress and front pay as being recoverable in a Section 301 action.

IT IS SO ORDERED this 11 day of July, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

1990

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

RHONDA CALLAWAY, Surviving Spouse)
and Next of Kin of CLINTON)
THEODORE CALLAWAY, deceased,)
Plaintiff,)

vs.)

SOCIETE des mines et fonderies,)
de zinc de la VIEILLE-MONTAGNE, a)
foreign corporation,)
Defendant and Third-)
Party Plaintiff,)

vs.)

ST. JOE MINERALS CORPORATION,)
Third-Party Defendant.)

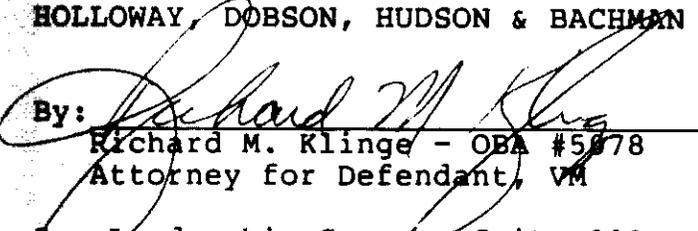
Case No. 88-C-1185 E

STIPULATION OF PARTIAL DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, Rhonda Callaway, Surviving Spouse and Next of Kin of Clinton Theodore Callaway, deceased (hereinafter "Callaway"), and Societe des mines et fonderies, de zinc de la Vieille-Montagne (hereinafter "VM"), stipulate that the above-entitled action be dismissed with prejudice only as it relates to the claims between Callaway and VM. Callaway and VM shall bear their own respective costs. Such matter between Callaway and VM has been settled for an agreed consideration and no further issues exist for determination. Neither this Dismissal nor said Settlement affect nor in any way dismiss the Third-Party Complaint of VM against St. Joe Minerals Corporation pending in this matter; such third-party action shall

survive this Dismissal and shall proceed pursuant to the appropriate Scheduling Order(s) of this Court.

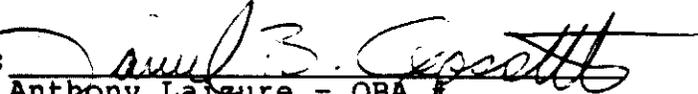
HOLLOWAY, DOBSON, HUDSON & BACHMAN

By: 

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

By: 

Anthony Laizure - OBA #
Daniel B. Gossett - OBA #13687
Attorney for Plaintiff

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P. O. Box 701110
Tulsa, Oklahoma 74105
Telephone: (918)745-6084

RMK:callaway.sti

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

FILED
1989

RAYMOND HERSCHEL JOHNSON,)
)
Plaintiff,)
)
v.)
)
VICKIE CHAMPION, et al,)
)
Defendants.)

89-C-1055-B

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

ORDER

Plaintiff was granted leave to **file in forma pauperis** this action seeking monetary damages for violations of his civil rights under 42 U.S.C. § 1983. Under 28 U.S.C. § 1915(d), an in forma pauperis complaint is subject to dismissal if found to be frivolous, improper, or obviously without merit. Henrikson v. Bentley, 664 F.2d 852 (10th Cir. 1981).

Plaintiff has brought this action **against** Earl Brewer, the former Director of the Oklahoma Pardon and Parole Board, **and** Vickie Champion, the Board employee who compiled a report on plaintiff's background **and** a recommendation regarding parole for the Board's information and review. Plaintiff **alleges** that his constitutional rights were violated in his application for parole when **the** Parole Board recommended he undergo a psychological evaluation.

The defendants are immune **from suit** for damages under § 1983. The Supreme Court has ruled that a state and its **officials** acting in their official capacities are not "persons" who may be sued under 42 U.S.C. § 1983. Will v. Michigan Department of State Police, 491 U.S. ___, 105 L.Ed.2d 45, **58**, 109 S.Ct. 2304 (1989). Suits against state officials in their official capacities **represent an attempt** to plead an action against the state

or other entity which the officers represent. Id. See also, Brandon v. Holt, 469 U.S. 464, 471 (1985); Kentucky v. Graham, 473 U.S. 159, 165-66 (1985).

The Court in Will relied on the principles of the Eleventh Amendment to determine the meaning of "person" under § 1983. That Amendment provides that "[t]he judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

Although the language of the Amendment does not encompass suits against a state by its own citizens, the Supreme Court has consistently held that such suits are barred by the Eleventh Amendment. Will at 2309; Edelman v. Jordan, 415 U.S. 651, reh. den. 416 U.S. 1000 (1974); Griess v. State of Colorado, 841 F.2d 1042 (10th Cir. 1988).

In addition, when government officials are performing discretionary functions, they are not personally liable for their conduct unless their actions violate clearly established statutory or constitutional rights of which a reasonable person would have know. Mitchell v. Forsyth, 472 U.S. 511 (1985); Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Plaintiff has utterly failed to show a right that has been violated by defendants. All that he claims is that he had a hearing before the Pardon and Parole Board and the Board recommended the matter be passed to the next hearing date and that plaintiff receive a psychological evaluation. Plaintiff alleges that he cannot get an unbiased hearing by the Parole Board because he has sued them in the past, but he presents no evidence of unfairness and has not included the Board members as defendants in this action. The Tenth Circuit in Shirley v. Chestnut, 603 F.2d 805, 807 (10th Cir. 1979), held that Oklahoma's parole system

created no liberty interest. Therefore, **plaintiff** has wholly failed to show a violation of any federally protected interest.

The court finds that plaintiff's **complaint** should be and is dismissed under 28 U.S.C. § 1915(d), as it is frivolous and without merit.

Dated this 11th day of July, 1989.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

JUL 11 1990

JAC. H. BOWEN, CLERK
U.S. DISTRICT COURT

EMMETT NICK,

Plaintiff,

vs.

Case No. 90-C-136-B /

CONTINENTAL BAKING COMPANY,
a Delaware corporation
domesticated in the State
of Oklahoma, d/b/a WONDER
BREAD,

and,

TEAMSTERS LOCAL 886, an
AFL/CIO affiliated labor
union,

Defendants.

ORDER

The Defendant, Continental Baking Company (Continental), filed its motion for summary judgment entitled DEFENDANT CONTINENTAL BAKING COMPANY'S MOTION FOR SUMMARY JUDGMENT/MOTION TO STRIKE. In the Motion and the Memorandum Brief filed in support thereof, Continental requests the Court, for reasons specified, to dismiss Plaintiff's Complaint. Additionally, Continental asks the Court to strike Plaintiff's claims for damages for emotional distress, exemplary or punitive damages and front pay as not recoverable under Section 301 of the Labor Management Relations Act (LMRA). Continental also moves to strike Plaintiff's demand for a jury

trial as not available under LMRA.¹ Notwithstanding Continental's request for dismissal of Plaintiff's claims, since it has referred to matters outside the pleadings, the Court will treat Continental's Motion as one for summary judgment.²

This is a "hybrid" Section 301/fair representation suit, being both an action under LMRA, 29 U.S.C. §185, *et seq.*, against Continental for alleged breach of a collective bargaining agreement, and an action under the National Labor Relations Act (NLRA) against Defendant Teamsters Local 886 (Teamsters) for alleged breach of the duty of fair representation. This dual approach has case law authority. See Sosbe v. Delco Electronics Division of General Motors Corp., 830 F.2d 83 (7th Cir. 1987); See also Vaca v. Sipes, 386 U.S. 171 (1967). While Section 301 does not include a statute of limitations, the Supreme Court has held the six-month statute of limitations found in Section 10(b) of the NLRA also governs actions brought under Section 301. DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151, 103 S.Ct. 2281 (1983).

Plaintiff's NLRA cause of action accrued when, in the exercise of reasonable diligence, he knew or should have known his union

¹ Continental's Motion to Strike Jury Trial has been withdrawn. See this Court's Order of April 9, 1990.

² Continental has failed to comply with the requirements of Rule 15 (b), Local Rules of the Northern District of Oklahoma, regarding motions for summary judgment in that Continental has not set forth a statement of material facts, numbered, to which there exists no genuine dispute. In the interest of judicial economy the Court will endeavor to off-set this lack of proper pleading.

would not assist him in his dispute with Continental. Freeman v. Local Union No. 135, Chauffeurs, Teamsters, Warehousemen and Helpers, 746 F.2d 1316 (7th Cir. 1984); Metz v. Tootsie Roll Indus., Inc., 715 F.2d 299 (7th Cir. 1983), *cert. denied*, 464 U.S. 1070 (1984). Plaintiff's Section 301 cause of action accrued when, as in any breach of contract action, the alleged breach actually occurred. The Court must next determine these matters factually, if possible under the record before it.

Plaintiff, a Wonder Bread route salesman, was terminated by Continental on or about June 9, 1989, for his alleged inability to get along with one of his route customers, Git & Go Stores. Plaintiff was a member in good standing in the Defendant Teamsters Local 886. Plaintiff challenged the termination and an August 2, 1989, grievance hearing was held, which resulted in the termination being upheld.

The August grievance panel consisted of two Continental representatives and two Teamsters representatives as provided in the collective bargaining agreement. One of the Teamsters representatives was Ken Taylor, who had been a supervisor of Plaintiff with Continental until late June, 1989. Plaintiff filed his initial grievance on June 13, 1989.

On January 26, 1990, Plaintiff filed a complaint with the National Labor Relations Board (NLRB) charging both Continental and Teamsters had each committed an unfair labor practice by permitting its supervisor to sit on the arbitration panel, and that, further Teamsters failed to enforce Plaintiff's right to progressive

discipline under the collective bargaining agreement. After Plaintiff filed the instant action he dismissed the unfair labor practice charge.

Plaintiff's termination was upheld August 2, 1989, by, Plaintiff alleges, a tainted panel.³ Plaintiff filed this action on Feb. 20, 1990, 6 months and 18 days later. Plaintiff contends he was foreclosed by contract⁴ from suing Continental until Teamsters breached its duty, towards Plaintiff, of fair representation. This duty, Plaintiff argues, was breached on February 2, 1990, at the expiration of the six month limitations period. Plaintiff's argument is sophistic. If Teamsters is subject to a six month period within which to file an action against Continental on behalf of Plaintiff, this period would only begin to run if and when an unfair-labor-practice cause of action arose in Plaintiff's favor against Continental. But Plaintiff's cause of action against Continental is based upon an alleged breach of the collective bargaining agreement juxtaposed to Plaintiff's cause of action against Teamsters being based upon alleged lack of fair representation (when brought in the same suit, the so-called "hybrid action").

The Court concludes that, factually, Plaintiff's alleged breach of the collective bargaining agreement cause of action

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against Continental arose, if at all, no later than August 2, 1989. It is therefore time barred, not having been prosecuted within the requisite six month period. DelCostello, supra.

Plaintiff's alleged cause of action, for lack of fair representation, against Teamsters is not before the Court for decision since not within the ambit of Continental's Motion for Summary Judgment. The Court is of the opinion, however, Plaintiff faces a burdensome task on the issue of statute of limitations relative to his claim against Teamsters in view of Teamsters Answer raising such issue as an affirmative defense. It is the Court's view DelCostello, supra, Freeman v. Local Union No. 135, Chauffeurs, Teamsters, Warehousemen and Helpers, supra, and additional cited authorities do not teach otherwise.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Winton Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

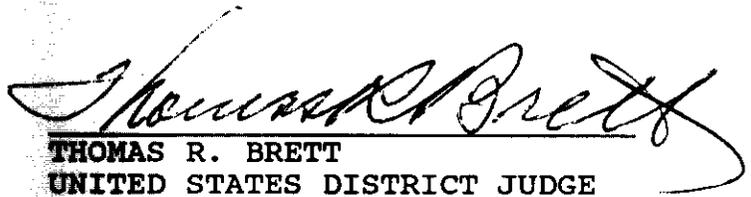
"The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which

that party will bear the burden of proof at trial."

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

The Court concludes Continental's Motion for Summary Judgment should be and the same is hereby SUSTAINED. In view of the Court's determination of the statute of limitations issue, the Court will not address, as moot, Plaintiff's claims against Continental relative to punitive damages for emotional distress and front pay as being recoverable in a Section 301 action.

IT IS SO ORDERED this 11 day of July, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

OCT 10 1990

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

UNITED STATES OF AMERICA,)

Plaintiff,)

-vs-)

CIVIL NUMBER 90-C-457 B

ANGELA R. LUTZ,
216325283)

Defendant,)

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, United States of America, by and through its attorney, Herbert N. Standeven, District Counsel, Department of Veterans Affairs, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

Respectfully submitted,

UNITED STATES OF AMERICA

Herbert N. Standeven
District Counsel
Department of Veterans Affairs
125 South Main Street
Muskogee, OK 74401
Phone: (818) 687-2191

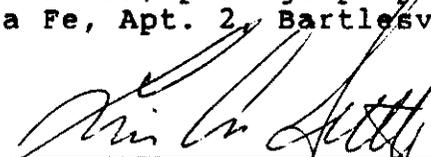
By:



LISA A. SETTLE, Attorney

CERTIFICATE OF MAILING

This is to certify that on the _____ day of _____, 1990, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: ANGELA R. LUTZ, at 312 South Santa Fe, Apt. 2, Bartlesville, OK 74003.



LISA A. SETTLE, Attorney

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

FILED

APR 21 1990

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

LEONARDO M. LEONOFF,)
)
Petitioner,)
)
v.)
)
AGENCY OF IMMIGRATION &)
NATURALIZATION SERVICE, et al.)
)
Respondents.)

90-C-434-B ✓

ORDER

Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Docket #2)¹ is now before the court for consideration. Petitioner alleges that he was notified on April 20, 1990, by the U.S. Immigration and Naturalization Service ("INS"), that he was subject to deportation from the United States, pursuant to § 241(a)(1) of the Immigration and Nationality Act ("INA"), for having procured a visa by fraud, and INA § 241(a)(2), for remaining in the United States as a nonimmigrant for a longer time than permitted. Petitioner claims that he has been held in INS custody since his arrest on unrelated kidnapping charges without a date or place having been set for his deportation hearing, this detention being in violation of his due process rights.

Because the petition is by a pro se litigant, its sufficiency must be judged by standards less stringent than those established for pleadings drafted by attorneys. Haines v. Kerner, 404 U.S. 519, 520 (1972). The petitioner does not allege facts sufficient to obtain redress under 28 U.S.C. § 2254, as petitioner is not in custody pursuant to a

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

judgment of a state court. However, **his** allegations, if found to be true, would constitute a habeas claim pursuant to 28 U.S.C. § 2241, which prohibits keeping an individual in custody in violation of **his constitutional rights**. The court finds that petitioner's petition should be interpreted as seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

Federal district courts have **jurisdiction** under 28 U.S.C. § 2241 to grant writs of habeas corpus to petitioners "in custody under or by color of the authority of the United States" or "in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States." 28 U.S.C. § 2241(c) (1) and (2). The federal courts also have jurisdiction over habeas corpus claims brought under the immigration statutes:

The district courts have **jurisdiction generally** of all civil and criminal causes arising under the immigration statutes. See 8 U.S.C. § 1329. This grant of jurisdiction is limited, however, by section 106(a) of the Act, which provides that jurisdiction is exclusively in the courts of appeals over petitions for judicial review of final orders of deportation entered against aliens in the United States pursuant to administrative proceedings under section 242(b) of the Act, 8 U.S.C. §1252(b). Section 242(b) proceedings are conducted by an immigration judge to determine whether an alien may be deported, and the immigration judge's decision is reviewable by the BIA. An exception to the exclusive court of appeals jurisdiction is provided in section 106(a)(9) which states that 'any alien held in custody pursuant to an order of deportation may obtain judicial review thereof by habeas corpus proceedings.' 8 U.S.C. § 1105a(a)(9).

Salehi v. District Director, I.N.S., 796 F.2d 1286, 1289 (10th Cir. 1986).

Petitioner indicates that he is **not in custody** pursuant to an order of deportation, as administrative proceedings under § 242(b) of the INA are yet to be initiated. Therefore, despite the petitioner's factual recitation and related allegations of denial of due process,

right to appeal, and violation of **privacy rights**, he is still not contesting the validity of a deportation order under § 106(2). **The federal** court has jurisdiction in this matter.

However, under 28 U.S.C. § 2241, a judge may decline to entertain an application for a writ of habeas corpus and **transfer** the application to the district court having jurisdiction over the complainant's **custodian**. As petitioner is presently incarcerated in Laredo, Texas in the Southern District of Texas, this court does not have jurisdiction over his custodian. Therefore, the court **finds that** this application should be and is transferred to the Southern District of Texas.

