

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

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

Plaintiff,

v.

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND, and ZIEGLER CORPORATION,

Defendant.

FIDELITY & DEPOSIT COMPANY OF
MARYLAND,

Third-Party Plaintiff,

v.

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

Third-Party Defendants.

31
U.S. DISTRICT COURT

Case No. CIV-89-C-377-B

ORDER DISMISSING CLAIMS WITH PREJUDICE

This cause having come on for consideration of the Stipulation and Application for Dismissal with Prejudice filed by Air Capitol Contractors, Inc. ("Air Capitol"), Fidelity & Deposit Company of Maryland ("Fidelity & Deposit"), and Ziegler Corporation ("Ziegler"), and good cause having been shown for the granting of such Application,

IT IS THEREFORE ORDERED that any and all claims or counterclaims of Air Capitol against Fidelity & Deposit and any all claims or counterclaims of Fidelity & Deposit against Air Capitol

are hereby dismissed with prejudice to the refiling of same with all parties to bear their own costs and attorney fees incurred in the prosecution or defense of such claims.

IT IS FURTHER ORDERED that any and all claims or counterclaims of Air Capitol against Ziegler and any and all claims or counterclaims of Ziegler against Air Capitol are hereby dismissed with prejudice to the refiling of same with all parties to bear their own costs and attorney fees incurred in the prosecution or defense of such claims.

Done this 31 day of July, 1990.

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

PREPARED BY:

Dale Joseph Gilsinger, OBA #10821
ALBRIGHT & ASSOCIATES
2601 Fourth National Bank Building
15 West Sixth Street
Tulsa, Oklahoma 74119
(918) 583-5800

062990L.003 (LIT#8/6002.02)

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

FILED
JUL 31 1999

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

SOL W. LOVETT,

Plaintiff,

vs.

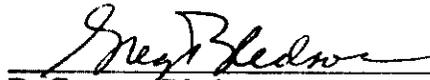
LANCE, INC., a North Carolina
corporation,

Defendant.

No. 89-C-283-C

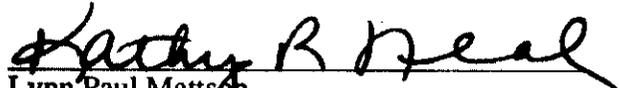
JOINT STIPULATION OF DISMISSAL

The plaintiff, by and through his attorney, and the defendant, by and through its attorney, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, stipulate that this matter should be and is hereby dismissed with prejudice, with each party to bear its own costs and attorneys fees.



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Tulsa, Oklahoma 74119-3828
(918) 599-8118

Attorney for Plaintiff



Lynn Paul Mattson
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Kathy R. Neal
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AND

W. T. Cranfill, Jr.
Grant B. Osborne
BLAKENEY, ALEXANDER & MACHEN
3700 NCNB Plaza
Charlotte, North Carolina 28280

Attorneys for Defendant

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA **JUL 31 1990**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ONE 1989 MERCURY SABLE,
VIN # IMEBM5348KA610510,

Defendants.

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

No. M-1609-B

ORDER

Currently before the Court is claimant Peter J. McMahon's Motion for Leave to Proceed In Forma Pauperis, Motion to Dismiss the Administrative Forfeiture Proceedings, and Motion to Stay.

Plaintiff asks the Court to assume jurisdiction over the administrative forfeiture proceedings and to dismiss the action on its merits. The motions to dismiss and to stay are now moot since the government has filed a civil judicial forfeiture action styled United States of America v. One 1989 Mercury Sable, VIN # IMEBM5348KA610510, Case No. 90-C-623-B. Therefore, Peter McMahon's Motion for Leave to File In Forma Pauperis, Motion to Dismiss and Motion to Stay are DENIED.

IT IS SO ORDERED, this 31ST 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 31 1990

FORD MOTOR CREDIT COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 DON WAYNE RUTHERFORD,)
)
 Defendant.)

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

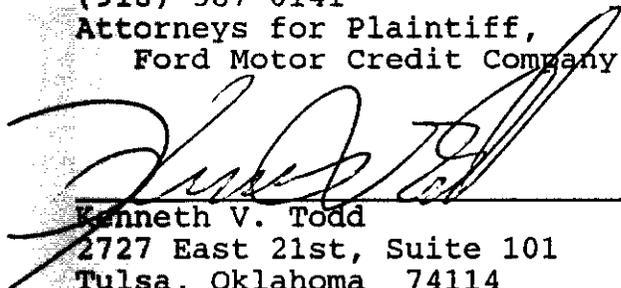
No. 88-C-1385-E

JOINT STIPULATION OF DISMISSAL

It is hereby stipulated by and between the Plaintiff, Ford Motor Credit Company, by its attorney, Thomas G. Marsh, and Defendant, Don Wayne Rutherford, by his attorney, Kenneth V. Todd, that the above-styled and captioned matter, on the Complaint may be, and the same is hereby dismissed with prejudice, without costs to either party.



Thomas G. Marsh (OBA #5706)
MARSH, SHACKLETT & FEARS, P.C.
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(918) 587-0141
Attorneys for Plaintiff,
Ford Motor Credit Company



Kenneth V. Todd
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Attorney for Defendant,
Don Wayne Rutherford

FILED

JUL 31 1990

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

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

LESLIE E. KING,)
)
 Plaintiff,)

vs.)

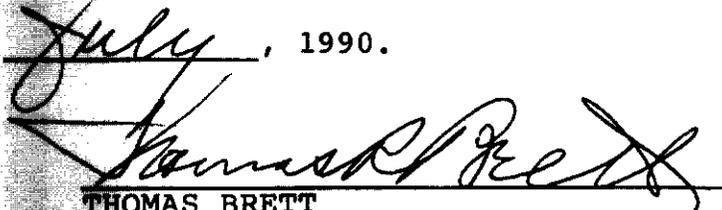
Case No. 89-C-1075-B ✓

RON SOLE, Chief of Police for the)
City of Sapulpa, individually and)
in his official capacity;)
JOHN DOE #1; JOHN DOE #2;)
JOHN DOE #3; JOHN DOE #4;)
JOHN DOE #5 (all police officers)
of the City of Sapulpa whose)
identities are unknown to)
Plaintiff); and the)
CITY OF SAPULPA,)
)
)
 Defendants.)

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to the Joint Stipulation of Dismissal filed by the Plaintiff and Defendants, the Court dismisses, with prejudice, Plaintiff's Complaint against the Defendants, City of Sapulpa, Oklahoma, Ron Sole and John Doe Nos. 1-5, with each party being responsible for their costs and attorney fees incurred herein.

Dated this 31 day of July, 1990.


THOMAS BRETT
United States District Judge

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

FILED

JUL 31 1990

CLERK
U.S. DISTRICT COURT

PEDCO RESOURCES COMPANY, GKM OIL)
COMPANY, AFTAG, INC., and)
MEDALLION PETROLEUM INC.,)

Plaintiffs,)

vs.)

Case No. 89-C-1012-B

MOBIL EXPLORATION AND PRODUCING)
NORTH AMERICA INC. and MOBIL)
OIL EXPLORATION & PRODUCING)
SOUTHEAST INC.,)

Defendants.)

ORDER

This matter comes on for consideration upon the Motion to Remand filed by Plaintiffs, PEDCO Resources Company, GKM Oil Company, AFTAG, Inc. and Medallion Petroleum, Inc.. Also under consideration are Motions to Dismiss and to Transfer filed by Defendants Mobil Exploration and Producing North America [MEPNA] (hereinafter Mobil 1) and Mobil Oil Exploration & Producing Southeast, Inc. [MOEPSI] (hereinafter Mobil 2).

This action was originally filed by Plaintiffs in Tulsa County District Court against Mobil 1 and 2, who removed the case to this Court on December 6, 1989, based upon alleged diversity of citizenship. Plaintiffs are, respectively, Delaware, Delaware, Texas and Oklahoma corporations, all with their principal places of business in Tulsa, Oklahoma. Some confusion existed as to the status of Mobil 1 (there being apparently two Mobil Exploration and

Producing North America, Inc.s) but the Court determines, based upon undisputed statements made during the hearing held herein June 15, 1990, that the Mobil 1, who is the operator of the two wells in question¹, is a Nevada corporation with its principal place of business in Virginia. Mobil 2 is a Delaware corporation with its principal place of business being within the state of Louisiana. The removal to this Court was based upon Defendants' contention that Mobil 2 is a mere nominal, fraudulently joined, party; that Mobil 2 is only an agent for its disclosed principal, Mobil 1; that therefore, the citizenship of Mobil 2 should not be considered for diversity purposes and the removal is proper. Defendants' Motion to Dismiss is premised upon Plaintiffs' failure to state a cause of action. It is Defendants' position this Court lacks personal jurisdiction over Mobil 2 due to lack of significant contacts on the part of Mobil 2 within the State of Oklahoma. Defendants further seek dismissal of the entire case based on alleged lack of subject matter jurisdiction under a contention that Plaintiffs are collaterally attacking State of Louisiana conservation orders relating to the wells in question. Defendants' Motion to Transfer is premised upon their assertion the entire matter belongs in Louisiana because the wells are located there, the law to be applied is Louisiana law and the majority of witnesses reside there. Additionally, the Louisiana Conservation Commission, Defendants allege, is a potentially interested party in this

¹ Lege # 1 and Lege # 3 in the S.E. Geuydan Field, Vermillion Parish, Louisiana.

proceeding, having jurisdiction of some or all of Plaintiffs' claims herein.

Plaintiffs, on December 22, 1989, sought permission to amend their Petition to attach certain omitted Exhibits, A & B, referenced in paragraph 9 of that pleading.² Permission was granted by Court Order entered December 29, 1989. Plaintiffs, on March 1, 1990, filed application for leave to file an amended petition (entitled Second Amended Petition). Plaintiffs, notwithstanding absence of leave of Court to so do, filed, on March 16, 1990, a First Amended Complaint which was substantially if not exactly the same as their proposed Second Amended Petition.

The parties have waxed prolific whether Plaintiffs First Amended Complaint was or is a proper pleading. Plaintiffs contend the earlier amendment, to add omitted exhibits A & B, was a mere technical amendment, Court permitted, which did not use up Plaintiffs option to amend their complaint once as a matter of right before a responsive pleading is served. Rule 15(a), F.R.Civ.P.. Defendants, on the other hand, assert a party who erroneously moves for leave to amend while entitled to amendment as a matter of course does not preserve the right to later amend without leave of court. The Court agrees. See, In re Watauga Steam Laundry, 7 F.R.D. 657 (E.D. Tenn. 1947). The Court concludes Plaintiffs First Amended Complaint, filed March 16, 1990, was and is without legal effect since filed without required leave of

² The Exhibits, A & B, were copies of the Joint Operating Agreements of the two wells in question.

Court. However, in view of the Court's conclusion, Plaintiffs' March 1, 1990, Application to File Second Amended Petition presently pends before the Court for decision.³

Next for consideration is whether Plaintiffs Application should be granted. Defendants alleged Plaintiffs have failed to state, in their proposed Second Amended Petition, valid causes of action against the additional defendants, Mobil Oil Corporation[MOC] (hereinafter Mobil 3), Mobil Exploration & Producing U.S. Inc.[MEPUS] (hereinafter Mobil 4), and Mobil Natural Gas Inc.[MNGI] (hereinafter Mobil 5). Mobils 3, 4 & 5 are, respectively, New York, Delaware and Delaware corporations, all with principal places of business in the state of Texas. Defendants contend Plaintiffs Second Amended Petition merely groups all of the Mobil corporations as defendants, presenting general allegations without differentiation as to actions and roles giving rise to liability; that Plaintiffs were aware of at least Mobils 3 and 4 involvement prior to filing this action, citing, *inter alia*, Ex.11 Brodnax⁴, and therefore should have included 3 and 4 initially; that Plaintiffs'present attempt to now include Mobils 3, 4 & 5 is but a sham to defeat federal diversity jurisdiction.

The Court is of the view that Ex. 11 Brodnax, rather than support Defendants' arguments, is significantly indicative of why,

³ This is notwithstanding Plaintiffs view that their Application to File Second Amended Petition was rendered moot by their filing of the First Amended Complaint.

⁴ Exhibit 11 Brodnax is part of Exhibit B, attached to Defendants' Reply Brief (docket entry # 86) filed May 7, 1990.

at least, Mobil 3 is a proper if not indispensable party. Ex. 11 Brodnax is a January 4, 1989, letter from Mobil 3 advising one of the Plaintiffs (GKM Oil Company) that \$70,920.01 in working interest revenues would be withheld from that Plaintiff's future production in the Lege wells unless that amount, allegedly overpaid to GKM, was not mailed to Mobil by January 20th. Plaintiffs' fourth cause of action seeks injunctive relief to prevent the suspension of production revenues and Plaintiffs' third cause seeks an accounting relative to these gas revenues.

The Court has reviewed Plaintiffs' Second Amended Petition which alleges, in addition to the foregoing, the existence of Services Agreements between and among the Mobil corporations relating to the operation, marketing of gas volume, accounting, production allocation and payment of production proceeds relative to the Lege wells. Based upon such review the Court concludes Plaintiffs' Second Amended Petition adequately states causes of action against Mobils 3, 4 & 5, as well as Mobils 1 and 2.

Turning next to the issue of subject matter jurisdiction, the Court notes Defendants' argument that Plaintiffs' Motion to Remand must be considered as the parties stood at the instant of removal, to be presently inappropriate. None of the parties dispute joinder of additional, non-diverse defendants, under 28 U.S.C. §1447(e) is discretionary with the Court, which should be guided by general equitable principles. However, a dispute does exist whether a party to be added need merely be a proper party or must it be an indispensable party. In Heininger v. Wecare Distributors, Inc., 706

F.Supp. 860 (S.D. Fla. 1989), the following appears:

"Remand for lack of subject matter jurisdiction after removal is controlled by 28 U.S.C. § 1447(c), which was amended on November 19, 1988 by the Judicial Improvements and Access to Justice Act, Pub. L. No. 100-702 (1988). 28 U.S.C. § 1447(c) now provides, in pertinent part:

If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.

Moreover, section 1447 was also amended to add a new subsection (e), which provides, in entirety:

If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the state court.

This subsection was added no doubt to reconcile different views among the circuits as to whether a non-diverse party need be indispensable before a court may allow joinder which would destroy diversity jurisdiction". (citing cases where conflicts among the circuits exist)

The Court, in the absence of any expression by the Tenth Circuit Court of Appeals, agrees with the reasoning of Heininger, *supra*, that it "is clear from the unambiguous language of § 1447(e) that a non-diverse party need not be indispensable as defined by Fed.R.Civ.P. 19 in order for a district court to permit joinder and remand the action to state court." *Ibid.* at 862.

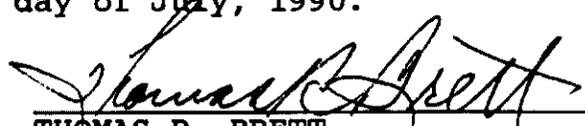
If joinder is made, adding non-diverse defendants which destroy diversity, the stance of the case at the moment of removal becomes immaterial. Timeliness is then not a consideration because subject matter jurisdiction cannot be waived. Giannakos v. M/V

Bravo Trader, 762 F.2d 1295 (5th Cir. 1985); Hensgens v. Deere & Co., 833 F2d 1179 (5th Cir. 1985), *cert. den.* 110 S.Ct. 150. Some post-removal developments may not divest the court of jurisdiction but an addition of a non-diverse defendant will do so. IMFC Professional Services of Florida v. Latin American Home Health, Inc. 676 F.2d 152 (5th Cir. 1982); Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 98 S. Ct. 2396, 57 L.Ed.2d 274 (1978).

The Court concludes, within its discretion, that the joinder of Mobils 3, 4 and 5, as proper parties, should be permitted. The Court further concludes Plaintiffs Application to File Second Amended Petition should be and the same is hereby GRANTED. Plaintiffs Second Amended Petition is made a part of the record herein, *instanter*. The joinder of non-diverse defendants divests the Court of subject matter jurisdiction and this action should be and the same is hereby REMANDED to the District Court for Tulsa County, State of Oklahoma.

The Court concludes the other motions before this Court are, insofar as the present Court is concerned, rendered moot by today's Order of Remand.

IT IS SO ORDERED this 31ST day of July, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

JUL 31 1990

SAMSON RESOURCES COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 DELHI GAS PIPELINE CORPORATION,)
)
 Defendant.)

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

No. 89-C-1060-B

ORDER

Currently before the Court is Plaintiff's Motion to Stay Proceedings pending arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. § 3. The Act provides:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

Section 17.1 of the Gas Purchase Agreement, dated July 14, 1971, provides:

"In the event of any dispute or controversy between the parties hereto involving the operations under this Agreement, same shall be settled by arbitration. ..."

Defendant asserts Plaintiff has waived its right to arbitration by filing suit and conducting discovery. Plaintiff cites numerous cases outlining the circumstances in which a defendant can waive

its right to arbitration.

"Parties seeking to prove waiver of arbitration obligations bear a heavy burden; they must show substantial prejudice. ... Under the federal policy favoring arbitration, a party does not waive arbitration merely by engaging in action inconsistent with an arbitration provision. Moreover, inconsistent behavior alone is not sufficient; the party opposing a motion to compel arbitration must have suffered prejudice." (citations omitted)

Adams v. Merrill Lynch Pierce Fenner & Smith, 888 F.2d 696, 701 (10th Cir. 1989). Defendant offers no evidence of prejudice it will suffer if the Court allows arbitration. The Supreme Court has recognized a federal policy favoring arbitration which requires the court to enforce arbitration agreements. Shearson/American Express, Inc. v. McMahon, 482 U.S. ___, 107 S.Ct. 2332, 96 L.Ed.2d 185, 193 (1987). The Court concludes it should stay the case pending arbitration as outlined in the parties' contract.

It is therefore ORDERED the case be stayed and administratively closed pending arbitration. The case may be reopened upon application from either party within 60 days after a final arbitration order is entered.

IT IS SO ORDERED, this 31st day of July, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

F I L E D

JUL 31 1990

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

DOROTHY K. RADER,

Plaintiff,

vs.

No. 89-C-851 B

INDEPENDENT FREIGHT, INC.,
HARVEY TAYLOR TRUCKING, INC.,
and RICHARD SMITH, an
individual,

Defendants.

ORDER OF DISMISSAL WITH PREJUDICE

Upon Application by the parties, and for good cause shown, the Court finds that the above styled and numbered case should be dismissed with prejudice to refiling in the future.

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

S/ THOMAS R. BRETT

U. S. District Judge

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

FILED

JUL 31 1990

FEDERAL DEPOSIT INSURANCE
CORPORATION,

Plaintiff,

vs.

KANSAS BANKERS SURETY COMPANY,

Defendant.

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

No. 90-C-101-B

ORDER SUSTAINING MOTION FOR SUMMARY JUDGMENT
OF DEFENDANT PURSUANT TO FED.R.CIV.P. 12(b)(6), 56

This is an action commenced on February 9, 1990, by Federal Deposit Insurance Corporation ("FDIC"), in its corporate capacity against Kansas Bankers Surety Company ("KBSC") on Town and Country Bank of Bixby, Oklahoma's bank employee dishonesty bonds. The matter is before the Court on the Defendant's Motion to Dismiss under Fed.R.Civ.P. 12(b)(6) or in the alternative Motion for Summary Judgment. As materials outside the pleadings are presented in support of and in opposition to the motion, it will be considered under Fed.R.Civ.P. 56.

The undisputed facts appear to be as follows: Town and Country Bank of Bixby, Oklahoma was an operating Oklahoma state bank until September 15, 1988, when the Oklahoma State Banking Department ("Commissioner") declared the bank insolvent and appointed the FDIC to serve as receiver pursuant to 12 U.S.C. §1821(c). FDIC-Corporate acquired certain assets of Town and Country Bank from FDIC-Receiver, one of which is asserted to be

the subject bond claims, and commenced this action.

Facts before the Court in addition to those alleged in the FDIC Complaint are presented through affidavits of Defendant's witness Donald M. Towle, President of KBSC (Exhibit A to KBSC's Motion to Dismiss, or in the Alternative Motion for Summary Judgment) and Plaintiff's witness, April Breslaw, FDIC staff attorney. (Affidavit attached to Memorandum Brief of FDIC in Opposition filed April 12, 1990). The Towle affidavit states that the subject bonds (Plaintiff's Exhibits 1 and 2 to Plaintiff's Complaint) were approved by the State Insurance Commissioner of Oklahoma and issued to Town and Country Bank on June 6, 1985. The bonds were renewed annually and terminated by cancellation effective June 6, 1988. Towle also stated that the insured, Town and Country Bank, did not provide KBSC with notice of discovery of the alleged loss during the time the bonds were in effect. Towle also states Town and Country Bank did not submit a proof of loss to the insurer, KBSC. The affidavit of Staff Attorney April Breslaw states in pertinent part: The subject bonds were issued June 6, 1985 and were in effect through June 5, 1988. It is stated that on August 17, 1988 the bank submitted notice to KBSC of losses involving dishonesty of Fred P. Leiding, Sr. and Anthony DiGeronimo and occurrences and circumstances regarding said losses. (Notice attached as Exhibit A to Breslaw Affidavit). On September 19, 1988, Ms. Breslaw advised KBSC that FDIC had succeeded to the interest of Town and Country Bank relative to the bonds and noted the Town and Country Bank notice of August 17, 1988. (Exhibit B).

On February 13, 1989, FDIC, through Ms. Breslaw, furnished KBSC with a detailed proof of loss relative to the claims under the bonds concerning wrongful nominee loans of Messrs. Leiding and DiGeronimo. (Exhibit C). A follow-up letter from FDIC (Ms. Breslaw) relative to the Leiding/DiGeronimo loss stated that Marty Hansen, President of Town and Country, learned of the Leiding/DiGeronimo conduct (a loss had occurred or was likely to occur) no later than the fall of 1987 and actually learned of one potentially improper nominee loan of DiGeronimo in the summer of 1987. The letter contained a proposed tolling agreement which was not signed or agreed to by KBSC.