Dated this 10th day of July, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

MAX FOOTE CONSTRUCTION COMPANY,)
INC., a Louisiana corporation,)
)
Plaintiff,)
)
vs.)
)
THE CITY OF TULSA, OKLAHOMA,)
an Oklahoma municipal corporation,)
)
Defendant,)
)
and)
)
DICARLO CONSTRUCTION COMPANY,)
a Missouri general partnership,)
)
Intervenor.)

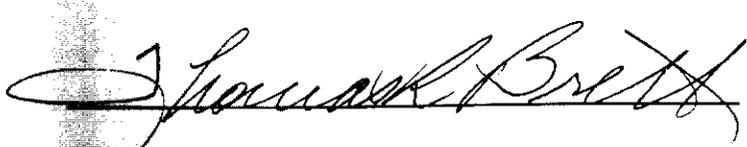
No. 90-C-163-B ✓

FILED
JUL 17 1990
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

Pursuant to the Order filed by the Tenth Circuit Court of Appeals on June 28, 1990, the above captioned complaint is hereby dismissed.

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


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

JUL 10 1990

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

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

ANNA M. ROBERTS,)
)
 Plaintiff,)
)
 vs.)
)
 LOUIS W. SULLIVAN, M.D., Secretary)
 of Health and Human Services,)
)
 Defendant.)

No. 89-C-522-B

ORDER

Currently before the Court is Plaintiff Anna Roberts' Objection to the Magistrate's Report and Recommendation to affirm the Administrative Law Judge's decision to deny Plaintiff benefits based upon his conclusion that Plaintiff was not disabled as of June 30, 1985. The facts were thoroughly presented in the Magistrate's Report and need not be repeated.

Plaintiff asserts the Magistrate's Report is not based on substantial evidence; did not consider the objective findings of severe pain; overlooked that Plaintiff would have met the Listing of Impairments for musculoskeletal impairment; did not consider plaintiff's chronic and long-standing depression; did not properly consider Social Security Ruling 85-15; and failed to analyze completely the vocational expert's testimony. The ultimate issue is whether there is substantial evidence to support the Administrative Law Judge's conclusions. Tillery v. Schweiker, 713 F.2d 601, 603 (10th Cir. 1983).

Plaintiff first argues the Magistrate failed to consider fully the Plaintiff's complaints and overlooked medical and testimonial evidence. Plaintiff identifies several isolated references in the transcript the Magistrate did not specifically address. The Court has reviewed those references in their complete context and concludes Plaintiff does not meet the criteria, or its equivalent, established in Appendix 1 to Subpart P, Regulation #4, Sections 1.11 or 1.03. The atrophy Plaintiff experienced in her thigh does not appear to be as severe as stated. (Tr. 287). There is no evidence of non-union of joints, marked limitations of motion with either gross anatomical deformity or significant bony destruction, or the equivalent of reconstructive surgery.

Plaintiff next argues the Magistrate's report failed to consider her severe headaches and her abnormal electroencephalogram. Dr. Stanton's conclusions regarding the electroencephalogram state Plaintiff is irritable; however, the frequent use of conditional language indicates Dr. Stanton's conclusions are tentative at best. (Tr. 457). There is no evidence that Plaintiff's headaches and irritability, alone or in combination with her knee problems, prevent her from any gainful employment.

Plaintiff also asserts the Magistrate's report did not fully consider the Plaintiff's long standing mental disorder and that he misapplied the regulations and the social security rulings. Social security ruling 85-15 provides:

"[T]he basic mental demands of competitive, remunerative, unskilled work include the

ability on a sustained basis to understand and carryout and remember simple instructions; to respond appropriately to supervision, co-workers, and usual work situations; and to deal with changes in routine work settings. A substantial loss of ability to meet any of these basic work related activities would severely limit the potential occupational base. This in turn would justify a finding of disability..."

The evidence does not support Plaintiff's conclusion that she was not able to carryout or remember simple instructions in 1985.¹ Evidence by way of Plaintiff's therapist for a year and a half supports the claim that Plaintiff suffers an adjustment disorder and a compulsive personality disorder, but does not conclude Plaintiff is incapable of carrying out the most basic and simple instructions.² The Court concludes there is substantial evidence to support the Secretary's determination that Plaintiff's mental condition, either alone or in combination with any other physical infirmities, did not render Plaintiff disabled on June 30, 1985.

Plaintiff also asserts the Magistrate minimized Plaintiff's allergy problems. The evidence indicates Plaintiff was being treated for her allergies and there is no evidence that her

¹The Magistrate also quoted Appendix 1 of Subpart P, Regulation #4, Section 12.04 and concluded Plaintiff did not meet the Listing of Impairments.

²Subsequent treatment by Dr. Soria indicates Plaintiff has deteriorated since 1985. Although the ALJ had the benefit of Dr. Soria's conclusions, the ALJ's conclusions were limited to Plaintiff's condition prior to June 30, 1985. Plaintiff's counsel recites numerous conclusory statements offered by Dr. Soria without stating how the statements are to be applied to the Social Security Regulations or Appendix 1 of Subpart P, Regulation #4, Section 12.04.

allergies were so severe as to prohibit her from any gainful employment.

The court concludes there is substantial evidence to support the Secretary's May 1988 decision that Plaintiff was not disabled on June 30, 1985. Therefore, the Secretary's decision and the Magistrate's Findings and Recommendations are AFFIRMED.

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



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

JUL 11 1990

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

MAXINE TEDDER and
EARL TEDDER,

Plaintiffs,

vs.

No. 89-C-70-B

MERCEDES-BENZ OF NORTH
AMERICA, INC., a foreign
corporation,

Defendant.

J U D G M E N T

In accordance with the jury verdict rendered this date, Judgment is hereby entered in favor of Defendant, Mercedes-Benz of North America, Inc., a foreign corporation, and against the Plaintiffs, Maxine Tedder and Earl Tedder. Costs are assessed against Plaintiffs if timely applied for under Local Rule 6.

DATED this 10th day of July, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED
MAY 14 1990 RA

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

DANIEL L. WILLIAMS,)
)
 Plaintiff,)
)
 vs.)
)
 HORACE TAYLOR, et al.,)
)
 Defendants.)

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

No. 89-C-296-B ✓

ORDER SUSTAINING MOTION TO DISMISS

Before the Court for decision is Defendants' Motion to Dismiss asserting that the Court is without subject matter jurisdiction. In essence Defendants move to dismiss Plaintiff's *pro se* Complaint because it does not allege the Defendants terminated Plaintiff outside the scope of their duties as members of the Pawnee Tribal Governing Board, the Pawnee Business Council. The Defendants state the Court is without subject matter jurisdiction because Defendants, as officials of the Pawnee Tribe as set forth in the Plaintiff's Complaint, are immune from suit. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58, 98 S.Ct. 1670, 56 L.Ed.2d 106 (1978), and Ramey Construction Company v. Apache Tribe of the Mescalero Reservation, 673 F.2d 315 (10th Cir. 1982).

Defendant also asserts the Pawnee Tribe is an indispensable party pursuant to Fed.R.Civ.P. 19, as Plaintiff is requesting reinstatement in his alleged tribal employment position. Additionally, Defendants state that Plaintiff has not exhausted the available tribal administrative appeal process which is provided in Section J of the Personnel Policies and Procedures for the

Pawnee Tribe of Oklahoma. Iowa Mutual Insurance Co. v. LaPlante, 107 S.Ct. 971 (1987), and National Farmers Union Ins. Cos. v. Crow Tribe, 471 U.S. 845, 105 S.Ct. 2447, 85 L.Ed.2d 818 (1985).

A review of Plaintiff's *pro se* Complaint suggests that he is attempting to allege a cause of action involving his employment as a health systems planner, in violation of his rights under the Fourteenth Amendment of the United States Constitution, the Indian Civil Rights Act of 1968 and the Constitution and Bylaws of the Pawnee Indian Tribe.

Plaintiff's *pro se* Complaint is deficient in that it does not allege Plaintiff's employment has been terminated. Further, it appears Defendants are sued in their official capacities, there being no allegation of waiver of sovereign immunity. If Plaintiff seeks re-instatement, back wages, or damages from the Pawnee Tribe, the Tribe is an indispensable party. Fed.R.Civ.P. 19. Neither has Plaintiff alleged exhaustion of his administrative tribal remedies, if any. Therefore, Defendants' Motion to Dismiss is SUSTAINED.

Plaintiff is hereby granted twenty (20) days from this date to file an Amended Complaint, failing in which Plaintiff's action will be dismissed for failure to prosecute. The Amended Complaint should allege facts relative to the Plaintiff's employment and termination, if any; as well as Plaintiff's United States constitutional rights violated relative to his employment. It should be specifically alleged whether Defendants were acting within or outside their official duties and capacities as members

of the Pawnee Tribal Business Council. If outside Defendants' official duties as members of the Pawnee Tribal Council, specific facts in this regard known to Plaintiff should be alleged. Plaintiff should also set forth whether or not any available Pawnee tribal administrative remedies have been exhausted and join the Pawnee Tribe as a defendant if relief is requested against the Tribe.

DATED this 10th day of July, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

JUL 9 1990

SOONER FEDERAL SAVINGS ASSOCIATION,)
by and through its Conservator,)
Resolution Trust Corporation,)

Plaintiff,)

vs.)

JACK D. FARMER, PATRICIA A.)
FARMER, GURPREET K. ATWALL,)
INDER R. SINGHAL,)
SWARNA L. SINGHAL,)
RAJESHWAR PAL S. SANGHA and)
RANBIR PAL K. SANGHA,)

Defendants.)

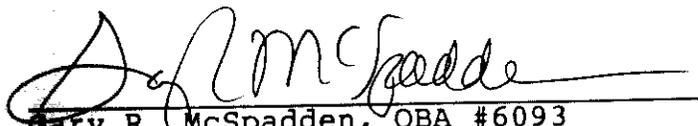
Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 90-C-132-C

STIPULATION OF DISMISSAL

Sooner Federal Savings Association, by and through its Conservator Resolution Trust Corporation ("Plaintiff"), and Jack D. Farmer and Patricia A. Farmer, defendants, hereby execute this Stipulation whereby Plaintiff dismisses its action in this proceeding without prejudice to Plaintiff's refiling of the same.

DATED this 5th day of July, 1990.


Gary R. McSpadden, OBA #6093
Victor E. Morgan, OBA #12419
Baker, Hoster, McSpadden,
Clark, Rasure & Slicker
800 Kennedy Building
Tulsa, Oklahoma 74103
(918) 592-5555

Attorneys for Plaintiff
Sooner Federal Savings Association,
by and through its Conservator,
Resolution Trust Corporation

Approved:



William R. Mayo, Esq.
312 N. Mt. Olive
Siloam Springs, AR 72761

Attorney for Defendants
Jack D. Farmer and Patricia A. Farmer

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

FILED
JUL -9 1990 *Jim*

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

HAZEL N. LATCH,
Plaintiff,

vs.

FEDERAL DEPOSIT INSURANCE
CORPORATION AS MANAGER OF
THE FSLIC RESOLUTION FUND,
Defendant.

No. 89-C-876-C

ORDER

Before the Court is defendant's objection to the Report and Recommendation of the Magistrate. In his report, the Magistrate recommended that the motion to dismiss, or alternatively for summary judgment, filed by defendant FDIC be denied in that issues of material fact remain to be litigated.

The Court has taken an independent review of this matter and concludes that the Magistrate's recommendation is not supported by the record and accordingly is reversed.

On July 29, 1988, the Federal Home Loan Bank Board (Bank Board) placed Victor Federal Savings and Loan Association of Muskogee, Oklahoma (Victor) into receivership and appointed the Federal Savings and Loan Insurance Corporation (FSLIC) as receiver for Victor.¹

¹The FSLIC was abolished on August 9, 1989. The FDIC as manager of the FSLIC Resolution Fund is the substituted party defendant.

On the date of default, there were two accounts maintained at Victor involving the plaintiff, both of which were certificates of deposit identified as:

Account	Balance
000456620	\$ 5,443.86
131214756	100,745.14

Plaintiff and her husband filed an insurance claim with FSLIC seeking insurance coverage for each account.

The FSLIC determined, based on the records on file at Victor, that the accounts held by Mr. and Mrs. Latch were joint accounts insured under 12 C.F.R. §564.9 and would be aggregated up to the \$100,000.00 limit to determine the maximum insurance coverage. Based on this analysis, the FSLIC concluded Accounts #000456620 and #131214756 were uninsured for \$6,189.00 (\$5,443.86 and \$745.14 respectively).

On October 3 and 4, 1988, the FSLIC issued Certificates of Claim in liquidation for the uninsured amount.

In a letter dated October 20, 1988 Mr. Latch challenged the FSLIC's determination that Account #000456620 was a joint account. Mr. Latch was of the opinion that this account was held individually by his wife. He stated:

This account was opened at Victor Savings & Loan in Muskogee, Oklahoma as a collateral account for a loan made to a buyer of a house my building [sic] company built in Muskogee. The buyer could not qualify for the amount of loan needed at that time.

I already had an account with Victor and the lady at Victor, Mrs. Arlene Luton, told me to put this account in my wife's name so it would also be insured. We did this and it was deposited in the name of Hazel Latch. The account could not be withdrawn, even when Victor closed. I went to Muskogee to inquire about the interest at one time and was told my wife would have to come down to get it. Rather than have her make a trip to Muskogee I had them mail it to her.

On February 9, 1988 the FSLIC granted Mr. Latch's request for reconsideration under 12 C.F.R. §564.1(d)(4)(i) in order to give him an opportunity to submit additional information in support of his statements.

In his letter dated February 20, 1989, Mr. Latch wrote:

When this account was opened I was building houses in Muskogee and one customer I sold a house to could not qualify for the amount of loan he wanted unless I deposited a certain amount with Victor Savings & Loan until his loan was paid down to a certain amount. The conditions of his loan have been met. We put this savings account in my wife's name because I already had a C.D. in my name. Neither my wife or I could draw on this account as long as it was collateral but when interest was earned they would not let me draw it because it was in my wife's name and she would have to collect it.

This year they sent her Substitute For [sic] 1099, copy enclosed, for interest which she did not receive. You will notice that this was addressed to her with her Social Security number. I have also enclosed the 1099 that was sent to me showing the interest on my C.D. and my Social Security number. I think this clearly shows that these are two entirely separate accounts for two different people.

By letter dated July 21, 1989 the FSLIC denied reclassifying Account #000456620 as a separately owned account and denied Mr. Latch's request for additional insurance coverage. In so doing the FSLIC relied on the following regulations:

Section 564.9(a) which provides that funds held by husband and wife as "joint tenants with right of survivorship", shall be insured as a joint account.

Section 564.2(b)(2) which permitted FSLIC to consider other documentation to disclose the existence of a relationship which could provide for additional insurance coverage. Mr. Latch provided FSLIC with a statement of the account bearing the name of Hazel Latch, along with her social security number, as the designated "recipient". FSLIC concluded that these additional records failed to disclose any relationship other than joint ownership.

Appendix, Section F, Example 3. The use of different social security numbers, for tax purposes, does not recharacterize the ownership of the account.

Following final determination by the Acting Executive Director of FSLIC, plaintiff Hazel Latch filed the subject action seeking a declaratory judgment that Account #000456620 was her individual fully insured account.

The above facts are not controverted. The issue before the Court is whether the FSLIC properly construed and applied its own regulations to this set of facts.

This Court has independently reviewed all relevant regulations. The Court finds that the regulations are not ambiguous or incomplete. Deference is due the construction of a regulation by the administrative agency charged with administering it. Jones v. FDIC, 748 F.2d 1400, 1405 (10th Cir. 1984) citing Udall v. Tallman, 380 U.S. 1 (1985).

This action was originally filed against the FSLIC in its corporate capacity as an insurer. Once an association, such as Victor, was placed into a liquidating receivership, the Bank Board, (at that time) directed the FSLIC to make payment on each insured account under the authority of 12 U.S.C. §1728(a)-(b). Pursuant to 12 U.S.C. §1728, the FSLIC had promulgated regulations governing the issuance and distribution of the insured funds. See, generally 12 C.F.R. Part 564 (1988).

When an agency is interpreting its own regulation, the courts are to give deference to the agency's construction unless the court

concludes the agency's interpretation is plainly erroneous. Jones v. FDIC, 748 F.2d at 1405.

In Jones the Tenth Circuit held that the administrative interpretation of its own regulation need only be a reasonable one to accept, even though there may be another equally reasonable interpretation. Id. And where the interpretation calls for agency expertise, the agency's construction is to be sustained if reasonable. Id.

Under these standards, the Court concludes that the FSLIC's interpretation of its own regulations is reasonable. Mr. Latch had an existing certificate of deposit at Victor (Account #131214756) which was acquired in his and his wife's name as joint tenants with right of survivorship. He went to Victor to obtain a second certificate of deposit, (Account #000456620) for a business purpose. Since his existing account had reached the \$100,000.00 insured limit, upon advice, he placed the second account in his wife's name solely in an effort to obtain FSLIC insurance coverage. However, both accounts listed Mr. and Mrs. Latch as joint tenants with right of survivorship.

It is not unreasonable for the FSLIC to first rely on the bank records, and then rely on collateral sources to make its determination that both accounts should be treated the same for actual ownership purposes. Accordingly, the Court affirms the final decision issued by the FSLIC regarding the uninsured sum of \$6,189.00 (\$5,443.86 on Account #000456620 and \$745.14 on Account #131214756).

In so holding, the Court grants the motion for summary judgment brought by the substituted defendant, FDIC as manager of the FSLIC Resolution Fund.

IT IS SO ORDERED this 7th day of July, 1990.

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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLIFTON ROBERT HARDY; JEFFREY
SCOTT HARDY; COUNTY TREASURER,
Tulsa County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

FILED

JUL 9 1990

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

CIVIL ACTION NO. 89-C-619-E

JUDGMENT OF FORECLOSURE

This matter came on for trial the 21st day of May, 1990. The Plaintiff appeared by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, did not appear; and the Defendants, Clifton Robert Hardy and Jeffrey Scott Hardy, appeared pro se.

The Court being fully advised and having examined the file and the evidence presented by the parties herein finds that the Defendants, Clifton Robert Hardy and Jeffrey Scott Hardy, acknowledged receipt of Summons and Complaint on August 16, 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.

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; that the Defendant, Clifton Robert Hardy, filed his Answer and Motion to Remove Named Defendant on August 16, 1989; and that Defendant, Jeffrey Scott Hardy, filed his Statement on August 16, 1989.

The Court further finds that on March 16, 1989, Jeffrey S. Hardy filed his voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 89-00649-W. Discharge of Debtor was entered on June 22, 1989, and subject bankruptcy case was closed on July 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 Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Thirteen (13) Block One (1) "ELM CREEK ESTATES FIRST ADDITION BLOCKS 1 THRU 6" an addition to the City of Owasso, situated in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on March 17, 1986, the Defendants, Clifton Robert Hardy and Jeffrey Scott Hardy, 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 \$57,000.00, payable in monthly installments, with interest thereon at the rate of ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Clifton Robert Hardy and Jeffrey Scott Hardy, 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 17, 1986, covering the above-described property. Said mortgage was recorded on March 20, 1986, in Book 4931, Page 279, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Clifton Robert Hardy and Jeffrey Scott Hardy, 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, Clifton Robert Hardy and Jeffrey Scott Hardy, are indebted to the Plaintiff in the principal sum of \$56,302.25, plus interest at the rate of 10 percent per annum from June 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Clifton Robert Hardy in personam and Jeffrey Scott Hardy in rem, in the principal sum of \$56,302.25, plus interest at the rate of

10 percent per annum from June 1, 1988 until judgment, plus interest thereafter at the current legal rate of 8.09 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that 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 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/John L. Farnor
U.S. District Judge

~~UNITED STATES DISTRICT JUDGE~~

APPROVED:

TONY M. GRAHAM
United States Attorney


NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 6 1990

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STEVEN JAY BROWN; CATHERINE
GRACE BROWN; CURTIS A. PARKS;
TULSA ADJUSTMENT BUREAU, INC.;
STATE OF OKLAHOMA ex rel.
OKLAHOMA TAX COMMISSION;
COUNTY TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

CIVIL ACTION NO. 90-C-0066-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 5th day
of July, 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, Curtis A. Parks,
appears not, having previously filed his Disclaimer; the
Defendant, Tulsa Adjustment Bureau, Inc., appears not, having
previously filed its Disclaimer; the Defendant, State of Oklahoma
ex rel. Oklahoma Tax Commission, appears by its attorney Lisa
Haws; and the Defendants, Steven Jay Brown and Catherine Grace
Brown, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendants, Steven Jay Brown and Catherine Grace Brown, acknowledged receipt of Summons and Complaint on February 19, 1990; that the Defendant, Curtis A. Parks, acknowledged receipt of Summons and Complaint on January 31, 1990; that the Defendant, Tulsa Adjustment Bureau, Inc., acknowledged receipt of Summons and Complaint on January 31, 1990; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on January 31, 1990; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 10, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 2, 1990.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on February 20, 1990; and that the Defendant, Curtis A. Parks, filed his Disclaimer on February 5, 1990; that the Defendant, Tulsa Adjustment Bureau, Inc., filed its Disclaimer on February 9, 1990; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer on February 16, 1990; that the Defendants, Steven Jay Brown and Catherine Grace Brown, 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 Eighteen (18), Block Seventeen (17)
REGENCY PARK ADDITION, to the City of Tulsa,
Tulsa County, State of Oklahoma, according to
the Recorded Plat thereof.

The Court further finds that on May 30, 1985, the Defendants, Steven Jay Brown and Catherine Grace Brown, 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 \$53,200.00, payable in monthly installments, with interest thereon at the rate of twelve percent (12%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Steven Jay Brown and Catherine Grace Brown, 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 30, 1985, covering the above-described property. Said mortgage was recorded on May 31, 1985, in Book 4866, Page 1463, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Steven Jay Brown and Catherine Grace Brown, 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, Steven Jay Brown and Catherine Grace Brown, are indebted to the Plaintiff in the principal sum of \$52,608.39, plus interest at the rate of

12 percent per annum from April 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, Curtis A. Parks and Tulsa Adjustment Bureau, Inc., disclaims any right, title, or interest in the subject real property.

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 Tax Warrant No. STS8600155802, in the amount of \$4,449.53 plus interest and penalty according to law; and by virtue of Tax Warrant No. STS8600235902, in the amount of \$14,325.86 plus interest and penalty according to law. These liens are inferior to the interest of the Plaintiff, United States of America.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Steven Jay Brown and Catherine Grace Brown, in the principal sum of \$52,608.39, plus interest at the rate of 12 percent per annum from April 1, 1988 until judgment, plus interest thereafter at the current legal rate of 8.09 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, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover judgment in the amount of \$4,449.53 plus interest and penalty according to law by virtue of Tax Warrant No. STS8600155802 and in the amount of \$14,325.86 plus interest and penalty according to law by virtue of Tax Warrant No. STS8600235902.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Steven Jay Brown and Catherine Grace Brown, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with 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 Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, in the amount of \$18,775.39 plus 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.

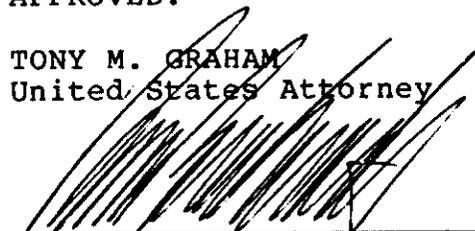
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ JAMES O. ELLISON

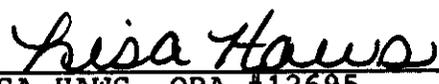
UNITED STATES DISTRICT JUDGE

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 #12695
Attorney for Defendant,
State of Oklahoma ex rel.
Oklahoma Tax Commission

Judgment of Foreclosure
Civil Action No. 90-C-0066-E

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

IN RE:)

ASBESTOS LITIGATION)

M-1417

ASB(TW) No. 3598

ERNEST L. ABLE, et al.,)	No. 88-C-1126-B
MILLARD L. ABLE, et al.,)	No. 88-C-803-B
LEWIS ADDINGTON, et al.,)	No. 88-C-990-E
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DELMAR RAY ANDERSON, et al.,)	No. 88-C-838-C
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DISMISSAL WITHOUT PREJUDICE (TW)

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HAROLD GENE JONES, et al.,)	No. 88-C-839-B

J. B. JONES, et al.,)	No. 88-C-1397-B
WILLIAM HARVEY JONES, et al.,)	No. 88-C-1267-B
LELAND WEBSTER KAHLER, et al.,)	No. 88-C-807-B
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CLARENCE JACK KNOX, et al.,)	No. 88-C-947-B
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LARRY WAYNE KUHN, et al.,)	No. 88-C-1038-B
NAYDEEN LADUKE, et al.,)	No. 89-C-162-B
JOHNNY LEROY LAFALIER, et al.,)	No. 88-C-876-E
WILLIAM W. LANDERS, et al.,)	No. 88-C-1059-C
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ORLEY FREEMAN LAWSON, et al.,)	No. 88-C-1010-B
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CHARLES MARVIN LEE, et al.,)	No. 88-C-1051-C
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LOYDE W. THOMASSON, et al.,)	No. 88-C-1063-E
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ESTELL EUGENE TUNNELL, et al.,)	No. 88-C-1045-E
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JAMES ALVIN VINCENT, et al.,)	No. 88-C-1311-C
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HARSE EDWARD WATERS, JR., et al.,)	No. 88-C-1180-C
CHARLES WATTERSON, et al.,)	No. 88-C-978-E
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GLEN ELDON WEBER, et al.,)	No. 88-C-775-E

JAMES E. WESTERVELT, et al.,)	No. 88-C-1008-C
BILLY EUGENE WHITE, et al.,)	No. 88-C-1298-E
ROBERT HARRY WHITE, et al.,)	No. 88-C-1153-C
CLIFFORD RAY WHITEHEAD, et al.,)	No. 88-C-1164-B
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RICHARD SCOTT WHITWORTH, et al.,)	No. 88-C-875-C
EDWARD R. WILBURN, et al.,)	No. 88-C-1007-E
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ELLEN BERNICE WILSON, et al.,)	No. 88-C-1411-B
JULIAN L. WILSON, et al.,)	No. 88-C-993-E
MARVIN LEE WILSON, et al.,)	No. 88-C-1080-E
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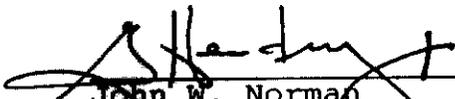
WILLIAM WYRICK, et al.,)
JOSEPH F. YINGER, et al.,)
BENJAMIN ROBERT YOST, et al.,)
Plaintiffs,)
v.)
ANCHOR PACKING, et al.,)
Defendants.)

No. 88-C-1412-B
No. 88-C-977-E
No. 88-C-767-E

FILED
JUL 1 1991
COURT CLERK
OKLAHOMA

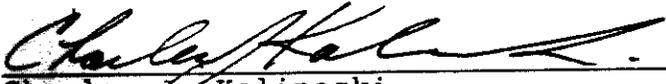
STIPULATION AND ORDER OF DISMISSAL
WITHOUT PREJUDICE OF PFIZER, INC.

Each of the plaintiffs named in the above styled Oklahoma Tireworker Litigation and the defendant, Pfizer, Inc., by and through their respective attorneys of record, stipulate to dismiss all causes of action involved herein against Pfizer, Inc., without prejudice to the filing of any other or future action(s) on the same or related cause(s) of action, and each party is to bear its own costs.



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ATTORNEYS FOR DEFENDANT
PFIZER, INC.

ORDER OF DISMISSAL WITHOUT PREJUDICE
OF DEFENDANT, PFIZER INC.

NOW on this _____ day of _____, 1990, pursuant to the foregoing Stipulation of Dismissal without Prejudice of Defendant, Pfizer, Inc., IT IS HEREBY ORDERED, ADJUDGED and DECREED that each and all named cases be and are hereby dismissed against Pfizer, Inc., without prejudice to the filing of any other or future action(s) on the same or related cause(s) of action, and each party is to bear its own costs.

FILED

MAY 12 1990

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

DISTRICT JUDGE

DISTRICT JUDGE

DISTRICT JUDGE

BI:I0613702.90

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing instrument was served upon all parties to the above cause by depositing said copy in the United States Mail, postage prepaid, on this 5th day of July, 1990, addressed to all counsel of record at their respective addresses as shown on the pleadings and the service list attached hereto.

Colleen Radebaugh
CRK

OKTW

1

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JOHN W NORMAN INC
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OKLAHOMA CTY, OK 73103

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MANCHESTER, HILTGEN & HEALY
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PRAY, WALKER, JACKMAN,
WILLIAMSON, & MARLAR
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OKLAHOMA CTY, OK 73102

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

FILED

JUL 6 1990

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

DANNY L. BROWN,

Plaintiff,

vs.

GOLDEN EAGLE DISTRIBUTING
COMPANY, INC., a Delaware
corporation,

Defendant.

No. 89-C-1038-B

JUDGMENT

In accordance with the jury verdict rendered this date, Judgment is hereby entered in favor of Plaintiff, Danny L. Brown, and against the Defendant, Golden Eagle Distributing Company, Inc., a Delaware corporation, in the amount of Forty Thousand Dollars (\$40,000.00), plus pre-judgment interest at the rate of 12.35% per annum (12 O.S. § 727) from the date of December 12, 1989 to July 6, 1990, and post-judgment interest at the rate of 8.09% per annum (28 U.S.C. § 1961) from July 6, 1990 on the total of said principal sum and pre-judgment interest. Costs are assessed against Defendant if timely applied for under Local Rule 6.

DATED this 6th day of July, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

JUL -6 1990

OK

FEDERAL DEPOSIT INSURANCE CORPORATION,)
AS MANAGER OF THE FEDERAL SAVINGS AND)
LOAN INSURANCE CORPORATION RESOLUTION)
FUND, AS RECEIVER FOR PHOENIX FEDERAL)
SAVINGS AND LOAN ASSOCIATION,)

Plaintiff,)

vs.)

RANDY WALLIS, et al.,)

Defendants.)

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

No. 89-C-757-B

ORDER

Currently before the Court for consideration is Plaintiff FDIC's Motion to Dismiss the claims asserted against the FDIC by the Defendants Randy Wallis, Connie Wallis, John C. Flud, Sr., Marily Flud, John C. Flud, Jr., Jantha K. Fludinkle, Joy Hinkle, J. Alan Gibson, Mary Louise Gibson, Lloyd G. Towery, and Mary J. Towery's Counterclaims against the FDIC.

On January 22, 1988, Phoenix filed a foreclosure action against the Defendants herein. Defendants Hinkle, Gibson, and Towery filed an Answer and Counterclaim alleging Phoenix committed several improper lending practices, fraudulent misrepresentations, and failures to disclose. On August 31, 1988, the Federal Home Loan Bank Board declared Phoenix Federal Savings and Loan Association (Phoenix) insolvent and appointed the Federal Savings and Loan Insurance Coloration ("FSLIC") as Receiver. As Receiver, the FSLIC became possessed of all of Phoenix's assets and liabilities. On August 31, 1988, the Receiver transferred

substantially all of Phoenix's assets, demand deposits and secured liabilities to Cimarron Federal Savings and Loan Association ("Cimarron").¹

In Defendant's five count counterclaim, only count five seeks money damages against FDIC.² The four remaining counts either seek money damages or equitable action against the developer or holder of the Notes and real estate mortgages and should be properly asserted against those parties (i.e. Cimarron and Lakeland).³ Therefore, the Court need only address the claim for money damages against the FDIC for Phoenix's misrepresentations and omissions.

The FDIC asks the Court to dismiss the counterclaim for two reasons: (1) the claim for money damages is prudentially moot because Defendants are only entitled to the amount of money they would have received if Phoenix had been liquidated, and, as an unsecured creditor, they would not have received any money; and (2) the D'Oench, Duhme Doctrine, and its progeny, does not allow individuals who execute promissory notes to raise affirmative

¹Cimarron asks this Court to assume pendent jurisdiction and grant it summary judgment on the foreclosure action.

²On August 9, 1990, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 became effective and all assets and liabilities of the FSLIC on the day before enactment were transferred to the Federal Savings and Loan Insurance Corporation Resolution Fund, to be managed by the Federal Deposit Insurance Corporation.