The purported notice letter of President Hansen dated August 17, 1988 (Exhibit A to the Affidavit of Ms. Breslaw attached to the Memorandum Brief of FDIC in Opposition dated April 12, 1990) and referred to by FDIC makes no reference to a potential employee dishonesty bond claim regarding conduct of either Leiding or DiGeronimo. The Hansen letter (while mentioning various types of potential claims in general) states we have no knowledge of specific claims but whenever the bank obtains knowledge of same, it will be passed on to KBSC.

Relevant provisions of the subject bonds are as follows: Both bonds issued by KBSC contain a "Loss Sustained" Rider. This rider defines discovery by deleting section 4 of the bonds and inserting the following language in its place:

"(a) This bond applies to loss sustained and discovered by the Insured after 12:01 a.m. of the date set forth in Item 2 of the Declarations and while this bond is in force.

Discovery occurs when the Insured becomes aware of facts which would cause a reasonable person to assume that a loss covered by the bond has been or will be incurred, even though the exact amount or details of loss may not then be known. Notice to the Insured of an actual or potential claim by a third party which alleges that the Insured is liable under circumstances which, if true, would create a loss under this bond constitutes such discovery. Loss sustained occurs at the time of the act, casualty or event which caused the loss."

Section 5 of both bonds pertains to Notice/Proof. It provides in part:

"(a) At the earliest practicable moment, not to exceed 30 days, after discovery of loss, the Insured shall give the Underwriter notice thereof.

"(b) Within 6 months after such discovery, the Insured shall furnish to the Underwriter proof of loss, duly sworn to, with full particulars.

* * *

"(d) Legal proceedings for the recovery of any loss hereunder shall not be brought prior to the expiration of 60 days after the original proof of loss is filed with the Underwriter or after the expiration of 24 months from the discovery of such loss, except that any action or proceeding to recover hereunder on account of any judgment against the Insured in any suit mentioned in General Agreement F. or to recover attorneys' fees paid in any such suit, shall be brought within 24 months from the date upon which the judgment and such suit shall become final.

"(e) If any limitation embodied in this bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to equal the minimum period of limitation provided by such law.

"(f) This bond affords coverage only in favor of the Insured. No suit, action or legal proceedings shall be brought hereunder by any one other than the named Insured."

Section 12 of Bond 22681R and Section 11 of Bond 28-4870

relates to Termination or Cancellation. They provide:

"This bond shall be deemed terminated or canceled as an entirety--(a) 60 days after the receipt by the Insured of a written notice from the Underwriter of its desire to terminate or cancel this bond, or (b) immediately upon the receipt of the Underwriter of a written request from the Insured to terminate or cancel this bond, or (c) immediately upon the taking over of the Insured by a receiver or other liquidator or by State or Federal officials, or (d) immediately upon the taking over of the Insured by another institution. The Underwriter shall refund to the Insured the unearned premium, computed pro rata, if the bond be terminated or canceled or reduced by notice from, or at the instance of the Underwriter, or if terminated or canceled as provided in sub-section (c) or (d) of this paragraph. The Underwriter shall refund to the insured the unearned premium computed at short rates if this bond be terminated or canceled or reduced by notice from, or at the instance of the Insured."

"This bond shall be deemed terminated or canceled as to any Employee [or any partner, officer or employee of any Processor--] (a) as soon as any Insured, or any director or officer not in collusion with such person, shall learn of any dishonest or fraudulent act committed by such person at any time against the Insured or any other person or entity, without prejudice to the loss of any Property then in transit in the custody of such person, or (b) 15 days after the receipt by the Insured of a written notice from the Underwriter of its desire to terminate or cancel this bond as to such person.

"Termination of the bond as to any insured terminates liability for any loss sustained by such Insured which is discovered after the effective date of such termination."

*In Section 11 Bond 28-4870 only.

A "Rights After Termination or Cancellation" Rider which amends Section 13 of Bond 2268IR and Section 12 of Bond 28 4870 provides as follows:

"At any time prior to the termination or cancellation of this bond as an entirety, whether by the Insured or the Underwriter, the Insured may give to the Underwriter notice that it desires under this bond an additional period of 12 months within which to discover loss sustained by the Insured prior to the effective date of such termination or cancellation and shall pay an additional premium therefor.

"Upon receipt of such notice from the Insured, the Underwriter shall give its written consent thereto; provided, however, that such additional period of time shall terminate immediately

"(a) on the effective date of any other insurance obtained by the Insured, its successor in business or any other party, replacing in whole or in part the insurance afforded by this bond, whether or not such other insurance provides coverage for loss sustained prior to its effective date, or

"(b) upon any takeover of the Insured's business by any State or Federal official or agency, or by any receiver or liquidator, acting or appointed for this purpose without the necessity of the Underwriter giving notice of such termination. In the event that such additional period of time is terminated, as provided above, the Underwriter shall refund any unearned premium.

"The right to purchase such additional period for the discovery of loss may not be exercised by any State or Federal official or agency, or by any receiver or liquidator, acting or appointed to take over the Insured's business for the operation or for the liquidation thereof or for any other purpose.

"After termination or cancellation, no State

or Federal official, agency, receiver, or liquidator, acting in the capacity of supervisor, liquidator, receiver, regulator, corporate, or any other capacity shall have or exercise any right to make any claim against the Underwriter, unless a Proof of Loss, duly sworn to, with full particulars and complete documentation has been received by the Underwriter prior to the termination or cancellation of this Bond."

The gist of the above quoted bond provisions relative to summary judgment herein are:

- (1) The bonds apply to losses sustained and discovered while the bonds are in force. (Loss Sustained rider);
- (2) The insured shall give the underwriter notice at the earliest practicable moment, not to exceed 30 days, after discovery of loss. Within six (6) months after such discovery, the insured shall furnish the underwriter proof of loss, duly sworn to, with full particulars. (Section 5 of each bond)
- (3) The bond is terminated as to the dishonest employee when the insured, director, or officer learns of the dishonest act committed by such person. (Section 12 of Bond 2268IR and Section 11 of Bond 28-4870).
- (4) Prior to termination or cancellation the insured may give KBSC notice that it desires an additional twelve-month period following termination or cancellation within which to discover losses sustained by the insured; and shall pay additional premium therefor. The additional twelve-month coverage period will cease upon the takeover of a state or federal receiver or liquidator. No state or federal official acting as receiver, liquidator, or corporate shall have a right to make a claim against KBSC under the bonds, unless a proof of loss, duly sworn to, with full particulars and complete documentation has been received by KBSC prior to termination or cancellation of the bond. (Rights after termination or cancellation waiver).

Thus the undisputed facts establish that the subject bonds terminated and ceased to be in force on June 6, 1988, and further that no notice of the Leiding/Digeronimo employee dishonesty losses

was given KBSC or proof of loss filed in regard thereto until after June 6, 1988. The insured, Town and Country Bank, learned of the Leiding/DiGeronimo employee dishonesty in the summer and fall of 1987. FDIC-Corporate acquired its rights September 13, 1988. (Exhibit A to FDIC's Supplement to Memorandum Brief filed 4-30-90).

The recent case of FDIC v. Aetna Casualty and Surety Co., No. 89-5866 (6th Cir. Tenn. May 24, 1990), 1990 WL 67275, ____ F.2d ____, states that an employee dishonesty bond with similar provisions concerning the rights of the FDIC was not invalid on public policy grounds. However, the Court deems it unnecessary to address FDIC's public policy argument because it appears clear from the undisputed facts, as a matter of law, the giving of notice of employee dishonesty by Town and Country Bank and the filing of the proof of loss was untimely. Although Plaintiff asserts the provisions requiring timely notice should be disregarded absent a showing of actual prejudice, the cases upon which the FDIC relies are inapposite for two reasons. First, Plaintiff's cases construed Louisiana's statute that allowed an injured third party to sue an insurance company directly. The courts held that an insurance company must demonstrate actual prejudice from not receiving notice in compliance with the policy provisions, when it had otherwise received actual notice of the third party's claim. MGIC Indemnity Corp. v. Central Bank, 838 F.2d 1382 (5th Cir. 1988); Pomeras v. Kansas City Southern Ry. Co., 474 So.2d 976 (La. App. 1985); Auster Oil & Gas Inc. v. Stream, 891 F.2d 570 (5th Cir. 1990). In its Response brief, FDIC argues it is in the nature of a third-party

creditor and KBSC should be required to show actual prejudice to escape liability. The bonds' provisions, however, extended coverage only to the named insured.² Second, Plaintiff's cases construe "occurrence" insurance policies as opposed to "claims-made policies". Claims-made policies are those under which coverage is provided if the error or omission is discovered and brought to the insurer's attention during the term of the policy. 7A J. Appleman, Insurance Law & Practice §4504.01, at 312-313 (Berdal ed. 1979 & Supp.1988). None of Plaintiff's cases address what prejudice must be shown, if any, to an insurer where the insured fails to follow the notice requirements of a claims-made policy.³

Because the reporting requirement helps to define the scope of coverage under a claims-made policy, several courts have held that excusing a delay in notice beyond the policy period would alter a basic term of the insurance contract. FDIC v. Aetna Casualty and Surety Co., *supra*; Esmailzadeh v. Johnson and Speakman, 869 F.2d 422, 424-425 (8th Cir. 1989); City of Harrisburg v. International Surplus Lines Ins. Co., 596 F.Supp. 954, 960-962 (M.D.Pa. 1984), *aff'd*, 770 F.2d 1067 (3rd Cir. 1985). Consequently,

²In its Reply brief, FDIC argues it is actually in the nature of the "insured" because it stepped into Town & Country's shoes.

³The Tenth Circuit has held, based upon Kansas law, that prejudice must be shown on a claims-made policy when the insurer receives timely and adequate notice, even though not submitted in writing in accordance with the policy terms. Phico Insurance Co. v. Providers Insurance Co., 888 F.2d 663, 668 (10th Cir. 1989). Phico is distinguishable from this case because KBSC never received any notice and notice is a condition precedent to payment on a bond under Oklahoma law.

prejudice need not be shown when an untimely claim is presented for payment under a claims-made policy.⁴ Where notice is a condition precedent to maintaining a suit on a bond, there will be no liability where the insured failed to give notice. USF&G v. Gray, 106 Okla. 222, 233 P. 731 (1925); Fidelity & Deposit Co. of Maryland v. USF&G, 179 Okla. 174, 64 P.2d 672 (1935); Alfalpa Electric Coop. v. Travelers Indemnity Co., 376 F.Supp. 901 (W.D.Okla. 1973). In this instance, KBSC did not receive notice, actual or otherwise, until after the claims-made policy had been terminated.

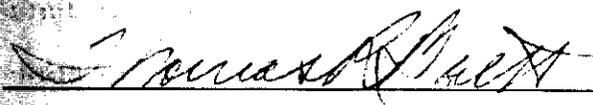
Notwithstanding the Court's conclusion that actual prejudice need not be demonstrated under a claims-made policy, the Court concludes Kansas Surety probably suffered actual prejudice from a lack of timely notice. Section 12 of Bond 2268IR and Section 11 of Bond 28-4870 provide the bond shall be deemed terminated or canceled as to any employee as soon as any insured, or any director or officer not in collusion shall learn of any dishonest or fraudulent act. The facts reflect KBSC was most probably prejudiced because the first knowledge of DiGeronimo's improper

⁴The court in Sherlock v. Perry, 605 F.Supp. 1001, 1004-1005 (E.D.Mich. 1985) held that prejudice need not be shown if notice is given in a reasonable, yet untimely, manner. This Court declines to follow this holding because the notice and proof of loss was not reasonable.

nominee banking transactions occurred in July 1987.⁵ As previously noted, the purported notice of August 1988 did not refer specifically to any misconduct or defalcations on DiGeronimo or Leiding's part.⁶ No notice of any specific conduct was given to KBSC until the FDIC's letter of February 1989. The Court concludes the failure to notify in a timely manner KBSC of any potential claim prejudiced KBSC's ability to investigate any allegations and minimize any existing and future claims.

Because neither notice nor a proof of loss was submitted in a timely manner, and KBSC probably suffered actual prejudice thereby, the Court concludes that Defendant's Motion for Summary Judgment should be SUSTAINED.

IT IS SO ORDERED, this 31st day of July, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

⁵FDIC's Proof of Loss is replete with references of Marty Hansen's "apparent discovery" of improper lending activities "in 1987" and Marty Hansen's overhearing a telephone conversation in July 1987 wherein DiGeronimo admitted receiving loan proceeds intended for other purposes.

⁶It is evident that DiGeronimo and Leiding were in collusion with regard to improper nominee loans because Leiding received the proceeds from loans executed by A.J. DiGeronimo in 1986.

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

FILED
JUL 31 1990

UNITED STATES, ex rel.)
AIR CAPITOL CONTRACTORS, INC.,)
)
Plaintiff,)
)
vs.)
)
FIDELITY AND DEPOSIT COMPANY)
OF MARYLAND, and ZIEGLER)
CORPORATION,)
)
Defendants.)
)
FIDELITY & DEPOSIT COMPANY)
OF MARYLAND,)
)
Third Party Plaintiff,)
)
vs.)
)
L. A. KNEBLER CONSTRUCTION CO.,)
INC., DEWAYNE ZIEGLER and DORIS)
J. ZIEGLER,)
)
Third Party Defendants.)

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

Case No. 89-C-377-B

JUDGMENT ON THE CROSS-CLAIM AND THIRD PARTY
ACTION OF FIDELITY & DEPOSIT COMPANY OF MARYLAND

Pursuant to the agreement of Fidelity & Deposit Company of Maryland, Ziegler Corporation, L. A. Knebler Construction Co., Inc., Dewayne Ziegler and Doris J. Ziegler, the Court enters the following judgment.

Defendant and third party plaintiff, Fidelity & Deposit Company of Maryland, has granted judgment against Ziegler Corporation, L. A. Knebler Construction Co., Inc., Dewayne Ziegler and Doris J. Ziegler, jointly and severally, in the principal amount of \$3,223.58, within interest thereon at 8.09% per annum from and after the date hereof. This Judgment is based upon the

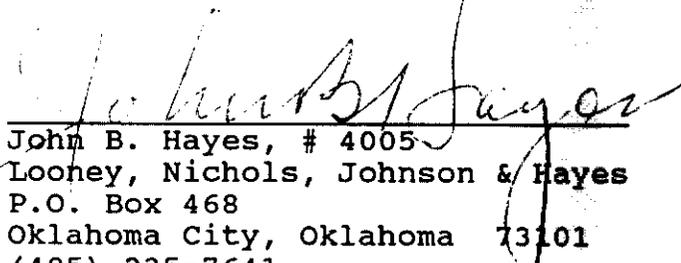
indemnity agreement executed by the judgment debtors in favor of the judgment creditor, Fidelity & Deposit Company of Maryland.

Since the parties have filed a stipulation to dismiss with prejudice all other actions involved in this litigation, this judgment constitutes a final order.

Entered: 7-31, 1990.

S/ THOMAS R. BRETT
Thomas R. Brett
U.S. District Judge

APPROVED AS TO FORM AND CONTENT:


John B. Hayes, # 4005
Looney, Nichols, Johnson & Hayes
P.O. Box 468
Oklahoma City, Oklahoma 73101
(405) 235-7641

Attorney for Fidelity & Deposit
Company of Maryland

Dale Joseph Gilsinger, # 10821
Albright & Associates
2601 Fourth National Bank Building
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Tulsa, Oklahoma 74119
(918) 583-5800

Attorney for Ziegler Corporation,
L. A. Knebler Construction Co., Inc.,
Dewayne Ziegler and Doris J. Ziegler

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

F I L E D

JUL 31 1990

SAMSON RESOURCES COMPANY,
a corporation,

Plaintiff,

v.

BASF CORPORATION,
a corporation,

Defendant.

Case No. 87-C-809 B

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

ORDER

The Court, having reviewed the Agreed Stipulation of the parties, hereby orders that this case, and all claims that were or could have been asserted in it by either party, are accordingly dismissed with prejudice.

SIGNED this 31st day of July, 1990.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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

F I L E D
JUL 31 1990

PETER J. McMAHON,

Movant,

v.

UNITED STATES ATTORNEY,

Respondent.

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

90-C-472-B

ORDER

Now before the court is movant **Peter J. McMahon's** Petition for a Writ of Habeas Corpus by a Person in Federal Custody (Docket #1).¹ He claims that he is a pretrial detainee in Case Nos. 90-CR-19-E and 90-CR-48-B and has been denied his right to due process by being sent to a drug treatment center without notice or hearing and being treated there without his consent. He also alleges that his subsequent escape from the treatment center was not unlawful because he was illegally confined there.

The records in Case No. 90-CR-19-E and 90-CR-48-B show the facts to be as follows. On February 8, 1990, movant was indicted in the Northern District of Oklahoma for Possession with Intent to Distribute a Controlled Substance (21 U.S.C. § 841(a)(1)), Unlawful Possession of a Firearm (18 U.S.C. § 922(g)), Maintaining a Place for the Distribution of Controlled Substances (21 U.S.C. § 856(a)), and for Use of a Firearm During a Drug Trafficking Crime (18 U.S.C. § 924(c)). On March 5, 1990, he was arrested and on March 7, 1990, Magistrate **Jeffrey S. Wolfe** ordered him delivered to Morton Detox Center for twenty-one (21) days without leave, liberty, or pass. Upon completion of the

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.

course of treatment, he was to be returned to the court by the United States Marshal's Service.

On March 13, 1990, movant escaped from the Center and an arrest warrant was issued. He was arrested on March 30, 1990 and indicted for Escape six (6) days later. On April 6, 1990, an initial appearance and arraignment were conducted and movant entered a plea of not guilty and was remanded to the custody of the United States Marshal's Service and transported to the Tulsa County Jail. He subsequently filed this action.

The court finds that on April 30, 1990, United States District Judge James O. Ellison conducted a jury trial involving movant. On May 1, 1990, the jury returned a verdict of guilty against him for Possession of a Controlled Substance. He pled guilty to Escape from pretrial detention on June 25, 1990.

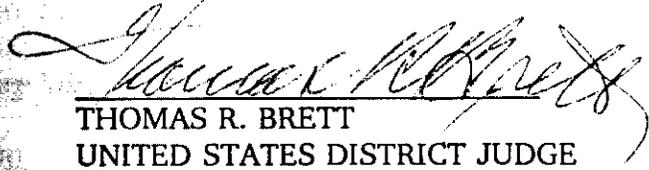
This court has dealt with the issues presented by movant in its Order of June 25, 1990 in Case No. 90-CR-48-B, in which it found as follows:

Defendant was not released from custody so he could receive drug treatment, but was allowed to receive drug treatment while 'in custody'. The Magistrate remanded Defendant to custody of the United States Marshal on March 7, 1990, and made specific findings on March 8, 1990, that no condition or combination of conditions existed that warranted Defendant's pretrial release. (Detention Order of March 8, 1990, filed one day after the Order allowing Defendant to receive drug treatment). The issue is whether the court has the authority to provide drug treatment to addicts during pretrial detention. 28 C.F.R. § 551.114(a) states the staff of a (qualified federal) institution shall provide the pre-trial inmate with the same level of basic medical, psychiatric, and psychological care provided convicted inmates. Chemical abuse programs are available to convicted inmates. 28 C.F.R. § 550.51(b); 42 U.S.C. § 259(a). Accepting Defendant's restrictive interpretation of 18 U.S.C. §3142 would render 28 C.F.R. §551.114 a nullity. The Court is not willing to impute such a restrictive interpretation.

The Court concludes the Magistrate had the authority to specify that Defendant be placed in a drug treatment facility and that Defendant was 'in custody' at the time of his 'escape' from the Morton Detox Center.

The movant's Petition for a Writ of Habeas Corpus by a Person in Federal Custody is therefore moot.

Dated this 31 day of July, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 31 1990

UNITED STATES OF AMERICA,)
)
Plaintiff,)
-vs-)
)
JAMES M. LANSFORD,)
C 27 540 487)
)
Defendant,)

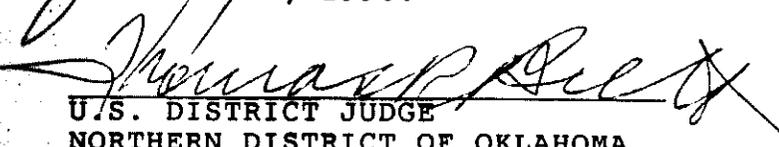
Jack C. Silver, Clerk
U.S. DISTRICT COURT
CIVIL NO. 90-C-456 B

CONSENT JUDGMENT

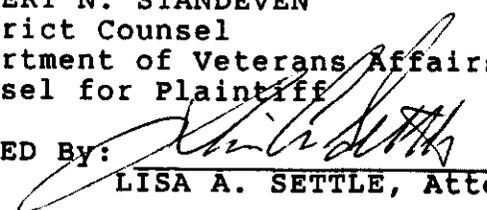
This matter coming on before this Court this 31st day of July, 1990, and the Court being informed in the premises and it appearing that the parties have agreed and consent to a judgment as set forth herein; in accordance therewith;

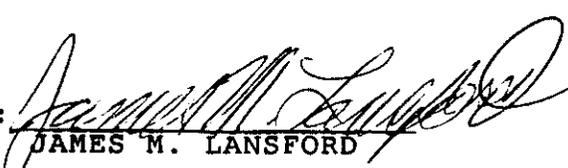
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff, United States of America, have and recover judgment against the Defendant, JAMES M. LANSFORD, in the principal sum of \$1,192.34, plus pre-judgment interest and administrative costs, if any, as provided by Section 3115 of Title 38, United States Code, together with service of process costs of \$11.00. Future costs and interest at the legal rate of 7.88%, will accrue from the entry date of this judgment and continue until this judgment is fully satisfied.

DATED this 31st day of July, 1990.