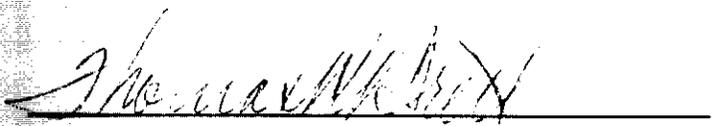
³Count One tenders to Lakeland, the developer, a reconveyance of the property and seeks a return of all consideration paid for the property; Count Two seeks cancellation of the notes and real estate mortgages; Count Three seeks an accounting of the property; Count Four seeks reinstatement of their credit rating; and Count Five seeks exemplary and punitive damages.

defenses and/or counterclaims based upon alleged oral agreements with the failed bank. 315 U.S. 447 (1941).

With regard to the prudential mootness question, the Court has previously ruled in this case that insufficient funds out of which to pay a prospective judgment is not grounds for dismissing an action for money damages. See, FDIC v. Wallis, dated Feb. 26, 1990. The type of money damages sought, however, may affect whether the action should be dismissed and such issue was not addressed in the Court's previous order. Count five seeks exemplary and punitive damages against the FDIC. Exemplary and punitive damages cannot be asserted against the FDIC. Professional Asset Management, Inc. v. Penn Square Bank, 566 F.Supp. 134, 136-137 (W.D.Okla. 1983).

Therefore, FDIC's Motion to Dismiss is SUSTAINED. The Court declines to exercise its pendent jurisdiction and ORDERS the case be REMANDED to Mayes County District Court for the underlying foreclosure action.

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



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

JUL -6 1990 *OK*

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

FEDERAL DEPOSIT INSURANCE CORPORATION,)
AS MANAGER OF THE FEDERAL SAVINGS AND)
LOAN INSURANCE CORPORATION RESOLUTION)
FUND, AS RECEIVER FOR PHOENIX FEDERAL)
SAVINGS AND LOAN ASSOCIATION,)

Plaintiff,)

vs.)

JIMMY M. SMITH, et al.,)

Defendants.)

No. 89-C-751-B ✓

O R D E R

Currently before the Court for consideration is Plaintiff FDIC's Motion to Dismiss Defendants Jimmy M. Smith, Robert D. Marsters, Donald H. Dinwiddie and Mary Ann Dinwiddie's Counterclaims against the FDIC.

On January 22, 1988, Phoenix filed a foreclosure action against the Defendants herein. Defendants Smith, Marsters and Dinwiddie filed an Answer and Counterclaim alleging Phoenix committed several improper lending practices, fraudulent misrepresentations, and failures to disclose. On August 31, 1988, the Federal Home Loan Bank Board declared Phoenix Federal Savings and Loan Association (Phoenix) insolvent and appointed the Federal Savings and Loan Insurance Coloration ("FSLIC") as Receiver. As Receiver, the FSLIC became possessed of all of Phoenix's assets and liabilities. On August 31, 1988, the Receiver transferred substantially all of Phoenix's assets, the demand deposits and secured liabilities to Cimarron Federal Savings and Loan

Association ("Cimarron").¹

In Defendant's five count counterclaim, only count five seeks money damages against FDIC.² The four remaining counts either seek money damages or equitable action against the developer or holder of the Notes and real estate mortgages and should be properly asserted against those parties (i.e. Cimarron and Lakeland).³ Therefore, the Court need only address the claim for money damages against the FDIC for Phoenix's misrepresentations and omissions.

The FDIC asks the Court to dismiss the counterclaim for two reasons: (1) the claim for money damages is prudentially moot because Defendants are only entitled to the amount of money they would have received if Phoenix had been liquidated, and, as an unsecured creditor, they would not have received any money; and (2) the D'Oench, Duhme Doctrine, and its progeny, does not allow individuals who execute promissory notes to raise affirmative defenses and/or counterclaims based upon alleged oral agreements with the failed bank. 315 U.S. 447 (1941).

¹Cimarron asks this Court to assume pendent jurisdiction and grant it summary judgment on the foreclosure action.

²On August 9, 1990, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 became effective and all assets and liabilities of the FSLIC on the day before enactment were transferred to the Federal Savings and Loan Insurance Corporation Resolution Fund, to be managed by the Federal Deposit Insurance Corporation.

³Count One tenders to Lakeland, the developer, a reconveyance of the property and seeks a return of all consideration paid for the property; Count Two seeks cancellation of the notes and real estate mortgages; Count Three seeks an accounting of the property; Count Four seeks reinstatement of their credit rating; and Count Five seeks exemplary and punitive damages.

With regard to the prudential mootness question, the Court has previously stated that insufficient funds out of which to pay a prospective judgment is not grounds for dismissing an action for money damages. See, FDIC v. Stefanoff, 88-C-1357-B. The type of money damages sought, however, may affect whether the action should be dismissed. Count five seeks exemplary and punitive damages against the FDIC. Exemplary and punitive damages cannot be asserted against the FDIC. Professional Asset Management, Inc. v. Penn Square Bank, 566 F.Supp. 134, 136-137 (W.D.Okl. 1983).

Therefore, FDIC's Motion to Dismiss is SUSTAINED. The Court declines to exercise its pendent jurisdiction and ORDERS the case be REMANDED to Mayes County District Court for the underlying foreclosure action.

IT IS SO ORDERED, this 6th day of July, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

liabilities to Cimarron Federal Savings and Loan Association ("Cimarron").¹

In Defendant's five count counterclaim, only count five seeks money damages against FDIC.² The four remaining counts either seek money damages or equitable action against the developer or holder of the Notes and real estate mortgages and should be properly asserted against those parties (i.e. Cimarron and Lakeland).³ Therefore, the Court need only address the claim for money damages against the FDIC for Phoenix's misrepresentations and omissions.

The FDIC asks the Court to dismiss the counterclaim for two reasons: (1) the claim for money damages is prudentially moot because Defendants are only entitled to the amount of money they would have received if Phoenix had been liquidated, and, as an unsecured creditor, they would not have received any money; and (2) the D'Oench, Duhme Doctrine, and its progeny, does not allow individuals who execute promissory notes to raise affirmative defenses and/or counterclaims based upon alleged oral agreements

¹Cimarron asks this Court to assume pendent jurisdiction and grant it summary judgment on the foreclosure action.

²On August 9, 1990, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 became effective and all assets and liabilities of the FSLIC on the day before enactment were transferred to the Federal Savings and Loan Insurance Corporation Resolution Fund, to be managed by the Federal Deposit Insurance Corporation.

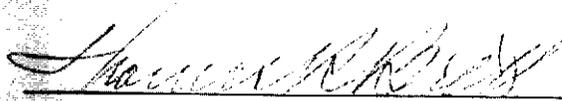
³Count One tenders to Lakeland, the developer, a reconveyance of the property and seeks a return of all consideration paid for the property; Count Two seeks cancellation of the notes and real estate mortgages; Count Three seeks an accounting of the property; Count Four seeks reinstatement of their credit rating; and Count Five seeks exemplary and punitive damages.

with the failed bank. 315 U.S. 447 (1941).

With regard to the prudential mootness question, the Court has previously stated that insufficient funds out of which to pay a prospective judgment is not grounds for dismissing an action for money damages. See, FDIC v. Stefanoff, 88-C-1357-B. The type of money damages sought, however, may affect whether the action should be dismissed. Count five seeks exemplary and punitive damages against the FDIC. Exemplary and punitive damages cannot be asserted against the FDIC. Professional Asset Management, Inc. v. Penn Square Bank, 566 F.Supp. 134, 136-137 (W.D.Okla. 1983).

Therefore, FDIC's Motion to Dismiss is SUSTAINED. The Court declines to exercise its pendent jurisdiction and ORDERS the case be REMANDED to Mayes County District Court for the underlying foreclosure action.

IT IS SO ORDERED, this 6th day of July, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED
JUL -6 1990

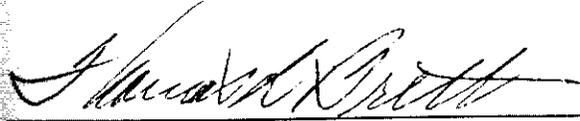
CALVIN ANTHONY ROUSE,)
)
 Plaintiff,)
)
 vs.)
)
 DAVID WALKER and CITY OF TULSA,)
 OKLAHOMA,)
)
 Defendants.)

JACK C. SILVER, CLERK
U.S. DISTRICT COURT
No. 89-C-507-B ✓

J U D G M E N T

In accord with the Order filed this date sustaining the Defendants' Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendants, David Walker and the City of Tulsa, Oklahoma, and against the Plaintiff, Calvin Anthony Rouse. Plaintiff shall take nothing of his claim.

Dated, this 6th day of July, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

F I L E D

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

JUL 6 1990

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

PACCAR FINANCIAL CORP., a)
Washington corporation,)

Plaintiff,)

vs.)

No. 89-C-306-B

MID-AMERICA RECOVERY, INC.,)
an Oklahoma corporation, and)
GLEN L. LAWRENCE, an)
individual,)

Defendants.)

JUDGMENT

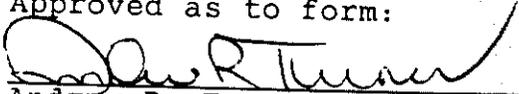
Upon the Complaint filed herein, judgment is hereby entered in favor of the Plaintiff and against the Defendants, jointly and severally, in the amount of \$60,614.29, plus attorneys fees and costs totalling \$36,287.26. Upon the Counterclaim filed herein, judgment is hereby entered in favor of the Defendants and against the Plaintiff in the amount of \$30,291.66, plus attorneys fees and costs totalling \$25,900.00. This results in a net judgment in favor of the Plaintiff and against the Defendants, joint and severally, in the amount of \$40,709.89, plus post-judgment interest from and after March 13, 1990, at the rate of 8.0% per annum.

Dated: July 6, 1990.

S/ THOMAS R. BRETT

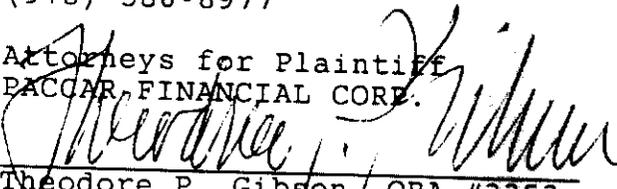
Hon. Thomas R. Brett
U.S. District Judge

Approved as to form:


Andrew R. Turner, OBA No. 9125

of
Conner & Winters
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-8977

Attorneys for Plaintiff
PACOR FINANCIAL CORP.


Theodore P. Gibson, OBA #3353

Tipps & Gibson
210 Park Centre Building
Tulsa, Oklahoma 74103
(918) 585-1181

Attorneys for Defendants

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

FILED

JUL 6 1990

PATTY GROGG,

Plaintiff,

vs.

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

Defendant.

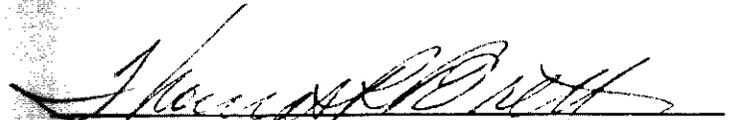
Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 88-C-477-B

ORDER

Currently before the Court is the Defendant's Appeal of the Magistrate's Report and Recommendation that the Administrative Law Judge's decision be reversed because it was not supported by substantial evidence. After reviewing the pleadings and the supporting medical records, the Court concludes the Magistrate's Report and Recommendation should be affirmed. However, as the decision was rendered at the fourth step of a five step test and the Court has insufficient information to make such a determination, the case should be remanded to the Administrative Law Judge for a determination of whether Plaintiff's impairment prevents her from performing any relevant work available in the national economy (Step 5).

IT IS SO ORDERED, this 6th day of July, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 KAREN A. FOSTER; STEPHEN E.)
 FOSTER; COUNTY TREASURER,)
 Tulsa County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

JUL 6 1990

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

CIVIL ACTION NO. 89-C-595-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 5th day
of July, 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, Karen A.
Foster and Stephen E. Foster, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Karen A. Foster,
acknowledged receipt of Summons and Complaint on November 11,
1989; that Defendant, County Treasurer, Tulsa County, Oklahoma,
acknowledged receipt of Summons and Complaint on July 20, 1989;
and that Defendant, Board of County Commissioners, Tulsa County,
Oklahoma, acknowledged receipt of Summons and Complaint on
July 20, 1989.

The Court further finds that the Defendant, Stephen E. Foster, was 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 December 15, 1989, and continuing to January 19, 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, Stephen E. Foster, 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, Stephen E. Foster. 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 his

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 August 4, 1989; and that the Defendants, Karen A. Foster and Stephen E. Foster, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on March 20, 1990, Karen A. Foster filed her voluntary petition in bankruptcy in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 90-00695-C. On April 16, 1990, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtor by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described below.

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 Five (5), Block Three (3), IRVING PLACE, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on May 20, 1987, the Defendants, Karen A. Foster and Stephen E. Foster, 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 \$18,800.00, 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, Karen A. Foster and Stephen E. Foster, 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 20, 1987, covering the above-described property. Said mortgage was recorded on May 21, 1987, in Book 5024, Page 1972, in the records of Tulsa County, Oklahoma.

The Court further finds that by Quit-Claim Deed dated July 8, 1988, Defendant, Stephen E. Foster, conveyed the above-described real property to Defendant, Karen A. Foster. Said Quit-Claim Deed was recorded on July 21, 1988, in Book 5116 at Page 579 in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Karen A. Foster and Stephen E. Foster, 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, Karen A. Foster and Stephen E. Foster, are indebted to the Plaintiff in the principal sum of \$18,693.78, plus interest at the rate of

9 percent per annum from April 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, 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, Karen A. Foster and Stephen E. Foster, in the principal sum of \$18,693.78, plus interest at the rate of 9 percent per annum from April 1, 1988 until judgment, plus interest thereafter at the current legal rate of 8.09 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

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

First:

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

Second:

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

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

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

ST. JAMES O. HUDON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT, OBA #741
Assistant United States Attorney

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

Judgment of Foreclosure
Civil Action No. 89-C-595-E

FILED

JUL 6 1990

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

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

SHELTER INSURANCE COMPANIES, a)
 Missouri corporation,)
)
 Plaintiff,)
)
 v.)
)
 WANELLA JEAN ANGIERI and DANIEL ANGIERI,)
 and ANN MARIE RODRIGUES,)
)
 Defendants.)

No. 89-C-089-B ✓

RELEASE OF ALL CLAIMS

FOR AND IN CONSIDERATION of the payment to Wanella Jean Angieri; Daniel Angieri; Gregory LaFavers; and Jim Watts at this time of the sum of Thirteen Thousand Five Hundred and No/100ths Dollars (\$13,500.00), the receipt of which is hereby acknowledged, they, being of lawful age, do hereby release, acquit and forever discharge Shelter Insurance Companies of and from any and all actions, causes of action, claims, demands, damages, costs, expenses and compensation, on account of, or in any way growing out of the declaratory judgment action, Case Number 89-C-089-B, and they hereby acknowledge full settlement and satisfaction of all claims of whatever kind or character which they may have against Shelter Insurance Companies by reason of the above-mentioned damages or losses arising out of the declaratory judgment action, Case No. 89-C-089-B.

They hereby declare and represent that in making this Release and agreement, it is understood and agreed that they rely wholly upon their own judgment, belief and knowledge of the nature, extent and duration of said damages, and that they have not been influenced to any extent whatever in making this Release by any representatives or statements regarding said damages, or regarding any other matters, made by the person who is hereby released, or by any person or persons representing him, or them.

It is further understood and agreed that this settlement is the compromise of a

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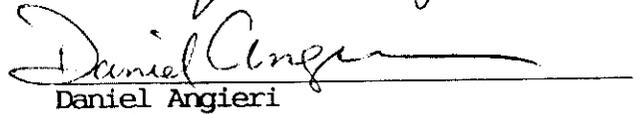
doubtful and disputed claim, and that the payment is not to be construed as an admission of liability on the part of Shelter Insurance Companies, by whom liability is expressly denied.

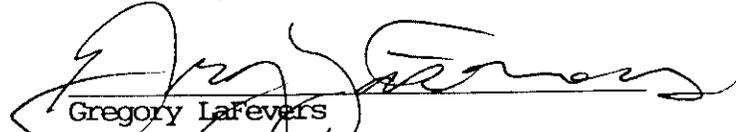
This Release contains the ENTIRE AGREEMENT between the parties hereto, and the terms of this Release are contractual and not a mere recital.

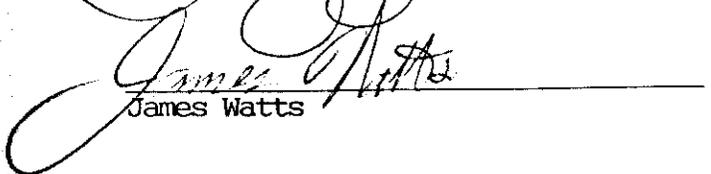
They further state that they have carefully read the foregoing Release and know the contents thereof, and they sign the same as their own free act.

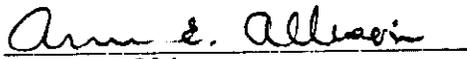
WITNESS their hands this 3rd day of July, 1990.


Wanella Jean Angieri


Daniel Angieri


Gregory Lafavers


James Watts


Ann E. Allison
Attorney for Plaintiff

NGM/jkb

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

FILED

JUL 6 1990

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

STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)

Plaintiff,)

vs.)

DONALD COOPER and VIRGINIA)
COOPER, individually and as)
husband and wife, MAURICE D.)
RUBLE, JR., an individual,)
RICHARD M. HAMMOND, JR., an)
individual, GREG OGUNSEYE,)
individually and d/b/a)
CONFIDENCE MOTORS, and)
ART SHARP, an individual,)

Defendants.)

No. 90-C-217 E

DEFAULT JOURNAL ENTRY OF JUDGMENT

Now on this 5th day of July, 1990, the above-entitled matter came on regularly for hearing. Plaintiff appeared by and through its attorneys, Joseph H. Paulk and Marylinn G. Moles; the defendants, Maurice D. Ruble, Jr. and Richard M. Hammond, Jr., appeared neither in person nor by counsel but came not and made default. Thereupon, the Court found that it had jurisdiction in the premises, and that the defendants had been duly and properly served with Summons, but had wholly failed, refused, and neglected to plead, answer, or otherwise defend. The Court thereupon found that the defendants, Maurice D. Ruble, Jr. and Richard M. Hammond, Jr., were in default, and ordered that the

allegations of plaintiff's Petition be taken as true and confessed as against the defendants as follows: ' .

1. The Court hereby finds that Richard M. Hammond, Jr. and Maurice D. Ruble, Jr., have been properly served with Summons and a copy of the complaint filed herein pursuant to the Federal Rules of Civil Procedure;

2. That as a result defendants Maurice D. Ruble, Jr. and Richard M. Hammond, Jr., are on notice of the allegations set forth in plaintiff's Complaint;

3. That no entry of appearance or answer is on file on behalf of either defendant Maurice D. Ruble, Jr. or Richard M. Hammond, Jr., and the time within which for them to respond has expired;

4. That as a result neither of these defendants are asserting a claim of ownership, title, or interest in the automobile described in plaintiff's Complaint;

5. That as a result, neither Maurice D. Ruble, Jr. nor Richard M. Hammond, Jr., are the owners of said vehicle now nor were they at the time of the sale or the time of the theft as further described in plaintiff's Complaint filed with the Court herein.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREE by the Court that the plaintiff have and is hereby granted a declaratory judgment against the defendants Maurice D. Ruble, Jr. and Richard M. Hammond, Jr., pursuant to the above findings and along with this equitable relief, the plaintiff is entitled

to a reasonable attorney's fee and all the court costs of this
action.


JUDGE OF THE DISTRICT COURT

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

FILED

JUL 6 1990 *DA*

CLAUDE JAY ANDERSON)
)
 Plaintiff,)
)
 vs.)
)
 FARMERS INSURANCE COMPANY, INC.)
 A Kansas Corporation,)
)
 Defendant,)
)
 and)
)
 PHYSICIANS HEALTH PLAN OF)
 OKLAHOMA, INC.,)
)
 Intervenor.)

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

Case No. 89-C-193-B /

ORDER

This matter comes on for consideration upon Motions filed by Defendant, Farmers Insurance Company, Inc., a Motion to Dismiss, filed March 29, 1990, and a Motion for Partial Summary Judgment, filed December 27, 1989. The Court will first address the Motion to Dismiss.

Plaintiff, Claude Jay Anderson, was involved in an automobile accident in March, 1987. Shelly Renee Tucker (Tucker) was the operator of the vehicle which allegedly negligently collided with Plaintiff's vehicle causing the injuries claimed by Plaintiff. Farmers Insurance Co. (Farmers) involvement is coincidentally twofold. Farmers is the liability insurer for Tucker with a policy limit of \$100,000.00. Farmers also has insured Plaintiff on two policies, each including uninsured motorist coverage of

\$100,000.00. Plaintiff alleges Tucker is an uninsured-underinsured motorist under these policies.

In April, 1987, Plaintiff filed an action in state court against Tucker, amending his Petition in June, 1987, to include Farmers. In August, 1987, Farmers filed an Amended Answer and Cross-Petition against Tucker alleging that if Farmers is liable, under its uninsured motorist exposure, to Plaintiff then Farmers is entitled to judgment against Tucker pursuant to its subrogation rights. On March 10, 1989, Plaintiff filed the instant action and on March 13, 1989, dismissed without prejudice his state court action against Farmers and Tucker. The original state court action is pending upon Farmers Cross-Petition against Tucker.

On March 13, 1990, Plaintiff filed a second state court action against the alleged tort-feasor, Tucker. On March 29, 1990, Farmers filed its second Motion to Dismiss¹, urging as grounds that the concurrent actions result in multiplicity or circuitry of actions. The Court disagrees. As these matters presently stand there exists three lawsuits no two having identical parties. The original state court action is Farmers vs. Tucker based on Farmers' subrogation rights, Anderson (Plaintiff) having opted out by voluntary dismissal against Farmers and Tucker. The present action is Anderson vs. Farmers² based upon uninsured-underinsured motorists

¹ Farmers first Motion to Dismiss, upon the ground the Complaint fails to state a claim upon which relief can be granted, was denied by the Court by order entered July 10, 1989.

² Physicians Health Plan of Oklahoma, Inc. is also a party to this action, as an Intervenor.

coverage and alleged bad faith dealing on the part of Farmers. The third and newest action is the state court suit, Anderson vs. Tucker, the alleged tort-feasor.

The Court concludes that while there are multiple actions there is not multiplicity of action as contemplated under case law. Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1 (1983). Additionally, the grounds necessary to support the abstention doctrine, Colorado River Water Conservancy District v. United States, 424 U.S. 800, (1976), *rehearing denied*, 426 U.S. 912, (1976), are absent here.

The Court concludes Farmers Motion to Dismiss, filed herein on March 29, 1990, should be and the same is hereby, DENIED.

The Court next considers Farmers' Motion for Partial Summary on the issue of its alleged bad faith actions taken in relation to its insured, Claude Jay Anderson. The basic facts relating to the bad faith issue are essentially undisputed: (1) Farmers refused to waive its subrogation rights against Shelly Renee Tucker, a then sixteen year-old high school junior; (2) a four month delay ensued during which Plaintiff was demanding Farmers relinquish its subrogation rights and pay the claims asserted by Plaintiff; (3) Farmers initially evaluated Plaintiff's claim under the tort-feasors liability policy in the amount of \$100,000.00, filing an Offer to Allow Judgment in that amount, then also offering to advance Plaintiff \$75,000.00 of uninsured motorist coverage contingent upon a jury verdict against Tucker of at least that

amount³; (4) Farmers later increased its evaluation of plaintiff's damages claim.

The Court will view the actions of Farmers *vis-a-vis* bad faith in the light of then known or knowable facts relative to the claim of Plaintiff at the time of his demand upon Farmers. Buzzard v. McDanel, 736 P.2d 157 (Okla. 1987); Conti v. Republic Underwriters Ins. Co., 782 P.2d 1357 (Okla. 1989). It was then unknown whether Tucker, the alleged tort-feasor, was negligent. Also unknown was the extent of Anderson's injuries. Based upon these unknowns a four month delay during which Farmers evaluated Anderson's claim would not, in the Court's opinion, be unreasonable nor rise to the level of bad faith refusal to act and/or pay a claim. Liability may be imposed only where there is a clear showing that the insurer unreasonably, and in bad faith, withholds payment of the claim of its insured. McCorkle v. Great Atlantic Ins. Co. 637 P.2d 583 (Okla. 1981); Christian v. American Home Assurance Company, 577 P.2d 899 (Okla. 1977); Everaard v. Hartford Accident and Indemnity Co., 842 F.2d 1186 (10th Cir. 1988). Farmers refusal to waive or give up its potentially valuable right to subrogation is not, the Court believes, bad faith action upon its part. Insurance companies are not chargeable with bad faith negotiations for refusing to relinquish statutory or contractual rights. Kovacs v. Farmland Mut. Ins. Co., Inc., No. 67,799 (Okla. Ct. App. filed May 24, 1988). Lastly, Farmers evolving assessment of its potential liability or

³ The \$75,000.00 amount was an alternative to and not in addition to the \$100,000.00 policy limit offer.

"the value" of Anderson's claim is, in the Court's opinion, a standard and acceptable exercise of business judgment. Plaintiff has cited no authority for the proposition that an increased offer of settlement reflects bad faith on the part of the offeror. Were this the law, bad faith claims would proliferate beyond judicial management.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Windon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

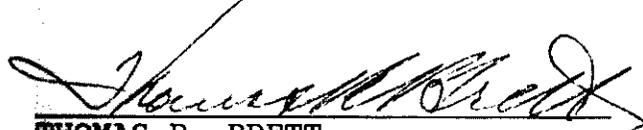
"The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of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

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

The Court concludes there exists no genuine issue as to any material fact relating to the issue of bad faith on the part of

Defendant, Farmers Insurance Company, Inc.. The Court is further of the opinion that Farmers did not act in bad faith in its actions relative to Anderson's claim. Therefore, the Court concludes Farmers' Motion for Partial Summary Judgment, on the issue of bad faith, should be and the same is hereby, SUSTAINED.

IT IS SO ORDERED this 6th day of July, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

JUL 5 1990

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 -vs-)
)
 MARCUS E. PARTEE,)
 CSS 444 68 0307)
)
 Defendant,)

CIVIL NUMBER 90-C-459 B

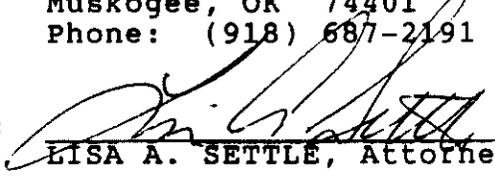
NOTICE OF DISMISSAL

COMES NOW the Plaintiff, United States of America, by and through its attorney, Herbert N. Standeven, District Counsel, Department of Veterans Affairs, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

Respectfully submitted,

UNITED STATES OF AMERICA

Herbert N. Standeven
District Counsel
Department of Veterans Affairs
125 South Main Street
Muskogee, OK 74401
Phone: (918) 687-2191

By: 
LISA A. SETTLE, Attorney

CERTIFICATE OF MAILING

This is to certify that on the 3rd day of July, 1990, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: MARCUS E. PARTEE, at 651 East 41st Place, N., Tulsa, OK 74106.


LISA A. SETTLE, Attorney

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

F I L E D

JUL 5 1990

KELLY OIL & GAS CO., INC.,
a California Corporation,

Plaintiff,

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

vs.

Case No. 89-C-625-B

COSSACK ENERGY GROUP LTD., an
Oklahoma corporation; DENNIS LEE,
individually and as a stockholder,
director and officer of COSSACK
ENERGY GROUP LTD.; BANK OF CUSHING
& TRUST CO., a state bank,

Defendants.

ORDER DISMISSING DEFENDANT BANK OF CUSHING & TRUST CO.

NOW on this 5th day of July, 1990, came on for
consideration the motion for dismissal of defendant, Bank of
Cushing & Trust Co. The Court, after reviewing the motion, the
court file, and being fully advised in the premises, finds as
follows:

1. That on May 31, 1990, the court entered an order for
leave to deposit money with the court in the sum of \$1,357.81
from account number 1274871 at Bank of Cushing & Trust Co.
2. That said sum of money was deposited with the Chief
Deputy Clerk on June 11 and 13, 1990, with service of a copy of
the order entered on May 31, 1990.
3. That the court ordered that Bank of Cushing & Trust Co.
was granted dismissal as a party to this case upon deposit of
said sums.

IT IS ORDERED, ADJUDGED AND DECREED that the defendant, Bank of Cushing & Trust Co., be and hereby is dismissed with prejudice from the above styled case.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



David M. Thornton (OBA #8999),
Attorney for Plaintiff



John B. DesBarres (OBA #12263),
Attorney for Bank of Cushing & Trust Co.

John B. DesBarres (OBA #12263)
DRUMMOND, RAYMOND & CLAUSING
1924 S. Utica, Suite 410
Tulsa, Oklahoma 74104
(918) 749-7378

3:3a:bankcush.ord

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

Randy Wallis, et al.

Plaintiff ,

vs.

Quinton R. Dodd, et al.

Defendant .

No. 88-C-1350-C

FILED

JUL 5 1990

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

ORDER

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

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

In the action herein, notice pursuant to Rule 35A was mailed
to counsel of record ^{for Plaintiff} ~~or to the parties~~, at their last address of
record with the Court, on May 10, 1990. ~~No~~
~~action has been taken in the case within thirty (30) days of the~~
~~date of the notice.~~ Plaintiff having filed Status Report on May 24, 1990,

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

Dated this 5th day of July, 1990.

W. S. LeBoek
United States District Judge

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

BILL CRUIKSHANK,
Plaintiff and
Counterclaim defendant

v.

UNITED STATES OF AMERICA
Defendant and
Counterclaimant,

v.

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

CIVIL NO. 88-C-585-C

FILED

JUL 5 1990

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

AGREED JUDGMENT

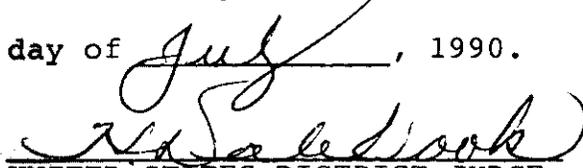
Pursuant to an agreement between counterclaim defendant,
William E. Howell, and counterclaimant, United States of America,
it is hereby

ORDERED, ADJUDGED, and DECREED that William E. Howell is
indebted to the United States of America in the sum of \$309,059.23,
with statutory interest thereon from February 10, 1986.

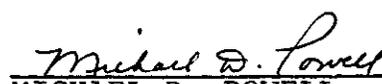
Signed this 5th day of July, 1990.

AGREED:


JOHN B. JARBOE
Jarboe & Stoermer
1810 Mid Continent Tower
Tulsa, Oklahoma 74103
(918) 582-6131


UNITED STATES DISTRICT JUDGE

ATTORNEY FOR WILLIAM E. HOWELL


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

ATTORNEY FOR UNITED STATES

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

FILED

JUL -5 1990

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

JON ENGLER TRUCKING, INC.,
an Oklahoma Corporation,

Plaintiff,

vs.

Case No. 89-C-403-E

SUNBELT EXPRESS, INC.,
a Texas corporation, and
PROGRESSIVE CASUALTY
INSURANCE COMPANY,

Defendants.

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW Plaintiff, Jon Engles Trucking, Inc., and Defendants, Sunbelt Express, Inc., and Progressive Casualty Insurance Company, by and through their undersigned counsel of record, and, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, stipulate to a dismissal with prejudice of the above complained action. Each party shall bear their own costs and attorney fees.

Respectfully submitted,

MOYERS, MARTIN, SANTEE, IMEL & TETRICK

By

Frank V. Cooper
Frank V. Cooper, OBA #11795
320 South Boston Bldg., Suite 920
Tulsa, Oklahoma 74103
(918) 582-5281

ATTORNEYS FOR PLAINTIFF
JON ENGLER TRUCKING, INC.

FELEMAN HALL, BRANDEN, WOODARD & FARRIS

By

John R. Woodard, III
John R. Woodard, III, #9853
525 South Main, Suite 1400
Tulsa, Oklahoma 74103
(918) 583-7129

ATTORNEYS FOR DEFENDANTS
SUNBELT EXPRESS, INC., and PROGRESSIVE
CASUALTY INSURANCE COMPANY

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

FILED

JUL 5 1990

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

RHONDA NANCE, and)
ELLEN BARTLEY,)
)
Plaintiffs,)
)
vs.)
)
MONTGOMERY ELEVATOR COMPANY, INC.,)
a foreign corporation,)
)
Defendant.)