U.S. DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

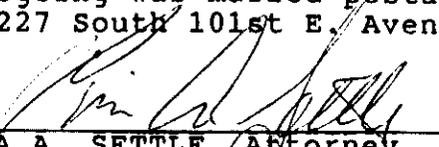
HERBERT N. STANDEVEN
District Counsel
Department of Veterans Affairs
Counsel for Plaintiff

AGREED BY: 
LISA A. SETTLE, Attorney

AGREED: 
JAMES M. LANSFORD

CERTIFICATE OF MAILING

This is to certify that on the 30th day of July, 1990, a true and correct copy of the foregoing was mailed postage prepaid thereon to: JAMES M. LANSFORD, 1227 South 101st E. Avenue, Tulsa, OK 74128.


LISA A. SETTLE, Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GLORIA JEAN HOLT a/k/a GLORIA J.
HOLT; TOWN OF GLENPOOL; COUNTY
TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

JUL 31 1990

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

CIVIL ACTION NO. 90-C-287-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 31st 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 Defendant, Gloria Jean
Holt a/k/a Gloria J. Holt, appears not, but makes default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Gloria Jean Holt a/k/a
Gloria J. Holt, acknowledged receipt of Summons and Complaint on
April 17, 1990; that Defendant, County Treasurer, Tulsa County,
Oklahoma, acknowledged receipt of Summons and Complaint on
April 3, 1990; and that Defendant, Board of County Commissioners,
Tulsa County, Oklahoma, acknowledged receipt of Summons and

Complaint on April 3, 1990.

It appears that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed its Answer on April 23, 1990; that the Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on April 23, 1990; that the Defendant, Town of Glenpool filed a Disclaimer on April 9, 1990 and the Order Granting Dismissal of the Town of Glenpool was filed on April 20, 1990; and that the Defendant, Gloria Jean Holt a/k/a Gloria J. Holt, has failed to answer and her 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 Five (5), Block Eight (8), GLENPOOL PARK, an Addition in the Town of Glenpool, Tulsa County, State of Oklahoma, according to the Recorded Amended Plat thereof.

The Court further finds that on October 1, 1984, the Defendant, Gloria Jean Holt, executed and delivered to the United States of America, acting through the Farmers Home Administration, her mortgage note in the amount of \$40,770.00, payable in monthly installments, with interest thereon at the rate of 11.8750 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Gloria Jean Holt, executed and delivered to the United States of America,

acting through the Farmers Home Administration, a mortgage dated October 1, 1984, covering the above-described property. Said mortgage was recorded on October 1, 1984, in Book 4820, Page 491, in the records of Tulsa County, Oklahoma.

The Court further finds that, on October 1, 1984, the Defendant, Gloria Jean Holt, 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 or about July 24, 1985, Gloria J. Holt 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 August 6, 1986, Gloria Jean Holt a/k/a Gloria J. Holt, 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 October 9, 1986, Gloria Jean Holt executed and delivered to the United States of America, acting through the Farmers Home Administration, a Reamortization and/or Deferral Agreement pursuant to which the entire debt due on that date was made principal.

The Court further finds that, on October 9, 1986, Gloria Jean Holt 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 October 2, 1987, Gloria J. Holt 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, Gloria Jean Holt a/k/a Gloria J. Holt, 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, Gloria Jean Holt a/k/a Gloria J. Holt, is indebted to the Plaintiff in the principal sum of \$40,579.96, plus accrued interest in the amount of \$3,511.74 as of July 18, 1989, plus interest thereafter at the rate of 11.8750 percent per annum or \$13.2024 per day from July 18, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of \$14,196.26, plus interest on that sum at the legal rate from judgment until 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 \$384.00, plus penalties and interest, for the year of 1989. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$8.00 which became a lien on the property as of 1989. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, 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 Defendant, Gloria Jean Holt a/k/a Gloria J. Holt, in the principal sum of \$40,579.96, plus accrued interest in the amount of \$3,511.74 as of July 18, 1989, plus interest accruing thereafter at the rate of 11.8750 percent per annum or \$13.2024 per day from July 18, 1989 until judgment, plus interest thereafter at the current legal rate of 7.88 percent per annum until paid, and the further sum due and owing under the interest credit agreements of \$14,196.26 plus interest on that sum at the legal rate from judgment 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 of 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 \$384.00, plus penalties and interest for ad valorem taxes for the year of 1989, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$8.00 for personal property taxes for the year of 1989, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, 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 the Defendant, Town of Glenpool, claims no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Gloria Jean Holt a/k/a Gloria J. Holt, 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 \$384.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

Fourth:

In payment of the Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$8.00, plus penalties and interest, for personal property taxes which are presently due and owing on said real property;

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

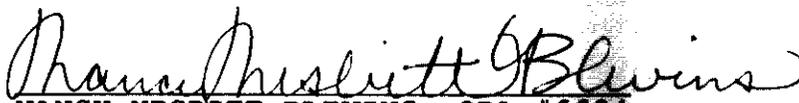
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under

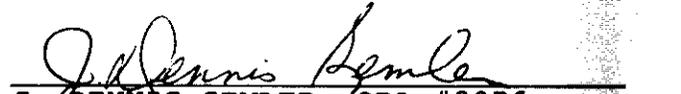
and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

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. 90-C-287-B

NNB/esr

F I L E D

JUL 31 1990

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

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

LYNN WHITEFIELD,)
DELIA ALICIA WHITEFIELD,)
MARGARITA CABALLERO DE CARRILLO,)
and ALICIA CABALLERO DE GUTIERREZ,)

Plaintiffs,)

vs.)

Case No. 90-C-182 B

CARLOS MALDONADO ELIZONDO,)
CARLOS MALDONADO QUIROGA,)
and COPAMEX, S.A. DE C.V.,)

Defendants.)

ORDER OF DISMISSAL

On July 31st 1990, this matter came on for hearing before me, the undersigned Judge. The Court finds that a Stipulation of Dismissal With Prejudice has been filed by the parties, which reflects that the claims have been resolved and that this cause should be dismissed, with prejudice.

IT IS THEREFORE ORDERED that the captioned action is dismissed with prejudice and each of the parties are directed to pay their own costs and attorney's fees.

S/ THOMAS R. BRETT

JUDGE THOMAS R. BRETT,

UNITED STATES DISTRICT JUDGE

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

FILED

JUL 31 1990

FEDERAL DEPOSIT INSURANCE
CORPORATION,

Plaintiff,

vs.

KANSAS BANKERS SURETY COMPANY,

Defendant.

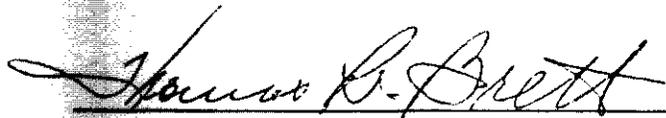
Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 90-C-101-B

J U D G M E N T

In accord with the Order filed this date sustaining the Defendant's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendant, Kansas Bankers Surety Company, and against the Plaintiff, Federal Deposit Insurance Corporation. Plaintiff shall take nothing of its claim. Costs are assessed against the Plaintiff and each party is to pay its respective attorney's fees.

Dated, this 31st 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 30 1990

DEBBIE PORTER,
an individual,

Plaintiff,

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

-vs-

Case No. 89-C-762-B

MARILYN CARY, d/b/a
TULSA ACADEMY OF
HAIRSTYLING,

ORDER OF DISMISSAL

NOW on this 30 day of July, 1990, the COURT
being advised that the parties hereto have effected settlement of
the above captioned matter and have entered into a stipulation of
dismissal finds that this matter should be dismissed with
prejudice.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that the above
captioned matter is dismissed with prejudice.

S/ THOMAS R. BRETT

HON. THOMAS R. BRETT
UNITED STATES DISTRICT COURT JUDGE

FILED

JUL 30 1990

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

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

RICHARD MOSER,

Plaintiff,

v.

METROPOLITAN LIFE INSURANCE
COMPANY,

Defendant.

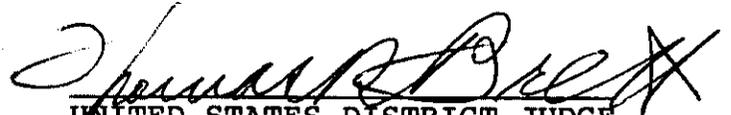
Case No. 89-C-860-B

ORDER OF DISMISSAL

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

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

DATED: 7-30-90


UNITED STATES DISTRICT JUDGE

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

FILED
JUL 30 1990

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

FINEX CAPITAL CORPORATION LTD.,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
COLWYN USA, INC., an Oklahoma)
corporation,)
)
Defendant.)

Case No. 90-C0011-B ✓

JOURNAL ENTRY OF JUDGMENT

Now on this 30th day of July, 1990 this matter comes on for trial. Plaintiff, Finex Capital Corporation Ltd. ("Finex"), appears by its counsel of record Richard W. Gable of Gable & Gotwals and the Defendant, Colwyn USA, Inc. ("Colwyn"), appears by its counsel of record Christopher J. Bernard Of Counsel with Brewster, Shallcross & Rizley. The parties announce that they have settled the claims included herein and agreed to entry of this judgment at this time whereupon the Defendant Colwyn verbally amended its Answer and admitted all of the findings and conclusions contained herein.

WHEREUPON, having considered all of the pleadings on file herein and the admissions by the Defendant of all of the following findings and conclusions the court finds as follows:

1. Finex is a corporation incorporated and existing under the laws of Canada, with its principal place of business in Alberta, Canada.

2. Colwyn is a corporation incorporated and existing under the laws of the State of Oklahoma with its principal place of business in Washington County, Oklahoma in the Northern District of Oklahoma. Colwyn's registered agent is Floyd W. Bockius and its registered agent's address is Rural Route 1, Box 75, Wann, Oklahoma in the Northern District of Oklahoma.

3. The amount in controversy exceeds the sum or value of U.S. \$50,000, exclusive of interest and costs. This is a civil action between Colwyn, a citizen of the State of Oklahoma, and Finex, a citizen of a foreign state. This Court has jurisdiction pursuant to 28 U.S.C. §1332.

4. On August 25, 1987, Finex as Lender and Colwyn as Borrower executed a certain Loan Agreement ("Loan Agreement") whereby Finex loaned Colwyn Cdn. \$450,000 (U.S. \$340,316.12 at the time) and Colwyn, among other promises and agreements, agreed to repay the Loan as provided in the Loan Agreement (herein "Loan"). A true and complete copy of the Loan Agreement is attached to the Complaint herein and is marked "Exhibit A" thereto. The full loan proceeds were disbursed by Finex to Colwyn.

5. At the time of the execution of the Loan Agreement, Colwyn also executed and delivered to Finex a certain Mortgage, Security Agreement and Financing Statement on oil, gas and other mineral interests (herein "Mortgage") covering the real estate, improvements, tangible and intangible personal property described therein to secure, among other obligations, Colwyn's obligation to repay the Loan to Finex. The Mortgage was duly executed and

acknowledged according to law and after the mortgage tax was paid thereon, was filed for record in the office of the County Clerk of Washington County, Oklahoma on the 31st day of August, 1987 and duly recorded in Book 845 beginning at Page 1024 of the real estate records of Washington County, Oklahoma. The Mortgage secures all of the obligations of Colwyn to Finex pursuant to the Loan Agreement and other obligations, all of which are collectively referred to in the Mortgage and herein as the "Secured Indebtedness". The collateral covered by the Mortgage, which is the subject of this foreclosure action, is described in the attached "Exhibit B" which is incorporated herein by reference and is hereinafter referred to as the "Mortgaged Premises".

6. Finex is now the owner and holder of the Loan, Loan Agreement and Mortgage.

7. The Loan matured and became due and payable in full on May 31, 1989. The Loan has not been paid.

8. As of January 31, 1990 the indebtedness from Colwyn to Finex consisted of the principal amount of Cdn. \$166,780.89 plus interest thereafter at the rate of 11.5% per annum resulting in a per diem interest of Cdn. \$53.22. Additionally, Colwyn is indebted to Finex for all foreclosure expenses and costs including without limitation attorney fees. The entire principal, interest, attorney fees, court costs, foreclosure expenses and other costs and expenses of collection and foreclosure are secured by the Mortgage and are owing by Colwyn

to Finex and are collectively hereinafter referred to as the "Secured Indebtedness".

9. The attorney fees of US \$7,500 are reasonable and all other foreclosure expenses and other costs of expenses of collection and foreclosure are US \$935.50 to date.

10. All requisite notices have been given.

IT IS THEREFORE ORDERED as follows:

A. Plaintiff, Finex Capital Corporation Ltd., have and recover of and from the Defendant, Colwyn USA, Inc., a judgment in the amount of the Secured Indebtedness which includes Cdn. \$166,780.89 plus interest at the rate of 11.5% per annum after January 31, 1990 until paid plus US \$7,500 attorney fees plus US \$935.50 costs and expenses to date plus costs hereafter incurred.

B. Finex has a lien, prior to the interests of Colwyn, upon the Mortgaged Premises described in the attached Exhibit B, which is incorporated herein by reference, which is hereby adjudged and established to be a good and valid lien thereon and the judgment for the Secured Indebtedness herein is secured by said lien.

C. Upon failure of Colwyn to satisfy the judgment herein, the Marshal of the United States District Court for the Northern District of Oklahoma or the Sheriff of the various counties where the properties are located shall levy upon the properties and interests and after having the same appraised as provided by law, shall proceed to advertise and sell the same according to law, and shall immediately turn over the proceeds thereof to the District Court Clerk who shall apply the proceeds arising from said sale as follows:

- (i) In payment of the costs and expenses of this action, including outstanding court costs and costs of sale incurred by Finex;
- (ii) In payment to Finex of its judgment as herein set forth;
- (iii) The residue, if any, shall be held by the Clerk of this Court to await further order of this Court.

D. From and after the sale of said properties and interests, all of the parties to this action, and each of them, and all persons claiming under them or any of them shall be and they are hereby forever barred and foreclosed of and from any and every lien upon, right, title, estate or equity of redemption in or to said properties and interests, or any portion thereof.

E. Upon confirmation of the sale hereinabove ordered, the Marshal or Sheriffs shall execute and deliver good and sufficient deeds or other instruments of conveyance of the properties and interests to the purchaser, which shall convey all of the right, title, interest, estate and equity of redemption of all of the parties herein, and all persons claiming under all of the parties herein, and each of them, since the filing of the Notice of Pendency in this action, and upon application of the purchaser, the United States District Court Clerk shall issue a writ of assistance to the Marshal or Sheriffs who shall thereupon and forthwith place said purchaser in full and complete possession and enjoyment of said properties and interests.

Thomas K. Brett
UNITED STATES DISTRICT JUDGE

APPROVED AND AGREED TO:

R. W. Gable

Richard W. Gable, Esq.
Gable & Gotwals
2000 Fourth National Bank Bldg.
15 W. 6th St.
Tulsa, Oklahoma 74119

ATTORNEYS FOR FINEX CAPITAL
CORPORATION, LTD.

C. J. Bernard
Christopher J. Bernard, Esq.
Brewster, Shallcross & Rizley
20 E. 5th, 15th Floor
Tulsa, Oklahoma 74103

ATTORNEYS FOR COLWYN USA, INC.

DESCRIPTION OF "MORTGAGED PREMISES"

The oil and gas leases and interests described in the attached Exhibit A which are incorporated herein by reference; together with, all of Colwyn U.S.A., Inc.'s right, title and interest in the oil, gas and mineral leases and/or minerals, mineral interests and estates in and under the property described in Exhibit A including, without limitation, all royalties, overriding royalties and production payments therefrom, and all interest of Colwyn U.S.A., Inc. in all other oil, gas and mineral interests with which any of the aforementioned interests and estates are utilized or pooled; all wells, casing, tubing, rods, flow lines, pipe lines, compressors, motors, engines, tanks, separators, pumping units, heater-treaters and fittings, machinery, tools, equipment, oil in storage, severed oil, buildings, structures, supplies, inventories, and all other goods, chattels, accounts, contract rights, insurance policies and proceeds, business records, documents of title, chattel paper, general intangibles and other items of personal property and fixtures located upon or used in connection with any of the property or properties described above expressly including all personal properties described above, expressly including all personal property of whatsoever kind used in the production of oil, gas, casing head gas or other hydrocarbon substances or other minerals of any kind or nature whatsoever, whether located below or above ground, from any of the property or properties, described above, and all production of oil, gas, casing head gas or other hydrocarbons or other minerals of any kind or nature whatsoever owned by Colwyn U.S.A., Inc.; all contracts, operating agreements, rights of way, easements, surface leases, permits, franchises, licenses, pooling or unitization agreements, pooling, designations and pooling orders, in any way effecting any of the interests covered hereby, or which are useful or appropriate in drilling or producing, treating, handling, storing, transporting or marketing oil, gas, casing head gas or other hydrocarbon substances or other minerals of any kind from any of the property or properties described above (all of such property, interests and estates are referred to as the "Mortgaged Premises").

FILED

JUL 27 1990

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

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

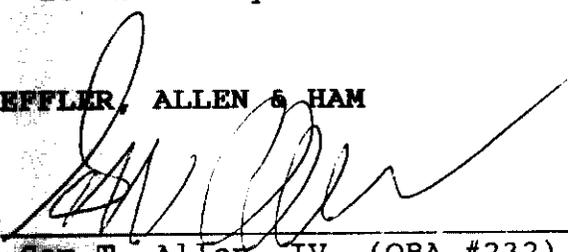
INTERNATIONAL SEARCHERS, INC.,)
)
 Plaintiff,)
 vs.)
)
 NOEL E. DANIELLS and JACK RUMP,)
 CO-EXECUTORS OF THE ESTATE OF)
 GLADYS K. HOLBROOK, Deceased,)
)
 Defendant's.)

Case No. 90-C-352-C

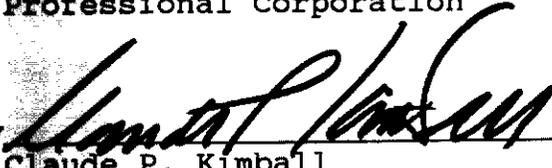
**DISMISSAL WITHOUT PREJUDICE
BY JOINT STIPULATION**

Comes now the Plaintiff, INTERNATIONAL SEARCHERS, INC., and the Defendants, NOEL E. DANIELLS and JACK RUMP, CO-EXECUTORS OF THE ESTATE OF GLADYS K. HOLBROOK, Deceased, by and through their respective attorneys of record and do hereby jointly stipulate pursuant to the provisions of Rule 41 of the Federal Rules of court Procedures that the parties have entered into a settlement agreement to resolve this litigation and that the case at bar may be dismissed without prejudice.

LOEFFLER, ALLEN & HAM

By 
Sam T. Allen, IV, (OBA #232)
P.O. Box 230
Sapulpa, Ok 74067
PHONE: (918) 224-5302
Attorney for Plaintiff

BUNKER, BYRUM & KIMBALL,
a Professional Corporation

By 
Claude P. Kimball
1515 - 20th Street
Bakersfield, CA 93301
PHONE: (805) 323-2841

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

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

ERIC C. HANSON,
CSS 221 44 0149

Defendant,

CIVIL NUMBER 90-C-0045 E

FILED

JUL 27 1990

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

NOTICE OF DISMISSAL

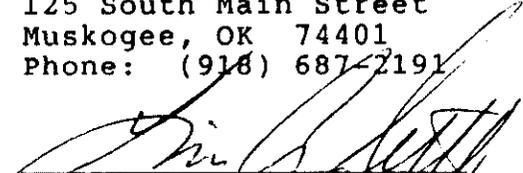
COMES NOW the Plaintiff, United States of America, by and through its attorney, Herbert N. Standeven, District Counsel, Department of Veterans Affairs, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

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 26th day of July, 1990, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: ERIC C. HANSON, at 10609 East 66th S., Apt. 234, Tulsa, OK 74133.


LISA A. SETTLE, Attorney

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

JUL 26 1993

WILLIAMS PIPE LINE COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 INDUSTRIAL RISK INSURERS,)
)
 Defendant.)

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

Case No. 90-C-514-B

NOTICE OF DISMISSAL WITHOUT PREJUDICE

Pursuant to Rule 41(a)(1)(i) Plaintiff Williams Pipe Line Company hereby gives notice that it dismisses the above-captioned action without prejudice.

Respectfully submitted,

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

By: Mark K. Blongewicz
Mark K. Blongewicz, OBA #5889
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-3087

and

Mark E. Klein
ANDERSON, KILL, OLICK & OSHINSKY, P.C.
666 Third Avenue
New York, New York 10017

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF MAILING

I the undersigned do hereby certify that on the 26th day of July, 1990, a true and correct copy of the above and foregoing instrument was forwarded by U.S. Mail, with proper postage thereon fully prepaid, to the following counsel of record:

H. Jerome Gette
Zelle & Larson
1201 Main Street, Suite 3000
Dallas, Texas 75202

Lawrence Zelle
Robert M. Wattson
33 South Sixth Street
City Center, Suite 4400
Minneapolis, Minnesota 55402

William E. Hughes
320 South Boston, Suite 1020
Tulsa, Oklahoma 74103

Mark Blongewicz

1 JOHN D. O'CONNOR
2 PATRICK J. HOGAN
3 TARKINGTON, O'CONNOR & O'NEILL
4 A Professional Corporation
5 One Market Plaza
6 Spear Street Tower, 41st Floor
7 San Francisco, California 94104
8 Telephone: (415) 777-5501

9 JAMES M. REED, ESQ.
10 Hall, Estill, Hardwick, Gable, Golden & Nelson
11 4100 Bank of Oklahoma Tower
12 One Williams Center
13 Tulsa, Oklahoma 74172-0154
14 Telephone: (918) 588-2700

15 Attorneys for the RESOLUTION TRUST CORPORATION,
16 as Conservator for MERCURY FEDERAL SAVINGS AND LOAN ASSOCIATION

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF OKLAHOMA

19 MARRIOTT CORPORATION,
20
21 Plaintiff and
22 Counter-Defendant,

NO. 89-C-225 E

23 vs.

CONSOLIDATED WITH

24 RESOLUTION TRUST CORPORATION,
25 as Conservator for MERCURY
26 SAVINGS AND LOAN ASSOCIATION,
27
28 Defendant and
29 Counter-Plaintiff,

NO. 90-C-138-E

30 RESOLUTION TRUST CORPORATION,
31 as Conservator for MERCURY
32 SAVINGS AND LOAN ASSOCIATION,
33
34 Plaintiff,

STIPULATION RE: VOLUNTARY
PARTIAL DISMISSAL OF
PETITION

35 vs.

36 CHESAPEAKE HOTEL LIMITED
37 PARTNERSHIP and MARRIOTT HOTELS,
38 INC.,
39
40 Defendants.

41 STIPULATION RE DISMISSAL

FILED

JUL 25 1990

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

1 This Stipulation for Partial Dismissal of Petition applies
2 only to consolidated Action No. 90-C-138-E captioned above.

3 WHEREAS defendant in Action No. 90-C-138-E, Chesapeake Hotel
4 Limited Partnership ("Chesapeake"), has filed a motion for partial
5 summary judgment as to Count I of the Petition in Action No. 90-C-
6 138-E, and petitioner Resolution Trust Corporation ("RTC") as
7 Conservator for Mercury Savings and Loan Association has agreed to
8 voluntarily dismiss its claim against Chesapeake contained in Count
9 I of the Petition, it is hereby stipulated by and between petitioner
10 and defendants herein as follows:

11 Petitioner RTC hereby dismisses the claim for relief stated
12 against Chesapeake in Count I of its Petition in case No. 90-C-138-
13 E. It is further agreed that defendant Chesapeake's Motion for
14 Partial Summary Judgment, and request for attorney fees contained
15 therein, shall be deemed withdrawn.

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28 STIPULATION RE DISMISSAL

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SO STIPULATED.

Dated: July 24, 1990

TARKINGTON, O'CONNOR & O'NEILL
A Professional Corporation

By: Patrick J. Hogan
PATRICK J. HOGAN
Attorneys for the Defendant
and Counter-Plaintiff
RESOLUTION TRUST CORPORATION
as Conservator for
MERCURY SAVINGS AND LOAN
LOAN ASSOCIATION

Dated: July 25, 1990

GABLE & GOTWALS
By: [Signature]
JAMES M. STURDIVANT
Attorneys for Defendants
CHESAPEAKE HOTEL LIMITED
PARTNERSHIP AND MARRIOTT
HOTELS, INC.

L11C:FSL36\12932\PLD\12932.STI
F4

STIPULATION RE DISMISSAL

1 JOHN D. O'CONNOR
2 PATRICK J. HOGAN
3 TARKINGTON, O'CONNOR & O'NEILL
4 A Professional Corporation
5 One Market Plaza
6 Spear Street Tower, 41st Floor
7 San Francisco, California 94104
8 Telephone: (415) 777-5501

9 JAMES M. REED, ESQ.
10 Hall, Estill, Hardwick, Gable, Golden & Nelson
11 4100 Bank of Oklahoma Tower
12 One Williams Center
13 Tulsa, Oklahoma 74172-0154
14 Telephone: (918) 588-2700

15 Attorneys for the RESOLUTION TRUST CORPORATION,
16 as Conservator for MERCURY FEDERAL SAVINGS AND LOAN ASSOCIATION

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF OKLAHOMA

19 MARRIOTT CORPORATION,

NO. 89-C-225 E

20 Plaintiff and
21 Counter-Defendant,

22 vs.

CONSOLIDATED WITH

23 RESOLUTION TRUST CORPORATION,
24 as Conservator for MERCURY
25 SAVINGS AND LOAN ASSOCIATION,

26 Defendant and
27 Counter-Plaintiff,

28 RESOLUTION TRUST CORPORATION,
as Conservator for MERCURY
SAVINGS AND LOAN ASSOCIATION,

NO. 90-C-138-E

Plaintiff,

STIPULATION RE: VOLUNTARY
PARTIAL DISMISSAL OF
PETITION

vs.

CHESAPEAKE HOTEL LIMITED
PARTNERSHIP and MARRIOTT HOTELS,
INC.,

Defendants.

STIPULATION RE DISMISSAL

-1-

FILED

JUL 25 1990

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

1 This Stipulation for Partial Dismissal of Petition applies
2 only to consolidated Action No. 90-C-138-E captioned above.

3 WHEREAS defendant in Action No. 90-C-138-E, Chesapeake Hotel
4 Limited Partnership ("Chesapeake"), has filed a motion for partial
5 summary judgment as to Count I of the Petition in Action No. 90-C-
6 138-E, and petitioner Resolution Trust Corporation ("RTC") as
7 Conservator for Mercury Savings and Loan Association has agreed to
8 voluntarily dismiss its claim against Chesapeake contained in Count
9 I of the Petition, it is hereby stipulated by and between petitioner
10 and defendants herein as follows:

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12 against Chesapeake in Count I of its Petition in case No. 90-C-138-
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14 Partial Summary Judgment, and request for attorney fees contained
15 therein, shall be deemed withdrawn.

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STIPULATION RE DISMISSAL

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SO STIPULATED.

Dated: July 24, 1990

TARKINGTON, O'CONNOR & O'NEILL
A Professional Corporation

By: Patrick J. Hogan
PATRICK J. HOGAN
Attorneys for the Defendant
and Counter-Plaintiff
RESOLUTION TRUST CORPORATION
as Conservator for
MERCURY SAVINGS AND LOAN
LOAN ASSOCIATION

Dated: July 25, 1990

GABLE & GOTWALS
By: James M. Sturdivant
JAMES M. STURDIVANT
Attorneys for Defendants
CHESAPEAKE HOTEL LIMITED
PARTNERSHIP AND MARRIOTT
HOTELS, INC.

L11C:FSL36\12932\PLD\12932.STI
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STIPULATION RE DISMISSAL

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

UNITED STATES OF AMERICA,
Plaintiff,
-vs-
GILBERT V. BRIONES,
C 17 947 026C
Defendant,

FILED

JUL 24 1990

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

CIVIL NO. 90-C-452 C

CONSENT JUDGMENT

This matter coming on before this Court this 23rd day of July, 1990, and the Court being informed in the premises and it appearing that the parties have agreed and consent to a judgment as set forth herein; in accordance therewith;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff, United States of America, have and recover judgment against the Defendant, GILBERT V. BRIONES, in the principal sum of \$730.25, plus pre-judgment interest and administrative costs, if any, as provided by Section 3115 of Title 38, United States Code, together with service of process costs of \$11.00. Future costs and interest at the legal rate of 8.09%, will accrue from the entry date of this judgment and continue until this judgment is fully satisfied.

DATED this 23rd day of July, 1990.

[Signature]
U.S. DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

HERBERT N. STANDEVEN
District Counsel
Department of Veterans Affairs
Counsel for Plaintiff

AGREED By: [Signature]
LISA A. SETTLE, Attorney

AGREED: [Signature]
GILBERT V. BRIONES

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: GILBERT V. BRIONES, 2748 South Elder Avenue, Broken Arrow, OK 74012.

[Signature]
LISA A. SETTLE, Attorney

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

LAWRENCE A.G. JOHNSON, et al,)
)
 Appellee,)
)
 v.)
)
 VERN O. LAING,)
)
 Appellant.)

89-C-504-C ✓

FILED

JUL 24 1990

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

ORDER

FACTS

In 1983, Appellee Vern Laing, a Tulsa doctor, borrowed \$75,000 from the Bank of Oklahoma ("BOK") to buy a Beechcraft Bonanza airplane. The bank was granted a security interest in the airplane. Several months later, co-Appellant Lawrence Johnson -- Laing's attorney at the time -- entered into a partnership agreement whereby Johnson obtained half-interest in the plane.

On August 28, 1987 the partnership was dissolved. Laing subsequently stopped making payments on the plane. On October 15, 1987, with Laing in default, Laing's one-half interest in the airplane was sold at a sheriff's sale--to Johnson. On November 16, 1987, co-Appellant Don Bradshaw, at the urging of Johnson, borrowed money from an Owasso bank to buy the Airplane note from BOK. Bankruptcy Court Memorandum, June 16, 1989, pg. 2. A day later, Bradshaw sued Laing on the BOK airplane note in Tulsa County District Court. Two months later, Johnson sold the airplane for \$72,000.¹

¹ Wrote the Bankruptcy Court: "Johnson in retaliation had his friend Bradshaw buy the note from the Bank of Oklahoma along with its security interest in the airplane and then Johnson had Bradshaw release the security interest. This enabled Johnson, who had obtained complete title to the airplane through a state court judgment and execution to sell the airplane for \$72,000 and keep all the proceeds. The basic result...is

Then, on July 19, 1988 the Tulsa County District Court granted summary judgment in favor of Bradshaw on the BOK airplane note for \$65,550.42 plus attorney fees. Several months later, Laing filed bankruptcy under Chapter 11 of the Bankruptcy Code. On December 29, 1988, Appellants made a motion requesting that the bankruptcy judge recuse himself from the case. That motion was subsequently denied. Two months later, on February 16, 1989, Bradshaw filed his Proof of Claim to the Bankruptcy Court, asserting a claim based on the BOK airplane note-judgment. The Bankruptcy Court reduced the amount of Bradshaw's claim, on the basis of equity, to \$29,666. Appellants appealed, claiming the state court judgment should be given preclusive effect, any inequities notwithstanding.

STANDARD OF REVIEW

A court may affirm, modify, or review a bankruptcy court's judgment. Fed.R.Bky.Proc. 8013. The "clearly erroneous" standard is used to review factual findings. *In Re: Ruti-Sweetwater, Inc.*, 836 F.2d 1263, 1266 (10th Cir. 1988). However, the standard of review for a question of law is *de novo*. *Id.*

DISCUSSION

This appeal focuses on two major issues: 1) Did the bankruptcy judge err in refusing to recuse himself; and 2) did the bankruptcy judge err in not giving preclusive effect to the state court judgment?

that Johnson obtained all of the proceeds from the sale of the airplane but Laing was left with the obligation to pay. Memorandum on Objection to Claims of Bradshaw/Johnson, July 16, 1989, at 2.

a. Recusal

Appellants' argument in support of their assertion that the bankruptcy judge should have recused himself from this case is summarized in their brief, as follows:

From the reading of the transcript, from the reading of Johnson's affidavit in his brief in support of the Motion to Recuse, it is obvious that Judge Covey (the bankruptcy judge) pre-judged this case and could not try it with a detached state of mind. From the beginning, he was not going to give res judicata effect to two valid state court judgments." Appellant's Brief in Chief, at 14.

Mandatory disqualification of a federal judge may be premised on either of two statutes: Title 28 U.S.C. § 144 or § 455. Under § 144, a motion to recuse must be filed promptly after the facts forming the basis of the disqualification become known.² *Davis v. Cities Service Oil Company*, 420 F.2d 1278 (10th Cir. 1970).

Section 455, on the other hand, requires a judge disqualify or recuse himself where "his impartiality might reasonably be questioned." *United States v. Gigax*, 605 F.2d 507, 511 (10th Cir. 1979).

In this case, §455 applies.³ In determining whether a judge should recuse himself under §455(a), the test is whether a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality. *Hinman v. Rogers*, 831 F.2d 937, 939

² The applicable part of 28 U.S.C. §144 states: "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding..."

³ Under 28 U.S.C. § 144, an affidavit of bias and prejudice must be timely, sufficient, made by a party, and accompanied by a certificate of good faith of counsel. *Hinman v. Rogers*, 831 F.2d 937, 938 (10th Cir. 1987). The affidavit must state with required particularity the identifying facts of time, place, persons, occasion and circumstances. *Id.* Appellants' brief in support of his motion to recuse does not state with "required particularity" the identifying facts stated above. Brief in Support of Motions, December 29, 1988, at 4. Therefore, the procedural requirements of §144 have not been met.

(10th Cir. 1987).⁴ A judge should not **recuse** himself on unsupported, irrational or highly tenuous speculation. *Hinman*, 831 at 939.

Ultimately, the decision to **recuse** is committed to the sound discretion of the trial judge, and a denial of a motion to **recuse** is reviewed only for abuse of discretion. *Id.* at 938. Thus, a trial court's decision will **not** be disturbed on appeal unless there is a clear error of judgment, or, unless the trial court's decision exceeded the bounds of permissible choice under the circumstances. *U.S. v. Ortiz*, 804 F.2d 1161, 1164, n. 2 (10th Cir. 1986).

In this case, the bankruptcy judge **denied** Appellants' motion to recuse at a February 8, 1989 hearing. However, no transcript of that hearing has been provided to this Court. Appellant bears the burden to **assemble** the record necessary to support his argument. Fed.R.Bky.Proc. 8006. By analogy, the Court looks to Rule 10(b)(2) of the Federal Rules of Appellate Procedure which states:

If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include a record a transcript of all evidence relevant to such finding or conclusion.

Appellants should have included the transcript of the hearing on the motion to recuse. Without the benefit of the transcript, and upon review of record otherwise, this Court finds no abuse of discretion in the Bankruptcy Court's denial on the motion to recuse.

b. Proof of Claim

The second issue is whether the July 19, 1988 state court judgment, awarding

⁴ Appellants offers only a two-paragraph argument on the motion to recuse. Appellant's brief, July 26, 1989, page 14. Although charges of misconduct or prejudice leveled at trial judges should not be lightly made or casually treated by a reviewing court (*United States v. Cardall*, 550 F.2d 604, 606 (10th Cir. 1976)), Appellants' sparse argument makes it difficult to determine if there was an abuse of discretion by the Bankruptcy Court.

Bradshaw \$65,550.42, should be granted preclusive effect in making a proof of claim. The Bankruptcy Court held that it need not abide by the state court judgment, and reduced the claim to \$29,000. The question for this Court is whether the Bankruptcy Court is collaterally estopped from reducing the state court judgment.⁵

The general rule, allowing or disallowing creditors' claims, is that bankruptcy courts are required to give *res judicata* effect to a prior judgment of a non-bankruptcy court unless the rendering court lacked jurisdiction, or, unless the judgment resulted from fraud or collusion. *Heiser v. Woodruff*, 327 U.S. 726, 736, 66 S.Ct. 853, 90 L.Ed. 970 (1946).⁶ The Court of Appeals for the Sixth Circuit explains the reasoning for granting preclusive effect to state court judgments:

Collateral estoppel is applied to encourage the parties to present their best arguments on the issues in question in the first instance and thereby save judicial time. There is no reason to suppose that parties will not vigorously present their cases on issues necessary to the state court proceeding or that the bankruptcy court will be any more fair or accurate than the state court in determination of the facts. *Spilman v. Harley*, 656 F.2d 224, 227 (6th Cir. 1981)

Some courts have held that collateral estoppel should not apply in dischargeability determinations because of the bankruptcy court's exclusive jurisdiction. Other courts, however, including the Court of Appeals for the Tenth Circuit, have decided to the

⁵ Neither party contends that the elements of collateral estoppel have not been met. First, the issue of Bradshaw's judgment in the bankruptcy court decision is the same as that involved in the July 19, 1988 state action. Second, the issue was actually litigated by the parties in the state court action, third, the state court's determination of the issue was necessary to the resulting final and valid judgment. See, *In Re Wallace*, 840 F.2d 762, 765 (10th Cir. 1988).

⁶ Bankruptcy courts are essentially courts of equity with broad equity powers. *Margolis v. Nazareth Fair Grounds and Farmers Market*, 249 F.2d 222, 223 (2nd Cir. 1957). And they have the ability to invoke equitable powers "to the end that fraud will not prevail, that substance will not give way to form, that technical considerations will not prevent substantial justice from being done." *Pepper v. Litton*, 308 U.S. 295, 304, 60 S.Ct. 238, 84 L.Ed. 281 (1939). However, bankruptcy courts may not disregard the principle of *res judicata*. *Heiser v. Woodruff*, *supra*.

contrary.⁷ The issue in *In Re Wallace*, 840 F.2d 762 (10th Cir. 1988) was whether the state court's judgment barred relitigation in a dischargeability proceeding. The court wrote:

Although the bankruptcy court in a dischargeability action under section 523(a) ultimately determines whether or not a debt is dischargeable, we believe the doctrine of collateral estoppel may be invoked to bar relitigation of the factual issues underlying the determination of the dischargeability. ..We find no countervailing statutory policy which would prevent application of the doctrine. *Id.* at 764.

Therefore, unless fraud or collusion exists in the instant case, it is error for the Bankruptcy Court to disregard the doctrine of collateral estoppel. If fraud or collusion does exist, then the state court judgment need not be given *res judicata* effect, and the Bankruptcy Court decision will stand. At several times during the proceedings, the Bankruptcy Court alludes to the fact that fraud or collusion did exist in this case.⁸ However, the Bankruptcy Court made no specific factual finding as to either fraud or collusion. Such a finding is not clearly set forth in the decision of the court and this court, on appeal, cannot infer whether the Bankruptcy Court's decision was motivated by such finding.

Accordingly, the case is remanded to the Bankruptcy Court so it may state specifically its findings and whether the downward adjustment to Bradshaw's proof of claim was motivated by the existence of fraud or collusion.

⁷ See, generally, *Goss v. Goss*, 722 F.2d 599 (10th Cir. 1983), *Matter of Lombard*, 739 F.2d 499 (10th Cir. 1984) and *In Re Austin*, 93 B.R. 723 (Bkrcy.D.Colo. 1988)

⁸ One example is the April 17, 1988 proceeding on the issue of Bradshaw's claim. The bankruptcy judge said: "I feel that under the circumstances there's a prima facie, at least, of breach of fiduciary relationship, conflict of interest, and that is the equivalent of fraud and collusion." *Partial Transcript of Proceedings*, at 5.

SO ORDERED THIS 24th day of July, 1990.



H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

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

BETTY JO BLUE and MELISSA
WOODS,

Plaintiffs,

vs.

BILL J. NEWPORT,

Defendant.

No. 90-C 326 C

FILED

JUL 23 1990

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

ORDER

FOR GOOD CAUSE SHOWN, the above cause of action is dismissed for
lack of diversity.

DATED this 23 day of July, 1990.

Granted by Minute Order

on 7-23-90
JACK C. SILVER, CLERK

BY: [Signature]
Deputy Clerk

JUDGE

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

FILED
JUL 2 1990

FEDERAL DEPOSIT INSURANCE
CORPORATION,

Plaintiff,

vs.

MICHAEL S. AIMOLA,

Defendant.

Case No. 90 C-0083E

AGREED JOURNAL ENTRY OF JUDGMENT

This matter came on before the undersigned Judge of the District Court on the 20th day of July, 1990. The Court, being fully advised in the premises and having reviewed the stipulation contained herein, finds as follows:

1. The Court has jurisdiction of the subject matter hereof and of the parties hereto.
2. Prior to September 10, 1986, Central Bank and Trust Company of Tulsa, Oklahoma (the "Bank"), was a banking association organized under the laws of the State of Oklahoma, with its principal place of business in Tulsa, Oklahoma. At the close of business on September 10, 1986, the Oklahoma State Banking Commissioner assumed exclusive custody and control of the property and affairs of the Bank pursuant to 6 O.S. §1201(b).
3. The Oklahoma Banking Commissioner subsequently tendered to the FDIC appointment as Liquidating Agent of the Bank pursuant to 6 O.S. §1205(b). The FDIC as Liquidating Agent sold certain assets of the Bank to the FDIC in its corporate capacity.
4. Among the assets sold and transferred to the FDIC in its corporate capacity was that certain Promissory Note (the "Note") made, executed and delivered by Michael S. Aimola (the "Defendant") on or about June 27, 1985, in the original principal sum of

\$150,000.00, together with interest payable thereon at the CBT Base Rate Floating from and after June 27, 1985, until paid.

5. The Note executed by Defendant is in default and Defendant is currently indebted to the FDIC in its corporate capacity in the principal sum of One Hundred Three Thousand Five Hundred Seventy-Six and 80/100 Dollars (\$103,576.80), plus interest through July 2, 1990 in the amount of Forty Thousand One Hundred and Twenty-Five and 32/100 Dollars (\$40,125.32), together with costs of this action taxed at Fifteen and 21/100 Dollars (\$15.21) and for attorney's fees, taxed at One Thousand One Hundred and Eight and 75/100 Dollars (\$1,108.75) for the total sum of One Hundred Forty-four Thousand Eight Hundred Twenty-six and 08/100 Dollars (\$144,826.08).

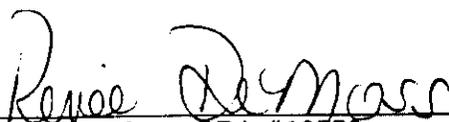
WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendant Michael S. Aimola is ordered to pay to the FDIC in its corporate capacity the sum of One Hundred Three Thousand Five Hundred Seventy-Six and 80/100 Dollars (\$103,576.80), plus interest through June 1, 1990 in the amount of Forty Thousand One Hundred and Twenty-Five and 32/100 Dollars (\$40,125.32), together with costs of this action taxes at Fifteen and 21/100 Dollars (\$15.21), and for attorney's fees, taxed at One Thousand One Hundred and Eight and 75/100 Dollars (\$1,108.75) for the total sum of One Hundred Forty-four Thousand Eight Hundred Twenty-six and 08/100 Dollars (\$144,826.08).

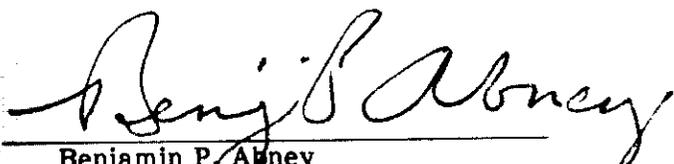
DATED this 20th day of July, 1990.

BY JAMES C. ...

United States District Judge

APPROVED AS TO FORM:


Renee DeMoss, OBA #10779
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2000 Fourth National Bank Building
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Attorneys for Plaintiff FDIC


Benjamin P. Abney
Chapel, Riggs, Abney, Neal & Turpen
502 West Sixth Street
Tulsa, Oklahoma 74119-1010
(918) 576-3161
Attorneys for Defendant Aimola

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

RONALD GENE STEWART

Plaintiff

VS.