No. 87-C-184-C
~~88-C-438-E~~
(Consolidated)

JUDGMENT

PURSUANT to a recommendation made in open Court on April 10, 1990, by United States Magistrate John Leo Wagner, the Honorable H. Dale Cook entered an Order herein on April 12, 1990 whereby money tendered by Mervyn's, Inc. was deposited into the Registry of the Court. The money tendered by Mervyn's, Inc. represents its settlement in these cases.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiffs, Rhonda Nance and Ellen Bartley and their attorneys, Stipe, Gossett, Stipe, Harper, Estes, McCune & Parks, recover of and from the Defendant, Mervyn's, Inc., the sum of Ten Thousand Dollars (\$10,000.00) in settlement of these cases. Further, the third party complaint which the Defendant, Mervyn's, Inc., filed against Kelley-Nelson Construction Company in these cases shall be dismissed.

UPON Said Judgment, Let Execution Issue!


H. DALE COOK
UNITED STATES DISTRICT JUDGE

1270

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

FILED

JUL 5 1990

RHONDA NANCE, and)
ELLEN BARTLEY,)
)
Plaintiffs,)
)
vs.)
)
MONTGOMERY ELEVATOR COMPANY, INC.,)
a foreign corporation,)
)
Defendant.)

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

No. 87-C-184-C
88-C-438-E
(Consolidated)

JUDGMENT

PURSUANT to a recommendation made in open Court on April 10, 1990, by United States Magistrate John Leo Wagner, the Honorable H. Dale Cook entered an Order herein on April 12, 1990 whereby money tendered by Mervyn's, Inc. was deposited into the Registry of the Court. The money tendered by Mervyn's, Inc. represents its settlement in these cases.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiffs, Rhonda Nance and Ellen Bartley and their attorneys, Stipe, Gossett, Stipe, Harper, Estes, McCune & Parks, recover of and from the Defendant, Mervyn's, Inc., the sum of Ten Thousand Dollars (\$10,000.00) in settlement of these cases. Further, the third party complaint which the Defendant, Mervyn's, Inc., filed against Kelley-Nelson Construction Company in these cases shall be dismissed.

UPON Said Judgment, Let Execution Issue!


H. DALE COOK
UNITED STATES DISTRICT JUDGE

1990

Entered

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

JUL 5 1990

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

FRANCES E. HEYDT COMPANY,

Plaintiff,

vs.

No. 87-C-974-E

CASPAR W. WEINBERGER, et al.,

Defendants.

JUDGMENT

Defendant has made application for entry of judgment upon the Court's previous order awarding attorney fees and expenses to Plaintiff, in order that the previous award may constitute a final and appealable judgment.

IT IS THEREFORE ORDERED that Plaintiff is granted judgment against the Defendant for attorney fees in the amount of \$21,546.63, and expenses in the amount of \$3,491.50.

ORDERED this 3rd day of July, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

*Entered
as to A
Principal
only*

L. BERNADETTE SMITH,)
)
Plaintiff,)
)
vs.)
)
JAMES R. O'CARROLL, M.D. and)
PRINCIPAL MUTUAL LIFE INSURANCE)
COMPANY,)
)
Defendants.)

Case No. 90-C-418-C ✓

FILED
JUL 5 1990
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER FOR PARTIAL DISMISSAL WITH PREJUDICE

This Court has for consideration the Application for Partial Dismissal with Prejudice as to defendant, Principal Mutual Life Insurance Company ("Principal"), and having been advised that the plaintiff and Principal have settled the captioned case as between themselves, and being fully advised in the premises, FINDS that the same should be granted.

IT IS THEREFORE ORDERED that the Application for Partial Dismissal with Prejudice be, and the same is, hereby granted and that Principal is hereby dismissed from the above-styled action and Complaint with prejudice and without costs or attorneys' fees pursuant to Rule 41(a), Fed.R.Civ.P. This Dismissal is specifically limited to defendant, Principal, and plaintiff's causes of action against the defendant, James R. O'Carroll, M.D., are hereby reserved.

DATED this 5th day of July, 1990.

[Signature]
UNITED STATES DISTRICT JUDGE

Submitted by:

Fred C. Cornish, OBA #1924
Stephen E. Schneider, OBA #7970
CORNISH & SCHNEIDER, INC.
917 Kennedy Building
321 South Boston Avenue
Tulsa, Oklahoma 74103
(918) 583-2284

ATTORNEYS FOR PLAINTIFF

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

JAMES NAUM,

Petitioner,

vs.

JOHN H. BROWN, Warden,
Oklahoma State Penitentiary;
MICHAEL TURPEN, Attorney
General of the State of
Oklahoma,

Respondents.

No. 85-C-320-C

FILED

JUL 5 1990

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

ORDER

The Court has received a request from petitioner for clarification of the Report and Recommendation entered by the Magistrate on February 21, 1990. This action was referred to the Magistrate following remand with directives from the Tenth Circuit Court of Appeals.¹

The Court has reviewed the mandate, along with the recommendation of the Magistrate and will provide the following clarification for the benefit of the petitioner.

Under Rose v. Lundy, 455 U.S. 509 (1982) the Supreme Court adopted a "total exhaustion" rule regarding habeas petitions. Under this rule a district court must dismiss a petition for writ of habeas corpus which contains any claim that has not been exhausted in the state courts. After the court has dismissed such "mixed petition" the prisoner is left with the choice of returning

¹No. 86-2707 Order and Judgment entered February 2, 1989.

to state court to exhaust his claims or of amending and resubmitting the habeas petition to present only exhausted claims to the district court. 455 U.S. at 510.

From a review of the record, the Magistrate determined that the following grounds asserted by petitioner require dismissal for failure to exhaust state remedies:

Ground One: Denial of effective assistance of counsel - pretrial & trial.

Ground Two: Denial of effective assistance of counsel - sentencing and appeal record.

Ground Three: Denial of effective assistance of counsel - appeal.

...

Ground Five: Conviction was obtained by involuntary plea of "Guilty-insanity" against petitioner's instructions to plead "Not Guilty/Moot".

Ground Six: Sentencing statute was/is unconstitutional as opposing "Fair Sentencing" and equal protection criteria.

Ground Seven: Petitioner was denied speedy trial.

Ground Eight: Conviction obtained by unconstitutional failure of state prosecutor to disclose to defense evidence favorable to defendant.

As to the above claims, petitioner may elect to return to state court and present these claims (thereby exhausting his state remedies) and after doing so resubmitting his habeas petition, or he may abandon these unexhausted claims.

The fourth ground asserted by petitioner states:

Ground Four: Denial of due process and court access, because he was denied access to legal materials, starved and denied recreation, and that guards conspired to have him killed.

This claim does not require exhaustion. However, these allegations should not be brought in a habeas action. Rather they are more properly considered under 42 U.S.C. §1983. To avoid statute of

limitation problems, the Court will permit petitioner to amend and assert a §1983 cause of action.²

It would also be permissible for petitioner to file his dismissed habeas claims before the state court and simultaneously amend his petition in federal court asserting the remaining §1983 claims.

These are the options available to petitioner, as directed by the Tenth Circuit Court of Appeals in its mandate. Accordingly, grounds 1, 2, 3, 5, 6, 7, and 8 contained in petitioner's writ of habeas corpus are hereby dismissed. As to ground 4, petitioner is granted leave of 60 days to amend his petition to bring a §1983 cause of action.

IT IS SO ORDERED this 5th day of July, 1990.


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

²Petitioner can request a Civil Rights Complaint Form No. XE-2 from the Court Clerk's Office. He should designate on the form "Amended Complaint", and include the present case No. 85-C-320-C.

entered

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

FILED

JUL 3 1990

NATHANIEL C. CARLIS, JR.,)
)
 Plaintiff,)
)
 vs.)
)
 SEARS ROEBUCK & COMPANY,)
)
 Defendant.)

No. 90-C-240-E ✓

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

ORDER

This matter is before the Court on the motion of Sears Roebuck & Company to dismiss Plaintiff's complaint. Plaintiff has not responded to the motion and has not sought an extension to file a response. Plaintiff has, therefore, waived any objection or opposition to the motion, and under Local Rule 15, the grounds raised by Defendant in support of its motion are deemed confessed. Even assuming Plaintiff opposed the motion, dismissal is appropriate. This is an action alleging racial discrimination in employment in violation of 42 U.S.C. §2000e-5, also known as Title VII.

A valid, final judgment precludes Plaintiff from relitigating a claim based upon issues that could have been, but were not, raised in the first action. Robert F. May v. Parker-Abbott Transfer and Storage, No. 87-1333 (10th Cir. April 4, 1990); Petromanagement Corp. v. Acme-Thomas Joint Venture, 835 F.2d 1329, 1335 (10th Cir. 1988). In this case, Plaintiff's claims arise from the same set of facts which formed the basis of Plaintiff's earlier

claim in Nathaniel C. Carlis, Jr. v. Sears Roebuck and Company, No. 89-C-184-C. Plaintiff alleged there only a state-based claim for relief; Plaintiff made no allegations of a Title VII violation. That case was dismissed on the merits by Order of July 7, 1989. Plaintiff's race discrimination allegations in this action are substantively identical to the allegations lodged in their earlier complaint. Thus, all theories of relief based upon these facts that were not raised in the first action are precluded.

IT IS THEREFORE ORDERED that the motion of Defendant Sears Roebuck & Company to dismiss Plaintiff's complaint is sustained.

ORDERED this 20 day of July, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

JUL 19 1990

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

Jack C. ... Clerk
U.S. ... COURT

DONALD THOMAS,

Plaintiff,

v.

CITY OF TULSA,

Defendant.

)
)
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)
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)
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)
)

90-C-191-E

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed March 21, 1990. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted by the Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's action must be and is hereby dismissed pursuant to the provisions of 28 U.S.C. §1915(d).

It is so Ordered this 31 day of July, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

JUL 1990

Jack C. Smith, Clerk
COURT

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

AMERICAN NATIONAL BANK & TRUST)
COMPANY, et al,)
)
 Plaintiffs,)
)
 v.)
)
 BIC CORPORATION,)
)
 Defendant.)

90-C-161-E

ORDER

Now on this 3rd day of July, 1990, comes on for consideration the above styled matter, and the Court, being fully advised in all premises finds that Plaintiffs originally erroneously moved for remand, based on outdated law as is pointed out in Defendant's response to such Motion. Apparently upon review of the authorities cited in Defendant's Response, Plaintiffs have now moved for a dismissal without prejudice. Defendants urge that certain conditions be placed upon any dismissal; namely, that Plaintiffs be required to withdraw the Motion for Remand or for this Court to rule on such Motion, and secondly, that the Court require any subsequent refileing to be done in the United States District Court for the Northern District of Oklahoma.

The Court has carefully considered the pleadings of the parties, including the arguments made and authorities cited, and finds that while one of the requested conditions can be met, the other cannot. Plaintiffs' Motion for Remand is not well taken and is hereby denied by this Court. The request for a requirement that any refileing be done in the federal system which should not be directed by this Court; Plaintiffs have a right to file

any matter needing adjudication on a **proper** forum. This right does not extend, however, to a license for forum shopping and the **Court** is confident that any future court, reviewing the history of these proceedings, would **look askance** at any attempt Plaintiffs might make to so forum shop.

IT IS THEREFORE ORDERED, **ADJUDGED** AND **DECREED** that Plaintiffs' Motion for Remand, should be, and is hereby **denied** and Plaintiffs' Motion for Dismissal should be and is hereby granted without **prejudice** to any subsequent refiling.



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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TAMMY J. SIMPSON a/k/a TAMMY
SIMPSON f/k/a TAMMY J.
TANKERSLEY; RICHARD R. SIMPSON
a/k/a RICHARD SIMPSON; COUNTY
TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

F I L E D

JUL 3 1990

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

CIVIL ACTION NO. 89-C-859-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 3rd day
of July, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendants, Tammy J.
Simpson a/k/a Tammy Simpson f/k/a Tammy J. Tankersley and
Richard R. Simpson a/k/a Richard Simpson, appear not, but make
default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Tammy J. Simpson a/k/a
Tammy Simpson f/k/a Tammy J. Tankersley, acknowledged receipt of
Summons and Amended Complaint on April 19, 1990; that the

Defendant, Richard R. Simpson a/k/a Richard Simpson, acknowledged receipt of Summons and Complaint on October 24, 1989 and Summons and Amended Complaint on April 19, 1990; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on October 17, 1989; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on October 16, 1989.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on October 27, 1989; and that the Defendants, Tammy J. Simpson a/k/a Tammy Simpson f/k/a Tammy J. Tankersley and Richard R. Simpson a/k/a Richard Simpson, 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 Thirteen (13), Block Three (3) of ROLLING MEADOWS, a Subdivision to the Town of Glenpool, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on March 19, 1982, Tammy J. Tankersley, at that time a single person, executed and delivered to the United States of America, acting through the Farmers Home Administration, her promissory note in the amount of \$36,500.00, payable in monthly installments, with interest thereon at the rate of 13.25 percent per annum.

The Court further finds that as security for the payment of the above-described note, Tammy J. Tankersley, at that time a single person, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated March 19, 1982, covering the above-described property. Said mortgage was recorded on March 19, 1982, in Book 4601, Page 1805, in the records of Tulsa County, Oklahoma.

The Court further finds that Tammy J. Tankersley, now Simpson, conveyed her interest in the subject property to Richard R. Simpson and Tammy J. Simpson, husband and wife, by General Warranty Deed dated June 3, 1985, and recorded on March 14, 1986, in Book 4930, Page 634, in the records of Tulsa County, Oklahoma.

The Court further finds that on August 1, 1984, Tammy Simpson and Richard R. Simpson executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on November 19, 1984, Tammy Simpson and Richard R. Simpson executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on September 19, 1985, Tammy Simpson and Richard R. Simpson executed and delivered to

the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on September 17, 1986, Tammy Simpson and Richard R. Simpson executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on January 20, 1987, the Interest Credit Agreements referred to above were cancelled because the borrower ceased to occupy the dwelling on the subject property.

The Court further finds that on October 15, 1987, Tammy Simpson and Richard R. Simpson executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Tammy J. Simpson a/k/a Tammy Simpson f/k/a Tammy J. Tankersley, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Tammy J. Simpson a/k/a Tammy Simpson f/k/a Tammy J. Tankersley, is indebted to the Plaintiff in the principal sum of \$36,930.34, plus accrued interest in the amount

of \$7,783.10 as of May 9, 1989, plus interest accruing thereafter at the rate of 13.25 percent per annum or \$13.4062 per day until judgment, plus interest thereafter at the current legal rate until fully paid, and the further sum due and owing under the interest credit agreements of \$9,241.91, plus interest on that sum at the current 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 \$449.00, plus penalties and interest, for the year 1989. Said lien is superior 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.

The Court further finds that the Defendant, Richard R. Simpson a/k/a Richard Simpson, is in default and has 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 Defendant, Tammy J. Simpson a/k/a Tammy Simpson f/k/a Tammy J. Tankersley, in the principal sum of \$36,930.34, plus accrued interest in the amount of \$7,783.10 as of May 9, 1989, plus interest accruing thereafter at the rate of 13.25 percent per annum or \$13.4062 per day until judgment, plus interest thereafter at the current legal rate of 8.09 percent per annum until fully paid, and the

further sum due and owing under the interest credit agreements of \$9,241.91, plus interest on that sum at the current legal rate of 8.09% percent per annum until fully 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 \$449.00, plus penalties and interest, for ad valorem taxes for the year 1989, plus the costs of this action.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Tammy J. Simpson a/k/a Tammy Simpson f/k/a Tammy J. Tankersley, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$449.00, 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.

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

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

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney


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

Judgment of Foreclosure
Civil Action No. 89-C-859-E

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

F I L E D

JUL 3 1990

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

TEDDY C. COFFEE,)
)
 Plaintiff,)
)
 v.)
)
 LOUIS W. SULLIVAN, M.D.,)
 Secretary of Health and)
 Human Services,)
)
 Defendant.)

Case No. 89-C-517-B ✓

O R D E R

This matter comes on for consideration upon the objection of the Plaintiff, Teddy C. Coffee, to the Findings and Recommendations of the U.S. Magistrate, entered herein on March 20, 1990.

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

The Social Security Act entitles every individual who "is under a disability" to a disability insurance benefit. 42 U.S.C.A. § 423(a)(1)(D) (1983). "Disability" is defined as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment." *Id.* § 423(d)(1)(A). An individual

"shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work

experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work."