BURLINGTON NORTHERN RAILROAD
COMPANY

CIVIL ACTION NO. 89 C-845-E

ORDER DISMISSING WITH PREJUDICE

Based upon the representation of counsel in their
Application for Order for Dismissal with Prejudice:

IT IS THEREFORE ORDERED that this case is hereby
dismissed with prejudice.

DATED this 20th day of July, 1990.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

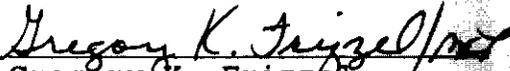
HUBBELL, SAWYER, PEAK & O'NEAL

BY: Gene C. Napier

Gene C. Napier #24607
Roger P. Wright #33138
Power & Light Building
106 West 14th Street
25th Floor
Kansas City, MO 64105
(816) 221-5666

and

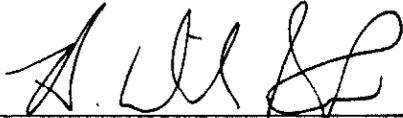
BY:


Gregory K. Frizzel

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(918) 581-6764

ATTORNEYS FOR PLAINTIFF,
RONALD GENE STEWART

BY:



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H. Daniel Spain
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(713) 650-6000

of WOMBLE & ASSOCIATES

ATTORNEYS FOR DEFENDANT,
BURLINGTON NORTHERN RAILROAD
COMPANY

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

VONNA JEAN EVANS and VIRGIL
EVANS,

Plaintiffs,

vs.

SIMPLIMATIC ENGINEERING COMPANY
a Delaware corporation,

Defendant,

No. 88-C-287-E

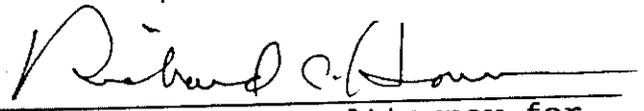
STIPULATION OF DISMISSAL

COMES NOW the Intervenor, Kansas City Fire & Marine Insurance Company, and stipulate that the Intervenor's claims in this matter are withdrawn and are hereby dismissed with prejudice as all the issues between the parties have been settled, each party to bear their or its own costs and attorney fees.

Dated this 25th day of June, 1990.

ROGERS, HONN AND ASSOCIATES

By:



Richard C. Honn, Attorney for
Intervenors

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

VONNA JEAN EVANS and VIRGIL
EVANS,

Plaintiffs,

vs.

SIMPLIMATIC ENGINEERING COMPANY
a Delaware corporation,

Defendant,

No. 88-C-287-E

U.S. District Court
COURT

STIPULATION OF DISMISSAL

COME NOW the Plaintiffs, and stipulate that the Plaintiffs' claims in this matter are withdrawn and are hereby dismissed with prejudice as all the issues between the parties have been settled, each party to bear their or its own costs and attorney fees.

Dated this 12th day of July, 1990.

JACK B. SELLERS LAW ASSOCIATES, INC.

By: Jack B. Sellers
Jack B. Sellers,
Attorney for Plaintiffs

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

PHILLIPS PETROLEUM COMPANY,
and Subsidiaries

Plaintiff

v.

UNITED STATES OF AMERICA,

Defendant

CIVIL NO. 87-C-408-E

ADMINISTRATIVE CLOSING ORDER

This case having been administratively closed for a period of six (6) months beginning February 2, 1990, and it appearing to the Court that the parties have reached grounds for settlement, this case is hereby administratively closed for an additional six (6) months from August 2, 1990. If the parties have not notified the Court of a final settlement by that date the case will be set for scheduling conference.

SIGNED this 20th day of July, 1990.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Approved for entry:

BOONE, SMITH, DAVIS, HURST
& DICKMAN

By L. K. Smith
L. K. Smith
500 ONEOK Plaza
100 West 5th Street
Tulsa, Oklahoma 74103
(918) 587-0000

ATTORNEY FOR PLAINTIFF
PHILLIPS PETROLEUM COMPANY

TONY M. GRAHAM
United States Attorney

By Phil Pineda
Attorneys for United States

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

JUL 23 1990

M. H. BOHANNON,

Plaintiff,

vs.

TIMOTHY T. RICKSTREW; WILLIAM
McWHIRT; and the TOWN OF OILTON,
OKLAHOMA,

Defendant.

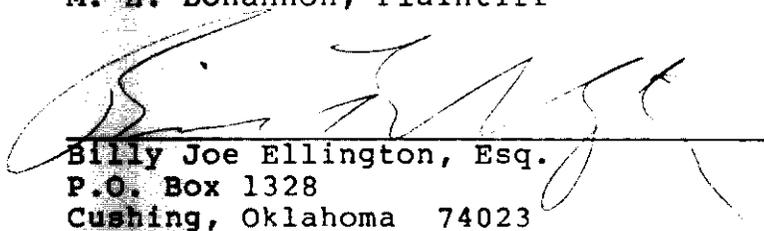
Case No. 90-C-133-B

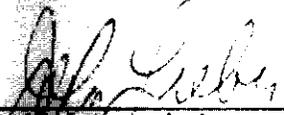
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

STIPULATION OF DISMISSAL WITH PREJUDICE

All the parties to this action hereby stipulate that any and all causes of action and claims against the Defendants, Timothy T. Rickstrew, William McWhirt and the Town of Oilton, Oklahoma, are hereby dismissed with prejudice.


M. H. Bohannon, Plaintiff


Billy Joe Ellington, Esq.
P.O. Box 1328
Cushing, Oklahoma 74023
Attorney for Plaintiff


John H. Lieber, Esq.
ELLER AND DETRICH
2727 East 21st Street
Suite 200, Midway Building
Tulsa, Oklahoma 74114
Attorney for Defendants

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

KATONA TAYLOR,

Plaintiff,

v.

SKAGGS ALPHA BETA,

Defendant.

Case No. 88-C-424-C **FILED**

JUL 20 1990

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

ORDER OF DISMISSAL WITH PREJUDICE

Now on this 20 day of July, 1990, the Court being advised that a compromise settlement having been reached between the Plaintiff and the Defendant, and those parties stipulating to a dismissal with prejudice, the Court orders that the captioned case be dismissed with prejudice.


UNITED STATES DISTRICT JUDGE

II. STIPULATIONS

On April 18, 1990, the parties provided the Court with a written stipulation in this matter. The stipulation reads as follows:

A. On February 14, 1986, Inland Construction Company entered into a contract with defendant to remove the contents and clean the subsoil of a detention pond, and perform various work incidental thereto, at the Tulsa refinery owned by defendant.

B. At all times material hereto plaintiff Rena McCormick was the president of Inland Construction Company.

C. At all times material hereto plaintiff Jim McCormick was lawfully married to plaintiff Rena McCormick, said plaintiffs residing together continuously at all times material hereto.

D. On April 9, 1986, defendant terminated the contract of Inland Construction Company and ordered Inland to remove its equipment and tools from defendant's premises by April 11, 1986.

E. Subsequent to Sun's termination of Inland, a dispute arose as to the balance due Inland under the contract with defendant for work actually performed.

F. On April 25, 1986, plaintiffs attended a meeting with representatives of defendant at a building identified as the north training room located at the defendant's refinery in Tulsa, Oklahoma.

G. The entrance to the north training room is located on a cement platform from which cement stairs descend from the north and south to ground level.

H. Plaintiffs entered the north training room by ascending the north stairway.

I. During the meeting, plaintiff stepped out onto the concrete platform on at least one occasion, but did not examine or descent either stairway.

J. Plaintiff Rena McCormick left the meeting alone and fell.

Agreed Pretrial Order at 2-3 (April 18, 1990). The Court adopts these stipulations as part of its findings and conclusions.

III. WITNESSES

Plaintiff called the following witnesses: Jerry Bennett, Rena McCormick, Jim McCormick, and Sherri McCormick. Defendant called the following witnesses: Kevin Crouch, Greg Shelest (by affidavit), Keith Ward (by deposition), Cindy Kline and Mike Matlock. The following witnesses also appeared by deposition: Ralph W. Richter, M.D., Henry H. Modrak, M.D., Sami R. Framjee, M.D.

IV. EXHIBITS

The following exhibits were admitted into evidence without objection: Joint exhibits #1 through #58; plaintiffs' exhibits #1 through #4; and defendant's exhibits #1 through #5.

IV. CONTESTED FACTUAL ISSUES

The parties, in their Final Agreed Pretrial Order, identified the factual issues set forth below. The Court's resolution and finding with respect to each of these issues is set forth below as well, in brackets.

A. Whether defendant breached its duty to the plaintiffs; [ANSWER: Yes].

B. If the defendant breached its duty, whether defendant's breach of duty was the direct and proximate cause of plaintiffs' injuries; [ANSWER: Yes].

C. Damages sustained by each plaintiff; [ANSWER: Yes, as set forth below].

D. Whether the defect on the stairway, if any, was open and obvious; [ANSWER: No].

E. Whether plaintiff has failed to mitigate her damages; [ANSWER: No].

F. Whether the plaintiff was comparatively negligent; [ANSWER: Yes].

G. Whether Inland had left the job site and had been terminated from all necessary and integral duties incident to the job; [ANSWER: Yes].

H. Whether Sun was the principal employer of Inland and hence the plaintiffs' employer at the time of the accident; [ANSWER: No].

I. Whether plaintiffs assumed the risk inherent in the condition of the premises which allegedly caused her injury; [ANSWER: No].

J. Whether plaintiff Rena McCormick suffered from a pre-existing condition; [ANSWER: Yes, in that she had an arthritic condition. However, as set forth below, this was not the cause of her damages herein].

K. Whether defendant selected, designated, and maintained the location of the meeting; [ANSWER: Yes].

L. Whether plaintiffs consented to a meeting at the location; [ANSWER: Yes].

M. Whether the plaintiffs objected to the site of the meeting; [ANSWER: No].

N. Whether plaintiffs were business invitees while on defendant's premises; [ANSWER: Yes].

Agreed Pretrial Order at 3-4 (Apr. 18, 1990).

V. ADDITIONAL FINDINGS OF FACT

In addition to the findings and conclusions adopted above, the Court makes the following findings of fact.

1. Defendant selected, designated and maintained the location of the April 25, 1986, meeting attended by plaintiffs. Plaintiffs consented to this location after first suggesting the meeting be held on plaintiff's business premises.

2. Plaintiffs entered the North Training Room by ascending the north stairs. The north stairs were partially covered by a tarp placed there by a painter or painters who were painting the building.

3. While ascending the north stairs plaintiffs had to "kick in" or kick away the tarp on several of the steps in order to ascend. This incident drew plaintiffs' attention to problems with the north staircase which were observable by them in the exercise of ordinary care.

4. Plaintiff Rena McCormick, however, did not ascend or descend the south stairs prior to her fall. Although she had spent several minutes of a break from the meeting on the platform directly above both the north and the south steps, no chipping or deterioration of the south steps could be seen from the platform where she was standing. Plaintiff, using ordinary care, would not have seen any crumbling portions of the south steps.

5. Viewing joint exhibit #16, a photograph taken by witness Sherri McCormick on the day of plaintiff's fall, the Court finds that plaintiff left the meeting by exiting the north door (the one with a window) and fell down the south steps (the steps fully shown in joint exhibit #16).

6. The steps where plaintiff fell had deteriorated as of the day plaintiff fell, and both cracking and chipping had occurred, although the cracking and chipping were not visible from plaintiff's point of view prior to her fall. In this respect, the south staircase contained a hidden danger in the form of concrete

steps which might crumble or give way when weight was placed upon them. Plaintiff credibly testified that the first step on the south staircase gave way, crumbling below her. Moreover, there was some photographic and testimonial evidence of concrete debris found at the scene. No chipping or crumbling or debris, however, was noted in any of the investigative reports prepared by defendant. The Court finds that the "chipping" noted by witness Jerry Bennett was related to the portion of the step where plaintiff fell, as well as to the debris shown in the photographic evidence on the day of the accident.

7. The deterioration of the south staircase was not open and obvious to plaintiff and would not have been observed by plaintiff in the exercise of ordinary care.

8. Joint exhibit #12, a photograph taken by counsel almost two years after the accident, is not an accurate picture of the condition of the south stairs on the day of the accident. None of the photographs taken more than two years after the accident, to wit: joint exhibits #1-13, have been relied upon by the Court as accurately depicting the scene on the day of the accident.

9. The deterioration of the south staircase was a direct and proximate cause of plaintiff's fall on April 25, 1986.

10. There was substantial evidence that immediately prior to plaintiff's fall, she left the meeting angry and disappointed. Prior to walking out of the training room, plaintiff told defendant's representatives that "they should be ashamed of themselves." The only eyewitness to the event heard her slam or

slap the door.¹ The speed with which plaintiff exited the meeting, as well as her emotional state, contributed to her fall. In the Court's view this constitutes contributory negligence on the part of plaintiff.

11. The Court finds comparative negligence as follows: Defendant 90%; plaintiff Rena McCormick 10%.

12. Defendant terminated the contract with Inland Construction Company on April 9, 1986, and ordered Inland to remove its equipment, tools and employees from defendant's premises by April 11, 1986.

13. Inland did no further work under the contract after April 9, 1986, and removed all of its equipment, tools and employees from defendant's premises by April 11, 1986.

14. Subsequent to the termination of the contract, a dispute arose as to the balance due to Inland for work performed.

15. Under the terms of the contract, labor and equipment were supplied to defendant at agreed rates per hour. Inland submitted daily time sheets and listed labor and equipment hours. The time sheets were verified, approved and signed by an authorized

¹The eyewitness, Kevin Crouch, was employed as a painter working at defendant's business on the day of the accident. Although this witness testified favorably for the defendant, his testimony has been carefully scrutinized by the Court. Crouch is a convicted felon who had difficulty recalling the events on the date of the accident, gave conflicting statements following the accident, and was impeached with several prior inconsistent statements. Crouch's testimony that plaintiff was departing in anger when she left the training room and slipped and fell down the stairs is corroborated by other evidence and as a result the Court believes this portion of Crouch's testimony, giving little, if any, weight to the remainder.

representative of defendant each day. The amount due Inland for work performed could be calculated by multiplying the agreed rates and the hours reflected on verified approved time sheets.

16. The Court has reviewed the extensive medical testimony by the parties. It is clear that plaintiff experienced great pain and suffering as a result of this accident.

17. At the time of her accident plaintiff was forty-five (45) years old and had an anticipated life expectancy of 32.4 to 35.2 years according to recognized mortality tables.

18. The Court finds plaintiffs' injuries are a direct and proximate result of her fall, and are not merely aggravation of any pre-existing injury or condition.

19. As a direct and proximate result of plaintiff's fall, plaintiff incurred reasonable hospital and medical expenses in the amount of \$22,428.33, and will continue to incur expenses for medication and treatment for pain control.

20. As a direct and proximate result of plaintiff's fall, plaintiff has endured great physical and emotional pain and suffering, and will in the future continue to experience great physical and emotional pain and suffering.

21. Dr. Modrack, an orthopedic surgeon, primarily treated plaintiff's knees. He met with her approximately 17 or 18 times from May, 1986 through February, 1988. On September 9, 1986, he performed arthroscopic surgery on her right knee. Dr. Modrack testified that he believes plaintiff has a permanent injury to the right knee.

22. Dr. Richter, a neurologist, first treated plaintiff on July 14, 1986. Plaintiff underwent a myelogram and a computerized tomographic analysis of the cervical spine, which indicated injuries to plaintiff's back and neck. Dr. Richter testified those injuries were a result of plaintiff's fall, notwithstanding plaintiff's pre-existing arthritic condition, which simply made her more vulnerable to such damage. Dr. Richter ordered a second myelogram on March 31, 1987, which, upon comparison with the earlier myelogram, showed "fluctuating symptoms" and indicated plaintiff was vulnerable to a "vascular cord catastrophe," which could leave her permanently quadriplegic.

23. Thereafter, plaintiff underwent a laminectomy, "decompressive surgery" performed by Dr. Angelo Patel. The decompressive surgery was extensive from C3 to C7. Dr. Richter's professional medical opinion was that this surgery was necessitated by plaintiff's fall.

24. Plaintiff still experiences pain and will continue to experience pain, and will continue to require medications, physical therapy, and further injections to block pain.

25. The Court finds plaintiff did not fail to mitigate her damages.

26. Plaintiff Rena McCormick has been damaged in the amount of \$10,000.00 for future medical expenses.

27. Plaintiff Rena McCormick has been damaged in the amount of \$130,000.00 for past and future physical and emotional pain and suffering.

28. Plaintiff Rena McCormick did not have any special education, training or practical experience to qualify her for the position of president of Inland, outside the context of a family-held corporation, and would not have had such an employment opportunity outside that context.

29. Inland made no attempt to replace plaintiff Rena McCormick with an individual of equal or greater qualifications.

30. The Court has reviewed the extensive financial records and testimony offered by the parties concerning the profitability of plaintiffs' company. Inland had experienced cash flow difficulties which continued from 1984 until the demise of the corporation in 1987. Inland, and the plaintiffs personally, incurred substantial payroll tax liens and failed to file corporate income tax returns as required by federal law and regulations of the Internal Revenue Service.

31. The demise of Inland in 1987 was caused not by plaintiff Rena McCormick's fall, but rather by the declining economic conditions in the market in which Inland operated, and by the declining health of Jim McCormick, who oversaw and managed the construction business of Inland.

32. Accordingly, plaintiffs are not entitled to any damages in the form of lost wages, lost earning capacity, or lost profits.

33. Plaintiff Jim McCormick, the husband of Rena McCormick, has suffered a loss of consortium as a result of his wife's accident and injuries, and has been damaged in the amount of \$25,000.00 for such loss of consortium.

VI. ADDITIONAL CONCLUSIONS OF LAW

In addition to the findings and conclusions adopted above, the Court enters the following conclusions of law. Insofar as a finding of fact set forth above might be more properly characterized as a conclusion of law, it is incorporated herein. Similarly, to the extent a conclusion of law set forth herein might be more properly characterized as a finding of fact, it is incorporated as a finding of fact.

1. This Court has jurisdiction over the parties and the subject matter.

2. Oklahoma law is applicable.

3. Plaintiffs were the business invitees of defendant on the day of the plaintiff's accident.

4. Defendant as invitor owed a duty to plaintiffs as invitees to use ordinary care to maintain its premises in a reasonably safe condition. Sutherland v. St. Francis Hospital, Inc., 595 P.2d 780, 783 (Okla. 1979). This duty does not require defendant to warn of, or otherwise protect an invitee from, perils that are open and obvious. Id. Rather, the duty applies only to defects or conditions which are in the nature of hidden dangers, traps, snares, pitfalls and the like, in that they are not known to the invitee and would not be observed by the invitee in the exercise of ordinary care. Jackson v. Land, 391 P.2d 904, 906 (Okla. 1964).

5. A hidden danger need not be totally or partially obscured from vision. Jack Healey Linen Service Co. v. Travis, 434 P.2d 924, 926 (Okla. 1967). There exists no fixed rule for determining

whether a defect in the premises constitutes a hidden danger. Id. What constitutes a hidden danger depends on the physical condition of the premises and the peculiar use of the premises by the invitor at the time of the invitee's injury. Id.; Henryetta Construction Co. v. Harris, 408 P.2d 522, 531 (Okla. 1965).

6. In an action such as this, plaintiff must prove the following elements by a preponderance of the evidence:

- a. That plaintiff has suffered injury;
- b. That defendant was negligent;
- c. That such negligence was a direct cause of plaintiff's injury.

7. In order to prove defendant was negligent in this case, plaintiff must prove by a preponderance of the evidence that defendant did not use ordinary care to maintain its premises in a reasonably safe condition, and that the unsafe condition was not open and obvious but rather was in the nature of a hidden danger which would not be observed by plaintiff in the exercise of ordinary care.

8. The Court finds plaintiff proved each of foregoing elements by a preponderance of the evidence.

9. The affirmative defense of assumption of the risk is not applicable in this case. Thomas v. Holliday, 764 P.2d 165 (Okla. 1988). Rather, the doctrine of contributory negligence is applicable. Id. at 170-171.

10. In order for plaintiff to be found contributorily negligent, defendant must prove by a preponderance of the evidence that plaintiff Rena McCormick's conduct fell below the degree of

care which would be exercised by a reasonable person, and that such conduct contributed as a legal cause of her injuries. Id.

11. The Court finds defendant proved the foregoing elements by a preponderance of the evidence.

12. Under Oklahoma's comparative negligence statute, 23 O.S. §§ 13 and 14, plaintiff's contributory negligence does not bar her recovery from defendant, but rather reduces the amount of damages she is entitled to recover. The statute provides:

§ 13. Comparative negligence

In all actions hereafter brought, whether arising before or after the effective date of this act, for negligence resulting in personal injuries or wrongful death, or injury to property, contributory negligence shall not bar a recovery, unless any negligence of the person so injured, damaged or killed, is of greater degree than any negligence of the person, firm or corporation causing such damage, or unless any negligence of the person so injured, damaged or killed, is of greater degree than the combined negligence of any persons, firms or corporations causing such damage.

§ 14. Damages diminished in proportion to contributory negligence

Where such contributory negligence is shown on the part of the person injured, damaged or killed, the amount of the recovery shall be diminished in proportion to such person's contributory negligence.

23 O.S. §§ 13 and 14.

13. Consortium is the right one spouse has to the services, society, comfort, companionship and the marriage relationship of her or his spouse. Ruland v. Zenith Const. Co., 283 P.2d 540 (Okla. 1955).

14. In order for plaintiff Jim McCormick to recover damages

for loss of consortium, he must prove by a preponderance of the evidence:

- a. That defendant was negligent;
- b. That plaintiff Rena McCormick sustained injuries resulting from defendant's negligence;
- c. That he and Rena McCormick were married at the time such injuries were sustained;
- d. That as a result of such injuries, plaintiff Jim McCormick sustained a loss of consortium.

15. Plaintiff Rena McCormick's contributory negligence reduces the amount of damages plaintiff Jim McCormick is entitled to recover for his loss of consortium. McKee v. Neilson, 444 P.2d 194 (Okla. 1968).

16. The contract between defendant and Inland was terminated on April 9, 1986; plaintiffs' contractual relationship with defendant ended at the latest, on April 11, 1986; and on April 25, 1986, plaintiff Rena McCormick was no longer an employee of defendant for purposes of the Oklahoma Workers' Compensation Act. See e.g. Parten v. State Industrial Court, 496 P.2d 114 (Okla. 1972).

17. Workers' compensation is, therefore, not the exclusive remedy arising from plaintiff's fall on April 25, 1986, and defendant is not immune from plaintiffs' claims.

18. Applying Oklahoma's comparative negligence statute, 23 O.S. §§ 13 and 14, the Court finds plaintiff Rena McCormick is entitled to recover from defendant 90% of her damages (that is 90% of \$162,428.33), which is \$146,185.50.

19. Applying Oklahoma's comparative negligence statute, the 23 O.S. §§ 13 and 14, Court finds plaintiff Jim McCormick is entitled to recover from defendant 90% of his damages for loss of consortium (that is, 90% of \$25,000.00), which is \$22,500.00.

VII. JUDGMENT

A judgment reflecting the ruling of the Court has been filed separately.

ENTERED THIS 20th DAY OF JULY, 1990.



LAYN R. PHILLIPS
UNITED STATES DISTRICT JUDGE

FILED

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

JUL 20 1990

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

RENA McCORMICK and JIM
McCORMICK,

Plaintiffs,

vs.

SUN REFINING & MARKETING
COMPANY,

Defendant.

No. 88-C-1465-P

J U D G M E N T

This action came on for trial before the Court, the Honorable Layn R. Phillips, visiting District Judge, presiding, and the issues have been duly tried and Findings of Fact and Conclusions of Law having been duly rendered.

IT IS ORDERED AND ADJUDGED that plaintiff Rena McCormick is awarded judgment in the amount of \$146,185.50, and plaintiff Jim McCormick is awarded judgment in the amount of \$22,500.00, together with interest as provided by law.

DATED AT TULSA, OKLAHOMA, THIS 20th DAY OF JULY, 1990.



LAYN R. PHILLIPS
UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ONE THOUSAND SIX HUNDRED
EIGHT DOLLARS (\$1,608.00)
IN UNITED STATES CURRENCY,

Defendant.

CIVIL ACTION NO. 89-C-101-C

F I L E D

JUL 19 1990

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

JUDGMENT OF FORFEITURE

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

ORDERED, ADJUDGED, AND DECREED that Judgment be entered against the following-described defendant property:

ONE THOUSAND SIX HUNDRED
EIGHT DOLLARS (\$1,608.00)
IN UNITED STATES CURRENCY,

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

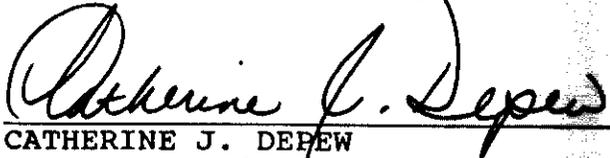
~~(Signed)~~ R. Dale Cook

R. DALE COOK, CHIEF JUDGE
United States District Court for the
Northern District of Oklahoma

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

A handwritten signature in cursive script, reading "Catherine J. DePew". The signature is written in black ink and is positioned above a horizontal line.

CATHERINE J. DEPEW
Assistant United States Attorney

CJD/ch
00758

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

ALBERT EQUIPMENT COMPANY, INC.,)
)
Plaintiff,)
)
v.)
)
ESCOE-GREEN, INC., et al,)
)
Defendants.)

90-C-211-C ✓

FILED

JUL 19 1990

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

ORDER

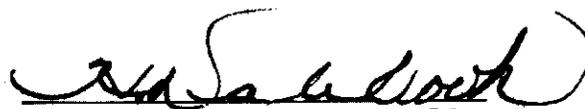
The Court has for consideration the Report and Recommendation of the United States Magistrate filed June 20, 1990 in which the Magistrate recommended that the Defendant's Motion to Dismiss be **granted and** the action dismissed.

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

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

It is, therefore, Ordered that the Motion to Dismiss is granted and the action dismissed.

Dated this 19th day of July, 1990.


H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

Closes

gsm

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LETHA J. CORNWELL a/k/a LETHA
CORNWELL; COUNTY TREASURER,
Craig County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Craig County, Oklahoma,

Defendants.

CIVIL ACTION NO. 90-C-360-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 19th day
of July, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, United States Attorney; the
Defendants, County Treasurer, Craig County, Oklahoma, and Board
of County Commissioners, Craig County, Oklahoma, appear by David
R. Poplin, Assistant District Attorney, Craig County, Oklahoma;
and the Defendant, Letha J. Cornwell a/k/a Letha Cornwell,
appears not, but makes default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Letha J. Cornwell a/k/a
Letha Cornwell, acknowledged receipt of Summons and Complaint on
April 30, 1990; that Defendant, County Treasurer, Craig County,
Oklahoma, acknowledged receipt of Summons and Complaint on
April 26, 1990; and that Defendant, Board of County
Commissioners, Craig County, Oklahoma, acknowledged receipt of

Summons and Complaint on May 4, 1990.

It appears that the Defendants, County Treasurer, Craig County, Oklahoma, and Board of County Commissioners, Craig County, Oklahoma, filed their Answer herein on May 2, 1990; and that the Defendant, Letha J. Cornwell a/k/a Letha Cornwell, has failed to answer and her 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 Craig County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot 9, in Block 6, in Northgate, an addition to the City of Vinita, Oklahoma, according to the recorded plat thereof, on file and of record in the office of the County Clerk, Craig County, Oklahoma.

The Court further finds that on July 23, 1981, the Defendant, Letha J. Cornwell, and Duane T. Cornwell executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$36,900.00, payable in monthly installments, with interest thereon at the rate of 13 percent (13%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Letha J. Cornwell, and Duane T. Cornwell executed and delivered to the United States of America, acting through Farmers Home Administration, a mortgage dated July 23, 1981, covering the

above-described property. Said mortgage was recorded on July 23, 1981, in Book 324, Page 332, in the records of Craig County, Oklahoma.

The Court further finds that, on July 23, 1981, the Defendant, Letha J. Cornwell, and Duane T. Cornwell 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 December 23, 1983, the Defendant, Letha J. Cornwell, and Duane T. Cornwell executed and delivered to the United States of America, acting through the Farmers Home Administration, a Reamortization and/or Deferral Agreement pursuant to which the entire debt due on that date was made principal.

The Court further finds that, on June 14, 1983, the Defendant, Letha J. Cornwell, and Duane T. Cornwell 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 December 19, 1983, the Defendant, Letha J. Cornwell, and Duane T. Cornwell 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 21, 1985, the Defendant, Letha Cornwell, 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 March 11, 1986, the Defendant, Letha Cornwell, and Duane T. Cornwell 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 10, 1986, the Defendant, Letha J. Cornwell, and Duane T. Cornwell 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 October 22, 1987, the Defendant, Letha Cornwell, and Duane Cornwell 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 August 15, 1989, the

United States of America, acting through the Farmers Home Administration, released Duane T. Cornwell from personal liability to the government for the indebtedness and obligation of above-described said note and security instruments.

The Court further finds that the Defendant, Letha J. Cornwell a/k/a Letha Cornwell, made default under the terms of the aforesaid note, mortgage, and reamortization and/or deferral agreements by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Letha J. Cornwell a/k/a Letha Cornwell, is indebted to the Plaintiff in the principal sum of \$32,319.54, plus accrued interest in the amount of \$3,119.90 as of August 11, 1989, plus interest accruing thereafter at the rate of 13 percent per annum from August 11, 1989 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, Craig County, Oklahoma, and Board of County Commissioners, Craig County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$208.52, plus penalties and interest, for the year of 1989. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, County Treasurer, Craig County, Oklahoma, and Board of County Commissioners, Craig County, Oklahoma have a lien on the property

which is the subject matter of this action by virtue of personal property taxes in the amount of \$11.41 which became a lien on the property as of 1989. Said lien is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Letha J. Cornwell a/k/a Letha Cornwell, in the principal sum of \$32,319.54, plus accrued interest in the amount of \$3,119.90 as of August 11, 1989, plus interest at the rate of 13 percent per annum from August 11, 1989 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 of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer, Craig County, Oklahoma, and Board of County Commissioners, Craig County, Oklahoma, have and recover judgment in the amount of \$208.52, plus penalties and interest for ad valorem taxes for the year of 1989, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer, Craig County, Oklahoma, and Board of County Commissioners, Craig County, Oklahoma have and recover judgment in the amount of \$11.41 for personal property taxes for the year of 1989, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Letha J. Cornwell a/k/a Letha Cornwell, 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 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 Defendants, County Treasurer, Craig County, Oklahoma, and Board of County Commissioners, Craig County, Oklahoma, in the amount of \$208.52, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

Fourth:

In payment of the Defendants, County Treasurer, Craig County, Oklahoma, and Board

of County Commissioners, Craig County,
Oklahoma in the amount of \$ 11.41, personal
property taxes which are currently due and
owing.

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

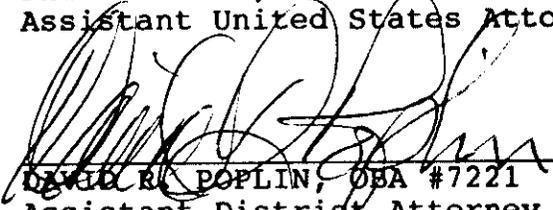
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, all of the Defendants
and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of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

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


PHIL PINNELL, OBA #7169
Assistant United States Attorney


DAVID R. POPLIN, OBA #7221
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Craig County, Oklahoma

PP:esr

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONALD L. CALDWELL; DEBORAH A.
CALDWELL; THOMAS J. McCOY;
JOHN DOE, Tenant; STATE OF
OKLAHOMA ex rel. OKLAHOMA TAX
COMMISSION; COUNTY TREASURER,
Tulsa County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

FILED

Jack [unclear] Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 90-C-254-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 19th 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; the Defendant, State of
Oklahoma ex rel. Oklahoma Tax Commission, appears by its attorney
Lisa Haws; and the Defendants, Donald L. Caldwell, Deborah A.
Caldwell, and Thomas J. McCoy who is the one and same person as
Defendant, John Doe, Tenant, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendants, Donald L. Caldwell and
Deborah A. Caldwell, acknowledged receipt of Summons and

Complaint on April 12, 1990; that the Defendant, Thomas J. McCoy who is the one and same person as Defendant, John Doe, Tenant, acknowledged receipt of Summons and Complaint on April 16, 1990; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on March 27, 1990; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 28, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 28, 1990.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on April 17, 1990; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer on April 4, 1990; and that the Defendants, Donald L. Caldwell, Deborah A. Caldwell, and Thomas J. McCoy who is the one and same person as Defendant, John Doe, Tenant, 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 Six (6), Block Seven (7), SOUTH PARK ESTATES 3rd, an Addition to the City of Broken Arrow, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on August 16, 1986, the Defendants, Donald L. Caldwell and Deborah A. Caldwell, 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 \$71,750.00, payable in monthly installments, with interest thereon at the rate of 9.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Donald L. Caldwell and Deborah A. Caldwell, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated August 16, 1986, covering the above-described property. Said mortgage was recorded on August 19, 1986, in Book 4963, Page 2961, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Donald L. Caldwell and Deborah A. Caldwell, 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, Donald L. Caldwell and Deborah A. Caldwell, are indebted to the Plaintiff in the principal sum of \$70,735.66, plus interest at the rate of 9.5 percent per annum from December 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the

property which is the subject matter of this action by virtue of Tax Warrant No. ITI0002298700 dated July 5, 1985, in the amount of \$1,443.62 plus interest and penalty according to law.

The Court further finds that the Defendant, Thomas J. McCoy who is the one and same person as Defendant, John Doe, Tenant, is in default and therefore has no right, title, or interest in the subject real property.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Donald L. Caldwell and Deborah A. Caldwell, in the principal sum of \$70,735.66, plus interest at the rate of 9.5 percent per annum from December 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 rem in the amount of \$1,443.62 plus interest and penalty according to law by virtue of Tax Warrant No. ITI0002298700 dated July 5, 1985.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Thomas J. McCoy is the one and same person as Defendant, John Doe, Tenant, and is in default and therefore has no right, title, or interest in the subject real property.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Donald L. Caldwell and Deborah A. Caldwell, 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 \$1,443.62 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.

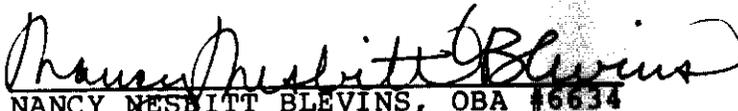
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

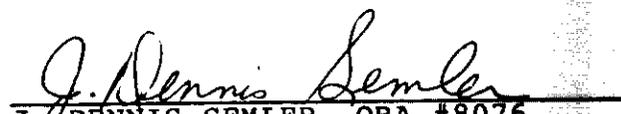
S/ THOMAS R. BRETT

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


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

Judgment of Foreclosure
Civil Action No. 90-C-254-B

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

ALBERT EQUIPMENT COMPANY, INC.,)
)
Plaintiff,)
)
v.)
)
ESCOE-GREEN, INC., et al,)
)
Defendants.)

90-C-211-C ✓

FILED

JUL 19 1990

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

ORDER

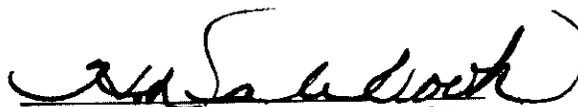
The Court has for consideration the Report and Recommendation of the United States Magistrate filed June 20, 1990 in which the Magistrate recommended that the Defendant's Motion to Dismiss be **granted and** the action dismissed.

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

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

It is, therefore, Ordered that the Motion to Dismiss is granted and the action dismissed.

Dated this 19th day of July, 1990.


H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

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

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

Plaintiff,)

vs.)

SHELDON BLOCH and)
GERALDINE BLOCH,)

Defendants.)

Case No. 89-C-376-E

ORDER OF DISMISSAL

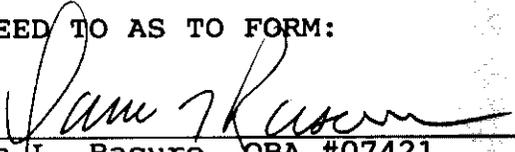
Pursuant to the Order entered by this Court on July 6, 1990, granting Plaintiff Thrifty Rent-A-Car System, Inc.'s ("Thrifty") Application for Order of Dismissal filed herein on December 18, 1989, Thrifty's cause of action against Geraldine Bloch insofar and only insofar as it relates to amounts owed by Geraldine Bloch under the Lease Agreement (as defined in the Complaint) is dismissed without prejudice.

ENTERED this 19 day of July, 1990.

S/ JAMES O. ELLISON

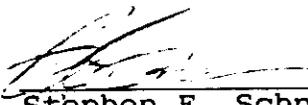
DISTRICT JUDGE

AGREED TO AS TO FORM:


Dana L. Rasure, OBA #07421
Ranee F. Charney, OBA #13255
BAKER, HOSTER, McSPADDEN,
CLARK, RASURE & SLICKER
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Tulsa, Oklahoma 74103
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THRIFTY RENT-A-CAR SYSTEM, INC.
5330 East 31st Street, Suite 900
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(918) 665-9319

Attorneys for Plaintiff
Thrifty Rent-A-Car System, Inc.


Stephen E. Schneider
Cornish & Schneider, Inc.
Kennedy Building, Suite 917
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Sheldon E. Rabb
Rabb and Davis Co., L.P.A.
450 Standard Building
Cleveland, Ohio 44113

Attorneys for Defendants
Sheldon Bloch and Geraldine Bloch

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

FILED
JUL 19 1990

Jessie L. ... Clerk
U.S. DISTRICT COURT

SUZAN ROHRBAUGH, BARBARA ANN
CLAY, and DEBRA MAE AMBLER,
Individually and as the Personal
Representative of the Estate of
Dorothy Mae Palmer,

Plaintiffs,

vs.

OWENS-CORNING FIBERGLAS, INC.,
and CELOTEX CORPORATION,

Defendants.

No. 88-C-90-B

J U D G M E N T

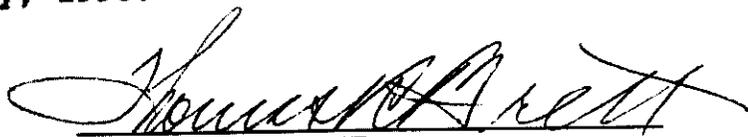
In keeping with the verdict of the jury herein, rendered on July 18, 1990, Judgment is hereby entered in favor of the following named Plaintiffs in the amounts provided:

Suzan Rohrbaugh, Barbara Ann Clay and Debra Mae Ambler, as representatives of the Estate of Dorothy Mae Palmer, Deceased	\$225,000.00
Suzan Rohrbaugh, Individually	\$ 75,000.00
Barbara Ann Clay, Individually	\$ 75,000.00
Debra Mae Ambler, Individually	\$ 75,000.00

and against the Defendants, Owens-Corning Fiberglas, Inc., and Celotex Corporation, jointly and severally, plus pre-judgment interest thereon from February 1, 1988 until the date hereon at the rate of 12.35% per annum and post-judgment interest from the date hereon at the rate of 8.09% per annum. The judgment-debtor Defendants, Owens-Corning Fiberglas, Inc. and Celotex Corporation, are hereby granted a credit to be deducted from the amount of the

above said judgment in the total sum of \$256,469.00,
having previously been paid Plaintiffs by parties other than the
two Defendants herein on their alleged claims for wrongful death
damages. Said credit sum is to be deducted pro rata from the
aforesaid judgments entered in favor of the Plaintiffs. Further,
costs are hereby assessed in favor of the Plaintiffs and against
the two named Defendants, if timely applied for pursuant to Local
Rule 6E and the parties herein are to pay their own respective
attorneys' fees.

DATED this 19th day of July, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

INTERSTATE COMMERCE COMMISSION,)

Plaintiff,)

v.)

RANDALL HILKER, individually,)
and d/b/a)
REJ TRANSPORT,)

Defendant.)

CIVIL ACTION NO. 90-C-212-C

DEFAULT JUDGMENT
AND
PERMANENT INJUNCTION

FILED
JUL 18 1990

Silver, Cle
S. DISTRICT COU

This cause came to be heard on plaintiff's Motion for Default Judgment, against defendant, Randall Hilker, individually, and doing business as REJ Transport, pursuant to Rule 55 (b) (2) of the Federal Rules of Civil Procedure.

The court has considered the motion and the argument of counsel for plaintiff. Accordingly, the plaintiff is entitled to a default judgment against defendant Randall Hilker, individually, and doing business as REJ Transport, granting the relief sought in plaintiff's complaint. Therefore, the Court having made and entered its Findings of Fact and Conclusions of Law:

IT IS ORDERED:

1. The plaintiff's motion for a default judgment against defendant Randall Hilker, individually, and doing business as REJ Transport, is granted;

FILED
JUL 18 1990
S. DISTRICT COU
ON RECEIPT

2. Defendant, **Randall Hilker**, individually, and d/b/a **REJ Transport**, and his officers, **agents**, employees, and representatives, and all persons in active concert or participation with him, be permanently enjoined from, in any manner or by any device:

- (a) Operating as a broker for the transportation of property by motor vehicle, in interstate or foreign commerce, for compensation, unless there is in effect a license issued by the Interstate Commerce Commission, authorizing such operations, and;
- (b) Operating as a broker for the transportation of property by motor vehicle, in interstate or foreign commerce, for compensation, unless there is in effect and on file with the Interstate Commerce Commission, in the manner and amounts prescribed, an acceptable policy of insurance, surety bond, or other security to ensure the financial responsibility of defendant, and;
- (c) Failing to use only the transportation of motor carriers which hold a certificate or permit issued by the Interstate Commerce Commission,

to transport property in interstate or foreign commerce, for compensation, and;

- (d) Failing to remit promptly the freight charges, which defendant collects on shipments subject to the jurisdiction of the Interstate Commerce Commission, to the motor carrier that transported the shipments, and;
- (e) charging or receiving less than the motor carrier's tariff rate, on shipments subject to the jurisdiction of the Commission, for which defendant arranges the transportation and bills the shipper, and;
- (f) participating with motor contract carriers in violations of 49 C.F.R. §1053.1, by arranging for the transportation of property by motor contract carrier, without a written bilateral contract in effect between the defendant and the motor contract carrier.

IT IS FURTHER ORDERED:

3. That defendant shall, within 30 days of the date of the entry of this Order, make an accounting to the Court, of all freight charges collected by defendant but not remitted to the motor carrier that transported the shipment.

4. Defendant shall send a copy of the accounting required by paragraph 3 above, to plaintiff's counsel.

5. Defendant shall, within 60 days of the date of the entry of this Order, make restitution to all motor carriers identified in the accounting required by paragraph 3 above.

Dated this 18th day of July, 1990.

(Signed) H. Dale Cook
H. DALE COOK
UNITED STATES DISTRICT JUDGE

Presented by:

YVONNE ANAGNOST
Attorney for Plaintiff
Interstate Commerce Commission
219 South Dearborn Street
Room 1304
Chicago, Illinois 60604
Phone No.: (312) 886-6403

entered

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

INTERSTATE COMMERCE COMMISSION,)
)
Plaintiff,)
)
v.)
)
RANDALL HILKER, individually,)
and d/b/a)
REJ TRANSPORT,)
)
Defendant.)

CIVIL ACTION NO. 90-C-212-C

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW **F I L E D**

JUL 18 1990

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

This cause came to be heard on plaintiff's motion for default judgment against the defendant, Randall Hilker, individually and d/b/a REJ Transport. The defendant did not appear at the hearing nor did he oppose the motion in any other manner.