Id. § 423(d)(2)(A).

Under the Social Security Act the claimant bears the burden of proving a disability, as defined by the Act, which prevents him from engaging in his prior work activity. Reyes v. Bowen, 845 F.2d 242, 243 (10th Cir. 1988); 42 U.S.C. § 423(d)(5) (1983). Once the claimant has established such a disability, the burden shifts to the Secretary to show that the claimant retains the ability to do other work activity and that jobs the claimant could perform exist in the national economy. Reyes, 845 F.2d at 243; Williams v. Bowen, 844 F.2d 748, 751 (10th Cir. 1988); Harris v. Secretary of Health and Human Services, 821 F.2d 541, 544-45 (10th Cir. 1987). The Secretary meets this burden if the decision is supported by substantial evidence. *See*, Campbell v. Bowen, 822 F.2d 1518, 1521 (10th Cir. 1987); Brown v. Bowen, 801 F.2d 361, 362 (10th Cir. 1986). "Substantial evidence" requires "more than a scintilla, but less than a preponderance," and is satisfied by such relevant "evidence that a reasonable mind might accept to support the conclusion." Campbell v. Bowen, 822 F.2d at 1521; Brown, 801 F.2d at 362. The determination of whether substantial evidence supports the Secretary's decision, however,

"is not merely a quantitative exercise. Evidence is not substantial 'if it is overwhelmed by other evidence--particularly

certain types of evidence (e.g., that offered by treating physicians)--or if it really constitutes not evidence but mere conclusion."

Fulton v. Heckler, 760 F.2d 1052, 1055 (10th Cir. 1985) (quoting Knipe v. Heckler, 755 F.2d 141, 145 (10th Cir. 1985)). Thus, if the claimant establishes a disability, the Secretary's denial of disability benefits, based on the claimant's ability to do other work activity for which jobs exist in the national economy, must be supported by substantial evidence.

The Secretary has established a five-step process for evaluating a disability claim. See Bowen v. Yuckert, 482 U.S. 137, 107 S.Ct. 2287, 96 L.Ed.2d 119 (1987). The five steps, as set forth in Reyes v. Bowen, 845 F.2d at 243, proceed as follows:

- (1) A person who is working is not disabled. 20 C.F.R. § 416.920(b).
- (2) A person who does not have an impairment or combination of impairments severe enough to limit his ability to do basic work activities is not disabled. 20 C.F.R. § 416.920(c).
- (3) A person whose impairment meets or equals one of the impairments listed in the "Listing of Impairments," 20 C.F.R. § 404, subpt. P, app. 1, is conclusively presumed to be disabled. 20 C.F.R. § 416.920(d).
- (4) A person who is able to perform work he has done in the past is not disabled. 20 C.F.R. § 416.920(e).
- (5) A person whose impairment precludes performance of past work is disabled unless the Secretary demonstrates that the person can perform other work available in the national economy. Factors to be considered are age, education, past work experience, and residual functional capacity. 20 C.F.R. § 416.920(f).

If at any point in the process the Secretary finds that a person

is disabled or not disabled, the review ends. Reyes, 845 F.2d at 243; Talbot v. Heckler, 814 F.2d 1456, 1460 (10th Cir. 1987); 20 C.F.R. § 416.920.

In the present case, the Administrative Law Judge entered this decision at the fifth level of the sequence. The ALJ determined Plaintiff did not experience pain of such intensity and severity as to prevent him from engaging in all substantial gainful work activity. The ALJ recognized Plaintiff was unable to perform his past line of work but did have the residual physical capacity to engage in work of a sedentary nature such as various types of clerk or dispatcher jobs. The Magistrate determined, and the Court agrees, the ALJ did not ignore the findings of the treating physicians. The ALJ acknowledged that, in the opinions of Drs. Kamani, Fortner, and DeFehr, the Plaintiff was disabled; however, Dr. Kamani's March 29, 1987, report found Plaintiff not disabled for any occupation and was a suitable candidate for rehabilitation services and the like. Dr. DeFehr was of the opinion Plaintiff had the residual physical capacity to lift or carry 30 pounds and, further, a capacity to sit for three-fourths of a normal work day. Taken as a whole, the findings of the physicians did not make out a prima facie case of disability.

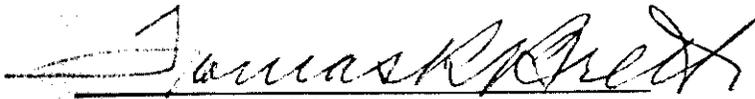
The Magistrate concluded the ALJ did not ignore Plaintiff's impairment of stress. Again, the Court agrees. The Court recognizes, as other Courts have, claimants with acute heart disease may be effectively disabled by the effect of stress, but the dangers of stress to the claimant's health must be documented

by treating physicians or at least supported in some meaningful way by the claimant's own testimony. Clark v. Bowen, 668 F.Supp. 1357 (N.D. Cal. 1987); Bradley v. Bowen, 800 F. 2d 760 (8th Cir. 1986); The Court is of the opinion that the conclusion that the Plaintiff was not disabled by stress is correct. Plaintiff was not under stress after he quit his last job as truck and shop supervisor. Plaintiff also testified he drives tractor-trailer trucks long distances without being bothered by chest pain. Plaintiff's primary stress, in the opinion of Dr. Fortner, is not having enough income to survive on.

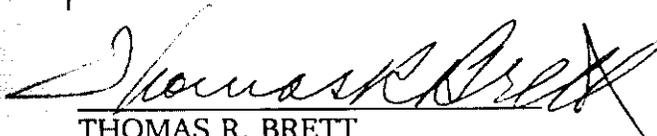
The Magistrate concluded, and the Court agrees, that Plaintiff's activities do not show that he cannot perform substantial gainful activity. Plaintiff has had chest pains since 1973 but was able to work at a stressful job until 1986.

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

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


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Dated this 3rd day of July, 1990.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett". The signature is written in dark ink and is positioned above the printed name.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BILLY DEAN BURNS,

Defendant.

No. 89-C-704-E
87-CR-79-E

FILED

JUL 8 1990

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

ORDER

This matter is before the Court on the motion of Petitioner to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. §2255. Petitioner is in the custody of the Attorney General of the United States pursuant to a judgment and conviction of this Court rendered January 5, 1988. Petitioner was sentenced to twenty (20) years imprisonment without parole under 18 U.S.C. §§922(g) and 924(e)(1). Petitioner's sentence was modified June 13, 1988 to fifteen (15) years without parole.

This court earlier overruled all grounds presented by Petitioner, except one, and the court asked for clarification and further briefing on that issue. That issue presents the question whether Petitioner's three Kansas burglary convictions were improperly considered for sentence enhancement when Petitioner's civil rights had been restored fully by the state of Kansas pursuant to his discharge from parole. Petitioner contends that his three former convictions were not available to enhance his sentence under 18 U.S.C. §924(e)(1) because he was no longer under

any firearms restrictions under K.S.A. §21-4204 (1988).

Section 21-4204 states in part:

(1) Unlawful possession of a firearm is... (b) Possession of a firearm with a barrel less than twelve (12) inches long by a person who, within five (5) years preceding such violation has been convicted of a felony under the laws of Kansas or any other jurisdiction or has been released from imprisonment for a felony....

The court is satisfied that in 1987, when Petitioner committed the instant offense, he was subject to firearms restrictions under this provision of Kansas law, despite the fact he received a certificate upon his 1981 discharge from parole restoring his civil rights. When Petitioner received this certificate in 1981 he was serving a federal sentence on case number 78-CR-128-C for conspiring to possess with intent to distribute amphetamine. He was sentenced on April 23, 1979 to five years in the custody of the Attorney General and a special parole term of five years. At the time of the sentencing, Petitioner was also the subject of charges pending in the state court in Oklahoma for possession of a firearm after a former felony conviction. Petitioner was not discharged from imprisonment on the federal drug conviction until March 14, 1986. He was, therefore, still subject to Kansas firearms restrictions when he committed the instant offense, some ten months following his release from imprisonment. Petitioner's claim that the three Kansas convictions were improperly used to enhance his sentence is, thus, without merit.

IT IS THEREFORE ORDERED that Petitioner's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. §2255 is

denied.

ORDERED this 2^d day of July, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

JUL 19 1990 *dh*

SHARON GLENN,
Plaintiff,

vs.

OKLAHOMA EMPLOYMENT SECURITY
COMMISSION, et al.,
Defendants.

No. 88-C-453-E ✓

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

ORDER

This matter is before the court on the motion of defendant Jack Manley to dismiss or alternatively for summary judgment regarding plaintiff's claim for violation of her first amendment right to freedom of association. The court previously requested supplemental briefing on the question whether plaintiff can maintain such a claim in these circumstances. Defendants filed a supplemental brief. Plaintiff did not. The court, nevertheless, heard brief oral argument on this issue when it addressed other motions made by the parties and, took the matter under advisement pending further review. The court has further reviewed the authorities, plaintiff's Complaint, and the evidence Plaintiff presents in support of her claim. The court finds that defendant Jack Manley, the only remaining defendant against whom plaintiff lodges this claim for relief, is entitled to summary judgment for the following reasons.

Certain associational rights are protected by the Constitution and the deprivation of those rights is actionable under Title 41 U.S.C. §1983. Trejo v. Wattles, 636 F. supp. 992, 996-997 (D.

Colo. 1985). To state a §1983 claim, a Plaintiff must (1) show that she was deprived of some right secured by the Constitution due to the action taken under color of law, Sanchez v. Marquez, 457 F. Supp. 359, 362 (D. Colo. 1978); and (2) include in the complaint an allegation that defendant intended to interfere with a particular relationship protected by the freedom of association, Trujillo v. Board of County Comm'n of Santa Fe, 768 F.2d 1186, 1190 (10th Cir. 1985).

Courts have recognized two types of protected associations: (1) associations founded on intimate relationships in which freedom of association is protected as a fundamental element of liberty , and (2) associations formed for the purpose of engaging in activities protected by the first amendment, for example, exercise of speech, assembly, and religion, Roberts v. Jaycees, 468 U.S. 609, 625 (1984). Some familial relationships fall within the ambit of intimate relationships because "family relationships by their nature, involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs, but also distinctly personal aspects of one's life." Id., at 619-620.

Government employees who claim that adverse employer action was taken against them based upon the exercise of their associational rights must show that they were engaged in constitutionally protected conduct, which conduct was a substantial or motivating factor in the government employer's decision. Rode v. Dellarciprete, 845 F.2d 1195, 1204 (3d Cir. 1988) (citing Mount Healthy City School Dist. Bd. of Ed. v. Doyle, 429 U.S. 274, 287

(1977). In the case of alleged interference with a protected intimate relationship, conduct by the governmental defendant, however improper or unconstitutional, will work an unconstitutional deprivation of the freedom of intimate association only if the conduct was directed at that right. Trujillo, 768 F.2d at 1190.

It is clear, therefore, that plaintiff's claim for violation of her right to freedom of association with her husband is cognizable. Plaintiff bears a heavy burden of proof, however, and the court must find in this case that Plaintiff is unable to sustain her burden.

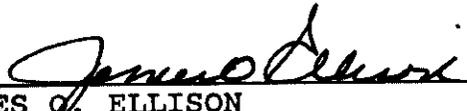
Government officials performing discretionary functions are not liable for their conduct unless their actions violate clearly established statutory or constitutional rights of which a reasonable person would have known. Pueblo Neighborhood Health Ctrs. v. Losavio, 847 F.2d 642, 645 (10th Cir. 1985). Even officials who violate constitutional rights are protected by a qualified immunity unless it is also demonstrated that their conduct was unreasonable under the applicable standard. Davis v. Scherer, 468 U.S. 183, 190, 104 S.Ct. 3012 (1984). The plaintiff bears the burden to show sufficient evidence both that the defendant's alleged conduct violated the law, and that the law was clearly established when the alleged violation occurred. Pueblo, 847 F.2d 646.

Plaintiff has produced no evidence of an unconstitutional motive on the part of defendant Manley directed at her intimate associational rights with her husband. State of mind is of course difficult to prove. Nevertheless, there is no indication in the

evidence submitted that a genuine fact issue exists whether Manley acted with the intent to deprive Plaintiff of her associational rights with her husband. Under the standards set by Celotex and Liberty Lobby, Plaintiff's first amendment claim on this issue must, therefore, be dismissed. Celotex Corp. v. Catrett, 477 U. S. 317, 324, 106 S. Ct. 2548, 2555 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-250, 106 S.Ct. 2505, 2510-2511 (1986); see also, LeFevre v. Space Communications Co., 771 F.2d 421, 423 (10th Cir. 1985) (summary judgment can be appropriate even on an issue involving state of mind).

IT IS THEREFORE ORDERED that the motion of defendant Jack Manley for summary judgment on Plaintiff's claim for violation of her first amendment right of freedom of association is sustained.

ORDERED this 2^d day of July, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

entered

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

THOMAS LOWRY,
Plaintiff,

vs.

UNITED PARCEL SERVICE,
Defendant.

No. 90-C-65-E ✓

FILED

JUL 8 1990/4

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

ORDER

This action was timely removed from the state district court for Tulsa County, Oklahoma following a default judgment against Defendant United Parcel Service (UPS). UPS moves for relief from the state district court's default judgment on various grounds. The Court finds that it has original jurisdiction under the provisions of 28 U.S.C. §1441(a), and this case may properly be removed to this Court from the state district court for Tulsa County, Oklahoma.

Plaintiff Lowry's state court petition alleged: (1) that UPS had failed to pay him for at least forty hours of overtime work at time and one half his regular hourly rate, in violation of the Fair Labor Standards Act, 28 U.S.C. §201, et seq.; (2) that UPS had wrongfully discharged Plaintiff for his union activities; and (3) that UPS wrongfully discharged Plaintiff because he was about to inform state and federal agencies regarding UPS premises and equipment safety. When UPS failed to answer or appear, the state court entered default judgment against UPS in the amount of

\$1,000,000.00 plus interest and costs. UPS has submitted affidavits showing that its internal procedure for handling legal process broke down in this case and default occurred because UPS's service agent, CT, failed to follow the contractual procedure for notification of UPS's district manager, who was responsible to arrange for defense of the state court action.

Jurisdiction of a federal court on removal is derivative. When a suit is removed from state court the federal court takes the suit as it stood in the state forum. Salveson v. Western States Bankcard Ass'n., 525 F.Supp. 566 (N.D. Cal. 1981) aff'd in part, rev'd in part and remanded, 731 F.2d 1423 (9th Cir. 1984). In other words, the federal court treats everything that occurred in state court as if it had taken place in federal court. 28 U.S.C. §1441; see also, Feller v. National Enquirer, 555 F.Supp. 1114, 1118 (M.D. Ohio 1982). Therefore, the federal court has authority to set aside a default judgment entered before removal just as it would have authority to set aside its own default judgment. Azzopardi v. Ocean Drilling & Exploration Co., 742 F.2d 890 (5th Cir. 1984); Robert E. Diehl, Inc. v. Morrison, 590 F.Supp. 1190 (D. Pa. 1984). It is, therefore, a matter of discretion with the Court whether to set aside the state court judgment; see Azzopardi, 742 F.2d at 895.

Rule 60(b) of the Federal Rules of Civil Procedure provides relief from a judgment or order for reasons, among others, of (1) mistake, inadvertence, surprise or excusable neglect, (4) the judgment is void, and (6) any other reason justifying relief. This

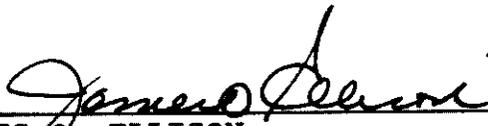
rule is applied most liberally to defaults. Courts disfavor default judgments, and all doubts are to be resolved in favor of a trial on the merits. Compton v. Alton Steamship Co., 608 F.2d 96 (4th Cir. 1979); Sandusky v. Graham & Assoc., Inc., 766 P.2d 370, 372 (Okla.App. 1988) (citing Cox v. Williams, 275 P.2d 248 (Okla. 1954)). Relief should be granted unless it appears that no injustice results from the default. Azzopardi, 742 F.2d at 895.