Having considered plaintiff's motion for default judgment and the record in this action, the Court now makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. This action arises, and the jurisdiction of this Court is invoked, under the provisions of 28 U.S.C. §1345, 49 U.S.C. §11702, and under the general laws and rules relative to suits in equity existing under the Constitution and laws of the United States.

2. Defendant was served by specially appointed process server Marvin E. Evilsizor with the summons and complaint in this action on June 13, 1990, but has not filed an appearance, answer, or other defense.

FILED
JUL 18 1990
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

3. At all times mentioned herein, Defendant, Randall Hilker, individually, and d/b/a REJ Transport, has operated as a broker for the transportation of property in interstate or foreign commerce by motor carrier for compensation, with his principal place of business in Catoosa, Oklahoma, within the jurisdiction of this Court.

4. Since January 1, 1989, Defendant Randall Hilker, individually and d/b/a REJ Transport, has operated as a broker for the transportation of property by motor carrier in interstate or foreign commerce, for compensation, without holding an appropriate license issued by the Interstate Commerce Commission.

5. Since January 1, 1989, Defendant Randall Hilker, individually and d/b/a REJ Transport, has operated as a broker for transportation subject to the jurisdiction of the Interstate Commerce Commission without having a surety bond in effect and on file with the Interstate Commerce Commission.

6. Since January 1, 1989, defendant has used the transportation of motor carriers which do not hold the appropriate certificate or permit from the Commission, to transport property in interstate or foreign commerce, for compensation.

7. Since January 1, 1989, defendant has failed to remit promptly to motor carriers the freight charges which it collected on shipments transported by those motor carriers.

8. Since January 1, 1989, defendant has charged and received less than the motor carrier's tariff rate on shipments for which defendant arranged the transportation and billed the shipper.

9. Since January 1, 1989, defendant has participated with motor contract carriers in violations of 49 C.F.R. §1053.1, by arranging for the transportation of property by motor contract carrier, without a written contract in effect between the defendant and the motor contract carrier.

10. Unless restrained by this Court, defendant intends and will continue to: (1) operate as a broker for the transportation of property by motor carrier in interstate or foreign commerce, for compensation, without having a license from the Interstate Commerce Commission, and without having and filing with the Interstate Commerce Commission the required surety bond; (2) use the transportation of motor carriers which do not hold operating authority; (3) fail to remit freight charges to motor carriers; (4) fail to charge motor carrier's tariff rates; and, (5) use the transportation services of motor contract carriers without a written bilateral contract in effect between defendant and the carriers.

Any finding of fact that may be deemed a conclusion of law is incorporated into the Conclusions of Law section below, and any conclusion of law which may be deemed a finding of fact is incorporated into the Findings of Fact section above.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and the subject matter of this action by virtue of 28 U.S.C. §1345, 49 U.S.C. §11702(a)(4), and under the general laws and rules relative to suits in equity existing under the Constitution and laws of the

United States.

2. Defendant's broker operations are subject to the Interstate Commerce Act, 49 U.S.C. §10101 et seq., and to the regulations promulgated thereunder by the Interstate Commerce Commission.

3. The actions of the Defendant, described in paragraph 4 of the Findings herein, constitute violations of 49 U.S.C. §10921, and are subject to be enjoined by this Court under the express provisions of 49 U.S.C. §11702(a)(4).

4. The actions of the Defendant, described in paragraph 5 of the Findings herein, constitute violations of 49 U.S.C. §10927 and 49 C.F.R. §1043.4, and are subject to be enjoined by this Court under the express provisions of 49 U.S.C. §11702(a)(4).

5. The actions of the defendant, described in paragraph 6 of the Findings herein, constitute violations of 49 U.S.C. §10924 (c)(1), and are subject to be enjoined by this Court under the express provisions of 49 U.S.C. §11702 (a)(4).

6. The actions of the defendant, described in paragraph 7 of the Findings herein, constitute violations of 49 C.F.R. §1045.10, are subject to be enjoined by this Court under the express provisions of 49 U.S.C. §11702 (a)(4).

7. The actions of the defendant, described in paragraph 8 of the Findings herein, constitute violations of 49 U.S.C. §10761 and 49 C.F.R. §1045.10, and are subject to be enjoined by this Court under the express provisions of 49 U.S.C. §11702 (a)(4).

8. The actions of the defendant, described in paragraph 9

of the Findings herein, constitute violations of 49 C.F.R. §1053.1, and are subject to be enjoined by this Court under the express provisions of 49 U.S.C. §11702 (a)(4).

9. This Court may properly grant a default judgment in this action pursuant to Rule 55 (b)(2) of the Federal Rules of Civil Procedure.

10. Plaintiff has demonstrated by the pleadings that plaintiff is entitled to a default judgment and a permanent injunction, and an accounting and restitution.

Dated this 18 day of July, 1990.

(Signed) H. Dale Cook

H. DALE COOK
UNITED STATES DISTRICT JUDGE

Presented by:

YVONNE ANAGNOST
Attorney for Plaintiff
Interstate Commerce Commission
219 South Dearborn Street
Room 1304
Chicago, Illinois 60604
Telephone: (312) 886-6403

DKM/cjk
7/11/90

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

FILED

JUL 18 1990

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

ST. PAUL FIRE & MARINE
INSURANCE COMPANY,

Plaintiff,

Vs.

DEAN FULLINGIM,

Defendant.

NO. 90-C-501 B

J U D G M E N T

The Court has before it the application and affidavit of the plaintiff duly made for judgment by default. It appears that the defendant herein is in default and that the Clerk of the United States District Court has previously searched the records and entered the default of the defendant. It further appears upon plaintiff's affidavit that declaratory relief is sought, that default has been entered against defendant for failure to appear, and that defendant is not an infant or incompetent person and is not in the military service of the United States. The Court, having heard the argument of counsel and being fully advised, finds that judgment should be entered for the plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiff be granted the declaratory relief sought in the Complaint, namely:

1. That plaintiff is not obligated under its contract of insurance to indemnify the defendant, Dean Fullingim, in the underlying appeal of the Internal Revenue Service's proposed tax liability assessment,
2. That plaintiff is not obligated under its contract of insurance to defend an appeal from the proposed tax liability assessment by

5

the Internal Revenue Service, and

3. ~~Costs in the sum of \$120.00, for all of which let execution~~
~~issue.~~ *VRB*

JUDGMENT RENDERED THIS 18 DAY OF July, 1990.

Thomas R. Bredt
UNITED STATES DISTRICT JUDGE

APPROVED:

David K. McLean
Larry D. Ottaway/Timothy M. Melton

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

ATTORNEYS FOR PLAINTIFF

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

FILED

JUL 17 1990

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

TRANSMISSION STRUCTURES
LIMITED, an Oklahoma
corporation,

Plaintiff,

vs.

MTD, INC., a New Mexico
corporation, and WOODROW
MICHAEL WARREN,

Defendants.

Case No. 90-C-403-C

NOTICE OF
DISMISSAL WITH PREJUDICE

COMES NOW Transmission Structures, Ltd. and, pursuant to
Fed. R. Civ. P. 41(a)(1)(i), dismisses the captioned action with
prejudice to re-filing the same.

CORNISH & SCHNEIDER, INC.

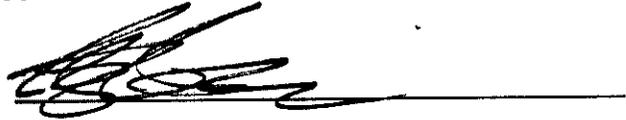
By 
Fred C. Cornish, OBA #1924
Stephen E. Schneider, OBA #7970
917 Kennedy Building
321 South Boston Avenue
Tulsa, Oklahoma 74103
(918) 583-2284

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF MAILING

I, the undersigned, certify that on the 17th day of July, 1990, I mailed by First Class U.S. Mail a true and correct copy of the above and foregoing document to the following attorney with proper postage prepaid thereon:

Mr. Allen McMurrey
KMMW
Post Office Box 449
Ruidoso Downs, NM 88345

A handwritten signature in black ink, appearing to read "Allen McMurrey", is written over a horizontal line.

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

FILED

CARL WAYNE SISCO,

Plaintiff,

v.

OKLA. DEPT. OF CORRECTIONS and
DICK CONNERS CORRECT. CENTER,

Defendants.

89-C-705-B

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

ORDER

Now before the court are plaintiff's civil rights complaint pursuant to 42 U.S.C. § 1983 (Docket #2)¹ and defendants' Motion to Dismiss (#6). Defendants state that plaintiff died in Norman, Oklahoma on April 23, 1990 and attach a copy of his death certificate to their Brief in Support of Motion to Dismiss as Exhibit "A". Defendants ask the court to dismiss this action because a civil rights claim does not survive the claimant's death.

State law is used to determine whether a plaintiff's claim survives under 42 U.S.C. § 1983 if he dies. Robertson v. Wegmann, 436 U.S. 584, 589-90 (1978). The Oklahoma wrongful death statute does not provide for the survival of an action to recover for a civil rights violation.

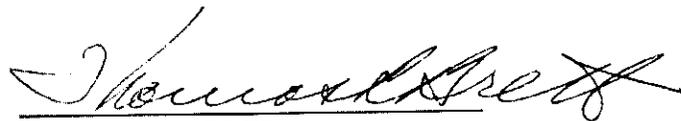
The Oklahoma statute governing survival and abatement of actions is 12 O.S. § 1051, which provides as follows: "In addition to the causes of action which survive at common law, causes of action for mesne profits, or for an injury to the person, or to real

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.

or personal estate, or for any deceit or fraud, shall also survive; and the action may be brought, notwithstanding the death of the person entitled or liable to the same." This statute does not provide for the survival of a cause of action to recover for violation of a decedent's civil rights while he was alive. See Black v. Cook, 444 F.Supp. 61 (W.D.Okla. 1977).

Therefore plaintiff's civil rights complaint pursuant to 42 U.S.C. § 1983 should be and is dismissed.

Dated this 17th 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 17 1990

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

ROBERT JOSEPH ZANI)
)
 Plaintiff,)
)
 v.)
)
 STANLEY GLANZ, et al)
)
 Defendant.)

90-C-0570-B

ORDER

Plaintiff's Motion to Proceed in forma pauperis was granted and the Complaint was filed. The action is brought pursuant to 42 U.S.C. § 1983.

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

Plaintiff is a prisoner convicted of murder in Texas and incarcerated within the Texas Department of Corrections. He brings this action against the Tulsa County Sheriff (Stanley Glanz), and three Texas state officials. In support of his action, he presents a vague, rambling tale of prisoner litigation and alleged retaliation.

4

As to defendant Glanz, Plaintiff alleges Glanz,

"revived a wrongful 1986 detainer (and obtained from the Tulsa Co. Clerk, in 1990, a copy of a judgment, but not a final judgment, of course) and sent those documents to [co-defendant] Woods, so that: 1) the TBPP and the TDC would have some "extra ammunition" assuming they had to go to court against plaintiff; 2) to show plaintiff how interstate retaliatory conspiracies can work, unhindered; 3) to smear plaintiff; 4) to perpetrate a fraud; [and] 5) to show plaintiff how co-conspirators and their minions can use/abuse court records, falsely, for their own ends."

These five claims do not state violations of federal rights. At best, the allegations may support state tort claims against Glanz. However, a state tort claim will not support federal jurisdiction under 42 U.S.C. §1983.¹ Therefore, the claims against defendant Glanz are totally without merit and will be dismissed.

As to the remaining Texas state defendants, the proper venue would be in a federal district in Texas, rather than Oklahoma.

Nevertheless, in view of the lack of merit of plaintiff's claims against these remaining defendants, justice is better served by dismissing the case now, rather than transferring the case to another court where a second review of the complaint would have to be undertaken.

Defendant S. O. Woods, Jr. is the chairman of the state classification committee for the Texas Department of Corrections, claims Plaintiff. Defendant Troy Fox is a Parole Commissioner of the Texas Board of Pardon and Parole, claims Plaintiff. Defendant Carl White, according to Plaintiff, is an assistant warden at the "Michael Unit". Each is alleged

¹ It is noted that a denial of a prisoner's rights given under the Interstate Agreement on Detainers, could be actionable under §1983 (Cuyler v. Adams, 449 U.S. 433 (1981), however, that is not the type of claim presented here.

to have acted under color of state law.

According to the Complaint, the defendants, "conspired against plaintiff, all acts related herein (and similar type acts) were done in pursuance of that conspiracy, the ends of which have not yet been attained, but were described in other federal court documents prior to defendants' misdeeds." Plaintiff then goes on to describe, in equally vague terms, his fight against the conspirators. He describes the conspiratorial retaliation as beginning with his appeal of his federal habeas corpus case. After his appeal, he tells of transfers, lockdowns, seizures of legal documents, "and other retaliatory measures taken on a daily basis." He does not identify the individuals who have so acted.

He also describes an incident on May 9, 1990, when he was questioned outside the offices of defendant Fox. The Complaint alleges that Fox "repeatedly attempted to interrogate plaintiff about his 'guilt' in the case and implying that if plaintiff would simply lie and make a false confession, and drop litigation that TBPP might be able to 'help.'"

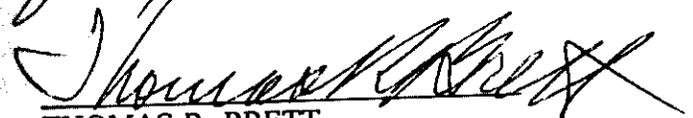
In sum his allegations against the remaining Texas defendants are nothing more than vague, conclusory finger-pointing, lacking the requisite specificity of actual wrongful deeds demonstrating defendants' involvement, and omitting a statement of specific rights these defendants abridged.

In a similar case, Reed v. Dunham, 893 F.2d 285 (10th Cir. 1990), the Tenth Circuit held that dismissal under §1915(d) is the proper procedure where, "allegations, by which [plaintiffs] attempt to substantiate a general discriminatory conspiracy claim, are unfocused, conclusory, and hopelessly deficient on the fundamental elements of agreement

and concerted action." This court agrees.

Therefore, it is hereby ordered, that Plaintiff's action against all defendants, is hereby, DISMISSED.

SO ORDERED THIS 17 day of July, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

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

JUL 17 1983

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

DAVID LORAN UNDERWOOD, and BRENDA LEE)
GORDON, Personal Representatives of the)
Estate of Phyllis Rose Underwood,)
deceased, et al.,)

Plaintiffs,)

vs.)

BILLY JAKE MYERS d/b/a RHINELAND)
AGRI-SHIPPERS d/b/a MYERS GRAIN AND)
FERTILIZER,)

Defendants,)

and)

MILDRED REYNOLDS,)

Plaintiff,)

vs.)

BILLY JAKE MYERS, d/b/a RHINELAND)
AGRI-SHIPPERS, d/b/a MYERS GRAIN AND)
FERTILIZER, et al.,)

Defendants,)

and)

CHARLES OVERGARD, Personal)
Representative of the Estate of)
Elizabeth Ann Overgard, deceased, et al.)

Plaintiffs,)

vs.)

BILLY JAKE MYERS d/b/a RHINELAND)
AGRI-SHIPPERS d/b/a MYERS GRAIN AND)
FERTILIZER, et al.,)

Defendants,)

and)

Case No. 87-C-644-B
(Consolidated) and
Nos. 87-C-645-B
87-C-819-B
87-C-863-B
87-C-923-B
~~87-C-544-E~~
89-C-328-C

88-C-544-B ✓

UNDERWRITERS REINSURANCE COMPANY,)
a New York Insurance Exchange)
underwriting member; IMPERIAL CASUALTY)
AND INDEMNITY COMPANY; CORONET INSURANCE)
COMPANY; NEW YORK INSURANCE EXCHANGE)
UNDERWRITING MEMBERS IAT SYNDICATE)
MEMBER #S069A; SPEAR LEEDS AND)
KELLOGG RE #S073A, a New York Insurance)
Exchange underwriting member;)
J & H WILLIS FABER SYNDICATE A #S071A,)
a New York Insurance Exchange)
underwriting member; ILLINOIS INSURANCE)
EXCHANGE SYNDICATE RESURE, INC. #018;)
TERRANOVA INSURANCE CO., LTD.; and)
ASSICURAZIONA GENERAL S.P.A., U.K.)
BRANCH;)

Case No. 87-C-644-B
(Consolidated)

Defendants.)

vs.)

CITIZENS NATIONAL ASSURANCE COMPANY;)
FABIAN CHAVEZ, Superintendent of)
Insurance for the State of New Mexico,)
as Receiver for Citizens National)
Assurance Company; R. A. MILLER, as)
Deputy Receiver of Citizens National)
Assurance Company; and STEPHEN S.)
DURISH, as Ancillary Receiver for)
Citizens National Assurance Company;)

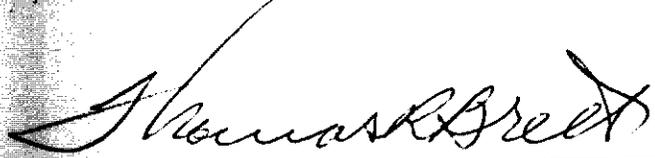
Additional Indispensable)
Party Defendants.)

ORDER OF DISMISSAL WITH PREJUDICE AND INJUNCTION

The Court being informed and fully advised in the premises that Protective Casualty Insurance Company (hereinafter "Defendant Protective") having deposited \$120,000 into the Registry of this Court pursuant to this Court's Order dated July 10, 1989, FINDS THAT: (i) said Defendant Protective should be and it is hereby dismissed from this Case No. 87-C-644-B, and all consolidated Cases No. 87-C-645-B, 87-C-819-B, 87-C-863-B, 87-C-923-B, 87-C-544-E, and 89-C-328-C

with prejudice to any party to this case or any consolidated case or any person claiming through any party to this case or any consolidated case, instituting or prosecuting any claim, demand or cause of action against said Defendant Protective which arises directly or indirectly out of the June 22, 1987, accident, which gave rise to this action, and Defendant Protective having issued that certain Form E - Certificate of Insurance, on August 12, 1986, on behalf of Billy Jake Myers, d/b/a Rhineland Agri-Shippers, and (ii) that CNAC Domiciliary Receiver, Superintendent of Insurance for the State of New Mexico, Fabian Chavez, Texas CNAC Ancillary Receiver, Stephen S. Durish, Billy Jake Myers, d/b/a Rhineland Agri-Shippers, d/b/a Myers Grain and Fertilizer and RAS, Inc., David Loran Underwood and Brenda Lee Gordon, personal representatives of the Estate of Phyllis Rose Underwood, deceased, David Loran Underwood, individually and Brenda Lee Gordon, individually, Mildred Reynolds, Charles Overgard, personal representative of the Estate of Elizabeth Ann Overgard, deceased, and Charles Overgard, individually, Myrtle V. Morgan, Harry Cheatwood, personal representative of the Estate of Pauline Thomas, deceased, and Vera L. Tresler, and anyone claiming through them, shall be, and are, hereby enjoined from pursuing any claim against Defendant Protective or instituting or prosecuting any claim, demand, or cause of action in any state court, any federal court, or any administrative tribunal against Defendant Protective, which arises directly or indirectly out of the June 22, 1987, accident, which gave rise to this action, and Defendant Protective having issued that certain Form E - Certificate of Insurance dated August 12, 1986.

IT IS SO ORDERED this 17 day of July, 1989.



Thomas R. Brett
UNITED STATES DISTRICT JUDGE

128/0725

FILED

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

JUL 17 1983

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

DAVID LORAN UNDERWOOD, and BRENDA LEE)
GORDON, Personal Representatives of the)
Estate of Phyllis Rose Underwood,)
deceased, et al.,)

Plaintiffs,)

vs.)

BILLY JAKE MYERS d/b/a RHINELAND)
AGRI-SHIPPERS d/b/a MYERS GRAIN AND)
FERTILIZER,)

Defendants,)

and)

MILDRED REYNOLDS,)

Plaintiff,)

vs.)

BILLY JAKE MYERS, d/b/a RHINELAND)
AGRI-SHIPPERS, d/b/a MYERS GRAIN AND)
FERTILIZER, et al.,)

Defendants,)

and)

CHARLES OVERGARD, Personal)
Representative of the Estate of)
Elizabeth Ann Overgard, deceased, et al.)

Plaintiffs,)

vs.)

BILLY JAKE MYERS d/b/a RHINELAND)
AGRI-SHIPPERS d/b/a MYERS GRAIN AND)
FERTILIZER, et al.,)

Defendants,)

and)

Case No. 87-C-644-B
(Consolidated) and
Nos. 87-C-645-B
87-C-819-B
87-C-863-B
87-C-923-B ✓
87-C-544-E
89-C-328-C

UNDERWRITERS REINSURANCE COMPANY,
a New York Insurance Exchange
underwriting member; IMPERIAL CASUALTY
AND INDEMNITY COMPANY; CORONET INSURANCE
COMPANY; NEW YORK INSURANCE EXCHANGE
UNDERWRITING MEMBERS IAT SYNDICATE
MEMBER #S069A; SPEAR LEEDS AND
KELLOGG RE #S073A, a New York Insurance
Exchange underwriting member;
J & H WILLIS FABER SYNDICATE A #S071A,
a New York Insurance Exchange
underwriting member; ILLINOIS INSURANCE
EXCHANGE SYNDICATE RESURE, INC. #018;
TERRANOVA INSURANCE CO., LTD.; and
ASSICURAZIONA GENERAL S.P.A., U.K.
BRANCH;

Case No. 87-C-644-B
(Consolidated)

Defendants.

vs.

CITIZENS NATIONAL ASSURANCE COMPANY;
FABIAN CHAVEZ, Superintendent of
Insurance for the State of New Mexico,
as Receiver for Citizens National
Assurance Company; R. A. MILLER, as
Deputy Receiver of Citizens National
Assurance Company; and STEPHEN S.
DURISH, as Ancillary Receiver for
Citizens National Assurance Company;

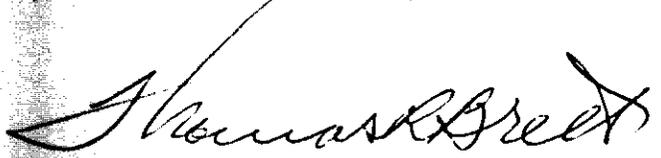
Additional Indispensable
Party Defendants.

ORDER OF DISMISSAL WITH PREJUDICE AND INJUNCTION

The Court being informed and fully advised in the premises that Protective Casualty Insurance Company (hereinafter "Defendant Protective") having deposited \$120,000 into the Registry of this Court pursuant to this Court's Order dated July 10, 1989, FINDS THAT: (i) said Defendant Protective should be and it is hereby dismissed from this Case No. 87-C-644-B, and all consolidated Cases No. 87-C-645-B, 87-C-819-B, 87-C-863-B, 87-C-923-B, 87-C-544-E, and 89-C-328-C

with prejudice to any party to this case or any consolidated case or any person claiming through any party to this case or any consolidated case, instituting or prosecuting any claim, demand or cause of action against said Defendant Protective which arises directly or indirectly out of the June 22, 1987, accident, which gave rise to this action, and Defendant Protective having issued that certain Form E - Certificate of Insurance, on August 12, 1986, on behalf of Billy Jake Myers, d/b/a Rhineland Agri-Shippers, and (ii) that CNAC Domiciliary Receiver, Superintendent of Insurance for the State of New Mexico, Fabian Chavez, Texas CNAC Ancillary Receiver, Stephen S. Durish, Billy Jake Myers, d/b/a Rhineland Agri-Shippers, d/b/a Myers Grain and Fertilizer and RAS, Inc., David Loran Underwood and Brenda Lee Gordon, personal representatives of the Estate of Phyllis Rose Underwood, deceased, David Loran Underwood, individually and Brenda Lee Gordon, individually, Mildred Reynolds, Charles Overgard, personal representative of the Estate of Elizabeth Ann Overgard, deceased, and Charles Overgard, individually, Myrtle V. Morgan, Harry Cheatwood, personal representative of the Estate of Pauline Thomas, deceased, and Vera L. Tresler, and anyone claiming through them, shall be, and are, hereby enjoined from pursuing any claim against Defendant Protective or instituting or prosecuting any claim, demand, or cause of action in any state court, any federal court, or any administrative tribunal against Defendant Protective, which arises directly or indirectly out of the June 22, 1987, accident, which gave rise to this action, and Defendant Protective having issued that certain Form E - Certificate of Insurance dated August 12, 1986.

IT IS SO ORDERED this 17 day of July, 1989.



Thomas R. Brett
UNITED STATES DISTRICT JUDGE

128/0725

FILED

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

JUL 17 1983

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

DAVID LORAN UNDERWOOD, and BRENDA LEE)
GORDON, Personal Representatives of the)
Estate of Phyllis Rose Underwood,)
deceased, et al.,)

Plaintiffs,)

vs.)

BILLY JAKE MYERS d/b/a RHINELAND)
AGRI-SHIPPERS d/b/a MYERS GRAIN AND)
FERTILIZER,)

Defendants,)

and)

MILDRED REYNOLDS,)

Plaintiff,)

vs.)

BILLY JAKE MYERS, d/b/a RHINELAND)
AGRI-SHIPPERS, d/b/a MYERS GRAIN AND)
FERTILIZER, et al.,)

Defendants,)

and)

CHARLES OVERGARD, Personal)
Representative of the Estate of)
Elizabeth Ann Overgard, deceased, et al.)

Plaintiffs,)

vs.)

BILLY JAKE MYERS d/b/a RHINELAND)
AGRI-SHIPPERS d/b/a MYERS GRAIN AND)
FERTILIZER, et al.,)

Defendants,)

and)

Case No. 87-C-644-B
(Consolidated) and
Nos. 87-C-645-B ✓
87-C-819-B
87-C-863-B
87-C-923-B
87-C-544-E
89-C-328-C

UNDERWRITERS REINSURANCE COMPANY,)
a New York Insurance Exchange)
underwriting member; IMPERIAL CASUALTY)
AND INDEMNITY COMPANY; CORONET INSURANCE)
COMPANY; NEW YORK INSURANCE EXCHANGE)
UNDERWRITING MEMBERS IAT SYNDICATE)
MEMBER #S069A; SPEAR LEEDS AND)
KELLOGG RE #S073A, a New York Insurance)
Exchange underwriting member;)
J & H WILLIS FABER SYNDICATE A #S071A,)
a New York Insurance Exchange)
underwriting member; ILLINOIS INSURANCE)
EXCHANGE SYNDICATE RESURE, INC. #018;)
TERRANOVA INSURANCE CO., LTD.; and)
ASSICURAZIONA GENERAL S.P.A., U.K.)
BRANCH;)

Case No. 87-C-644-B
(Consolidated)

Defendants.)

vs.)

CITIZENS NATIONAL ASSURANCE COMPANY;)
FABIAN CHAVEZ, Superintendent of)
Insurance for the State of New Mexico,)
as Receiver for Citizens National)
Assurance Company; R. A. MILLER, as)
Deputy Receiver of Citizens National)
Assurance Company; and STEPHEN S.)
DURISH, as Ancillary Receiver for)
Citizens National Assurance Company;)

Additional Indispensable)
Party Defendants.)

ORDER OF DISMISSAL WITH PREJUDICE AND INJUNCTION

The Court being informed and fully advised in the premises that Protective Casualty Insurance Company (hereinafter "Defendant Protective") having deposited \$120,000 into the Registry of this Court pursuant to this Court's Order dated July 10, 1989, FINDS THAT: (i) said Defendant Protective should be and it is hereby dismissed from this Case No. 87-C-644-B, and all consolidated Cases No. 87-C-645-B, 87-C-819-B, 87-C-863-B, 87-C-923-B, 87-C-544-E, and 89-C-328-C

with prejudice to any party to this case or any consolidated case or any person claiming through any party to this case or any consolidated case, instituting or prosecuting any claim, demand or cause of action against said Defendant Protective which arises directly or indirectly out of the June 22, 1987, accident, which gave rise to this action, and Defendant Protective having issued that certain Form E - Certificate of Insurance, on August 12, 1986, on behalf of Billy Jake Myers, d/b/a Rhineland Agri-Shippers, and (ii) that CNAC Domiciliary Receiver, Superintendent of Insurance for the State of New Mexico, Fabian Chavez, Texas CNAC Ancillary Receiver, Stephen S. Durish, Billy Jake Myers, d/b/a Rhineland Agri-Shippers, d/b/a Myers Grain and Fertilizer and RAS, Inc., David Loran Underwood and Brenda Lee Gordon, personal representatives of the Estate of Phyllis Rose Underwood, deceased, David Loran Underwood, individually and Brenda Lee Gordon, individually, Mildred Reynolds, Charles Overgard, personal representative of the Estate of Elizabeth Ann Overgard, deceased, and Charles Overgard, individually, Myrtle V. Morgan, Harry Cheatwood, personal representative of the Estate of Pauline Thomas, deceased, and Vera L. Tresler, and anyone claiming through them, shall be, and are, hereby enjoined from pursuing any claim against Defendant Protective or instituting or prosecuting any claim, demand, or cause of action in any state court, any federal court, or any administrative tribunal against Defendant Protective, which arises directly or indirectly out of the June 22, 1987, accident, which gave rise to this action, and Defendant Protective having issued that certain Form E - Certificate of Insurance dated August 12, 1986.

IT IS SO ORDERED this 17 day of July, 1989.



Thomas R. Brett
UNITED STATES DISTRICT JUDGE

128/0725

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

FILED

JUL 17 1990

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

JOHNNY RAY SMITH,)
)
 Petitioner,)
)
 v.)
)
 EARL ALLEN, Warden and THE)
 ATTORNEY GENERAL OF THE STATE)
 OF OKLAHOMA,)
 Respondents.)

89-C-1079-B

ORDER

Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is now before the court for determination. Petitioner was convicted in Tulsa County District Court, Case No. CRF-75-406, of Second Degree Murder, and sentenced to fifty (50) years imprisonment. The conviction was appealed to the Oklahoma Court of Criminal Appeals, which affirmed the conviction and remanded to the district court for resentencing. The petitioner then asked the Oklahoma Court of Criminal Appeals for a rehearing and upon rehearing the court held that the only sentence the trial court could impose was an indeterminate sentence of ten (10) years to life imprisonment. The trial court then sentenced petitioner to an indeterminate sentence of ten (10) years to life.

The court notes that petitioner filed an application for a writ of habeas corpus in the Northern District of Oklahoma challenging this same conviction in Case No. 82-C-587-B. That case was subsequently dismissed by the court. This petition is therefore a successive petition.

6

The petitioner makes two claims which are in essence the same. He alleges that because other convicted murderers have had their indeterminate sentences modified by the Oklahoma Court of Criminal Appeals, the failure to similarly modify his sentence is a violation of the equal protection clause of the Constitution of the United States.

At the time petitioner committed his crime, the statute applicable to second degree murder cases was 21 O.S. § 701.4¹, which set an indeterminate sentence of not less than ten (10) years nor more than life imprisonment. This was the only punishment the court could order. On July 24, 1976 that statute was repealed and 21 O.S. § 701.9² enacted, which provided the punishment for second degree murder and dispensed with indeterminate sentencing. However, under 57 O.S. § 353³, juries still have the authority to assess indeterminate sentences, providing that the maximum sentence imposed does not exceed the maximum statutory punishment for the offense.

¹ Title 21 O.S. § 701.4 states as follows: "Every person convicted of murder in the second degree shall be punished by imprisonment in the State Penitentiary for not less than 10 [sic] (10) years nor more than life. The trial court shall set an indeterminate sentence in accordance with this section upon a finding of guilty by the jury of murder in the second degree."

² Title 21 O.S. § 701.9 reads in pertinent part as follows: "A person who is convicted of or pleads guilty or nolo contendere to murder in the second degree shall be punished by imprisonment in a state penal institution for not less than ten (10) years nor more than life."

³ Title 57 O.S. § 353 states:

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

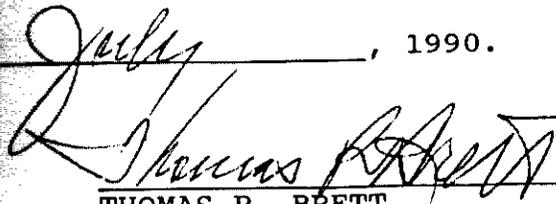
The Constitution does not prohibit indeterminate sentences, and a judge has broad discretion to impose such a sentence. United States v. Baer, 575 F.2d 1295, 1299 (10th Cir. 1978) (citing Andrus v. Turner, 421 F.2d 290 (10th Cir. 1970)). The Constitution also does not require identical sentences for persons convicted of the same crime. Williams v. Illinois, 399 U.S. 235, 243 (1970).

In Skinner v. Oklahoma, 316 U.S. 535, 540 (1942), the Court discussed the equal protection clause of the Constitution, saying that a law need not be applied exactly the same way to all individuals, but only should be applied uniformly to "all similarly situated so far and so fast as its means allow." The petitioner cannot be seen as similarly situated to others convicted under the later punishment statute which does not allow indeterminate sentences. He was sentenced under the former second degree murder statute and the newer law is not applicable to him.

The court also notes that matters relating to sentencing are questions of state law not normally reviewable in a federal habeas corpus action. Handley v. Page, 279 F.Supp. 878, 879 (W.D.Okla. 1968), aff'd., 398 F.2d 351 (10th Cir. 1968).

The Petitioner has not shown that he is being held in violation of the Constitution. His petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 should be and is therefore denied.

Dated this 17th 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 17 1990

OK

JAC. G. SILVER, CLERK
U.S. DISTRICT COURT

WANDA LINDA O'LEARY,)
)
 Plaintiff,)
)
 vs.)
)
 OKLAHOMA DEPARTMENT OF HUMAN)
 SERVICES, THE DELAWARE COUNTY)
 DEPARTMENT OF HUMAN SERVICES,)
 WINSTON DUNAWAY, PAT WEAVER,)
 STATE OF OKLAHOMA, and STATE)
 OF OKLAHOMA PUBLIC WELFARE)
 COMMISSION, d/b/a DEPARTMENT)
 OF PUBLIC WELFARE,)
)
 Defendants.)

Case No. 88-C-1621-B

ORDER

This matter comes on for consideration upon the Motion for Summary Judgment, filed by Defendant,¹ the Oklahoma Department of Human Services (DHS). In support thereof, Defendant has filed a Statement of Facts (29 paragraphs) to which it contends no dispute exists. Plaintiff, in opposition thereto, has filed Facts Disputing Undisputed Facts of Defendant, and Supplemental Facts, a 28 paragraph effort. In such Response Plaintiff has failed to

¹ The Motion for Summary Judgment pluralizes Defendant (Defendants') while the Brief in support thereof characterizes Defendant in the singular (Defendant, the Oklahoma Department of Human Services). This Court's Order of September 12, 1989, concluded that the State of Oklahoma, although not an answering Defendant, is the real party in interest because the Oklahoma Department of Human Services and the State of Oklahoma Public Welfare Commission, d/b/a Department of Public Welfare are state agencies. The Department of Human Services and the Commission for Human Services are successor names for the Department of Public Welfare and the Oklahoma Public Welfare Commission, respectively.

correlate, as required by Local Rule 15 (b), Northern District of Oklahoma, her disputation of Defendant's Statement of Facts, by number or content, considerably increasing the Court's burden of determining whether the matter is ripe for summary judgment.

By the Court's Order of September 12, 1989, Plaintiff's second and third causes of action were dismissed, leaving a single cause of action against the present movant.² In this remaining cause of action Plaintiff alleges she has lost salary increases and promotion because of her sex; that the Defendant discriminated against her and that she has been sexually harassed notwithstanding her capacity to perform her job activities, all in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5.

Plaintiff's charge of sexual harassment stems primarily from her association with Winston Dunaway, Delaware County Administrator for DHS, whom, Plaintiff alleges, made unwanted sexual advances in 1977. Former Defendant Dunaway became responsible for the administrative supervision of Plaintiff from October 1986, to July 1, 1987, part of which period Plaintiff was also under the delegated responsibility of former Defendant Pat Weaver. This period and thereafter fomented a series of work-related disputes between Plaintiff, Weaver and Dunaway, none sexually oriented.³ However, Plaintiff's August 24, 1987, sworn charge of discrimination filed with the Equal Employment Opportunity

² The September Order dismissed all three of Plaintiff's causes of action against the individual defendants, Winston Dunaway and Pat Weaver.

³ The Notices of Formal Grievance, filed by Plaintiff on January 9, and January 20, 1987, made no complaint of sexual harassment or discrimination.

Commission (EEOC) alleged less favorable treatment because of her sex. Plaintiff's EEOC charge alleged that from December 30, 1986, to the date of the complaint, Plaintiff was subjected to sexual discrimination, specifically that Dunaway "looked at her breasts" on January 2, 1987, "ogled her breasts" on January 27, 1987, slammed a clipboard onto Plaintiff's desk and shoved it into her chest, "separating out her breasts" on May 6, 1987, and other acts of staring, leering and peering. On October 27, 1987, Plaintiff attended a fact finding or investigative conference conducted by the Oklahoma Human Rights Commission relative to her sexual discrimination complaint filed with EEOC. On May 12, 1989, the EEOC issued a determination, after giving substantial weight to the findings of the Oklahoma Human Rights Commission, that the evidence offered by Plaintiff did not establish violations of Title VII. Plaintiff had previously filed the instant action on December 15, 1988.

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

Summary judgment is sometimes inappropriate because of the difficulty of a movant to establish undisputed facts showing a negative, e.g. lack of sexual discrimination. Plaintiff, in her response, has alleged a direct, unwanted sexual approach by Dunaway more than a decade ago.⁴ The incident was reported by Plaintiff to the OHRC during its fact finding conference relative to Plaintiff's formal charge before that panel. See Plaintiff's Exhibit 12. Notwithstanding the OHRC finding it was undisputed that there was evidence of alleged sexual advances having occurred in the past it held there was no recent evidence the sexual harassment had resumed in 1986. See Plaintiff's Exhibit 14. Despite its age, the allegation as to the 1977 approach lends credence to the more current allegations by Plaintiff relative to Dunaway's "breast

⁴ Plaintiff alleges Dunaway forced her to take rides; that Dunaway said to Plaintiff "You know what fun I've told you we can have." The outcome of the ride command was: "Yes, he propositioned me. He asked me if I had smoked marijuana." * * * "He told me we could use my house, nobody would have to know about it. We could play grab ass in my husband's bed while he was at work." Plaintiff alleges she asked for and was granted a transfer away from Dunaway.

watching" and "breast bruising".⁵

Plaintiff alleges Dunaway, and those doing his bidding, created a hostile environment as a retaliatory response to Plaintiff's filing work-related grievances. A claim of "hostile environment" sex discrimination is actionable under Title VII even without tangible job loss. See, C. Richey, Manual on Employment Discrimination Law and Civil Rights Actions in the Federal Courts (Federal Judicial Center Jan. 1988 ed.), citing Meritor Sav. Bank v. Vinson, 477 U.S. 57, 106 S. Ct. 2399, 91 L.Ed.2d (1986); Bundy v. Jackson, 641 F.2d 934 (D.C. Cir. 1981).

Plaintiff's first cause of action claims loss of salary increases and promotions. A great deal of material is devoted to the promotion issue, which the Court will discuss, *infra*. Little or none is devoted to the salary issue. Obviously, an employee can be properly denied (or not granted) promotions and improperly denied salary increases without inherent conflict between the two actions. The reverse is, of course, equally possible.

Movant does not establish, in the Court's opinion, sufficient undisputed facts as to the salary increase issue upon which summary judgment would be appropriate. The Court concludes Defendant's Motion for Summary Judgment as to the salary increase phase of Plaintiff's first cause of action should be and the same is hereby DENIED.

⁵ These allegations, while seemingly opposites, both would, of course, fall within the realm of sexual harassment. The fact that a sexual harasser alternates between seeming animosity and amorousness does not diminish the sexual connotation.

As to the "hostile environment" sex discrimination charge, the Eleventh Amendment⁶ does not preclude a federal court from awarding Title VII remedies (including money damages) in a suit against the a state. See C. Richey, Manual on Employment Discrimination Law and Civil Rights Actions in the Federal Courts, *supra*, citing Fitzpatrick v. Bitzer, 427 U.S. 445 (1976); Freeman v. Michigan Dep't of State 808 F.2d 1174 (6th Cir. 1987). As to this issue, again, the Court concludes the Movant has not established sufficient undisputed facts as to "hostile environment" sexual discrimination to warrant summary judgment consideration. It is, indeed, difficult to establish a negative. Plaintiff's deposition testimony creates a genuine issue as to the very material fact of hostile environment sufficient to preclude summary judgment. Defendant's Motion for Summary Judgment, as to the hostile environment issue should be and the same is DENIED.

Regarding the promotion issue, the Court has a different view. Defendant's undisputed facts 23, 24 & 25 essentially establish Plaintiff was eligible for and applied for three separate job promotions, open announcements December 7, 1987, August 18, 1988, and February 23, 1989, respectively. The first two announcements were for the position of Social Services Supervisor, CRCS, Craig County, the third being for Social Worker III, CRCS, Mayes County. In the first two attempts, Plaintiff was not among the top three

⁶ In the Court's Order of September 12, 1989, Plaintiff's second and third causes of action were vitiated by, *inter alia*, Eleventh Amendment immunity.

finalists. In the third effort, Plaintiff was among the top three finalists but was not ultimately selected. It is without dispute that persons other than Winston Dunaway, the alleged sexual harasser, made the promotion selections in every instance. Plaintiff has offered no evidence to dispute this except her own personal opinion.⁷ See Plaintiff's Exhibit 24, excerpt from deposition of Linda O'Leary, Appendix to Plaintiff's Response to Defendant's Motion for Summary Judgment. The Court is of the opinion this is insufficient in view of Defendant's Statement of Facts. Celotex Corp. v. Catrett, *supra*.

The Court concludes Defendant's Motion for Summary Judgment, on the promotion issue, should be and the same is hereby SUSTAINED.

Notwithstanding today's Order the Court concludes the Plaintiff bears a heavy burden, indeed, to establish her claim. Not all workplace conduct is "harassment" affecting the terms, conditions or privileges of employment within the meaning of Title VII. Meritor Sav. Bank, FSB v. Vinson, *supra*, ; Henson v. Dundee, 682 F.2d 897 (11th Cir. 1982). For sexual harassment to be actionable, it must be sufficiently severe or pervasive "to alter the conditions of [the victim's] employment and create an abusive working environment." *Ibid.*, at 904.

⁷ Plaintiff is of the opinion Dunaway's influence was "in collusion with the State Office in covering up this sexual harassment, which is due to my gender." Plaintiff's Ex. 24.

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

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

COBB OIL AND GAS COMPANY,
a Corporation,

Plaintiff,

vs.

MOBIL OIL CORPORATION,
a Corporation,

Defendant.

Case No. 88-C-47-B

FILED

JUL 16 1990

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

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW both parties to this action and, pursuant to Rule 41 of the Federal Rules of Civil Procedure, hereby stipulate to the dismissal of this action with prejudice. The parties have provided for the payment of costs and attorneys' fees by separate agreement, and neither party requests the Court to award such fees and expenses in this case.

COMFORT, LIPE & GREEN, P.C.

By: Richard A. Paschal
Richard A. Paschal #6927
2100 Mid-Continent Tower
401 South Boston Avenue
Tulsa, Oklahoma 74103
(918) 599-9400

ATTORNEYS FOR PLAINTIFF,
COBB OIL AND GAS COMPANY

CROWE & DUNLEVY, P.C.

By: 

L. Mark Walker
1800 Mid-America Tower
20 North Broadway
Oklahoma City, Oklahoma 73102
(405) 235-7700

ATTORNEYS FOR DEFENDANT,
MOBIL OIL CORPORATION