UPS's failure to answer was the result of a mistake by its service agent, which was compounded when UPS's new district manager, having no experience in legal matters, failed to recognize the significance of the documents sent to him. UPS timely removed the matter to federal court, raising several meritorious defenses. With respect to Plaintiff's first claim, UPS has shown that it expects to prove that the overtime pay provisions do not apply to Lowry because he was one of a group of workers whose qualifications and maximum work hours were subject to regulation by the Secretary of Transportation under 49 U.S.C. §3102(b). Section 13(b)(1) of the FLSA, 29 U.S.C. §213(b)(1) expressly provides that the overtime provisions do not apply to such workers. With respect to Plaintiff's other claims which may be characterized as claims for unfair labor practices, for breach of the collective bargaining agreement, and for retaliatory discharge, UPS has shown that the state court lacked subject matter jurisdiction to consider these claims.

IT IS THEREFORE ORDERED that the motion of UPS to vacate the judgment of state district court for Tulsa County, Oklahoma, is

granted. This matter shall be set for scheduling on the next regularly scheduled status conference docket.

ORDERED this 2^d day of July, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

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

DOROTHY JONES,

Plaintiff,

vs.

No. 90-C-171-E ✓

OGDEN ALLIED SERVICES, INC.,
a/k/a OGDEN ALLIED BUILDING
AND AIRPORT SERVICES, INC.,

Defendant.

FILED

JUL 3 1990

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

ORDER

This matter comes before the Court on the motion of Defendant to strike the punitive damage claim in Plaintiff's first claim for relief and to dismiss Plaintiff's third claim for relief. Plaintiff's amended complaint alleges sexual harassment, intentional infliction of emotional distress, and wrongful discharge. The Court finds that Defendant's motion should be sustained for the following reasons.

Plaintiff's first claim for relief for sexual harassment is governed by 42 U.S.C. §2000e-5, also known as Title VII. Punitive damages are not available under Title VII. Pearson v. Western Electric Co., 452 F.2d 1150, 1152 (10th Cir. 1976). Plaintiff's prayer for \$500,000.00 in punitive damages under her first claim for relief must, therefore, be stricken.

Plaintiff's third claim for relief alleges that she was discharged because she reported sexual harassment to her superiors, in violation of the public policy against sexual harassment. The

reporting or opposing of a workplace practice unlawful under Title VII is protected by 42 U.S.C. §2000-3(a). This Court has consistently held that the public policy exception to the employment at will doctrine does not apply when a remedy is statutorily available to address the public policy allegedly violated. Plaintiff's third claim for relief must, therefore, be dismissed.

IT IS THEREFORE ORDERED that the Defendant's motion to strike Plaintiff's prayer for punitive damages is sustained and defendant's motion to dismiss Plaintiff's third claim for relief for wrongful discharge in violation of public policy is sustained.

ORDERED this 22 day of July, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FEDERAL DEPOSIT INSURANCE)
CORPORATION, in its corporate)
capacity,)
)
Plaintiff,)
)
vs.)
)
EDWARD V. ROBERTS,)
)
Defendant.)

No. 89-C-774-B ✓

J U D G M E N T

In accord with the Order filed this date sustaining the Plaintiff's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Plaintiff, Federal Deposit Insurance Corporation, in its corporate capacity, and against the Defendant, Edward V. Roberts, for the amount of \$80,000.00, plus interest accrued as of August 15, 1989, in the sum of \$49,117.00, plus interest accruing from and after August 15, 1989, until date of Judgment in the amount of \$41.64 per diem, plus interest from this date forward at the legal rate of 8.09 per cent per annum. Costs and attorney fees may be awarded upon proper application.

DATED this 2nd day of July, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

JUL 8 1990

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

RICHARD KEVIN KING,)
)
 Plaintiff,)
)
 v.) 89-C-654-B
)
 GARY MAYNARD and DELORES)
 RAMSEY)
 Defendants.)

ORDER

This matter comes on for consideration upon the Objection¹ of the Plaintiff to the Report and Recommendation of the U.S. Magistrate entered herein on April 4, 1990.

The Plaintiff complains of constitutional violations arising from a disciplinary hearing on March 15, 1989, which resulted in the imposition upon Plaintiff of disciplinary segregation for thirty days. It is not disputed that Plaintiff lost no good time credits as a result of the disciplinary action but Plaintiff complains such misconduct determination resulted in his placement in a maximum security institution where he cannot earn good time credits. The Defendants, Gary Maynard and Delores Ramsey, are both employees of the Oklahoma Department of Corrections. Defendants

¹ Denominated by Plaintiff as Notice of Intent to Appeal. The Court will consider the matter as an Objection to the Report and Recommendation of the Magistrate. Additionally, the Objection was not timely filed; however, the Plaintiff, a pro se litigant, will be given extreme latitude it not being clear from the record that Plaintiff was made aware of his need to timely object should he disagree with the conclusions reached by the Magistrate.

maintain the suit is dismissable in that no constitutional rights have been violated, they are not "persons" for purposes of suit in their official capacity, and they enjoy qualified immunity in their individual capacities.

The Magistrate concluded that Defendant's Motion to Dismiss should be granted. The Court agrees.

The issue before the Magistrate is whether the Complaint states a cause of action under 42 U.S.C. 1983, the vehicle chosen by Plaintiff to prosecute his claims. Under § 1983 a Plaintiff must show: (1) deprivation of right(s) secured by the Constitution or laws of the United States, and (2) the person who so deprived the Plaintiff was acting colorably under state law. Gomex v. Toledo, 446 U.S. 635 (1980).

Plaintiff was not deprived of a constitutional right when he was re-classified and placed in detention, as such action(s) are well within the contemplation of a prison sentence. Hewitt v. Helms, 459 U.S. 460, (1983); Dolph v. Crisp, 446 F.Supp. 1179 (E.D. Okla. 1978); Twyman v. Crisp, 584 F. 2d 352, (10th Cir. 1978). Constitutional due process protection does not extend to such interests and Plaintiff's lost opportunities, if any, are not constitutionally protected. Dolph v. Crisp, supra.

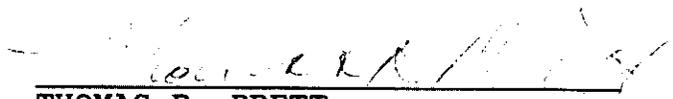
The Court further determines that, even if some constitutional protection did extend to disciplinary detention, the Defendants are not "persons" for the purposes of a §1983 suit unless claims for prospective relief are entertained. Will v. Michigan Dept. of State Police, 491 U.S. ____, 105 L.Ed.2d 45, 109 S.ct. 2304 (1989).

Lastly, government officials, performing discretionary

functions, are not liable for their conduct unless their actions violate clearly established statutory or constitutional rights which were known or should have been known by such officials. Harlow v. Fitzgerald, 457 U.S. 800 (1982); Pueblo Neighborhood Health Centers v. Losavio, 847 F.2d 642 (10th Cir. 1988).

The Court concludes the Report and Recommendation of the U.S. Magistrate, should be and the same is hereby adopted and affirmed. Accordingly, Defendants' Motion to Dismiss should be and the same is hereby SUSTAINED.

IT IS SO ORDERED this 22nd day of July, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

PHILIP A. HAMM,

Petitioner,

v.

JUDITH L. HAMM, et al,

Respondents.

JUL 19 1990

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

89-C-927-E

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed January 31, 1990. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted by the Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner Hamm's Petition for Writ of Habeas corpus should be and is hereby dismissed.

It is so Ordered this 10th day of July, 1990.


JAMES Q. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

JUL 19 1990

WILBURN ROLLO MANSFIELD,

Plaintiff,

v.

RON CHAMPION,

Defendant.

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

89-C-789-E

ORDER

Now on this 1st day of July, 1990, comes on for consideration the above styled matter, and the Court, being fully advised in all premises finds that Petitioner Mansfield has moved this Court to allow him to voluntarily dismiss his Petition for Writ of Habeas corpus without prejudice, so that he may exhaust his state remedies. No objection to such procedure has been filed. This Court, therefore, finds that Plaintiff's Motion to Dismiss should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner Mansfield's Motion to Dismiss Petition should be and is hereby granted, without prejudice to any subsequent refileing.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

JUL 8 1990

Jack C. Silver, Clerk
U.S. District Court

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

EUGENE T. FOUST,

Petitioner,

v.

RON CHAMPION, et al,

Respondents.

89-C-642-E

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed March 15, 1990. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted by the Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner Foust's Petition for Writ of Habeas corpus and Motion for Summary Judgment and/or Default Judgment should be and is hereby denied.

It is so Ordered this 7th day of July, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

JUL 2 1990

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

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

EUGENE THEODORE FOUST,)
)
 Petitioner,)
)
 v.)
)
 RON CHAMPION,)
)
 Respondent.)

89-6611-E

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed March 16, 1990. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted by the Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner Foust's Petition for Writ of Habeas Corpus should be and is hereby denied.

It is so Ordered this 7th day of July, 1990.


JAMES D. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

JUL 1990

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

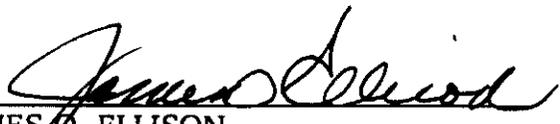
DELBERT JACKSON BARRETT,)
)
 Petitioner,)
)
 v.) 89-C-521-E
)
 THE STATE OF OKLAHOMA, and)
 TULSA COUNTY,)
)
 Respondents.)

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed January 30, 1990. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted by the Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner Barrett's Petition for A Writ of Habeas Corpus and Petitioner's Motion for Summary Judgment must be and are hereby denied.

It is so Ordered this 11th day of July, 1990.


 JAMES O. ELLISON
 UNITED STATES DISTRICT JUDGE

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

FILED

JUL 9 1990

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

RICHARD BURNS,
Plaintiff,
vs.
RONALD MAX HIGHT,
Defendant.

No. 89-C-433-E

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed January 25, 1990 upon an evidentiary hearing held on a bankruptcy appeal. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court, with the exception that this Court finds the total amount received by Richard Burns was \$48,706.40, rather than the more than \$67,000.00 indicated by the Magistrate.

IT IS THEREFORE ORDERED that the Bankruptcy Court ruling of Judge Covey denying Appellant's petition to except a debt from discharge under 11 U.S.C. §523 should be and is hereby sustained.

ORDERED this 2^d day of June, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

JUL 8 1990

COUNTY LINE INVESTMENT,)
)
 Plaintiff,)
)
 vs.)
)
 CALVIN TINNEY,)
)
 Defendant.)

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

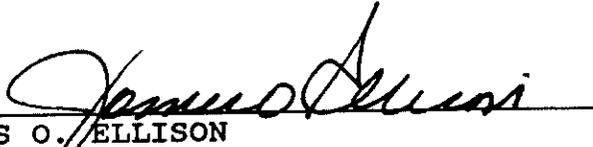
No. 88-C-550-E

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed January 23, 1990. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has conducted its own de novo review and concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Defendant should be and is hereby awarded attorneys' fees in the amount of \$46,390.00.

ORDERED this 7th day of July, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

JUL 9 1990

ERHAN OZEY,

Plaintiff,

vs.

BANKERS TRUST CO., et al.,

Defendants.

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

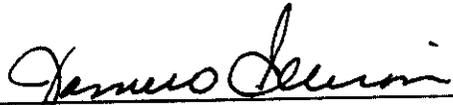
No. 89-C-449-E

ADMINISTRATIVE CLOSING ORDER

This Court's Order of April 10, 1990 directed that the only pending motion for sanctions in the form of fees and costs is abated, to be reset upon application of any party after resolution of connected case Bankers Trust Co. v. Keeling, 87-C-20-C. 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.

ORDERED this 2nd day of June, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

JUL 8 1990

JAMES ANDREW THOMAS,)
)
 Plaintiff,)
)
 vs.)
)
 DEPARTMENT OF THE ARMY,)
)
 Defendant.)

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

No. 88-C-1539-E

ORDER

NOW on this 2^d day of June, 1990 comes on for hearing the above styled case and the Court, being fully advised in the premises finds that Plaintiff moved on April 12, 1989 to dismiss this case, which dismissal was granted on April 28, 1989. Such dismissal was granted without prejudice to any subsequent refileing.

Plaintiff has now moved to reinstate his case. No authority is cited for such action and in fact the case has been closed by the Clerk of this Court since June 1, 1989. Thus "reinstatement" of this case cannot be accomplished. Rather, further pursuance of Major Thomas' claims would of necessity require a new action to be filed.

IT IS THEREFORE ORDERED that the Motion of Plaintiff to Reinstate Case must be and is hereby denied.

ORDERED this 2 day of June, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

JUL 7 1990

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

LARRY MOOREHOUSE,

Plaintiff,

vs.

No. 88-C-1529-E

GRAND RIVER DAM AUTHORITY,
et al.,

Defendants.

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed February 23, 1990. Although this Court regrets that portions of the transcript under seal were quoted in such Findings and Conclusions, after careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that discovery of the December 2, 1987 Transcript of the Executive Session of the Grand River Dam Authority may proceed.

ORDERED this 7th day of June, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

F I L E D

JUL 2 1990

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

WADRESS HUBERT METOYER, JR,)

Petitioner,)

vs.)

STEPHEN KAISER, WARDEN)

Respondent.)

No. 89-C-330-B

ORDER

This matter comes on for consideration upon the Motion to Reconsider filed by Petitioner, Wadress Hubert Metoyer, Jr. relative to this Court's Order of March 30, 1990. In addition, the Court has considered Petitioner's Motion To Reconsider Amended, filed April 23, 1990.

In the Court's Order of March 30, 1990, footnote 4 spoke to the lack of retroactive application given Carbray v. Champion¹ and Clapton v. State². Griffith v. Kentucky, 479 U.S. 314, (1987), cited by the Petitioner is, in the Court's opinion, inapplicable to the Carbray/Clapton premise.

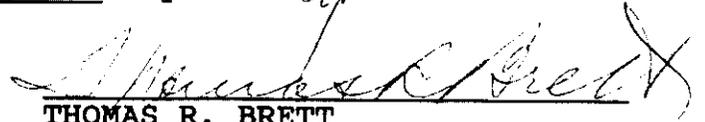
The Court concludes the Petitioner's Motion to Reconsider (including the Amended Motion) should be and the same is hereby

¹ No. 89-5152(10th Cir. Fed 28, 1990).

² 742 P.2d 586(Okla. Crim. App. 1987).

DENIED.

IT IS SO ORDERED **this** 2nd day of June, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED
JUL 2 1990

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

WADRESS HUBERT METOYER, JR,)
)
Petitioner,)
)
vs.)
)
STEPHEN KAISER, WARDEN)
)
Respondent.)

No. 89-C-330-B

ORDER

The Court has for consideration the Motion for Certificate of Probable Cause filed by the Petitioner, Wadress Hubert Metoyer, Jr.. Petitioner's Notice of Appeal was filed on April 9, 1990.

Fed.R.App.P. 22(b) provides in a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court, an appeal by the applicant for the writ may not proceed unless a district court or a circuit judge issues a certificate of probable cause. The test for granting a certificate of probable cause is stricter than for allowing an appeal in forma pauperis. The test appears to be that a certificate of probable cause should be granted as long as the issue raised is "not frivolous" and more recently it has required a question of some "substance" before issuing a certificate. Gardner v. Pogue, 558 F.2d 548, 551 (9th Cir. 1977). In Clements v. Wainwright, 648 F.2d 979, 981 (5th Cir. 1981), the Court said:

"... The test for granting a certificate of probable cause is stricter. Justice (then Judge) Blackmun has stated:

"My own reaction is that the cases

[of the several circuits], taken as a whole, do indicate that the standard of probable cause requires something more than the absence of frivolity and that the standard is a higher one than the 'good faith' requirement of §2925."

"Blackmun, Allowance of In Forma Pauperis Appeals in §2255 and Habeas Corpus Cases, 8 Cir., 43 F.R.D. 343, 352 (1967), quoted in Gardner v. Pogue, 558 F.2d 548 (9th Cir. 1977)"

This Court has applied the test for granting a certificate of probable cause and finds such certificate should be issued pursuant to Fed.R.App.P. 22(b), the issue raised by Petitioner being not frivolous and of some substance. The Court also finds that Petitioner should be allowed to proceed in forma pauperis pursuant to Fed.R.App.P 24(a).

IT IS THEREFORE ORDERED a certificate of probable cause is hereby issued pursuant to Fed.R.App.P. 22(b), and the Petitioner be allowed to proceed in forma pauperis.

DATED, this 2nd day of June, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE