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OBA #12280

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

**FILED**

SEP 28 1990

DONNA GILMORE, d/b/a  
KEYSTONE KORNER,

Plaintiff,

vs.

NORTH STAR MUTUAL INSURANCE  
COMPANY,

Defendant.

Jack C. Silver, Clerk  
DISTRICT COURT

Case No. 89-C-458-E

**ORDER OF DISMISSAL**

Now on this 24th day of September, 1990, the parties appearing before this court for a closing conference. The Court having observed exchange of the settlement proceeds and witnessing the execution of the Stipulation of Dismissal and Release, does herein find that this matter should be dismissed with prejudice as to refiling.

S/ JAMES O. ELLISON

United States District Magistrate

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

DALE FLETCHER a/k/a DALE R.  
FLETCHER; CHERYL FLETCHER  
a/k/a CHERYL L. FLETCHER;  
COUNTY TREASURER, Tulsa County,  
Oklahoma; and BOARD OF COUNTY  
COMMISSIONERS, Tulsa County,  
Oklahoma,

Defendants.

FILED

SEP 28 1990

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

CIVIL ACTION NO. 90-C-0086-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 27 day  
of Sept, 1990. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Phil Pinnell, Assistant United States Attorney;  
the Defendants, County Treasurer, Tulsa County, Oklahoma, and  
Board of County Commissioners, Tulsa County, Oklahoma, appear by  
J. Dennis Semler, Assistant District Attorney, Tulsa County,  
Oklahoma; and the Defendants, Dale Fletcher a/k/a Dale R.  
Fletcher and Cheryl Fletcher a/k/a Cheryl Fletcher, appear not,  
but make default.

The Court, being fully advised and having examined the  
court file, finds that the Defendant, Cheryl Fletcher a/k/a  
Cheryl L. Fletcher, acknowledged receipt of Summons and Complaint  
on May 22, 1990; that Defendant, County Treasurer, Tulsa County,  
Oklahoma, acknowledged receipt of Summons and Complaint on  
February 7, 1990; and that Defendant, Board of County

FILED  
SEP 28 1990  
JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 7, 1990.

The Court further finds that the Defendant, Dale Fletcher a/k/a Dale R. Fletcher, was served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record of Tulsa, Oklahoma, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning July 16, 1990, and continuing to August 20, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, Dale Fletcher a/k/a Dale R. Fletcher, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, Dale Fletcher a/k/a Dale R. Fletcher. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through

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

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, filed its Answer on February 26, 1990; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on February 26, 1990; and that the Defendants, Dale Fletcher a/k/a Dale R. Fletcher and Cheryl Fletcher a/k/a Cheryl L. Fletcher, 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 One (1), Block Nine (9), EASTLAND PARK,  
an Addition to the City of Tulsa, Tulsa  
County, State of Oklahoma, according to the  
recorded plat thereof.

The Court further finds that on April 30, 1987, the Defendants, Dale Fletcher and Cheryl Fletcher, 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 \$54,000.00, payable in monthly installments, with interest thereon at the rate of 9 percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Dale Fletcher and Cheryl Fletcher, 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 April 30, 1987, covering the above-described property. Said mortgage was recorded on May 1, 1987, in Book 5020, Page 258, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Dale Fletcher a/k/a Dale R. Fletcher and Cheryl Fletcher a/k/a Cheryl L. Fletcher, 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, Dale Fletcher a/k/a Dale R. Fletcher and Cheryl Fletcher a/k/a Cheryl L. Fletcher, are indebted to the Plaintiff in the principal sum of \$53,533.51, plus interest at the rate of 9 percent per annum from September 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$249.95 (\$20.00 docket fees, \$229.95 publication fees).

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, Dale Fletcher a/k/a Dale R. Fletcher and Cheryl Fletcher a/k/a Cheryl L. Fletcher, in the principal sum of \$53,533.51, plus interest at the rate of 9 percent per annum from September 1, 1988 until judgment, plus interest thereafter at the current legal rate of 7.78 percent per annum until paid, plus the costs of this action in the amount of \$249.95 (\$20.00 docket fees, \$229.95 publication fees), 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 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, Dale Fletcher a/k/a Dale R. Fletcher and Cheryl Fletcher a/k/a Cheryl L. Fletcher, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

**First:**

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

**Second:**

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

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

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

(Signed) W. Dale Cook

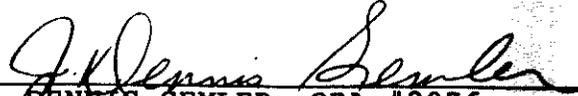
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UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
\_\_\_\_\_  
PHIL PINNELL, OBA #7169  
Assistant United States Attorney  
3600 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

  
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-0086-C

PP/esr

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

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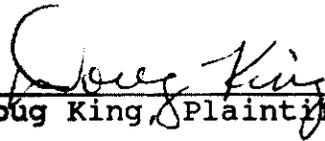
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 90-C0087 E

DOUG KING, )  
)  
Plaintiff, )  
)  
vs. )  
)  
FARMERS INSURANCE EXCHANGE, )  
TRUCK INSURANCE EXCHANGE, )  
FIRE INSURANCE EXCHANGE, )  
MID CENTURY INSURANCE COMPANY, )  
FARMERS NEW WORLD LIFE INSURANCE )  
COMPANY, and FARMERS INSURANCE )  
CO., INC., )  
)  
Defendants. )

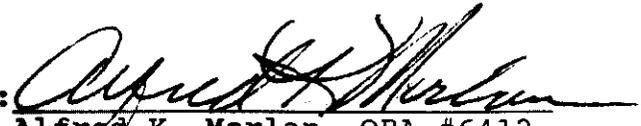
JOINT STIPULATION <sup>of</sup> ~~FOR~~ DISMISSAL WITH PREJUDICE

COME NOW the Plaintiff, pro se, and Defendants by and through their attorney of record and stipulate and agree that this Court should enter its order dismissing this cause with prejudice to the Plaintiff's right to reassert any claim which was asserted or which could have been asserted by the Plaintiff in this cause.

  
\_\_\_\_\_  
Doug King, Plaintiff

and

JONES, GIVENS, GOTCHER & BOGAN,  
a professional corporation

By:   
\_\_\_\_\_  
Alfred K. Morlan, OBA #6412  
3800 First National Tower  
Tulsa, Oklahoma 74103  
918-581-8217

ATTORNEYS FOR DEFENDANTS

RELEASE IN FULL OF ALL CLAIMS

FOR AND IN CONSIDERATION of the payment to Doug King of the sum of Fifteen Thousand and no/100 Dollars (\$15,000.00), the receipt of which is hereby acknowledged and accelerated payment of the two remaining "Contract Value" payments provided for upon termination by the Agency Appointment entered into by me with Farmers Insurance Exchange, Truck Insurance Exchange, Fire Insurance Exchange, Mid Century Insurance Company, Farmers New World Life Insurance Company and Farmers insurance Co., Inc., in 1975 as amended in 1975 and amended in 1985, I, Doug King, being over 21 years of age, do hereby release, acquit and forever discharge Farmers Insurance Exchange, Truck Insurance Exchange, Fire Insurance Exchange, Mid Century Insurance Company, Farmers New World Life Insurance Company, Farmers Insurance Co., Inc., and Farmers Group, Inc., and any other associated or affiliated persons, firms or corporations of and from any and all actions, causes of action, claims, demands, damages, costs, expenses and compensation, on account of, or in any way growing out of, any and all known and unknown claims whether constitutional, statutory, contractual, equitable or tortious arising from or in any way related to my relationship as an agent with Farmers Insurance Exchange, Truck Insurance Exchange, Fire Insurance Exchange, Mid Century Insurance Company, Farmers New World Life Insurance Company, Farmers Insurance Co., Inc., and Farmers Group, Inc.

I do hereby declare and represent that in making and executing this release it is understood and agreed that I rely wholly upon my own judgment, belief and knowledge of the nature of the claims asserted, or which could have been asserted, by me and the liability questions involved, and that I have not been influenced to any extent whatsoever in making and executing this release by any representations or statements regarding said claims, or any other matters, made by Farmers Insurance Exchange, Truck Insurance Exchange, Fire Insurance Exchange, Mid Century Insurance Company, Farmers New World Life Insurance Company, Farmers Insurance Co., Inc., and Farmers Group, Inc. or any other person, firm or corporation hereby released, or by any person or persons representing, or acting for them or it.

I further understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment of said sum is not to be construed as an admission of liability on the part of Farmers Insurance Exchange, Truck Insurance Exchange, Fire Insurance Exchange, Mid Century Insurance Company, Farmers New World Life Insurance Company, Farmers Insurance co., Inc., or Farmers Group, Inc., by whom liability is expressly denied.

This release contains the ENTIRE AGREEMENT between the parties hereto, and the terms of this release are contractual and not mere recitals.

I further state that I have carefully read the foregoing release and know the contents thereof, and I sign the same as my own free act.

WITNESS my hand and seal this 23<sup>rd</sup> day of August, 1990.

WITNESSES TO SIGNATURES

CAUTION! READ BEFORE SIGNING

*David L. Jones*

*Doug King*  
Doug King

State of Oklahoma \_\_\_\_\_ )

County of Tulsa \_\_\_\_\_ )

SS.

On this 23<sup>rd</sup> day of August, 1990, before me personally appeared Doug King to me known to be the person described herein, and who executed the foregoing instrument and acknowledged that he voluntarily executed the same.

*Susan L Pennington*  
Notary Public

My term expires April 24, 1994

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

FILED

SEP 28 1990

LARRY D. PINSON, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ANTHONY M. FRANK, Postmaster )  
General, )  
 )  
Defendant. )

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

No. 90-C-140-E

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed August 31, 1990. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Plaintiff's action is dismissed with prejudice to its refiling, for failure to comply with 1) the Court's Scheduling Order, and 2) requested discovery.

ORDERED this 28<sup>TH</sup> day of September, 1990.

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

SEP 28 1990

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

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

HARRISON JONES; ANNA MAE JONES  
a/k/a ANNA M. JONES; STATE OF  
OKLAHOMA ex rel. DEPARTMENT  
OF HUMAN SERVICES; FIDELITY  
FINANCIAL SERVICES, INC.;  
COUNTY TREASURER, Tulsa County,  
Oklahoma; and BOARD OF COUNTY  
COMMISSIONERS, Tulsa County,  
Oklahoma,

Defendants.

CIVIL ACTION NO. 90-C-0143-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28 day  
of Sept, 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, Harrison Jones,  
appears by his attorney Rick Folluo; and the Defendants, Anna Mae  
Jones a/k/a Anna M. Jones, State of Oklahoma ex rel. Department  
of Human Services, and Fidelity Financial Services, Inc., appear  
not, but make default.

The Court being fully advised and having examined the  
file herein finds that Defendant, Anna Mae Jones a/k/a Anna M.  
Jones, acknowledged receipt of Summons and Complaint on June 20,

1990; that Defendant, State of Oklahoma ex rel. Department of Human Services, acknowledged receipt of Summons and Complaint on March 26, 1990; that Defendant, Fidelity Financial Services, Inc., acknowledged receipt of Summons and Complaint on February 26, 1990; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 26, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 23, 1990.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on March 12, 1990; that the Defendant, Harrison Jones, filed his Answer on March 13, 1990; and that the Defendants, Anna Mae Jones a/k/a Anna M. Jones, State of Oklahoma ex rel. Department of Human Services and Fidelity Financial Services, Inc., 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 Ten (10), Block Fifty-Eight (58), VALLEY VIEW ACRES THIRD ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on February 26, 1974, the Defendant, Harrison Jones, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, his mortgage note in the amount of \$10,500.00, payable in monthly installments, with interest thereon at the rate of six percent (6%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Harrison Jones, 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 February 26, 1974, covering the above-described property. Said mortgage was recorded on March 1, 1974, in Book 4108, Page 556, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Harrison Jones, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Harrison Jones, is indebted to the Plaintiff in the principal sum of \$7,537.01, plus interest at the rate of 6 percent per annum from January 1, 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, Anna Mae Jones a/k/a Anna M. Jones, State of Oklahoma ex rel. Department of Human Services, and Fidelity Financial Services, Inc., are in

default and therefore have no right, title, or interest in the subject real property.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendant, Harrison Jones, in the principal sum of \$7,537.01, plus interest at the rate of 6 percent per annum from January 1, 1989 until judgment, plus interest thereafter at the current legal rate of 7.78 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, Anna Mae Jones a/k/a Anna M. Jones, State of Oklahoma ex rel. Department of Human Services, Fidelity Financial Services, Inc., and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell without appraisal the real property involved herein and apply the proceeds of the sale as follows:

**First:**

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

**Second:**

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

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

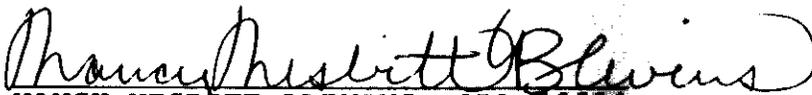
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
NANCY NESBITT BLEVINS, OBA #6634  
Assistant United States Attorney

  
RICK FOLLUO, OBA #3010  
Attorney for Defendant,  
Harrison Jones

  
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-0143-E

NNB/css

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.  
CRAIG A. FREINCLE; LEE FREINCLE;  
COUNTY TREASURER, Tulsa County,  
Oklahoma; BOARD OF COUNTY  
COMMISSIONERS, Tulsa County,  
Oklahoma, and STATE OF OKLAHOMA  
ex rel. OKLAHOMA TAX COMMISSION,  
Defendants.

FILED

SEP 28 1990

Jock C. Silver, Clerk  
DISTRICT COURT

) CIVIL ACTION NO. 90-C-564-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28 day  
of Sept, 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, Craig A. Freincle and Lee  
Freincle, appear not, but make default.

The Court being fully advised and having examined the  
court file finds that the Defendant, Craig A. Freincle, was  
served with Summons and Amended Complaint on July 24, 1990; that  
the Defendant, Lee Freincle, was served with Summons and Amended  
Complaint on July 24, 1990; that Defendant, County Treasurer,  
Tulsa County, Oklahoma, acknowledged receipt of Summons and

Complaint on June 29, 1990; that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 29, 1990; and that Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Amended Complaint on July 19, 1990.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, filed its Answer on July 18, 1990; that the Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on July 18, 1990; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer on July 30, 1990; and that the Defendants, Craig A. Freincle and Lee Freincle, 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 Eleven (11), Block Five (5),  
RESUBDIVISION OF AMENDED PLAT OF MEADOW  
HEIGHTS ADDITION, Tulsa County, State of  
Oklahoma, according to the recorded plat  
thereof.

The Court further finds that on September 29, 1986, the Defendants, Craig A. Freincle and Lee Freincle, 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

\$42,500.00, payable in monthly installments, with interest thereon at the rate of 10 percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Craig A. Freincle and Lee Freincle, 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 September 29, 1986, covering the above-described property. Said mortgage was recorded on September 30, 1986, in Book 4973, Page 78, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Craig A. Freincle and Lee Freincle, 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, Craig A. Freincle and Lee Freincle, are indebted to the Plaintiff in the principal sum of \$41,663.45, plus interest at the rate of 10 percent per annum from January 1, 1990 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$30.92 (\$20.00 docket fees, \$10.92 fees for service of Summons and Complaint).

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.

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 Income Tax Warrant No. ITI 90 001120 00 in the amount of \$560.62; Income Tax Warrant No. ITI 90 002381 00 in the amount of \$332.11; and Income Tax Warrant No. ITI 90 003452 00 in the amount of \$283.74 together with interest and penalties. Said liens are 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 Defendants, Craig A. Freincle and Lee Freincle, in the principal sum of \$41,663.45, plus interest at the rate of 10 percent per annum from January 1, 1990 until judgment, plus interest thereafter at the current legal rate of 7.78 percent per annum until paid, plus the costs of this action in the amount of \$30.92 (\$20.00 docket fees, \$10.92 fees for service of Summons and Complaint), 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 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, Craig A. Freincle and Lee

Freinkle, 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 \$1,176.47, plus penalties and interest for Income Tax Warrant No.

ITI 90 001120 00; Income Tax Warrant No.

ITI 90 002381 00; and Income Tax Warrant No.

ITI 90 003452 00.

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

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

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

S/ JAMES O. ELLISON

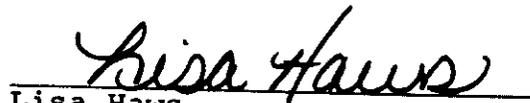
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

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

  
J. Dennis Semler  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

  
Lisa Haws  
Assistant General Counsel  
Attorney for Defendant,  
State of Oklahoma ex rel.  
Oklahoma Tax Commission

Judgment of Foreclosure  
Civil Action No. 90-C-564-E

NNB/esr

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

CAROL E. KIGER,  
Plaintiff,  
v.  
MRS. W. K. WARREN and W. K.  
WARREN FOUNDATION, an Oklahoma  
non-profit corporation,  
Defendants.

No. 89-C-1076-C

**F I L E D**

**SEP 28 1990**

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

**ORDER FOR JUDGMENT APPROVING  
SETTLEMENT OF WAGE CLAIM AND  
ENTERING DISMISSAL WITH PREJUDICE**

NOW on this 27 day of September, 1990, the parties request for approval of their Release and Settlement Agreement resolving Plaintiff's wage claims come before the Court for approval. The Court having reviewed the court file and the proposed Release and Settlement Agreement provided to the Court in camera, finds that the same should be approved and the claims should be dismissed with prejudice. The Court specifically finds:

1. Plaintiff was not an employee of the William K. Warren Foundation.
2. There is substantial doubt in fact and law whether either Defendant was an enterprise under the Fair Labor Standards Act, the legal basis upon which Plaintiff relies for her entitlement to overtime compensation.
3. There is substantial doubt in fact and law whether the Plaintiff was ever an employee of Defendant Mrs. W. K. Warren, and Plaintiff may have been an independent contractor.

4. There is substantial doubt in fact and law that even if Plaintiff is entitled to overtime that the failure to pay such was willful.
5. Plaintiff has at all times been represented by counsel in the pursuit of her wage claims and he has advised the Plaintiff that the settlement is fair and fully compensates her for her claims.
6. The Court finds that the settlement is in fact fair and fully compensates the Plaintiff as approved in compliance with the Fair Labor Standards Act.

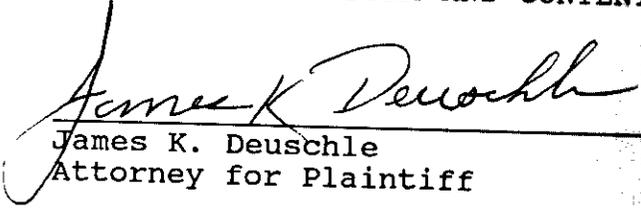
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's claims against each Defendant are dismissed with prejudice, with each party assuming their own costs and attorney fees.

(Signed) H. Dale Cook

---

H. Dale Cook, Judge  
United States District Court

APPROVED AS TO FORM AND CONTENT:

  
James K. Deuschle  
Attorney for Plaintiff

  
Larry D. Henry  
Attorney for Defendants

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

STUDY CASE FILED

LA DONNA SHAUGHNESSY  
Plaintiff(s),

SEP 28 1990

vs.

No. 89-C-344-C

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

HILLCREST MEDICAL CENTER  
Defendant(s).

JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT

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

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

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

Dated this 27 day of September, 1990.

Jack C. Silver  
UNITED STATES DISTRICT JUDGE

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

**FILED**

**SEP 28 1990**

NINTH DISTRICT PRODUCTION CREDIT )  
ASSOCIATION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
BILLY GENE DOOLIN, et al., )  
 )  
Defendants. )

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

Case No. 87-C-546 C

**DEFAULT JUDGMENT AGAINST FIRST STATE BANK OF OILTON**

This matter comes on for hearing before this Court on this 27 day of Sept, 1990, the plaintiff, Ninth District Production Credit Association ("NDPCA"), appearing by and through its counsel, G. Blaine Schwabe, III and Kevin M. Coffey of Mock, Schwabe, Waldo, Elder, Reeves & Bryant.

The Court, having reviewed the pleadings filed in this case, including the briefs, affidavits and other instruments offered by the parties, being fully advised in the premises, finds that this Court has jurisdiction over the parties and the subject matter of this action.

The Court further finds that on February 26, 1988, NDPCA filed its Second Amended Complaint, a true and correct copy of which was served upon the First State Bank of Oilton by mailing the same to its attorney of record, Clayton L. Badger, by first-class mail, postage prepaid, in compliance with Fed. R. Civ. P. 5 and Rule 9, Rules of the United States District Court for the Northern District of Oklahoma.

**NOTE: THIS COPY IS FOR THE COURT  
BY MAIL AND IS NOT TO BE FILED AND  
PRO SE DEFENDANTS IMMEDIATELY,  
UPON RECEIPT.**

The Court further finds that First State Bank of Oilton has failed to answer or otherwise respond to plaintiff's Second Amended Complaint.

The Court further finds that the Clerk of the United States District Court for the Northern District of Oklahoma entered the default of the First State Bank of Oilton herein on August 22, 1990.

The Court further finds that First State Bank of Oilton has not objected or otherwise responded to NDPCA's motion for default judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the First State Bank of Oilton is hereby adjudged to be in default, and the allegations of NDPCA's Second Amended Complaint are taken as true and confessed as against said defendant.

The Court further finds, and IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that NDPCA and the defendants, Billy Gene Doolin, Wallace J. Doolin, Mark Lee Doolin, Virginia E. Orr, f/k/a Virginia E. Doolin, Sara E. Canfield, f/k/a Sara E. Doolin, and Susan L. Doolin (collectively, the "Doolins"), have submitted to the Court for its approval a Stipulation for Judgment, and to the Court for entry a Partial Journal Entry of Judgment and Decree of Foreclosure, which state and determine that the Doolins are indebted to NDPCA in the sum of \$374,623.67, which includes accrued interest through the date of judgment, by reason of the matters stated in plaintiff NDPCA's Second Amended Petition, and that said Stipulation for Judgment was so approved, and said

Partial Journal Entry of Judgment and Decree of Foreclosure was entered, by the Court on August 15, 1990.

The Court further finds, and IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the indebtedness owed NDPCA, as set forth in the Stipulation for Judgment and IN THE Partial Journal Entry of Judgment and Decree of Foreclosure, is secured by first, valid and prior liens in and to the surface and surface rights only of the following described real property located in Creek County, State of Oklahoma:

The West Half ( $W\frac{1}{2}$ ) of the Northwest Quarter ( $NW\frac{1}{4}$ ) of the Southwest Quarter ( $SW\frac{1}{4}$ ) of Section Five (5), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only);

The West Half ( $W\frac{1}{2}$ ) of the East Half ( $E\frac{1}{2}$ ) of the Northwest Quarter ( $NW\frac{1}{4}$ ) of the Southwest Quarter ( $SW\frac{1}{4}$ ) of Section Five (5), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only);

The West Half ( $W\frac{1}{2}$ ) of the East Half ( $E\frac{1}{2}$ ) of the East Half ( $E\frac{1}{2}$ ) of the Northwest Quarter ( $NW\frac{1}{4}$ ) of the Southwest Quarter ( $SW\frac{1}{4}$ ) of Section Five (5), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only);

The South Half ( $S\frac{1}{2}$ ) of the Southwest Quarter ( $SW\frac{1}{4}$ ) of the Northeast Quarter ( $NE\frac{1}{4}$ ) of the Southeast Quarter ( $SE\frac{1}{4}$ ) of Section Six (6), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only);

The Southeast Quarter ( $SE\frac{1}{4}$ ) of the Southeast Quarter ( $SE\frac{1}{4}$ ) of the Northwest Quarter ( $NW\frac{1}{4}$ ) of the Southeast Quarter ( $SE\frac{1}{4}$ ) of Section Six (6), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only);

The South Half ( $S\frac{1}{2}$ ) of the Southeast Quarter ( $SE\frac{1}{4}$ ) of the Northeast Quarter ( $NE\frac{1}{4}$ ) of the Southeast Quarter ( $SE\frac{1}{4}$ ) of Section Six (6), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only);

The South Half (S $\frac{1}{2}$ ) of the Northwest Quarter (NW $\frac{1}{4}$ ) of Section Six (6), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only); and

Southwest Quarter (SW $\frac{1}{4}$ ) of Section Six (6), Township Nineteen (19) North, Range Eight (8) East (Surface and Surface Rights Only).

(hereinafter, the "Real Property", which is limited to surface and surface rights only).

The Court further finds, and IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that any right, title and interest claimed by the First State Bank of Oilton in and to the Real Property is subject and inferior to the liens in favor of NDPCA.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that from and after the date of the sale of the Real Property subject to this action and by virtue of this Default Judgment and the Partial Journal Entry of Judgment and Decree of Foreclosure filed herein on August 15, 1990, that the defendant, First State Bank of Oilton, and its successors and assigns, and all persons claiming under it, or any of them, are hereby forever barred from asserting and are foreclosed of and from any and all right, title, interest, estate or equity in and to the Real Property or any part thereof.

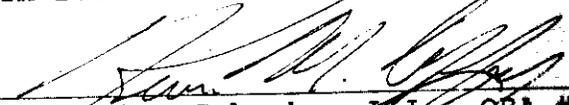
(Signed) H. Dale Cook

---

THE UNITED STATES DISTRICT JUDGE

APPROVED:

NINTH DISTRICT PRODUCTION CREDIT ASSOCIATION

By:   
G. Blaine Schwabe, III - OBA #8001  
Kevin M. Coffey - OBA #11791

Of the Firm:

MOCK, SCHWABE, WALDO, ELDER,  
REEVES & BRYANT,  
A Professional Corporation  
Fifteenth Floor  
One Leadership Square  
211 North Robinson  
Oklahoma City, Oklahoma 73102  
Telephone: (405) 235-5500

ATTORNEYS FOR NINTH DISTRICT  
PRODUCTION CREDIT ASSOCIATION

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

**F I L E D**

SEP 28 1990

Jack C. Silver, Clerk  
DISTRICT COURT

IN RE: )  
 )  
 HAROLD WAYNE BURLINGAME and )  
 BARBARA JEAN BURLINGAME, Husband )  
 and Wife, )  
 )  
 Debtors. )  
 and )  
 )  
 THE FIRST NATIONAL BANK & TRUST )  
 COMPANY OF TULSA, a national )  
 banking association, )  
 )  
 Plaintiff, )  
 v. )  
 )  
 HAROLD W. BURLINGAME, et al, )  
 )  
 Defendants, )  
 and )  
 )  
 D.P. BYERS & COMPANY, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 HAROLD W. BURLINGAME, et al, )  
 )  
 Defendants, )  
 )  
 and )  
 )  
 FIRST AMERICAN FEDERAL SAVINGS BANK, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 HAROLD W. BURLINGAME, et al, )  
 )  
 Defendants. )

No. 88-02062-C  
 (Chapter 11)  
 Adversary No. 88-248-C  
 Case No. 89-C-1078-E

ORDER

## ORDER

Now before the court is the Appeal of D.P. Byers & Company from the Memorandum Decision and Order of the Bankruptcy Court entered in this case on December 20, 1989.

Harold Burlingame ("Burlingame") purchased property at 4343 South Memorial in Tulsa and financed the purchase by **executing** two promissory notes with First National Bank & Trust Company ("First Tulsa"), which were secured by first and second mortgages to First Tulsa. Burlingame defaulted **on the** loan for construction of improvements, in the principal amount of \$390,000.00, and First Tulsa instituted foreclosure proceedings against the property.

A week after First Tulsa filed **its** foreclosure action, D.P. Byers and Company ("Byers") filed an action to foreclose a **mechanic** and materialman's lien resulting from work performed on the property. The actions **were** consolidated and tried in the U.S. Bankruptcy Court after Burlingame filed for Chapter 11 relief. On December 26, 1989, the Bankruptcy Court rendered its Memorandum Decision and Order in favor of First Tulsa, which is appealed by Byers.

The Bankruptcy Court addressed **the** question of whether First Tulsa's prior recorded mortgages should be subordinated on **equitable** grounds to the mechanic and materialman's lien of Byers. Byers was claiming, **and claims** on appeal, that First Tulsa, because of its conduct, was equitably estopped from **asserting** the priority of its mortgages.

Byers set forth two instances **upon** which its estoppel claims were based. The first instance was a meeting in January of 1987 between Burlingame and First Tulsa's then senior vice president and manager of **real** estate, Steve Lynn ("Lynn"). Burlingame had

developed a potential lease with Geneva Foods ("Geneva") for a major portion of the property and requested that First Tulsa lend additional monies to pay for expenses associated with the lease. Burlingame offered to provide additional collateral for the loan, including the pledge of a \$250,000.00 certificate of deposit to be submitted by Geneva to guarantee its lease with Burlingame (the "CD") and two second mortgages on other properties owned by Burlingame.

Burlingame and Byers have asserted that Lynn subsequently waived the CD requirement. However, the evidence presented to the court supports Lynn's testimony that the CD requirement was never dropped. The January 16, 1987, letter from Lynn to Burlingame included documents associated with the requested loan and specifically set out the CD requirement. Also, Lynn sent Burlingame certain agreements relevant to Burlingame's pledge of a CD. Documents prepared by First Tulsa, after the time Burlingame claimed Lynn dropped the CD requirement, consistently refer to the CD requirement. Documents prepared by Burlingame, including his interrogatory answers, his recap, and his answer to this suit, show that Burlingame knew that the CD was always a condition for funding. The Bankruptcy judge found from this evidence that Lynn's testimony was "credible and believable," and Burlingame's was not credible.

On January 12, 1987, Burlingame told Lynn that Geneva needed to occupy the property as soon as possible and requested Lynn's permission to begin demolition. Without such permission, demolition of part of the Property could be construed as a breach of Burlingame's mortgages and associated loan agreements. Lynn did not object because the demolition involving the interior of the property would not impair first Tulsa's collateral,

but explained that the requested loan had not been approved yet.

Burlingame and Byers had negotiated a contract for construction of the tenant finish improvements for Geneva which was signed on January 12, 1987 and Burlingame told Byers to get started on the construction, representing that he had a standing loan commitment from First Tulsa for \$250,000.00. The total amount of the Construction Contract was approximately \$370,000.00. Although Burlingame knew that his financing was contingent on his ability to produce a satisfactory letter of credit, Burlingame told Byers there would be no problem getting the additional \$120,000.00 necessary to pay for the improvements for Geneva.

Relying on Burlingame's representation that he had a \$250,000.00 standing loan commitment, not on any representation by First Tulsa, Byers began work under the Construction Contract. Byers continued to rely on Burlingame's misrepresentations, despite the fact that Burlingame did not pay the initial up-front payment invoiced on December 31, 1986, the first draw billed on February 6, 1987, or the second draw billed on February 23, 1987. On February 23, 1987 Burlingame finally told Byers there was a problem with the financing, but that Byers would still get paid. Byers continued to work, and did not contact First Tulsa.

Byers' only contact with First Tulsa was on February 4, 1987, when Delmar Davis ("Davis"), First Tulsa's construction analyst, visited the Property to see what was going on. This visit by Davis is the second instance relied upon by Byers as a basis for its equitable subordination claim. When Davis arrived at the Property he introduced himself to D.P. Byers and Byers' employee Gary Teague ("Teague") and handed them his card indicating

that he was a "construction analyst" for First Tulsa. Davis examined Byers' work and told D.P. Byers and Teague about the process of submitting draw requests to Burlingame. Davis told D.P. Byers he was in the "inspecting department," not the "check writing department."

After reviewing all the evidence and weighing the witness's credibility, the Bankruptcy Court found the testimony of Teague and D.P. Byers was more credible and reasonable than that of Davis. The judge pointed out that on cross examination Davis was impeached several times. The Bankruptcy Court found that Davis did not have actual authority to make statements with respect to the funding of Burlingame's loan or with respect to whether Byers should continue working. The issue according to the Bankruptcy Court was whether Davis had apparent authority to bind First Tulsa.

The Bankruptcy Court concluded that First Tulsa did nothing to clothe Davis with apparent authority to make the statements regarding Burlingame's loan and Byers continuance of work. Citing substantial case law, the Bankruptcy Court determined that, because of its experience in the construction industry, D.P. Byers knew or should have known that only loan officers can make representations as to loan approval and that it was unreasonable for D.P. Byers to believe that Davis, a construction analyst, had such authority. The judge found that, while D.P. Byers hoped to get paid, such hope could not be translated into actual or apparent authority which Davis did not have.

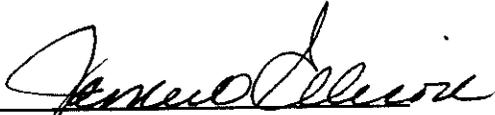
Because Byers' reliance prior to February 4, 1987, was based on statements or actions of Burlingame, not First Tulsa, and because Byers' reliance, if any, upon Davis' conduct was not reasonable, the court concluded that Byers failed to prove the elements of equitable estoppel necessary to subordinate First Tulsa's mortgages. Therefore, the

Bankruptcy Court determined First Tulsa has a first and prior lien against the property.

Bankruptcy Rule 8013 sets forth a "clearly erroneous" standard for appellate review of bankruptcy rulings with respect to **findings** of fact. In re: Morrissey, 717 F.2d 100, 104 (3rd Cir. 1983). The parties in this case agree that the bankruptcy court's findings of fact are at issue in this appeal.

The court finds, upon review of the evidence and Judge Stephen Covey's Memorandum Decision and Order, that the order should be affirmed. It is well-reasoned and based on credibility determinations on the part of the trier of fact which must be upheld by this court.

Dated this 28<sup>th</sup> day of September, 1990.

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

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

FILED

SEP 28 1990

THRIFTY RENT-A-CAR SYSTEM, INC., )  
a corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SHELDON BLOCH and )  
GERALDINE BLOCH, )  
 )  
Defendants. )

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

Case No. 89-C-376 E

JOURNAL ENTRY OF JUDGMENT

Now on this 28 day of Sept, 1990, this matter comes on before the undersigned District Judge. Plaintiff, Thrifty Rent-A-Car System, Inc. ("Thrifty") filed its Complaint on May 4, 1989. Sheldon Bloch and Geraldine Bloch (the "Defendants") filed their Answer on June 8, 1989. The parties have agreed to the entry of a judgment as hereinafter set forth:

1. The Court finds that the Court has jurisdiction over the Defendants and that the Defendants consent to the jurisdiction of this Court.

2. The Court further finds that every issue of law and fact herein is wholly between citizens of different states and the amount in controversy exceeds \$10,000, exclusive of interest and costs. The Court further finds that it has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. § 1332(a).

3. The Court further finds that venue is proper pursuant to 28 U.S.C. § 1391(a).

4. The Court further finds that Thrifty should be granted a joint and several judgment in its favor against the Defendants, Sheldon Bloch and Geraldine Bloch, and each of them, on the claim for relief stated in the Complaint filed herein on May 4, 1989, in the amount of \$591,284.57 as of May 1, 1989, with interest thereon from and after May 1, 1989 until the entry of judgment at the rate of 6 percent per annum, and interest continuing to accrue on the principal amount and accrued interest from and after the entry of judgment at the rate of 278 percent per annum as provided by law.

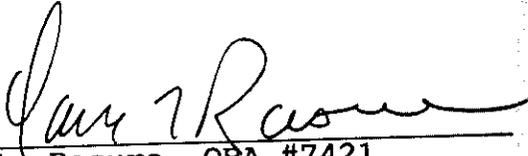
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that a joint and several judgment be and is hereby entered in favor of Thrifty against the Defendants, Sheldon Bloch and Geraldine Bloch, and each of them, on the claim for relief stated in the Complaint, in the amount of \$591,284.57 as of May 1, 1989, with interest thereon from and after May 1, 1989 until the entry of judgment at the rate of 6 percent per annum, and interest continuing to accrue on the principal amount and accrued interest from and after the entry of judgment at the rate of 278 percent per annum as provided by law.

S/ JAMES O. ELLISON,

---

DISTRICT JUDGE

Approved:



Dana L. Rasure, OBA #7421  
Ranee F. Charney, OBA #13255  
BAKER, HOSTER, MCSPADDEN, CLARK,  
RASURE & SLICKER  
800 Kennedy Building  
Tulsa, Oklahoma 74103  
(918) 592-5555

John M. Hickey, OBA #11100  
THRIFTY RENT-A-CAR SYSTEM, INC.  
Suite 900, 5330 E. 31ST St.  
Tulsa, Oklahoma 74153  
(918) 665-9319

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



Stephen E. Schneider, OBA #7970  
Cornish & Schneider  
321 South Boston, Suite #917  
Tulsa, Oklahoma 74103  
(918) 583-2284

Sheldon E. Rabb  
Rabb & Davis Co., L.P.A.  
450 Standard Building  
Cleveland, Ohio 44113  
(216) 781-3311

Attorneys for Defendants  
Sheldon Bloch and Geraldine Bloch

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

*Entered  
Jennings  
only*

LEONARDO MARCOS LEONOFF, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JOE JENNINGS, Tulsa County )  
 District Judge; STANLEY GLANZ, )  
 Tulsa County Sheriff; DAN )  
 CHERRY, Administrator, Tulsa )  
 County Jail; VIVIAN WHITE, TOM )  
 CREWSON, Tulsa County Juvenile )  
 Judge and THE STATE OF )  
 OKLAHOMA, )  
 )  
 Defendants. )

No. 90-C-60-C

**FILED**

**SEP 28 1990**

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

**ORDER**

Before the Court is the Report and Recommendation of the Magistrate recommending that the claim filed against defendant Joe Jennings in his capacity as Tulsa County District Judge be dismissed as frivolous. On April 11 and 19, 1990, plaintiff filed objections to the recommendation.

Plaintiff is a citizen of Israel in the United States on a tourist visa. He is confined in the Tulsa County Jail and brings this action pursuant to 42 U.S.C. §1983 against, among others, Joe Jennings in his capacity as a Tulsa County District Judge. Plaintiff asserts that Judge Jennings has deprived him of due process of law by failing to appoint him counsel after plaintiff dismissed the attorney which was provided him by the Jewish Community. Plaintiff contends that he is an indigent and therefore

had a right to a court appointed attorney. Secondly, plaintiff asserts he speaks Hebrew and he is unable to understand the English language. He was denied due process by Judge Jennings' failure to provide him an interpreter in order for him to understand the legal proceedings and prepare a defense. Additionally, plaintiff asserts that Judge Jennings acted without jurisdiction in that plaintiff was unlawfully extradited to the State of Oklahoma from the State of Florida.

It is well settled law that judges are entitled to absolute immunity from damages for acts performed in their official capacity. Pierson v. Ray, 386 U.S. 547, 553-4 (1967).

The Supreme Court has held that the common law doctrine of judicial absolute immunity was not abolished by the passage of the Civil Rights Act of 1871 now 42 U.S.C. §1983.

The Court explained:

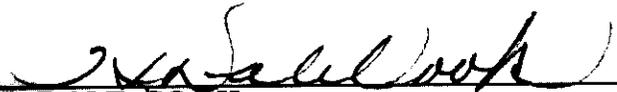
It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation. Pierson v. Ray, *supra* at 554.

The doctrine of absolute immunity rests upon considerations of public policy, its purpose being to preserve the integrity of the judiciary and to insure that judges will act on their own free, unbiased convictions.

Accordingly, the Magistrate's recommendation is affirmed and adopted as the Findings and Conclusions of this Court.

It is therefore Ordered sua sponte, that defendant Joe Jennings in his capacity as Tulsa County District Judge is hereby dismissed from this action.

*IT IS SO ORDERED* this 27 day of September, 1990.

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

*entered*

IN THE UNITED STATES DISTRICT COURT **FILED**  
FOR THE NORTHERN DISTRICT OF OKLAHOMA **SEP 28 1990**

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

CHRISTINE TUCKER,  
Plaintiff

vs.

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

CIVIL ACTION NO. 87-C-693-C

AMENDED ORDER

This matter comes on for consideration upon Plaintiff's Christine Tucker, Motion for Attorney's Fees in the amount of \$1,202.98 as requested under 42 U.S.C. §406, and attorney's fees under the Equal Access to Justice Act, 28 U.S.C. §§2412(b) and (d). The Court has jurisdiction to award attorney's fees under the Social Security Act for services rendered. Harris v. Secretary of HHS, 836 F.2d 496 (10th Cir. 1987). The Social Security Administration has withheld the amount of \$1,202.98, which represents 25% of the past due benefits under §406.

The Defendant has no objection to the Court approving an attorney fee award of \$1,202.98 as requested under 42 U.S.C. §406, and has no objection to the attorney fee of \$5,590.00 as requested under 28 U.S.C. §2412(d) and as to costs.

The Court concludes Plaintiff's Motions for Attorney's Fees should be and is hereby sustained. Plaintiff's attorney, Mark E. Buchner, is awarded an attorney's fee in the amount of \$1,202.98 under 42 U.S.C. §406, and an attorney fee of \$5,590.00 under 28 U.S.C. §2412(d) and costs in the amount of \$17.50. The smaller of the two attorney fees

is to be paid to the Plaintiff, Christine Tucker, by the attorney.  
Weakley v. Bowen, 803 F.2d 575 (10th Cir. 1986).

It is so ordered this 27 day of Sept, 1990.

*W. J. Sale Dock*  
United States District Judge

**FILED  
IN OPEN COURT**

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

SEP 28 1990

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

SCOTT DAVIES,

Plaintiff,

vs.

AMERICAN AIRLINES, INC., a  
Delaware corporation,

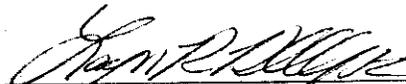
Defendant.

Case No. 89-C-881-P

**JUDGMENT**

This action came on for trial before the Court and a jury, The Honorable Layn R. Phillips, District Judge, presiding. The issues having been duly tried and the jury having duly rendered its verdict on September 25, 1990, IT IS HEREBY ORDERED that the Plaintiff, Scott Davies, recover from the Defendant, American Airlines, Inc., the sum of \$81,000.00 in actual damages and \$15,000.00 in punitive damages. Plaintiff shall be entitled to costs of the action. Interest shall be awarded as provided by law.

DATED this 28 day of September, 1990.

  
LAYN R. PHILLIPS,  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



---

Joe White  
Attorney for Plaintiff,  
Scott Davies



---

Reuben Davis  
Kimberly A. Lambert  
Attorney for Defendant,  
American Airlines, Inc.

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

FILED  
IN OPEN COURT

SEP 28 1990

SCOTT DAVIES,

Plaintiff,

vs.

AMERICAN AIRLINES, INC., a  
Delaware corporation,

Defendant.

Case No. 89-C-881-P

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

JUDGMENT NOTWITHSTANDING THE VERDICT

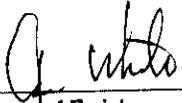
Upon Motion of the Defendant, American Airlines, Inc., for Judgment Notwithstanding the Verdict, pursuant to Rule 50(b), Federal Rules of Civil Procedure, this Court hereby grants the Defendant's Motion. IT IS HEREBY ORDERED that judgment be entered for the Defendant, American Airlines, Inc.

IT IS SO ORDERED.

DATED this 28 day of September, 1990.

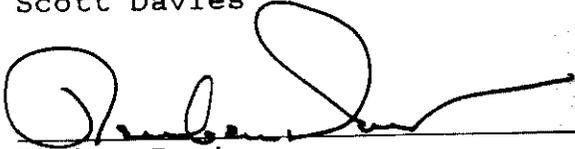
Layn R. Phillips  
LAYN R. PHILLIPS,  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



---

Joel White  
Attorney for Plaintiff,  
Scott Davies



---

Reuben Davis  
Kimberly A. Lambert  
Attorney for Defendant,  
American Airlines, Inc.

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES W. COTTINGIM; DONA L.  
COTTINGIM; WOODLAND BANK;  
VALLEY NATIONAL BANK; VAL W.  
SYNAR; COUNTY TREASURER,  
Rogers County, Oklahoma;  
BOARD OF COUNTY COMMISSIONERS,  
Rogers County, Oklahoma;  
KENNETH COLE and ROBERT  
PETERSON d/b/a PETCO,

Defendants.

FILED

SEP 28 1990

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

CIVIL ACTION NO. 89-C-916-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 27 day  
of Sept, 1990. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Phil Pinnell, Assistant United States Attorney;  
the Defendants, James W. Cottingim and Dona L. Cottingim appear  
by their attorney, Mack Greever; the Defendant, Valley National  
Bank appears by its attorney, Jon E. Brightmire; the Defendant,  
Val W. Synar, appears pro se; The Defendants, County Treasurer,  
Rogers County, Oklahoma, and Board of County Commissioners,  
Rogers County, Oklahoma, appear by their attorney, Ernest E.  
Haynes, Jr., Assistant District Attorney, Rogers County,  
Oklahoma; and the Defendants, Woodland Bank, Kenneth Cole d/b/a  
Petco, and Robert Peterson d/b/a Petco appear not, but make  
default.

The Court being fully advised and having examined the file herein finds that the Defendants, James W. Cottingim and Dona L. Cottingim, were served with a Summons and Complaint on January 18, 1990; that Defendant, Woodland Bank, acknowledged receipt of Summons and Complaint on November 3, 1989; that Defendant, Valley National Bank, acknowledged receipt of Summons and Complaint on November 30, 1989; that Defendant, Val W. Synar acknowledged receipt of Summons and Complaint on November 17, 1989; that Defendant, Kenneth Cole d/b/a Petco, acknowledged receipt of Summons and Amended Complaint on May 31, 1990; that Defendant, Robert Peterson d/b/a Petco, was served with a Summons and Amended Complaint on June 4, 1990; that Defendant, County Treasurer, Rogers County, Oklahoma, acknowledged receipt of Summons and Complaint on November 2, 1989; and that Defendant, Board of County Commissioners, Rogers County, Oklahoma, acknowledged receipt of Summons and Complaint on November 3, 1989.

It appears that the Defendants, James W. Cottingim and Dona L. Cottingim, filed their Answer herein on January 25, 1990; the Defendant, Valley National Bank, filed its Answer on December 5, 1989; that Defendant, Val W. Synar, filed his answer on November 17, 1989; that Defendants County Treasurer, Rogers County, Oklahoma, and Board of County Commissioners, Rogers County, Oklahoma, filed their Answer on November 15, 1989; and that Defendants, Woodland Bank, Kenneth Cole d/b/a Petco and Robert Peterson d/b/a Petco have failed to answer, and their

default has therefore been entered by the Clerk of this Court.

The Court further finds that on March 10, 1988, James William Cottingim a/k/a J.W. Cottingim a/k/a Jim Cottingim and Dona Lou Cottingim a/k/a Dona L. Cottingim a/d/b/a COGA Oil & Gas, Inc. filed their voluntary petition in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 88-00599-C. Discharge of Debtors was entered on July 22, 1988. On October 11, 1989, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtors by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described below.

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

E 1/2 of SE 1/4 of Section 7 and NW 1/4 of Section 17, Township 23 North, Range 15 East of the I.B. & M., in Rogers County, Oklahoma, according to the U.S. Government Survey.

On February 14, 1979, the Defendants, James W. Cottingim and Dona L. Cottingim, executed and delivered to the United State of America, acting through the Farmers Home Administration, their promissory note in the amount of \$49,600.00, with interest thereon at the rate of 8.5 percent per annum. As security for the payment of this note, the Defendants, James W. Cottingim and Dona L. Cottingim, executed and delivered

to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated February 14, 1979. This mortgage was recorded on February 14, 1979, in Book 552, Page 646, in the records of Rogers County, Oklahoma. Said mortgage was paid in full as of August 13, 1980.

The Court further finds that on March 8, 1979, the Defendants, James W. Cottingim and Dona L. Cottingim, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$342,010.00, payable in yearly installments, with interest thereon at the rate of 8.5 percent (8.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, James W. Cottingim and Dona L. Cottingim, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated March 8, 1979, covering the above-described property. Said mortgage was recorded on March 8, 1979, in Book 553, Page 860, in the records of Rogers County, Oklahoma.

The Court further finds that the Defendants, James W. Cottingim and Dona L. Cottingim, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the yearly installments due thereon, which default has continued, and that by reason thereof, the Defendants, James W. Cottingim and Dona L. Cottingim, are indebted to the Plaintiff in the principal sum of \$329,981.53, plus accrued interest in the

amount of \$181,941.80 as of August 15, 1989, plus interest accruing thereafter at the rate of 8.5 percent per annum or \$76.8451 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing for ad valorem taxes of \$2,833.53 as of September 26, 1989, plus interest accruing thereafter at the rate of 8.5 percent per annum or \$0.6598 per day until judgment, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$78.20 (\$20.00, docket fees; \$50.20 fees for service of Summons and Complaint; and \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendant, Valley National Bank, claims some right, title, or interest in the property being foreclosed in the amount of \$401,663.54 plus interest at the rate of ~~\$103.55 percent per annum~~ <sup>per diem</sup> by virtue of a mortgage recorded on June 14, 1985 in Book 705 at Page 781 in the records of Rogers County, Oklahoma. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Val W. Synar, claims some right, title or interest by virtue of expenses incurred in the amount of \$3,028.00 for improvement of subject property which include: attorney fee, \$250.00; new abstract, \$513.00; and one-half expense of cost of constructing property lines, \$2,265.00.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Rogers County,

Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that the Defendants, Woodland Bank, Kenneth Cole d/b/a Petco, and Robert Peterson d/b/a Petco are in default and therefore have no right, title or interest in the subject property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendants, James W. Cottingim and Dona L. Cottingim, in the principal sum of \$329,981.53, plus accrued interest in the amount of \$181,941.80 as of August 15, 1989, plus interest accruing thereafter at the rate of 8.5 percent per annum or \$76.8451 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing for ad valorem taxes in the amount of \$2,833.53 as of September 26, 1989, plus interest accruing thereafter at the rate of 8.5 percent per annum or \$0.6598 per day until judgment, plus interest on that sum at the legal rate from judgment until paid, plus the costs of this action in the amount of \$78.20 (\$20.00 docket fees; \$50.20 fees for service of Summons and Complaint; and \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by the Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Valley National Bank, have and recover judgment in the amount of \$401,663.54 at the rate of \$103.55 ~~percent per annum~~ <sup>per diem.</sup>

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Val W. Synar, have and recover judgment in the amount of \$3,028.00.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Woodland Bank, Kenneth Cole d/b/a/ Petco, Robert Peterson d/b/a Petco, the County Treasurer and the Board of County Commissioners, Rogers County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

Third:

In payment of the Defendant, Valley National Bank, in the amount of \$401,663.54 plus interest at the rate of \$103.55 ~~percent per annum~~ <sup>per diem;</sup>

**Fourth:**

In payment of the Defendant, Val W. Synar, in the amount of \$3,028.00.

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.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

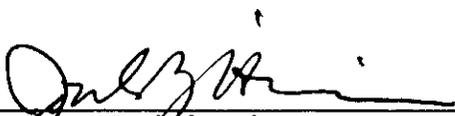
  
\_\_\_\_\_  
Phil Pinnell, OBA #7169  
Assistant United States Attorney

*Mack Greever*

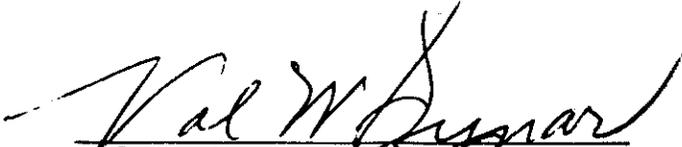
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Mack Greever  
Attorney for James W. Cottingim  
and Dona L. Cottingim

Judgment of Foreclosure  
Civil Action No. 89-C-916-E

  
\_\_\_\_\_  
Jon E. Brightmire  
Attorney for Defendant,  
Valley National Bank

Judgment of Foreclosure  
Civil Action NO. 89-C-916-E

  
Val W. Synar, Pro se

Judgment of Foreclosure  
Civil Action No. 89-C-916-E



Ernest E. Haynes, Jr.  
Assistant District Attorney  
Attorney for County Treasurer  
and Board of County Commissioners

Judgment of Foreclosure  
Civil Action No. 89-C-916-E

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

FILED

SEP 28 1990

MARY CASTRO,

Plaintiff,

vs.

WAL-MART STORES, INC.,

Defendant.

No. 89-C-1039-E

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

**JUDGMENT**

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

IT IS THEREFORE ORDERED that the Plaintiff Mary Castro take nothing from the Defendant Wal-Mart Stores, Inc., that the action be dismissed on the merits, and that the Defendant recover of the Plaintiff its costs of action.

ORDERED this 28<sup>th</sup> day of September, 1990.

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

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

FILED  
SEP 28 1990

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

CLIFTON ASHER and KELLY ASHER, )  
 )  
 Plaintiffs, )  
 )  
 vs. ) No. CIV-88-C-1262-P  
 )  
 JIM BARTLETT, d/b/a )  
 McDONALD TRUCK CENTER, )  
 )  
 Defendant. )

O R D E R

At issue is defendant Jim Bartlett d/b/a McDonald Truck Center's ("Bartlett") application for attorney fees filed June 15, 1990. Plaintiff Clifton Asher and Kelly Asher responded in opposition on June 29, 1990. Final entry of judgment was entered for Bartlett on May 31, 1990.

It is well established that the right to attorney fees did not exist at common law, and therefore, any amount not based on a written contract provision must be based on statutory authority. United General Ins. Co. v. Crane Carrier Co., 695 P.2d 1334, 1337 (Okla. 1984). Defendant Bartlett argues that it is entitled to attorney fees for successfully defending plaintiffs' cause of action for negligent injury to property. The pertinent statute reads:

In any civil action to recover damages for the negligent or willful injury to property and any other incidental costs related to such action, the prevailing party shall be allowed reasonable attorney's fees, court costs and interest to be set by the court and to be taxed and collected as other costs of the action.

12 Okla. Stat. § 940(A).

Plaintiffs argue that its pertinent cause of action was for negligent repair of a motor vehicle, which was not contemplated within 12 Okla. Stat. § 940(A) as a negligent injury to property. The Oklahoma Supreme Court has ruled that actions are covered in the broad sense under the statute if there is a negligent physical injury to property. Woods Petroleum Corp. v. Delhi Gas Pipeline Corp., 700 P.2d 1011, 1013 (Okla. 1984). Negligent repairs to motor vehicles as a practical matter would result in physical injury to the vehicle. It would appear therefore that a negligent repair of a motor vehicle is covered by the statute and Bartlett as prevailing party is entitled to reasonable fees and costs. Bartlett is hereby **AWARDED** the sum of \$5,169 as there was no objection as to the reasonableness of the requested fees. N.D. Okla. R. 6(G). Bartlett's request for costs is not in the proper format and is **DENIED** with leave to refile with the Court Clerk within fifteen (15) days of this Order pursuant to the local rules. N.D. Okla. R. 6(E).

IT IS SO ORDERED THIS 28th DAY OF SEPTEMBER, 1990.

  
\_\_\_\_\_  
**LAYN R. PHILLIPS**  
**UNITED STATES DISTRICT JUDGE**

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

FILED  
SEP 27 1990

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

KIRBY W. ROUNTT,  
Plaintiff,

vs.

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

No. 89-C-906-C

ORDER

Before the Court is the objection by plaintiff Kirby W. Rountt to the Report and Recommendation of the Magistrate. The Magistrate recommended affirming the conclusion reached by the Secretary of Health and Human Services that plaintiff is not disabled within the meaning of the Social Security Act.

Plaintiff raises three objections to the Report of the Magistrate in contending that the conclusion reached by the Secretary is not supported by substantial evidence:

First: The Administrative Law Judge (ALJ) failed to develop the plaintiff's case because he did not properly examine the vocational expert witness.

The Court has independently reviewed the record in this case. From a review of the transcript of the hearing before the ALJ, it appears to this Court that the ALJ conducted a thorough inquiry into plaintiff's medical condition and past work history. The ALJ

admitted plaintiff's medical records (over plaintiff's objection to the doctor's findings) and reached his decision based upon both objective and subjective factors. The vocational expert was present during plaintiff's testimony and had advised the ALJ that she had reviewed plaintiff's medical records. The ALJ inquired into the vocational expert's opinion as to the type of work, if any, this plaintiff could perform, and provided plaintiff an opportunity to respond to her opinion. Accordingly, the Court finds plaintiff's objection without merit.

Second: The ALJ asked the vocational expert witness an improper and incomplete hypothetical question.

Plaintiff objects to the content of the hypothetical question posed by the ALJ, as not setting forth all of plaintiff's alleged disabilities. The Tenth Circuit has held that a decision reached by the Secretary should not be remanded to the ALJ for further proceedings simply because some questions asked by the ALJ were objectionable in form. Brown v. Brown, 801 F.2d 361 (10th Cir. 1986). The court cited with approval Roberts v. Heckler, 783 F.2d 110, 112 (8th Cir. 1985), which held that an ALJ's hypothetical question to a vocational expert was not improper because it did not set forth all the claimant's alleged disabilities. It need only contain the impairments which are accepted as true by the ALJ. Additionally, the vocational expert had been present during plaintiff's testimony and had reviewed his medical records prior to the hearing.

Third: The ALJ did not properly evaluate plaintiff's pain testimony in regard to the plaintiff's credibility.

From a review of plaintiff's medical records there is substantial evidence to support the ALJ's conclusion that plaintiff was able to perform light work, reduced by the lack of vision in one eye and his inability to squat. There is substantial objective evidence that plaintiff's complaint of incapacitating pain is not credible. The Tenth Circuit has said that "subjective complaints of pain must be accompanied by medical evidence and may be disregarded if unsupported by clinical findings." Frey v. Bowen, 816 F.2d 508, 515 (10th Cir. 1987). The standard for evaluating a claim of disabling pain includes both objective and subjective factors, and must take into consideration credibility, motivation and medical evidence.

It includes an evaluation of the patient's medical history and the physician's observations of the patient, and necessarily involves an evaluation of the credibility of the patient's subjective complaints of pain. A medical opinion based on all of these factors is medical evidence supporting a claim of disabling pain, even if the objective test results taken alone do not fully substantiate the claim.

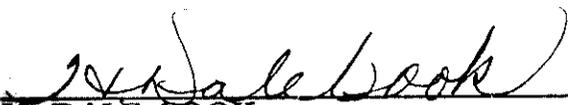
816 F.2d at 516.

The Findings entered by the ALJ reflect that the standard for evaluating plaintiff's subjective complaints of pain was properly followed. The ALJ reviewed plaintiff's medical history, work history, testimony of plaintiff and physician statements. The conclusion reached by the ALJ is supported by substantial evidence.

The Report and Recommendation entered by the Magistrate is affirmed and adopted as the Findings and Conclusions of this Court.

Accordingly, it is the Order of the Court that the decision rendered by the Secretary of Health and Human Services regarding plaintiff Kirby W. Routt is affirmed as being supported by substantial evidence.

IT IS SO ORDERED this 27<sup>th</sup> day of September, 1990.

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

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

FILED

SEP 27 1990

JACK [unclear] CLERK  
U.S. DISTRICT COURT

BONNIE PERRY and ROBERT PERRY, )  
husband and wife, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 KOCH INDUSTRIES, INC., )  
 a Kansas corporation, )  
 KOCH ENGINEERING CO., INC., )  
 a Kansas corporation, )  
 ERIC SCHLUMPF, an individual, and )  
 JOHN VAN GELDER, an individual, )  
 )  
 Defendants. )

No. 90-C-351-B ✓

ORDER

Before the Court for decision is Defendant Eric Schlumpf's Motion to Dismiss For Failure to State a Claim upon which relief can be granted, pursuant to Fed.R.Civ.P. 12(b)(6).

Defendant Schlumpf was an employee of John Zink Company, a division of Koch Engineering Co., Inc. (KEC), and the direct supervisor of Plaintiff Bonnie Perry. Plaintiffs allege three claims in their cause of action against Defendants Koch Industries, Inc., KEC, Eric Schlumpf, and John Van Gelder, which arose from Plaintiff Bonnie Perry's termination as an employee of John Zink Company. In their first claim, Plaintiffs allege an apparent Burk v. K-Mart<sup>1</sup> public policy common law tort exception to the terminable-at-will employment doctrine in the wrongful termination of Bonnie Perry. In their second claim, Plaintiffs allege that Defendants Schlumpf and Van Gelder tortiously interfered with

<sup>1</sup>Burk v. K-Mart Corporation, 770 P.2d 24 (Okla. 1989).

Bonnie Perry's advantageous employment relationship with KEC. In the third claim, Plaintiff Bonnie Perry alone alleges that Defendants Schlumpf and KEC intentionally inflicted emotional distress on her.

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

Defendant Schlumpf maintains that Plaintiffs' first claim for relief should be dismissed against him because he was not Bonnie Perry's employer and thus is not a proper defendant under the wrongful termination tort. While Plaintiffs' first claim may conceivably entitle them to relief against some of the Defendants who were a party to the employment contract, Defendant Schlumpf was a stranger to that contract and is therefore improperly joined in the first claim.

Plaintiffs' second claim for intentional interference with contractual relations, as well as Plaintiff Bonnie Perry's third claim of intentional infliction of emotional distress, each allege facts upon which relief could be granted against Defendant

Schlumpf. As such, it is inappropriate for the Court to dismiss them at this time.

The Court concludes that Defendant Schlumpf's Motion to dismiss should be and is hereby SUSTAINED as to him with respect to the first claim of wrongful termination; and, regarding the second and third claims, the motion should be and is hereby DENIED.

IT IS SO ORDERED this 27<sup>th</sup> day of September, 1990.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED 9-27-90

SEP 27 1990

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

OIL CAPITAL LAND & EXPLORATION )  
CO., an Oklahoma corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
FUEL RESOURCES, INC., a )  
Delaware corporation, )  
 )  
Defendant. )

Case No. 89-C-838 E

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Fed.R.Civ.P. 41(a), the plaintiff, Oil Capital Land & Exploration Co., and the defendant, Fuel Resources, Inc., hereby jointly stipulate that this action by the plaintiff and the counterclaims by the defendant be and the same hereby are dismissed with prejudice, each party to bear their respective attorneys' fees and costs.

DATED this 27th day of September, 1990.

Respectfully submitted,

SNEED, LANG, ADAMS, HAMILTON &  
BARNETT

By: Melinda J. Martin  
Melinda J. Martin  
Pamela Shelton  
Mark L. Collier  
2300 Williams Center Tower II  
Two West Second Street  
Tulsa, Oklahoma 74103  
(918) 583-3145

Attorneys for Plaintiff

HASTIE & KIRSCHNER

By: Robert D. McCutcheon  
Robert D. McCutcheon  
3000 First Oklahoma Tower  
210 West Park Avenue  
Oklahoma City, Oklahoma 73102  
(405) 239-6404

CULLEN AND DYKMAN

Cynthia Boyer Okrent  
177 Montague Street  
Brooklyn, New York 11201

Attorneys for Defendant

fuel\st-stip.die

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

CHARLES KERKER,  
Plaintiff,

vs.

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

No. 89-C-877-E

FILED

SEP 27 1990

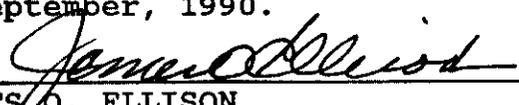
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed August 1, 1990. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that the decision of the Secretary be reversed and remanded for the taking of testimony from a vocational expert to determine whether there are occupations in the national economy which Plaintiff has the residual functional capacity to perform; or, for the purpose of requiring the Administrative Law Judge to specify on the record the specific reasons why he finds Plaintiff's testimony as to his inability to work as a "watchmaker" not credible.

ORDERED this 26<sup>th</sup> day of September, 1990.

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

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

FILED

SEP 27 1990

TRACY FIGUET,

Plaintiff,

vs.

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

Defendant.

No. 89-C-1041-E

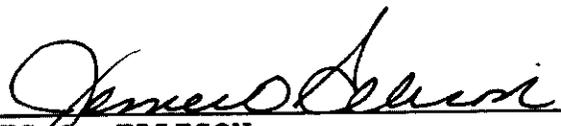
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed September 12, 1990. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that the decision of the Secretary is vacated and the application of the claimant is remanded with directions that the Administrative Law Judge conduct further inquiry of claimant's treating physicians as directed in the Magistrate Report.

ORDERED this 27<sup>th</sup> day of September, 1990.

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

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

**F I L E D**

**SEP 27 1990**

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

GEORGE LEWIS SLOAN,  
Petitioner,

vs.

No. 90-C-597-E

JACK COWLEY (Warden) and  
THE ATTORNEY GENERAL OF THE  
STATE OF OKLAHOMA,

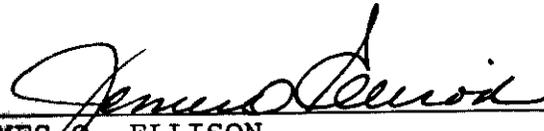
Respondents.

**ORDER**

The Court has for consideration the Report and Recommendation of the Magistrate filed August 1, 1990. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Petitioner's application for a writ of habeas corpus is dismissed for failure to state a habeas corpus claim.

ORDERED this 27<sup>th</sup> day of September, 1990.



JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

FILED

ANTONIO VARGAS, )  
)  
Plaintiff, )  
)  
v. )  
)  
ANTHONY M. FRANK, et al, )  
)  
Defendants. )

SEP 27 1990

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

90-C-31-E

ORDER

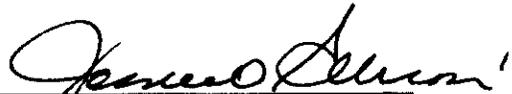
The Court has for consideration the Report and Recommendation of the United States Magistrate filed August 30, 1990 in which the Magistrate recommended that the Motion to Dismiss be granted insofar as regards Defendant Jesse W. Williams, and that he be dismissed from this action.

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 insofar as regards Defendant Jesse W. Williams, and he is dismissed from this action.

Dated this 27<sup>th</sup> day of Sept., 1990.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

FILED

SEP 27 1990

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

PATTY ANN FREEMAN,  
Plaintiff,

vs.

No. 90-C-19-E

BARBARA SNOW, et al.,  
Defendants.

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed June 29, 1990. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Dismiss is granted and Defendants Lamb and Seaton are hereby dismissed without prejudice.

ORDERED this 26<sup>th</sup> day of September, 1990.



JAMES C. ELLISON  
UNITED STATES DISTRICT JUDGE

**FILED**

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

SEP 27 1990

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

ROBERTA J. GURLEY and SEREDA  
CHRISTINE SUMMERTON,

Plaintiff,

vs.

AUTOMOBILE CLUB INSURANCE  
COMPANY, an Ohio corporation,  
and AMERICAN NATIONAL  
INSURANCE COMPANY, a Texas  
corporation,

Defendant.

Case No. 90-C-250 B ✓

ORDER

THIS MATTER comes before the Court on the Application of the Plaintiffs and Defendant, AMERICAN NATIONAL INSURANCE COMPANY. The Court finds that all of the issues between these two parties have been completely settled and compromised, and therefore dismisses with prejudice the Defendant, AMERICAN NATIONAL INSURANCE COMPANY, only, as to any future actions.

SO ORDERED this 27<sup>th</sup> day of September, 1990.

  
U.S. DISTRICT JUDGE

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

JAG:pm  
9/10/90  
2112.90

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

FILED

SEP 27 1990

Jack C. Silver, Clerk  
DISTRICT COURT

VERDA GAULT,

Plaintiff,

vs.

No. 90-C-23-E

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

Defendant.

ORDER

The Court has for consideration the Report and Recommendations of the Magistrate filed September 11, 1990. 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 Recommendations of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss is granted without prejudice to the right of Plaintiff to file a request with the Appeals Council for an extension of the period to commence her action in district court pursuant to 20 C.F.R. §404.982.

ORDERED this 27<sup>th</sup> day of September, 1990.

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

WARREN K. HALVERSON, a/k/a  
WARREN KENNETH HALVERSON;  
JOANNE K. HALVERSON;  
COUNTY TREASURER, Tulsa County,  
Oklahoma; and BOARD OF COUNTY  
COMMISSIONERS, Tulsa County,  
Oklahoma,

Defendants.

FILED

SEP 27 1990

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

CIVIL ACTION NO. 90-C-237-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 27 day  
of September, 1990. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Phil Pinnell, Assistant United States Attorney;  
the Defendants, County Treasurer, Tulsa County, Oklahoma, and  
Board of County Commissioners, Tulsa County, Oklahoma, appear by  
J. Dennis Semler, Assistant District Attorney, Tulsa County,  
Oklahoma; and the Defendants, Warren K. Halverson a/k/a Warren  
Kenneth Halverson and Joanne K. Halverson, appear not, but make  
default.

The Court, being fully advised and having examined the  
court file, finds that the Defendant, County Treasurer, Tulsa  
County, Oklahoma, acknowledged receipt of Summons and Complaint  
on March 22, 1990; and that Defendant, Board of County  
Commissioners, Tulsa County, Oklahoma, acknowledged receipt of  
Summons and Complaint on March 22, 1990.

The Court further finds that the Defendants, Warren K. Halverson a/k/a Warren Kenneth Halverson and Joanne K. Halverson, were served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record of Tulsa, Oklahoma, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning July 13, 1990, and continuing to August 17, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Warren K. Halverson a/k/a Warren Kenneth Halverson and Joanne K. Halverson, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Warren K. Halverson a/k/a Warren Kenneth Halverson and Joanne K. Halverson. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of Farmers Home Administration, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma,

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

It appears that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed its Answer on April 11, 1990; that the Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on April 11, 1990; and that the Defendants, Warren K. Halverson a/k/a Warren Kenneth Halverson and Joanne K. Halverson, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Thirteen (13), Block Three (3), THREE LAKES III, an addition to the City of Owasso, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

Subject, however, to all valid outstanding easements, rights of way, mineral leases, mineral reservations, and mineral conveyances of record.

The Court further finds that on May 27, 1986, the Defendants, Warren K. Halverson and Joanne K. Halverson, executed

and delivered to the United States of America, acting through Farmers Home Administration, their promissory note in the amount of \$42,000.00, payable in monthly installments, with interest thereon at the rate of 9.5 percent (9.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Warren K. Halverson and Joanne K. Halverson executed and delivered to the United States of America, acting through Farmers Home Administration, a mortgage dated May 27, 1986, covering the above-described property. Said mortgage was recorded on May 27, 1986, in Book 4944, Page 1934, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Warren K. Halverson and Joanne K. Halverson, executed and delivered to the United States of America, acting through Farmers Home Administration, an Interest Credit Agreement dated August 12, 1986, pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendants, Warren K. Halverson and Joanne K. Halverson, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement dated June 16, 1987, pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendants, Warren K. Halverson a/k/a Warren Kenneth Halverson and Joanne K. Halverson, made default under the terms of the aforesaid note, mortgage and

interest credit agreements by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Warren K. Halverson a/k/a Warren Kenneth Halverson and Joanne K. Halverson, are indebted to the Plaintiff in the principal sum of \$41,892.02, plus accrued interest in the amount of \$3,717.70 as of July 13, 1989, plus interest accruing thereafter at the rate of 9.5 percent per annum or \$10.9034 per day 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 \$6,294.96, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$274.05 (\$20.00 docket fees, \$254.05 publication fees).

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 \$456.00, 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, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the Plaintiff have and recover judgment in rem against the Defendants, Warren K. Halverson a/k/a Warren Kenneth Halverson and Joanne K. Halverson, in the principal sum of \$41,892.02 plus accrued interest in the amount of \$3,717.70 as of July 13, 1989,

plus interest accruing thereafter at the rate of 9.5 percent per annum or \$10.9034 per day until judgment, plus interest thereafter at the current legal rate of 7.78 percent per annum until paid, and the further sum due and owing under the interest credit agreements of \$6,294.96, plus interest on that sum at the legal rate from judgment until paid, plus the costs of this action in the amount of \$274.05 (\$20.00 docket fees, \$254.05 publication fees), 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 \$456.00, plus penalties and interest, for ad valorem taxes for the year 1989, plus the costs of this action.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with 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 Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$456.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

**Third:**

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

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

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

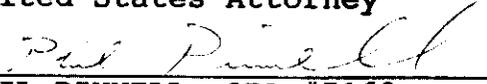
S/ THOMAS R. BRETT

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UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
PHIL PINNELL, OBA #7169  
Assistant United States Attorney  
3600 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

  
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-237-B

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

KURT HOLZ, )  
Plaintiff, )  
 )  
vs. )  
 )  
THE STATE OF OKLAHOMA, )  
ex rel, OKLAHOMA REAL )  
ESTATE COMMISSION, W.L. )  
"BILL" McCLURE, "MO" )  
ANDERSON, ROBERT )  
TRABAND, LARRY STUMPF )  
ROBERT M. SAUNIER, TERRY )  
ROBERTSON and LARRY E. )  
JARVIS, )  
Defendants )

Case No. 90 C-0127B

FILED  
SEP 2 1990  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

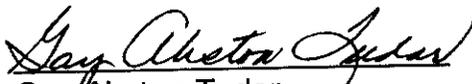
STIPULATION OF DISMISSAL

STATE OF OKLAHOMA )  
 )  
COUNTY OF TULSA ) ss.

COMES NOW the Plaintiff and hereby dismisses the above cause  
without prejudice, as is allowed by Rule 41.

DATED this 27<sup>th</sup> day of September, 1990.

Approved:

  
Gay Abston Tudor  
Assistant Attorney General  
Attorney for the Defendants  
420 West Main, Suite 550  
Oklahoma City, OK 73102

  
KENNETH L. HIRD, OBA#004230  
Attorney for Plaintiff  
427 S. Boston, Suite 1802  
Tulsa, Oklahoma 74103  
(918) 582-7888

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 27 1990

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WAYNETTA J. HILL,  
COUNTY TREASURER, Tulsa County,  
Oklahoma; and BOARD OF COUNTY  
COMMISSIONERS, Tulsa County,  
Oklahoma,

Defendants.

CIVIL ACTION NO. 90-C-244-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 27<sup>th</sup> day  
of September, 1990. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Phil Pinnell, Assistant United States Attorney;  
the Defendants, County Treasurer, Tulsa County, Oklahoma, and  
Board of County Commissioners, Tulsa County, Oklahoma, appear by  
J. Dennis, Assistant District Attorney, Tulsa County, Oklahoma;  
and the Defendant, Waynetta J. Hill, appears not, but makes  
default.

The Court, being fully advised and having examined the  
court file, finds that the Defendant, County Treasurer, Tulsa  
County, Oklahoma, acknowledged receipt of Summons and Complaint  
on March 26, 1990; and that Defendant, Board of County  
Commissioners, Tulsa County, Oklahoma, acknowledged receipt of  
Summons and Complaint on March 27, 1990.

The Court further finds that the Defendant, Waynetta J.  
Hill, was served by publishing notice of this action in the Tulsa

Daily Business Journal & Legal Record of Tulsa, Oklahoma, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning July 13, 1990, and continuing to August 17, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, Waynetta J. Hill, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, Waynetta J. Hill. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of Farmers Home Administration, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to her present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is

sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendant served by publication.

It appears that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed its Answer on April 11, 1990; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, its Answer on April 11, 1990; and that the Defendant, Waynetta J. Hill, 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 Twelve (12), Block Nine (9), PRAIRIE VIEW ADDITION, an Addition in Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

Subject, however, to all valid outstanding easements, rights-of-way, mineral leases, mineral reservations, and mineral conveyances of record.

The Court further finds that on April 16, 1985, the Defendant, Waynetta J. Hill, and Robert M. Hill, executed and delivered to the United States of America, acting through Farmers Home Administration, their promissory note in the amount of \$41,000.00, payable in monthly installments, with interest thereon at the rate of 11.875 percent (11.875%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Waynetta J.

Hill, and Robert M. Hill, executed and delivered to the United States of America, acting through Farmers Home Administration, a mortgage dated April 16, 1985, covering the above-described property. Said mortgage was recorded on April 16, 1985, in Book 4856, Page 938, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Waynetta J. Hill, executed and delivered to the United States of America, acting through Farmers Home Administration, an Interest Credit Agreement dated July 16, 1985 pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Waynetta J. Hill, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement dated April 4, 1986 pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on May 9, 1988, Farmers Home Administration released Robert M. Hill from personal liability for the subject indebtedness and obligation of the note and mortgage.

The Court further finds that the Defendant, Waynetta J. Hill, 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, Waynetta J. Hill, is indebted to the Plaintiff in the principal sum of \$41,911.71, plus accrued interest in the amount of \$10,197.88 as of August 30, 1989, plus

interest accruing thereafter at the rate of 11.875 percent per annum or \$13.0615 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the credit agreements of \$5,988.57, plus interest on that sum at the legal rate from judgment until fully paid, and the costs of this action in the amount of \$253.35 (\$20.00 docket fees, \$233.35 publication fees).

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendant, Waynetta J. Hill, in the principal sum of \$41,911.71, plus accrued interest in the amount of \$10,197.88 as of August 30, 1989, plus interest accruing thereafter at the rate of 11.875 percent per annum or \$13.0615 per day until judgment, plus interest thereafter at the current legal rate of 7.78 percent per annum until paid, plus the costs of this action in the amount of \$253.35 (\$20.00 docket fees, \$233.35 publication fees), 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 and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

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

First:

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

Second:

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

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

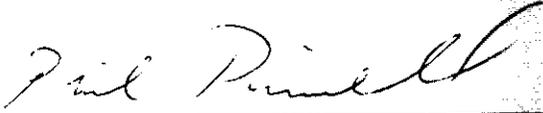
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

---

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney



---

PHIL PINNELL, OBA #7169  
Assistant United States Attorney  
3600 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463



---

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-244-B

PP/esr

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

SEP 27 1990

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

MONSI L'GGRKE,

Plaintiff,

vs.

No. 89-C-417-C ✓

LOIS BENKULA, BARBARA HUMES,  
JOHN NELSON, each and all  
individually, and in their  
official capacities; and  
AMERICAN COLLEGE OF CAREERS,  
LIMITED, d/b/a DICKINSON  
BUSINESS SCHOOL,

Defendants.

ORDER

Before the Court is the objection by plaintiff Monsi L'ggrke to the Report and Recommendation of the Magistrate which was entered on June 29, 1990.

Plaintiff commenced this action asserting that he was a student studying accounting at Dickinson Business School ("Dickinson"). He had applied for and had received student financial assistance through three federally sponsored financial assistance programs. Plaintiff contends he was provided funds totalling \$6,625 which were paid directly to Dickinson. The aggregate of Dickinson's tuition and fees was \$5,600, along with a \$320 loan origination fee. Plaintiff contends he made demand upon

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Dickinson for the balance of the funds to use for living expenses, but that Dickinson continuously refused plaintiff's requests. Plaintiff alleges he was ultimately expelled from school in retaliation for his insisting on receiving the balance of the federal funds for which he is allegedly entitled under federal regulatory law.

In his amended complaint plaintiff asserted five claims for relief: (1) a claim for wrongful retention of federal funds in violation of the regulations governing the administration of student loan programs under Title IV of the Higher Education Act of 1965 as amended, 20 U.S.C. §§1070 et seq. ("Title IV"); (2) a claim for breach of fiduciary duties imposed by Title IV and the regulations promulgated thereunder, including 34 C.F.R. §668.82(b); (3) a claim for racial discrimination in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000(d) ("Title VI"); (4) a tort claim for wrongful expulsion in retaliation for the exercise of federal regulatory rights; and (5) a tort claim for assault under Oklahoma law.

After a lengthy discussion of applicable law, the Magistrate recommended that plaintiff's first and second cause of action under ~~Title IV~~ be dismissed because no private right of action exists under Title IV.

The Court has independently reviewed the case law and the statutory language and concurs with the Magistrate that no private right of action is available under Title IV.

As to plaintiff's third cause of action under Title VI, the Magistrate recommended allowing plaintiff to amend his complaint by setting forth facts supporting an allegation of intentional discrimination. The Court has reviewed Guardians Association v. Civil Service Commission of the City of N.Y., 463 U.S. 582 (1983), and agrees with the Magistrate that in order to recover monetary damages under Title VI, a plaintiff must set forth a claim for intentional discrimination. The amended complaint filed by plaintiff on August 31, 1989 does not properly state a claim under Guardians Association and is subject to dismissal.

The Court will provide plaintiff leave of twenty (20) days to amend to properly assert his claim for relief under Title VI. Failure to timely and properly amend will result in dismissal of plaintiff's Title VI claim.

The Court agrees with the Magistrate that if a cognizable claim does exist under plaintiff's fourth cause of action, then it must necessarily arise under Oklahoma state law.

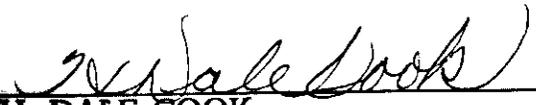
Accordingly, the Court hereby affirms the Report and Recommendation of the Magistrate and adopts it as the Findings and Conclusions of the Court.

In so doing, it is the Order of the Court that defendants' motion to dismiss plaintiff's first and second causes of action is hereby granted.

It is the further Order of the Court that plaintiff shall be given twenty (20) days to timely and properly amend his third cause of action under Title VI of the 1964 Civil Rights Act, and that

failure to so amend will result in dismissal of plaintiff's Title VI claim and plaintiff's remaining state pendent claims asserted in his fourth and fifth causes of action.

IT IS SO ORDERED this 26<sup>th</sup> day of September, 1990.

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

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

SEP 27 1990

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

MONSI L'GGRKE,

Plaintiff,

vs.

No. 89-C-417-C

LOIS BENKULA, BARBARA HUMES,  
JOHN NELSON, each and all  
individually, and in their  
official capacities; and  
AMERICAN COLLEGE OF CAREERS,  
LIMITED, d/b/a DICKINSON  
BUSINESS SCHOOL,

Defendants.

ORDER

Before the Court is the objection by plaintiff Monsi L'ggrke to the Report and Recommendation of the Magistrate which was entered on June 29, 1990.

Plaintiff commenced this action asserting that he was a student studying accounting at Dickinson Business School ("Dickinson"). He had applied for and had received student financial assistance through three federally sponsored financial assistance programs. Plaintiff contends he was provided funds totalling \$6,625 which were paid directly to Dickinson. The aggregate of Dickinson's tuition and fees was \$5,600, along with a \$320 loan origination fee. Plaintiff contends he made demand upon

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Dickinson for the balance of the funds to use for living expenses, but that Dickinson continuously refused plaintiff's requests. Plaintiff alleges he was ultimately expelled from school in retaliation for his insisting on receiving the balance of the federal funds for which he is allegedly entitled under federal regulatory law.

In his amended complaint plaintiff asserted five claims for relief: (1) a claim for wrongful retention of federal funds in violation of the regulations governing the administration of student loan programs under Title IV of the Higher Education Act of 1965 as amended, 20 U.S.C. §§1070 et seq. ("Title IV"); (2) a claim for breach of fiduciary duties imposed by Title IV and the regulations promulgated thereunder, including 34 C.F.R. §668.82(b); (3) a claim for racial discrimination in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000(d) ("Title VI"); (4) a tort claim for wrongful expulsion in retaliation for the exercise of federal regulatory rights; and (5) a tort claim for assault under Oklahoma law.

After a lengthy discussion of applicable law, the Magistrate recommended that plaintiff's first and second cause of action under Title IV be dismissed because no private right of action exists under Title IV.

The Court has independently reviewed the case law and the statutory language and concurs with the Magistrate that no private right of action is available under Title IV.

As to plaintiff's third cause of action under Title VI, the Magistrate recommended allowing plaintiff to amend his complaint by setting forth facts supporting an allegation of intentional discrimination. The Court has reviewed Guardians Association v. Civil Service Commission of the City of N.Y., 463 U.S. 582 (1983), and agrees with the Magistrate that in order to recover monetary damages under Title VI, a plaintiff must set forth a claim for intentional discrimination. The amended complaint filed by plaintiff on August 31, 1989 does not properly state a claim under Guardians Association and is subject to dismissal.

The Court will provide plaintiff leave of twenty (20) days to amend to properly assert his claim for relief under Title VI. Failure to timely and properly amend will result in dismissal of plaintiff's Title VI claim.

The Court agrees with the Magistrate that if a cognizable claim does exist under plaintiff's fourth cause of action, then it must necessarily arise under Oklahoma state law.

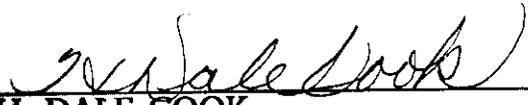
Accordingly, the Court hereby affirms the Report and Recommendation of the Magistrate and adopts it as the Findings and Conclusions of the Court.

In so doing, it is the Order of the Court that defendants' motion to dismiss plaintiff's first and second causes of action is hereby granted.

It is the further Order of the Court that plaintiff shall be given twenty (20) days to timely and properly amend his third cause of action under Title VI of the 1964 Civil Rights Act, and that

failure to so amend will result in dismissal of plaintiff's Title VI claim and plaintiff's remaining state pendent claims asserted in his fourth and fifth causes of action.

IT IS SO ORDERED this 26<sup>th</sup> day of September, 1990.

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

**FILED**

SEP 27 1990

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

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

AMIN KAHN,

Plaintiff,

vs.

AMERICAN AIRLINES, INC.,

Defendant.

No. 90-C-465-B

ORDER

Before the Court is the Motion to Dismiss filed by the defendant, American Airlines, Inc., (American), for failure to state a claim upon which relief may be granted.

In his complaint, the plaintiff, Amin Khan, alleges that, in terminating his employment, American violated the Civil Rights Act of 1866, 42 U.S.C. §1981 (§1981), 42 U.S.C. §1983 (§1983), the Fourteenth Amendment to the United States Constitution (the Fourteenth Amendment), and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2 (Title VII). In response to American's Motion to Dismiss, the plaintiff concedes that the claims based on §1981, §1983 and the Fourteenth Amendment fail to state a claim upon which relief can be granted. The Court, therefore, sustains American's Motion to Dismiss those claims and addresses the dismissal of plaintiff's Title VII claim.

On or about August 9, 1988, American fired the plaintiff for allegedly misrepresenting expenses in his expense reports. The plaintiff alleges that his discharge was the result of American's

discrimination against him due to his Pakistan descent, as other white employees who allegedly misrepresented expenses were disciplined less severely.

In *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1972), the Supreme Court set forth four elements of a prima facie case of disparate treatment due to race:

[A] prima facie case of racial discrimination [may be established]. . . by showing (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications.

*Id.* at 802.

American argues that the plaintiff has failed to establish his prima facie case of racial discrimination because he has not alleged the fourth element of the *McDonnell Douglas* test, that he was replaced by someone not a member of the protected group. In support of its argument, American cites *Whateley v. Skaggs Companies, Inc.*, 707 F.2d 1129 (10th Cir. 1983) and *Graham v. American Airlines, Inc.*, 731 F. Supp. 1494 (N.D. Okla. 1989), each of which adapts and applies the above *McDonnell Douglas* test to the facts of its case. However, neither case states that the *McDonnell Douglas* test is the only method of establishing a prima facie case for racial discrimination.

The Supreme Court has clearly stated that the *McDonnell Douglas*

test is not "an inflexible formulation"<sup>1</sup> and that a plaintiff in his/her prima facie case need only "create an inference that an employment decision was based on a discriminatory criterion illegal under the [Civil Rights] Act."<sup>2</sup> Compliance with the *McDonnell Douglas* test, therefore, is one way to establish a prima facie case of racial discrimination, not the only way. *Lowe v. City of Monrovia*, 775 F.2d 998, 1005-1007 (9th Cir. 1985); *Diaz v. American Telephone & Telegraph*, 752 F.2d 1356, 1361 (9th Cir. 1985).

The plaintiff has identified himself as an American citizen of Pakistan descent,<sup>3</sup> and has alleged that he was disciplined more severely than other white employees of American who misrepresented expenses in their reports. This is sufficient to "create an inference" of discriminatory animus, and the Court hereby denies American's Motion to Dismiss the plaintiff's Title VII claim.

A status conference is set for November 29, 1990 at 10:00 A.M. before Magistrate Wolfe.

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<sup>1</sup>*International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 358 (1976). The Court stated that it had expressly noted in *McDonnell Douglas* that "[t]he facts necessarily will vary in Title VII cases, and the specification . . . of the prima facie proof required . . . is not necessarily applicable in every respect to differing factual situations." *Id.* (quoting *McDonnell Douglas Corporation v. Green*, 411 U.S. 792, 802 n.13 (1972)).

<sup>2</sup>*International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 358 (1976).

<sup>3</sup>Whether the plaintiff asserts that he was discriminated against due to his national origin, race or both, his claim falls within the ambit of Title VII. *Espinoza v. Farah Manufacturing Co., Inc.*, 414 U.S. 86 (1973); *Ancoya v. Hilton Hotels Corp.*, 733 F.2d 48, 50 (7th Cir. 1984).

IT IS SO ORDERED, this 27<sup>th</sup> day of September, 1990.

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

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

*United States* *The Northern District*  
IN THE DISTRICT COURT WITHIN AND FOR TULSA COUNTY  
STATE OF OKLAHOMA

KURT HOLZ, )  
Plaintiff, )  
vs. )  
THE STATE OF OKLAHOMA, )  
ex rel, OKLAHOMA REAL )  
ESTATE COMMISSION, W.L. )  
"BILL" McCLURE, "MO" )  
ANDERSON, ROBERT )  
TRABAND, LARRY STUMPF )  
ROBERT M. SAUNIER, TERRY )  
ROBERTSON and LARRY E. )  
JARVIS, )  
Defendants )

Case No. 90 C-0127B **FILED**

SEP 27 1990

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

STIPULATION OF DISMISSAL

STATE OF OKLAHOMA )  
COUNTY OF TULSA ) **ss.**

COMES NOW the Plaintiff and hereby dismisses the above cause  
without prejudice, as is allowed by Rule 41.

DATED this 27<sup>th</sup> day of September, 1990.



KENNETH L. HIRD, OBA#004230  
Attorney for Plaintiff  
427 S. Boston, Suite 1802  
Tulsa, Oklahoma 74103  
(918) 582-7888

Approved:



Gay Abston Tudor  
Assistant Attorney General  
Attorney for the Defendants  
420 West Main, Suite 550  
Oklahoma City, OK 73102

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

FILED

SEP 27 1990

JACKIE PARRET,

Petitioner,

vs.

No. 90-C-308-E

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

JACK COWLEY (Warden) and  
THE ATTORNEY GENERAL OF THE  
STATE OF OKLAHOMA,

Respondents.

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed June 18, 1990. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is dismissed under Rule 9 of the Rules Governing Section 2254 Cases in the United States District Courts.

ORDERED this 27<sup>th</sup> day of September, 1990.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

FLOYD D. MARKHAM, JR.,

Petitioner,

vs.

RON CHAMPION, Warden,

Respondent.

No. 90-C-184-E

FILED

SEP 27 1990

ORDER

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

The Court has for consideration the Report and Recommendation of the Magistrate filed May 2, 1990. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Petitioner's petition is dismissed for failure to exhaust his state court remedy of a request for an appeal out of time.

ORDERED this 26<sup>th</sup> day of September, 1990.

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

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

**F I L E D**

SEP 27 1990

**KELLEE JO BEARD**, by her  
parents and next friends,  
Patty and Bill Beard, et al.,

Plaintiffs,

vs.

**THE HISSOM MEMORIAL CENTER**,  
et al.,

Defendants.

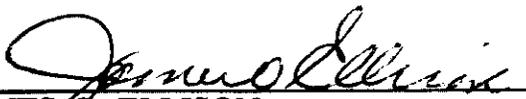
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Case No. 87-C-704-E

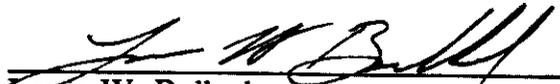
**JUDGMENT**

In accordance with the Stipulation and Order entered on the 27 day of September, 1990, the Court hereby enters judgment in favor of Plaintiffs' counsel, Bullock and Bullock and PILCOP, and against Defendant Sand Springs School District in the amount of \$50,000.

ENTERED this 27<sup>th</sup> day of September, 1990.

  
\_\_\_\_\_  
JAMES O. ELLISON  
United States District Court

**APPROVED:**

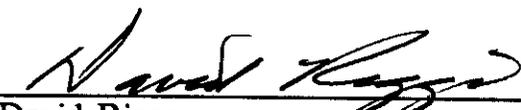


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Louis W. Bullock  
Patricia W. Bullock  
**BULLOCK & BULLOCK**  
320 South Boston, Suite 718  
Tulsa, Oklahoma 74103  
(918) 584-2001

Frank Laski  
Judith Gran  
**PUBLIC INTEREST LAW CENTER**  
125 South 9th Street, Suite 700  
Philadelphia, PA 19107  
(215) 627-7100

**ATTORNEYS FOR PLAINTIFFS**



---

David Riggs  
**CHAPEL, RIGGS, ABNEY, NEAL & TURPEN**  
502 West Sixth Street  
Tulsa, OK 74119  
(918) 587-3161

**ATTORNEY FOR SAND SPRINGS  
SCHOOL DISTRICT**

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

SEP 27 1990

**KELLEE JO BEARD**, by her  
parents and next friends,  
Patty and Bill Beard, et al.,

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

Plaintiffs,

vs.

Case No. 87-C-704-E

**THE HISSOM MEMORIAL CENTER**,  
et al.,

Defendants.

**JUDGMENT**

In accordance with the Stipulation and Order entered on the 27 day of September, 1990, the Court hereby enters judgment in favor of Plaintiffs' counsel, Bullock and Bullock and PILCOP, and against Defendant Department of Human Services in the amount of \$50,000.

ENTERED this 27<sup>th</sup> day of September, 1990.

  
\_\_\_\_\_  
JAMES O. ELLISON  
United States District Court

**APPROVED:**



Louis W. Bullock  
Patricia W. Bullock  
**BULLOCK & BULLOCK**  
320 South Boston, Suite 718  
Tulsa, Oklahoma 74103  
(918) 584-2001

Frank Laski  
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Philadelphia, PA 19107  
(215) 627-7100

**ATTORNEYS FOR PLAINTIFFS**



**CHARLES L. WATERS**  
General Counsel  
**DEPARTMENT OF HUMAN SERVICES**  
P.O. Box 53025  
Oklahoma City, OK 73152-3025  
(405) 521-3638

**ATTORNEY FOR  
DEPARTMENT OF HUMAN SERVICES**

**FILED**

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

SEP 27 1990

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

STANLEY K. CLARK, dba  
ESKIMO JOE'S, and dba  
JOE'S CLOTHES

Plaintiff,

ANTHONY F. CATERINE, dba  
TONY'S CORNER and LINDA CATERINE

Defendants.

Civil Action No. 90-C0062 E

**STIPULATED CONSENT DECREE, ORDER AND JUDGMENT**

1. This is an action for trademark infringement and for false designation of origin and/or false description or representation arising under the Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051 et seq., and for trademark infringement and unfair competition under the common law of the State of Oklahoma.

2. This Court has jurisdiction of this cause of action under the Trademark Laws of the United States, 15 U.S.C. §§ 1051 et seq., and under the Common Law of the State of Oklahoma.

3. Plaintiff, Stanley K. Clark, is an individual, a citizen of the United States of America, a resident of Stillwater, Oklahoma, and doing business under the names of ESKIMO JOE'S and JOE'S CLOTHES at 501 West Elm, Stillwater, Oklahoma 74076.

4. Defendant, Anthony F. Caterine, is an individual residing in the Northern District of Oklahoma, and having business addresses of 5007 North Peoria, Tulsa, Oklahoma 74126, and 7830 East Admiral Place, Tulsa, Oklahoma 74115.

5. Defendant, Linda Caterine, is an individual residing in the Northern District of

Oklahoma, and have a business address of 7830 East Admiral Place, Tulsa, Oklahoma 74115.

6. Plaintiff and Defendants have reached a settlement of the disputed issues in this case as follows:

A. Defendants, Anthony F. Caterine, dba TONY'S CORNER, and Linda Caterine, agree that the Plaintiff Stanley K. Clark, dba ESKIMO JOE'S and dba JOE'S CLOTHES, is the owner of the service marks "ESKIMO JOE'S" AND "ESKIMO JOE'S and Design" for restaurant services and retail clothing store services, as well as the slogan "Stillwater's Jumpin' Little Juke Joint" and Defendants, their officers, directors, agents and persons, partnerships or corporations in active concert or participation with Defendants, agree that they shall never use said mark or slogan or any mark or slogan confusingly similar thereto, such as, but not limited to, the mark "Eskimo Joke's".

B. Plaintiff, Stanley K. Clark, agrees, subject to the remaining terms of this Settlement Agreement, to waive his claim for damages.

C. The Parties have authorized their attorneys to sign and file this Stipulated Consent Decree, Order and Judgment with the Court.

7. Each party enters into this Stipulated Consent Decree, Order and Judgment specifically without making any admission as to the validity of the claims made by the other party.

8. The foregoing constitutes the findings of fact and conclusions of law in this case.

9. It is the intention of the parties hereto that upon the Court's approval of this Stipulated Consent Decree, Order and Judgment that the same shall become an Order of the

Court enforceable through the Court upon violation of the terms hereof by either party.

Dated in Tulsa, Oklahoma, this 25<sup>th</sup> day of Sept., 1990.

BY THE COURT:

5/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

ATTORNEY FOR PLAINTIFF

William S. Dorman

William S. Dorman  
1146 East 64th Street  
Tulsa, Oklahoma 74136  
(918)747-1080

ATTORNEY FOR DEFENDANTS

C. Rabon Martin

C. Rabon Martin  
1023 West 23rd Street  
Tulsa, Oklahoma 74107  
(918)587-9000

ACCEPTANCE OF AGREEMENT

The parties hereto do hereby agree to the terms and provisions of this Stipulated Consent Decree, Order and Judgment and approve of it being entered as an Order of this Court.

Stanley K. Clark

Stanley K. Clark

Stanley K. Clark, dba  
ESKIMO JOE'S, and dba  
JOE'S CLOTHES

Anthony F. Caterine

Anthony F. Caterine

Anthony F. Caterine, dba  
TONY'S CORNER

and

Linda Caterine

Linda Caterine

FILED

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09/14/90

SEP 2 1990

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

Jack C. Sizer, Clerk  
DISTRICT COURT

IN RE: ASBESTOS LITIGATION

) Master #1417  
)  
) ASB - TW # 4532

=====

LARRY EUGENE STOGSDILL, and  
LOUISE STOGSDILL, Plaintiff's Spouse,  
Plaintiffs,

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

vs.

No. 88-C-715-E

ANCHOR PACKING COMPANY, et al.,  
Defendants.

=====

ORDER OF DISMISSAL

=====

Upon Plaintiffs' motion, this action is hereby dis-  
missed.

s/ JAMES O. ELLISON  
JAMES O. ELLISON  
U.S. DISTRICT JUDGE

ORDER OF DISMISSAL

GOAL-S28/STO-MTD-01



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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL FORREST STONE and  
DEBORAH LYNN STONE,

Defendants.

88-C-1160-E

~~86-CR-3-E~~

FILED

SEP 20 1990

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

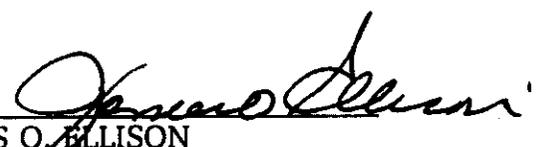
**ORDER**

The court has for consideration the Report and Recommendation of the Magistrate filed on August 10, 1990, in which the Magistrate recommended that defendants' Motions to Vacate, Set Aside or Correct pursuant to 28 U.S.C. § 2255 be denied. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that defendants' Motions to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 is denied.

Dated this 25<sup>th</sup> day of Sept., 1990.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

SEP 26 1990

GERALD O'DELL and  
DIXIE O'DELL, Co-Administra-  
tors for the Estate of Clyde  
O'Dell, Deceased,

Plaintiffs,

v.

NORTHERN ELECTRIC COMPANY,  
a Division of Sunbeam  
Corporation, a foreign  
corporation,

Defendant.

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

No. 85-C-1128-E

**ORDER OF DISMISSAL WITH PREJUDICE**

Upon Application of the parties and for good cause shown, the  
above styled and numbered cause of action is dismissed with  
prejudice.

S/ JAMES O. ELLISON

---

James O. Ellison  
United States District Judge

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

FILED

SEP 21 1990

CHARLES C. DENTON,

Plaintiff,

vs.

BIBLE BAPTIST COLLEGE,

Defendant.

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

Case No. 89-C-743-E

ORDER

THIS MATTER comes before the Court on the Joint Application of the parties hereto. The Court finds that all of the issues between the parties have been completely settled and compromised, and therefore dismisses the above-entitled cause of action with prejudice as to any future actions.

SO ORDERED this 25<sup>th</sup> day of September, 1990.

JAMES O. ELLISON

U.S. DISTRICT JUDGE

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F I L E D

SEP 26 1990

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

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

SHIRLEY J. LIGGINS, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 CITY OF TULSA, OKLAHOMA, )  
 a municipal corporation, )  
 )  
 Defendant. )

No. 89-C-730-B

JOURNAL ENTRY OF JUDGMENT  
UPON AGREED SETTLEMENT

This cause comes before the undersigned judge upon the parties' joint application that the Court approve an agreed settlement between the parties as required by 51 O.S. 1981, § 158(A). Plaintiff appears by her counsel, Daniel B. Gossett; the defendant appears by and through its attorney of record, Charles R. Fisher, Assistant City Attorney.

The Court has reviewed the file, heard the presentations of the parties and finds as follows:

(1) The defendant has submitted itself to the jurisdiction of the Court; and the Court further finds the parties have concluded settlement negotiations, and the terms and conditions of this free and voluntary settlement are as follows:

(a) The City of Tulsa, Oklahoma, agrees to an entry of judgment in the total sum of Fifty Thousand and 00/100 Dollars (\$50,000.00) against it and in favor of the

plaintiff as a full, final and complete settlement of any and all claims for damages, pre- and post-judgment interest, costs and attorney's fees the plaintiff may have against the City of Tulsa, its employees or agents.

(b) All parties agree not to file further Motions in this cause.

(c) Upon receipt of said \$50,000.00, the plaintiff agrees to waive any right to ask for or receive punitive damages.

(d) The \$50,000.00 settlement figure does not include any amount as wages, but is for damages caused by emotional distress.

In consideration of the above findings:

IT IS ORDERED that plaintiff have judgment against the defendant, City of Tulsa, Oklahoma, in the total sum of Fifty Thousand and 00/100 Dollars (\$50,000.00).

S/ THOMAS R. BRETT

THOMAS R. BRETT  
Judge of the District Court

APPROVED AS TO FORM & CONTENT:

  
DANIEL B. GOSSETT  
Attorney for Plaintiff

  
CHARLES R. FISHER  
Attorney for Defendant

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

FILED

SEP 26 1990

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

ANTHONY JEROME HARRIS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 RON CHAMPION, et al., )  
 )  
 Defendants. )

No. 90-C-448-C  
No. 90-C-475-C  
(CONSOLIDATED)

ORDER

Before the Court are the objections of plaintiff to the Report and Recommendation of the United States Magistrate, and plaintiff's motion for appointment of counsel.

The Magistrate recommended dismissal of plaintiff's petitions without prejudice, on the basis that he has pending direct appeals from the convictions in question. State remedies cannot be exhausted if an appeal from a state conviction is pending. Kessinger v. Page, 369 F.2d 799 (10th Cir. 1966).

Plaintiff asks the Court to appoint counsel pursuant to 18 U.S.C. §3006A(g) on the basis that he cannot afford counsel, his case is complex and requires investigation, and that plaintiff has a very limited knowledge of the law. There is no constitutional right to appointed counsel in a civil case. Durre v. Dempsey, 869 F.2d 543, 547 (10th Cir. 1989). Unless an evidentiary hearing is required, the decision to appoint counsel is within the discretion of the district court. Terrovona v. Kincheloe, 852 F.2d 424, 429 (9th Cir. 1988). When the petition presents a pure question of

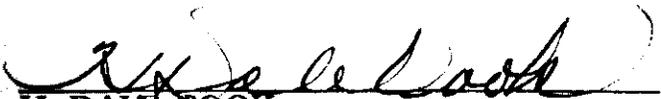
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law, no hearing is necessary. Townsend v. Sain, 372 U.S. 293, 309 n.6 (1963). Where the facts are not substantially in dispute, no hearing is necessary. Foster v. Barbour, 613 F.2d 59, 60-61 (4th Cir. 1980). The Court has reviewed the record and finds no hearing is required. The cases upon which plaintiff relies deal with situations in which no appeal was perfected from the state convictions. Such is not the situation here. Thus, both the objections and motion will be denied.

It is the Order of the Court that the motion of the plaintiff for appointment of counsel is hereby denied.

It is the further Order of the Court that the objections of the plaintiff to the Report and Recommendation of the Magistrate are hereby overruled. This action is hereby dismissed without prejudice.

IT IS SO ORDERED this 26<sup>th</sup> day of September, 1990.

  
H. DALE COOK

Chief Judge, U. S. District Court

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

FILED  
SEP 26 1990  
U.S. DISTRICT COURT  
CLERK

SONNY THOMPSON, a minor  
by and through his father  
and Next Friend, CHARLIE  
THOMPSON; CHARLIE THOMPSON  
and LINDA THOMPSON

Plaintiffs

vs.

HORACE MANN INSURANCE  
COMPANY, a Florida  
corporation,

Defendant.

Case No. 89-C-362-B ✓

J U D G M E N T

In accordance with the jury verdict rendered on September 24, 1990, Judgment is hereby entered in favor of Plaintiff, Sonny Thompson, a minor<sup>1</sup> by and through his father and Next Friend, Charlie Thompson, in the amount of \$300,000.00<sup>2</sup>, plus pre-judgment interest at the rate of 12.35% per annum (12 O.S. §727) from the date of May 1, 1989, to September 24, 1990, and post-judgment interest at the rate of 7.78% (28 U.S.C. § 1961) from September 24, 1990, on the total of said principal sum and pre-judgment interest. Each party is to pay its own attorneys' fees. Costs are assessed against Defendant, Horace Mann Insurance Company, if timely applied for under Local Rule 6.

<sup>1</sup> The parties are directed by the Court, and have agreed to, comply with the provisions of 12 O.S. §83.

<sup>2</sup> The parties have agreed hereto that the entire \$300,000.00 Judgment is in favor of Charlie Thompson, as father and Next Friend of Sonny Thompson, a minor.

DATED this 27<sup>th</sup> day of September, 1990.

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

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



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

FILED

SEP 2 1990

BRUNSWICK CORPORATION,

Plaintiff

vs.

SPINIT REEL CO., et al.,

Defendants

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

Case No. 84-C-233-~~B~~ E ✓

**ORDER**

Upon joint stipulation of Plaintiff and Defendants, the Court hereby orders that all claims by the parties to this action should be and are hereby dismissed with prejudice.

Ordered this 25<sup>th</sup> day of Sept, 1990.

  
United States District Court Judge

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

FILED

SEP 26 1989

ISIAH E. KEYS, JR.,

Plaintiff,

vs.

MISSOURI PACIFIC RAILROAD COMPANY,  
doing business as UNION PACIFIC  
RAILROAD COMPANY, a foreign  
corporation,

Defendant.

CLERK  
U.S. DISTRICT COURT  
No. 89-C-904-B

**ORDER SUSTAINING DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT ON PLAINTIFF'S FEDERAL  
SAFETY APPLIANCE ACT AND BOILER  
INSPECTION ACT CLAIMS**

The Defendant's Motion for Partial Summary Judgment is before the Court for decision on Plaintiff's claim for recovery under the Federal Safety Appliance Act, 45 U.S.C. §§ 1-16, and the Boiler Inspection Act, 45 U.S.C. §§ 22-46. For the reasons hereafter stated, the Motion for Summary Judgment is sustained as to both claims.

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." Where there is an absence of material issues of fact, then the movant is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Winton Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986); Commercial Iron & Metal Co. v. Bache & Co., Inc., 478 F.2d 39, 41

(10th Cir. 1973); and Ando v. Great Western Sugar Company, 475 F.2d 531, 535 (10th Cir. 1973).

The defendant, Missouri Pacific Railroad Company, argues in its motion that the Boiler Inspection Act (BIA) is inapplicable. As the BIA applies only to locomotives, the pertinent inquiry is whether the spiker vehicle is a locomotive. The leading case which sets forth the factors to apply in determining whether a track machine is a locomotive is Garcia v. Burlington Northern Railroad Co., 818 F.2d 713 (10th Cir. 1987). In considering whether a tamper machine is a locomotive under the BIA, the court in Garcia set out two definitional requisites:

1. the vehicle must operate on railroad tracks; and
2. it must perform a locomotive function.

The court further defined a locomotive function as pushing and pulling, and found that although the tamper machine did push and pull two metal buggies, the buggies were appurtenances, necessary to the tamper's function.

Applying the principles set forth in Garcia, the Court finds that the spiker is not a locomotive. While the spiker machine is a track vehicle, it does not have a locomotive function. Its function is to spike rails to ties, not to push and pull other vehicles. Thus, the Defendant's Motion for Partial Summary Judgment on the inapplicability of the BIA is SUSTAINED.

The defendant also argues that the Federal Safety Appliance Act (FSAA) is not applicable. The section specifically addressed is

§11.<sup>1</sup> Section 11 requires efficient hand brakes on all cars, and is applicable only to cars. The threshold question, therefore, is whether the spiker machine is a car.

The definition of a car is less clear than the definition of a locomotive. In Dykes v. Norfolk and Western Ry. Co., 477 N.E.2d 504 (Ill. 1985), the court distinguished locomotives from cars, pointing out that locomotives have their own source of power and braking system, while cars are inert and have only hand brakes as required by §11.

The Court finds that the spiker machine is not a car, as it is a self-propelled vehicle which has three braking systems and does not fit the definition of a car as set out in Dykes. Therefore, the FSAA is not applicable and Defendant's Motion for Partial Summary Judgment under the FSAA is **SUSTAINED**.

IT IS SO ORDERED this 25<sup>th</sup> day of September, 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

---

<sup>1</sup>The applicability of section 1, in conjunction with section 8, was not addressed by the parties and is therefore not addressed by this order. This order makes no determination of the spiker as "a similar vehicle" as set out in section 8.



JWN/ta  
09/14/90

FILED

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

SEP 2 1990

U.S. DISTRICT COURT

IN RE: ASBESTOS LITIGATION

) Master #1417

)  
) ASB - TW # 4532

=====

LARRY EUGENE STOGSDILL, and  
LOUISE STOGSDILL, Plaintiff's Spouse,

Plaintiffs,

vs.

) No. 88-C-715-E

ANCHOR PACKING COMPANY, et al.,

Defendants.

=====

ORDER OF DISMISSAL

=====

Upon Plaintiffs' motion, this action is hereby dismissed.

JAMES O. ELLISON

\_\_\_\_\_  
JAMES O. ELLISON  
U.S. DISTRICT JUDGE

ORDER OF DISMISSAL

GOAL-S28/STO-MTD-01

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

SAMUEL TRIMIAR,  
Plaintiff,

vs.

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

No. 89-C-658-E ✓

FILED

SEP 25 1990 *bt*

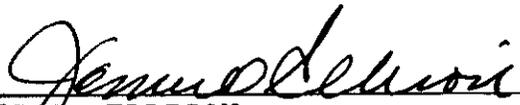
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER

The Court has for consideration the Findings and Recommendation of the Magistrate filed May 29, 1990. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Findings and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that the final decision of the Secretary of Health and Human Services denying Plaintiff's application for disability insurance is hereby affirmed.

ORDERED this 25<sup>TH</sup> day of September, 1990.

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

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

RAYMOND HERSCHEL JOHNSON,

Petitioner,

vs.

RON CHAMPION, et al.,

Respondents.

No. 89-C-686-E ✓

FILED

SEP 25 1990 dt

Jack C. Silver, Clerk  
DISTRICT COURT

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed May 7, 1990. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Petitioner's Motion for Default Judgment and Petition for Habeas Corpus pursuant to 28 U.S.C. §2254 are hereby denied.

ORDERED this 25<sup>th</sup> day of September, 1990.

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

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

TINA BROWN AND BARRY BROWN, )

Plaintiffs, )

vs. )

No. 89-C-738-E ✓

STANLEY GLANZ, Sheriff of )  
Tulsa County, Oklahoma; )  
JOHNNY EDGE; D. PERKINS, )  
JACKIE LEWIS; JUNE DAVIS; )  
BOARD OF COUNTY COMMISSIONERS )  
OF TULSA COUNTY, OKLAHOMA, )  
et al., )

Defendants. )

FILED  
SEP 25 1990 *dst*

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

ORDER

This matter comes before the court on the motions of Defendants to dismiss the Plaintiffs' Second Amended Complaint on the grounds that the Complaint fails to state claims for relief for violations of their civil rights, and that the pendent state claims are barred by the applicable statute of limitations.

It is the court's responsibility in any civil rights action to weed the frivolous claim from the serious and, in so doing, to liberally construe a Plaintiff's allegations. Thus, Plaintiffs must show two elements to state a civil rights claim arising from these allegations: first, that Defendants acted under color of state law; and second, Defendants' actions deprived Plaintiffs of their rights, privileges, or immunities secured by the Constitution and the laws of the United States. Parratt v. Taylor, 451 U.S. 527, 101 S.Ct. 1908 (1981). It is axiomatic that injuries sustained from a police officer's conduct must transcend tort law

and reach a constitutional dimension to be actionable under §1983.

1. Civil Rights Violations Alleged

The Court is satisfied that the Second Amended Complaint adequately alleges violations of Plaintiffs' constitutional rights under the pleading standards of Meade v. Grubbs, 841 F.2d 1512 (10th Cir. 1988). Further the Court finds that Plaintiffs have adequately alleged that these violations could be attributed official county policy or custom. Meade, 841 F.2d at 1528-1530. Plaintiffs' claims will, of course, be subject to a de minimis analysis but, at this juncture, Defendants' motion must be denied. Wise v. Bravo, 666 F.2d 1328, 1335 (10th Cir. 1981).

2. Pendent State Tort Claims

Plaintiffs have demonstrated compliance with the jurisdictional prerequisites of the Oklahoma Political Subdivisions Tort Claims Act, Okla.Stat.tit. 51 §§156(b), 157. Plaintiffs' application to amend the Complaint, adding these pendent claims, was timely under the applicable limitations period of section 157(b). Plaintiffs' application tolled the running of the limitation period, even though the order granting leave to amend and the technical filing of the amended complaint occurred after the running of limitation period. Pearson v. Niagra Machining & Tool Works, 701 F.Supp. 195 (N.D. Okla. 1988). Defendants' Motions to Dismiss the pendent tort claims are accordingly denied.

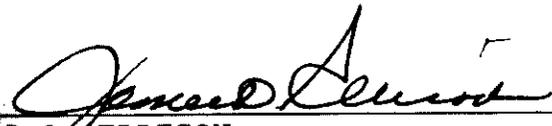
3. Claims Against Trooper T. L. Shriever in his Official Capacity

Defendant Shriever moves to dismiss Plaintiffs' claims against him in his official capacity on the grounds of 11th Amendment immunity. Plaintiffs do not contest this ground for dismissal and

are, therefore, deemed to have conceded that claims against Trooper Shriever in his official capacity should be dismissed.

IT IS THEREFORE ORDERED that Defendants' Motions to Dismiss are denied with the exception that all claims against Defendant T. L. Shriever in his official capacity are dismissed.

ORDERED this 25<sup>th</sup> day of September, 1990.



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JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

SEP 25 1990

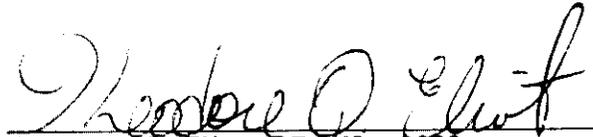
JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

PAMELA K. NAIFEH and P. J. AVATAR )  
INCORPORATED, a Florida )  
corporation, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
LONNIE ROGERS, an individual, )  
 )  
Defendant. )

Case No. 90-C-722-B

DISMISSAL WITHOUT PREJUDICE

Come now the Plaintiffs, Pamela K. Naifeh and P. J. Avatar, Inc., and pursuant to Federal Rule of Civil Procedure No. 41(a)(1)(i) hereby dismiss their claims filed herein without prejudice to the refileing of the same.



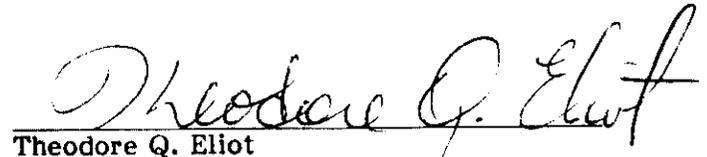
Theodore Q. Eliot, OBA No. 2669  
GABLE & GOTWALS  
2000 Fourth National Bank Building  
15 West Sixth Street  
Tulsa, Oklahoma 74119-5447  
(918) 582-9201

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing instrument was mailed, by depositing the same in the U.S. mail, with proper postage thereon fully prepaid, this 25th day of September, 1990, addressed to:

George W. Owens  
Owens & McGill, Inc.  
1606 First National Bank Building  
Tulsa, Oklahoma 74103

  
Theodore Q. Eliot

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

FILED

SEP 25 1989

CLERK  
U.S. DISTRICT COURT

SONNY THOMPSON, a minor  
by and through his father  
and Next Friend, CHARLIE  
THOMPSON; CHARLIE THOMPSON  
and LINDA THOMPSON

Plaintiffs

vs.

HORACE MANN INSURANCE  
COMPANY, a Florida  
corporation,

Defendant.

Case No. 89-C-362-B /

ORDER

This matter comes on for consideration upon the Motion for Partial Summary filed by the Defendant, Horace Mann Insurance Company relating to the uninsured motorist coverage of the three policies of insurance issued by the Defendant to the Plaintiff, Charlie Thompson.

Each policy covered a different vehicle and provided for uninsured motorist coverage of \$100,000.00 per person with \$300,000.00 for each occurrence. Charlie Thompson, as Father and Next Friend of his son, Sonny Thompson, the injured minor, urges that in addition to the obvious coverage afforded his son (unless barred by the contributory negligence of Sonny Thompson in a percentage amount greater than that of the alleged negligence of the supervising adult driver, Terry Joe Kidd), together with

Plaintiff Linda Thompson, Sonny's mother, that they are entitled to recover under the policies an additional \$100,000.00 per policy for medical expenses incurred on behalf of their minor child.

Each of the policies provides, in part, as follows:

LIMITS OF LIABILITY

1. The limit of liability stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury sustained by one person in any one accident, and subject to this provision, the limit of liability stated in the declarations as applicable to "each accident" is the total limit of the company's liability for all such damages for bodily injury sustained by two or more persons in any one accident. (Emphasis in original)

It is without dispute that Sonny Thompson is the only person covered under these policies who sustained bodily injury as a result of the accident in question. Unless there are at least two claimants under the policies who have sustained bodily injury, the per occurrence limit has no application. Reid v. State Farm Mutual Automobile Insurance Company, 784 F.2d 577 (5th Cir. 1986). Derivative claims, i.e. a parent suing for the medical bills of an injured minor, are encompassed within the "each person" limit rather than the "each accident" limit. Campbell v. Farmers Insurance Company, 745 P.2d 160 (Ariz. App. 1987).

The Court concludes the "each person" liability limit under the policy limits the coverage herein to \$100,000.00 per policy for the total coverage of \$300,000.00. Accordingly, Defendant's Motion for Partial Summary Judgment, on the issue of total policy coverage, should be and the same is hereby SUSTAINED.

IT IS SO ORDERED this 24 day of September, 1990.

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

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

SEP 2 1990 *at*

PETER J. McMAHON,  
Petitioner,

vs.

GARY MAYNARD, Warden, and  
THE STATE OF OKLAHOMA,  
Respondents.

Jack C. Silver, Clerk  
DISTRICT COURT

87-C-491-E ✓

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed the 25th day of June, 1990. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that the Respondents' Motion to Strike Evidentiary Hearing and Dismiss Petition as Moot is hereby granted.

ORDERED this 24<sup>th</sup> day of September, 1990.

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

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

FILED

SEP 24 1990

Jack C. Silver, Clerk  
DISTRICT COURT

JERRY R. RUSHING,  
Petitioner,

vs.

RON CHAMPION, et al.,  
Respondents.

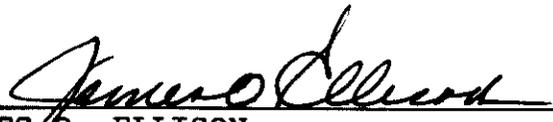
No. 88-C-1288-E

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed May 23, 1990. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is hereby denied.

ORDERED this 24<sup>th</sup> day of September, 1990.

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

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

FILED

SEP 24 1990 *dt*

LANCE R. STOREY, JR.,

Petitioner,

vs.

THE STATE OF OKLAHOMA and  
S. W. KAISER, et al.,

Respondents.

No. 90-C-160-E ✓

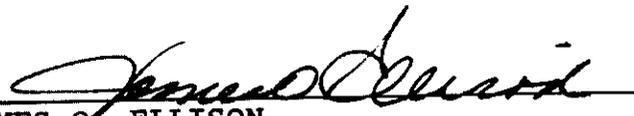
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER

The Court has for consideration the Report and Recommendations of the Magistrate filed August 30, 1990. After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendations of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is denied.

ORDERED this 24<sup>th</sup> day of September, 1990.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

SEP 24 1990

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 R. DEANNE MILLER a/k/a ROBERTA )  
 DEANNE MILLER f/k/a R. DEANNE )  
 NEEL f/k/a ROBERTA DEANNE NEEL; )  
 DAN E. NEEL a/k/a DAN EUGENE )  
 NEEL a/k/a DANNY EUGENE NEEL; )  
 COUNTY TREASURER, Tulsa County, )  
 Oklahoma; and BOARD OF COUNTY )  
 COMMISSIONERS, Tulsa County, )  
 Oklahoma, )  
 )  
 Defendants. )

CIVIL ACTION NO. 90-C-380-B

**ORDER**

Upon the Motion of the United States of America, acting through the Farmers Home Administration, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and for good cause shown it is hereby ORDERED that this action shall be dismissed without prejudice.

Dated this 24 day of Sept, 1990.

S/ THOMAS R. BRETT.  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM  
United States Attorney

PETER BERNHARDT, OBA #741  
Assistant United States Attorney  
3600 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

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

DONNA GILMORE, d/b/a  
KEYSTONE KORNER,  
  
Plaintiff,

9-24-90

d

vs.

Case No. 89-C-458-E

NORTH STAR MUTUAL INSURANCE  
COMPANY,  
  
Defendant.

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the parties to this action, Donna Gilmore, d/b/a  
Keystone Korner, pro se, and North Star Mutual Insurance Company,  
by and through its attorneys of record, Knowles, King & Smith,  
P.C., and in support of their stipulation of dismissal state as  
follows:

That the parties have reached a settlement agreement  
whereunder North Star Mutual Insurance Company has agreed to pay  
Donna Gilmore, d/b/a Keystone Korner, the sum of \$2,500.00 in  
exchange for dismissal of the action pending and all claims she may  
have under policy number SMP-35-7786.

As consideration therefore, the plaintiff does herein  
stipulate that this matter should be dismissed with prejudice as  
to refiling.

Respectfully submitted,

  
\_\_\_\_\_  
Donna Gilmore, d/b/a Keystone Korner  
Plaintiff

  
\_\_\_\_\_  
Dale Ellis, Attorney for North Star  
Mutual Insurance Company



UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

CLERK'S OFFICE

UNITED STATES COURT HOUSE

TULSA, OKLAHOMA 74103

September 21, 1990

JACK C. SILVER  
CLERK

(SIB) 581-7796  
(FTS) 736-7796

TO: Counsel/Parties of Record

RE: Case # 90-C-740-C  
Diaz vs. USA

This is to advise you that Chief Judge H. Dale Cook entered the following Minute Order this date in the above case:

This case, having been inadvertently transferred to the Northern District of Oklahoma rather than the district of proper venue, the Court hereby transfers this case to the Eastern District of Oklahoma.

Very truly yours,

JACK C. SILVER, CLERK

By: Phillips  
Deputy Clerk

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

MICHAEL L. KETCHER,

Plaintiff,

vs.

MISSOURI-KANSAS-TEXAS RAILROAD,  
Company, a Delaware corporation, commonly  
known as the KATY RAILROAD, and its  
successor UNION PACIFIC RAILROAD  
COMPANY, a foreign corporation,

Defendants.

No. 89-C-962-C

FILED

SEP 20 1990

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

ORDER DISMISSING WITH PREJUDICE

Upon Plaintiff's Application to Dismiss with Prejudice the Court hereby finds that good cause is shown and Plaintiff's Application is hereby granted and the above-captioned case is dismissed with prejudice.

SO ORDERED this 20 day of September, 1990.

  
UNITED STATES DISTRICT JUDGE

52

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

RICHARD HUGHES  
Plaintiff(s),

vs.

No. 90-C-54-C

**F I L E D**

**SEP 21 1990**

KELLY LANGBERG  
Defendant(s).

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

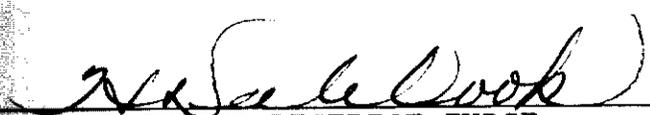
**JUDGMENT DISMISSING ACTION**  
**BY REASON OF SETTLEMENT**

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

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

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

Dated this 20<sup>th</sup> day of Sept., 1990.

  
UNITED STATES DISTRICT JUDGE

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

FILED  
SEP 21 1990 *dst*

LORETTA M. TRAMMELL,  
Plaintiff,

vs.

PAUL WILSON, an individual  
and a former police officer  
for the City of West Siloam  
Springs, Oklahoma; and THE  
CITY OF WEST SILOAM SPRINGS,  
OKLAHOMA, a municipal  
corporation,

Defendants.

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

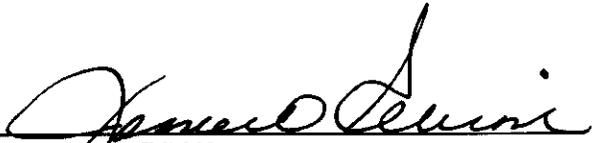
No. 89-C-600-E/

ADMINISTRATIVE CLOSING ORDER

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

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

ORDERED this 20<sup>th</sup> day of September, 1990.

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

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

**FILED**

SEP 21 1990

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

DEBRA ANN MARTIN,

Plaintiff,

vs.

WAL-MART STORES, INC.,  
a foreign corporation,

Defendant.

No. 89-C-646-B

**JUDGMENT**

In accordance with the jury verdict rendered on September 20, 1990, Judgment is hereby entered in favor of Plaintiff, Debra Ann Martin, and against the Defendant, Wal-Mart Stores, Inc., a foreign corporation, in the amount of One Hundred and Ten Thousand Dollars (\$110,000.00), plus pre-judgment interest at the rate of 12.35% per annum (12 O.S. § 727) from the date of August 3, 1989 to September 20, 1990, and post-judgment interest at the rate of 7.95% per annum (28 U.S.C. § 1961) from September 20, 1990 on the total of said principal sum and pre-judgment interest. Costs are assessed against Defendant if timely applied for under Local Rule 6.

DATED this 21st day of September, 1990.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

**FILED**

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

SEP 21 1990  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

UNITED STATES OF AMERICA )  
 )  
 Plaintiff )  
 )  
 vs. )  
 )  
 MICHAEL O. INGRAM, a/k/a )  
 DR. MICHAEL O. INGRAM )  
 )  
 Defendant. )

CIVIL ACTION NO. 90-C-100-B

AGREED JUDGMENT

This matter comes on for consideration this 21<sup>st</sup>  
day of September, 1990, the Plaintiff appearing by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Catherine J. Depew, Assistant United States  
Attorney, and the Defendant, Michael O. Ingram, appearing by his  
counsel, Robert A. Todd.

The Court, being fully advised and having examined the  
court file, finds that the Defendant, Michael O. Ingram, a/k/a  
Dr. Michael O. Ingram, has agreed that he is indebted to the  
Plaintiff in the amount alleged in the Complaint and that  
judgment may accordingly be entered against him in the principal  
amount of \$27,836.01, plus accrued interest in the amount of  
\$12,310.90 as of January 10, 1990, plus interest thereafter at  
the rate of 7%, until judgment, plus interest thereafter at the  
legal rate until paid, plus the costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the defendant in the principal amount of \$27,836.01, plus accrued interest in the amount of \$12,310.90 as of January 10, 1990, plus interest thereafter at the rate of 7% per annum until judgment, plus interest thereafter at the current legal rate of 7.78 percent per annum until paid, plus the costs of this action.

S/ THOMAS R. BRETT

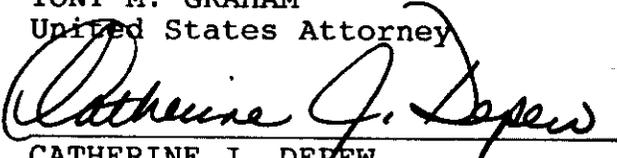
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THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

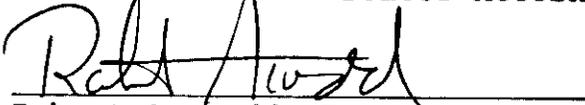
APPROVED;

UNITED STATES OF AMERICA

TONY M. GRAHAM  
United States Attorney



CATHERINE J. DEWEY  
Assistant United States Attorney



Robert A. Todd, Esq.  
2727 East 21st Street, Suite 101  
Tulsa, OK 74114

UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA.

**FILED**

SEP 20 1990

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

JAMES DeWAYNE KERR,  
Plaintiff,

v.

ROBERT H. HENRY and  
T. JACK GRAVES and/or  
successor,  
Defendants.

Case No. 90-C-737 E

**DISMISSAL**

COMES NOW the Plaintiff, James DeWayne Kerr, and hereby  
dismisses with prejudice the above-captioned matter.



JAMES DeWAYNE KERR

**CERTIFICATE OF MAILING**

I, James DeWayne Kerr, hereby certify that on the 18 day  
of September 1990, I placed in the United States Post Office with  
postage thereon prepaid, a true and exact copy of the foregoing  
instrument to: **Robert H. Henry**, Attorney General, 112 State  
Capitol Bldg., Oklahoma City, OK 73105, and **Patrick R. Abitbol**,  
Assistant District Attorney, Rogers County Courthouse, 219 South  
Missouri Street, Claremore, OK 74017.



JAMES DeWAYNE KERR

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

**FILED**

SEP 20 1990

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

FIRST SECURITY MORTGAGE COMPANY )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 ALLIED GROUP MORTGAGE COMPANY )  
 )  
 Defendant. )

89-C-699-B

**ORDER**

The Court has for consideration the Report and Recommendation of the United States Magistrate filed August 30, 1990 in which the Magistrate recommended that the action be administratively closed, pending resolution of Plaintiff's matters before the United States Bankruptcy Court.

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 action is to be administratively closed, pending resolution of Plaintiff's matters before the United States Bankruptcy Court.

Dated this 20<sup>th</sup> day of Sept., 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

DENNIS WOOD,

Plaintiff,

vs.

THE CITY OF MIAMI, OKLAHOMA,  
an Oklahoma Municipal Corporation,

Defendant.

SEP 20 1990

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

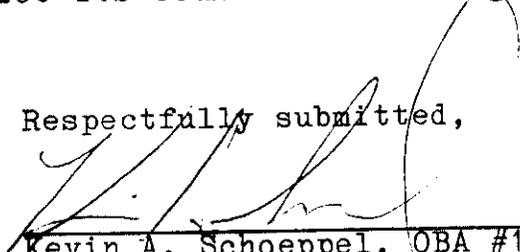
Case No. 90-C0094 E

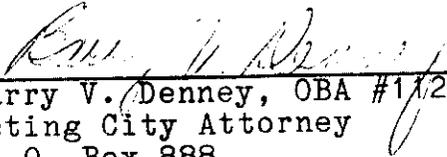
**STIPULATION OF DISMISSAL WITH PREJUDICE**

COMES NOW the Plaintiff, Dennis Wood, by and through his attorney Kevin A. Schoeppel and pursuant to Rule 41 (a) (1), of the Federal Rules of Civil Procedure, stipulates to dismiss with prejudice all claims as against the Defendant, the City of Miami, an Oklahoma Municipal Corporation.

The Defendant, the City of Miami, an Oklahoma Municipal Corporation, by and through its attorney, Barry V. Denney, stipulates to dismiss with prejudice its Counterclaim as against the Plaintiff above.

Respectfully submitted,

  
Kevin A. Schoeppel, OBA #10467  
1408 South Denver  
Tulsa, Oklahoma 74119  
PH: (918) 582-5444  
Attorney for Plaintiff

  
Barry V. Denney, OBA #11284  
Acting City Attorney  
P. O. Box 888  
Miami, Oklahoma 74355  
PH: (918) 542-5558  
Attorney for Defendant



"In an action to recover on a fire insurance policy that is defended on the ground that the insured set the fire or procured the fire set where there is not direct proof to so connect the insured with the fire, proof that the fire was of incendiary origin coupled with proof of motive, intent and opportunity on the part of the insured constitutes sufficient evidence to justify submitting the issue to the jury."

Manis v. Hartford Ins. Co., 681 P.2d 760, 762 (Okla. 1984) (quoting Bowen v. Connecticut Fire Ins. Co., 143 P.2d 140 ((Okla. 1943))).

Oklahoma courts have taken this principle, applicable to a breach of insurance contract claim, and applied it in the bad faith context. It is now established that it is error to submit a plaintiff's plea for punitive damages to the jury when (1) the defendant's evidence, if believed by the jury, could have supported an arson defense, and (2) the plaintiff failed to meet his burden of proof. Conti v. Republic Underwriters Ins. Co., 782 P.2d 1357, 1361 (Okla. 1989). Of course, if there is conflicting evidence as to the reasonableness of the insurer's actions then what is reasonable is always a jury question. McCorkle v. Great Atlantic Ins. Co., 637 P.2d 583, 587 (Okla. 1981).

The undisputed facts in this case establish that the policy was issued on February 3, 1989 and that the fire took place twenty-five days later, on February 28, 1989. The policy provided for \$125,000 of coverage for damage to the structure. The price of the house when sold to plaintiff was \$55,000. At closing, plaintiff paid only \$5,000. Two neighbors testified that they believed no one lived in the house, but that they saw someone moving items into the house on the Sunday before the fire. The state fire marshal

investigator stated in his report that he believed the fire's cause was arson. The local fire chief said the fire was "suspicious". The defendant's private cause and origin investigator found two positive samples of kerosene within the dwelling. From the record before the Court, the only reasonable conclusion which a jury could reach is that defendant reasonably relied upon its expert's finding of arson. Plaintiffs note that their expert will testify to the contrary regarding causation. Such testimony creates an issue of fact for the breach of contract claim, not the bad faith claim. The objections on hearsay grounds are not well taken. The statements are not offered for their truth, but for the reasonableness of defendant's reliance. The additional evidence as to motive and opportunity, while not overwhelming, would be sufficient to justify submitting the arson defense to the jury. Thus, the bad faith claim cannot stand. The courts in Williamson and Conti also had before them polygraph evidence which indicated that a plaintiff was not being completely truthful. However, the Court in Conti made clear that an insurer may not require or coerce a polygraph examination. 782 P.2d at 1362 n.2. This Court necessarily concludes that a negative polygraph examination is not required before summary judgment may be granted as to a bad faith claim.

It is the Order of the Court that the motion of the defendant, Farmers Alliance Mutual Insurance Company, for partial summary

judgment is hereby granted as to plaintiff Dennis R. Lewis's claims for extracontractual and punitive damages.

IT IS SO ORDERED this 20<sup>th</sup> day of September, 1990.

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

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

TRADE WINDS MOTOR HOTEL  
EAST, INC.,

Plaintiff,

and

SOUTHERN AMERICAN INSURANCE  
COMPANY,

Intervenor,

vs.

AMERICAN CASUALTY COMPANY OF  
READING, PA.,

Defendant.

**E I L E D**

SEP 20 1990

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

NO. 89-C-764-B

**ORDER REGARDING MOTION FOR PARTIAL SUMMARY  
JUDGMENT OF INTERVENOR, SOUTHERN AMERICAN  
INSURANCE COMPANY AND MOTION FOR PARTIAL SUMMARY  
JUDGMENT OF TRADE WINDS MOTOR HOTEL EAST, INC.,  
REGARDING PUNITIVE DAMAGES**

The Motion for Partial Summary Judgment of Intervenor, Southern American Insurance Company (Southern American), and the Motion for Partial Summary Judgment of Plaintiff, Trade Winds Motor Hotel East, Inc., (Trade Winds) regarding punitive damages, pursuant to Fed.R.Civ.P. 56, are before the Court for decision. The underlying facts giving rise to the action are as follows:

The Plaintiff, Trade Winds, has a comprehensive general liability insurance policy regarding its hotel operation written by American Casualty Company of Reading, Pennsylvania (American) extending primary coverage in the amount of \$500,000.00. Excess liability coverage in the amount of \$500,000.00 was written by Intervenor, Southern American, to Trade Winds. The primary and excess liability policies were in force and effect at all relevant

times.

On July 6, 1985, an accident occurred at the Trade Winds in Tulsa, Oklahoma, wherein Mario Maldonado Pinal, a minor age 10 years, died as a result of drowning in the hotel swimming pool. On October 9, 1985, Manuel Pinal and Burta Pinal, surviving heirs and next of kin of Mario Maldonado Pinal, filed a wrongful death action, No. CJ-85-6438 in the District Court in and for Tulsa County, State of Oklahoma, against the Trade Winds. The petition requested \$1,886,000.09 in compensatory damages and \$1,000,000.00 in punitive damages. The case was tried to a jury in Tulsa County, Oklahoma, and on February 24, 1989, a jury returned its verdict in favor of the Plaintiffs, awarding the Pinals \$544,540.00 in compensatory damages and \$316,000.00 in punitive damages. Pursuant to 12 O.S. §727, the trial court added prejudgment interest of \$200,705.12 to the compensatory award, making a total compensatory judgment of \$745,245.12.

Prior to the jury's verdict, both the insured, Trade Winds, and the excess carrier, Southern American, demanded that the primary carrier, American, settle the pending claims for the claimants' offered amount of \$350,000.00, which was within the primary coverage limits. American refused to settle within the primary coverage limits, asserting that it, in good faith, valued the claim for a lesser sum. Judgment upon the jury verdict rendered against the insured was in excess of the amount of the primary limits. Both the Trade Winds and the Southern American assert that American was guilty of bad faith in not settling within the limits of the primary coverage when it had an opportunity to do

so. Further, Trade Winds asserts that each insurance carrier's policy covers the punitive damage award of \$316,000.00.

The matter presents the following issues:

- (1) Was the primary carrier, American, guilty of bad faith in not settling the case within the primary coverage? (The parties agree that this is a factual question to be decided by a jury based upon the evidence regarding the facts and circumstances, and cannot be decided on summary judgment).
- (2) Does the excess carrier under Oklahoma law have a right to stand in the shoes of the insured and urge a bad faith refusal to settle within the primary coverage, if the insured has first made such a timely demand?
- (3) Does a primary carrier have an obligation to pay pre-judgment interest added to the judgment on a jury verdict, pursuant to 12 O.S. §727, if payment of same would exceed the amount of the primary coverage stated in the policy; and what is the primary carrier's obligation regarding post-judgment interest?
- (4) Is the primary or the excess carrier responsible for paying the cost of a supersedeas bond to supersede the judgment in an amount in excess of

the primary carrier's liability?<sup>1</sup>

- (5) Under the facts and circumstances herein, is either insurance carrier, American or Southern American, responsible under their policies for the \$316,000.00 punitive damage award?

The issues above will be discussed *seriatim*, 2 through 5.

(2) Does the excess carrier under Oklahoma law have a right to stand in the shoes of the insured and urge a bad faith refusal to settle within the primary coverage, if the insured has first made such a timely demand?

Under the facts herein the primary insurer is under no obligation to act upon demands made by an excess insurer, as the primary insurer's duty is exclusively to its insured. St. Paul Mercury Indemnity Co. v. Martin, 190 F.2d 455, 457 (10th Cir. 1951).

Herein the insured made a timely demand upon the primary carrier, American, to accept Plaintiffs' settlement offer of \$350,000.00, a few days prior to the jury verdict. (Exhibit B to American's Response Brief, Paragraph 5 of Affidavit of Keith Ramsey and Exhibit C to American's Response Brief, Letter of Trade Winds'

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<sup>1</sup>The primary carrier, American, refused to post a supersedeas bond for the amount of approximately \$1,300,000.00, the total amount of the judgment with both pre-judgment and anticipated post-judgment interest. However, American did post a supersedeas bond for purposes of appeal in the amount of \$616,138.18 which American asserts was in compliance with its obligation as the primary carrier. The supersedeas bond made by American was computed by adding the primary coverage of \$500,000.00 to the anticipated sum of the post-judgment interest thereon.

attorney Larry Oliver dated February 16, 1989).<sup>2</sup> Although Southern American had no right as the excess carrier to make demand upon American, it had a right of subrogation to stand in the shoes of its insured. American Fidelity and Casualty Co. v. All American Bus Lines, Inc., 190 F.2d 7 (10th Cir. 1950); Peter v. Travelers Ins. Co., 375 F.Supp. 1347 (C.D.Cal. 1974); Valentine v. Aetna Ins. Co., 564 F.2d 292 (9th Cir. 1977); Commercial Union Ins. Co. v. Mission Ins. Co., 835 F.2d 587 (5th Cir. 1988); and Puritan Ins. Co. v. Canadian Universal Insurance Co., 775 F.2d 76 (3rd Cir. 1985). These cited authorities support Southern American's theory of equitable subrogation in view of the insured's timely settlement demand within the primary coverage, which the Court declares is the applicable law of this case.

(3) Does a primary carrier have an obligation to pay pre-judgment interest added to the judgment on a jury verdict, pursuant to 12 O.S. §727, if payment of same would exceed the amount of the primary coverage stated in the policy; and what is the primary carrier's obligation regarding post-judgment interest?

(4) Is the primary or the excess carrier responsible for paying the cost of a supersedeas bond to supersede the judgment in an amount in excess of the primary carrier's liability?

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<sup>2</sup>Attorney Don Hopkins, to whom the letter was addressed by Trade Winds' personal attorney, Larry Oliver, had previously been employed by American under its insurance policy to provide a defense to Trade Winds, its insured. (Exhibit A to Southern American's Brief in Support of Motion for Partial Summary Judgment - Letter dated December 27, 1985 from Claims Specialist Jim Elsberry of American (CNA) to Trade Winds, Inc.)

Issues (3) and (4) above will be considered together because, under the applicable authority, the Court concludes the primary carrier's obligation to supersede the judgment on appeal is in the amount of its underlying policy coverage obligation. Since the case involves a contract between parties, the provisions of the contract, if clear and unambiguous, should dictate the insurance carrier's obligation.

Relative to payment of post-judgment interest on appeal, the applicable language of the primary carrier American's insurance policy states:

The Company [American] will pay, in addition to the applicable limit of liability: (a) all expenses incurred by the Company, all costs taxed against the insured in any suit defended by the Company and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon. . . .

Therefore, under the terms of its policy, until American has paid or tendered or deposited in court the limit of the company's liability it is obligated to pay under its insurance policy all post-judgment interest on a compensatory damage judgment whether within its coverage limits or above its coverage limits.<sup>3</sup>

In some case authority cited by American, the insurance policy specifically limits the interest payable to an amount within the

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<sup>3</sup> As the insurance carriers are not obligated to provide punitive damage coverage, as set forth hereafter, they have no obligation to pay or supersede any judgment, or interest thereon, relative to punitive damages.

limits of the policy. However, the American primary policy before the Court does not do so as it includes "all interest on the entire amount of any judgment therein which accrues after entry of the judgment. "

Relative to pre-judgment interest and the obligation of the primary carrier, the Court must look to both the language of 12 O.S. § 727 and that of the insurance policy. From this examination one concludes that the primary carrier is responsible only for pre-judgment interest added to the verdict, as required by § 727, within the base coverage limits. This is because pre-judgment interest pursuant to § 727 is added to the jury's verdict to comprise the base judgment, and is not interest that accrues after entry of the judgment. Herein the jury verdict exceeds the base coverage of \$500,000.00 of American so American is not liable for any pre-judgment interest on said judgment.

The primary carrier's obligation is to supersede the judgment on appeal in an amount commensurate with its above stated obligation. The excess carrier's obligation, within the terms of its coverage, commences at the point above the primary carrier's obligation.

The case of Baughn v. Busick, 541 P.2d 873 (Okla.App. 1975) is instructive because it involved an insurance policy with language identical to the language herein relative to the insurance carrier's obligation to pay post-judgment interest.

It appears to the Court the following authority dictates the conclusion that Oklahoma law will obligate the primary carrier to

pay prejudgment interest under 12 O. S. § 727 only within the amount of the primary coverage and post-judgment interest in an amount not exceeding the primary coverage unless, as herein, the policy specifically provides otherwise, regarding post-judgment interest. Morgan v. Graham, 228 F.2d 625, 628-629 (10th Cir. 1956); Herzog v. Fidelity & Casualty Co. of New York, 257 F.2d 840 (10th Cir. 1958); Curtis & Gartside Company v. Aetna Life Ins. Co., 58 Okl. 465, 160 P. 465 (1916); Maryland Casualty Co. v. Peppard, 53 Okl. 515, 157 P. 106 (1915); and Bossert v. Douglas, 557 P.2d 1164 (Okl.Ct.App. 1976).

Relative to American's policy concerning the payment of appeal bonds it states:

The Company will pay, in addition to the applicable limits of liability; (b) premium on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy. . .

As noted above, American is obligated to pay "all interest on the entire amount of any judgment, " so American's obligation is to pay the cost of a supersedeas bond which includes herein the base amount of the coverage plus interest on the entire amount of the judgment even though the amount of the judgment is in excess of the \$500,000.00 limit. While American has no obligation to pay prejudgment interest, for the reasons stated above, it is obligated under its policy to pay post-judgment interest thereon and to supersede the judgment accordingly. 7C J Appleman, Insurance Law

and Practice § 4688, pp. 203-204 (W. Berdal Rev. 1979).

The precise amount of the primary carrier's obligation is not now subject to computation but the Court declares the above is American's obligation once subject to final determination. Final determination will not be known until the subject judgment becomes final or is reversed in whole or in part.

The Court notes that if Trade Winds and Southern American should prevail before a jury on their bad faith claim, then American would be responsible for the entire amount of the compensatory judgment plus post-judgment interest, and responsible to Southern American for expenses, costs, etc.

The applicable language of Southern American's excess policy regarding payment of interest and/or supersedeas bond expense states:

**II. Defense, Settlement, Supplementary Payments**

With respect to any occurrence not covered by the underlying policies listed in the Schedule of Underlying Insurance made a part of this Policy or any other underlying insurance collectible by the insured, but covered by the terms and conditions of this Policy except for the amount of retained limit specified in the Declarations, the Company shall, provided suit is brought in the United States or Canada:

\* \* \*

- (b) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this Policy, and all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish any such bonds.
- (c) pay all expenses incurred by the Company, all costs taxed against the insured in any such suit and all interest accruing after entry of judgment until the Company has paid or tendered or deposited in court such part of such judgment as does not exceed the limit of the Company's liability. . . .

As stated above, American is responsible herein for payment of post-judgment interest on the full amount of the judgment until the full amount of its liability is paid or tendered, but is not responsible for the accrued pre-judgment interest as it exceeds its base coverage. Southern American, therefore, as the excess carrier, is liable for the amount by which the compensatory damage award and pre-judgment interest exceed the primary coverage of \$500,000.00, and is obligated to supersede the judgment accordingly, within its \$500,000.00 excess coverage limits.

(5) Under the facts and circumstances herein, is either insurance carrier, American or Southern American, responsible under their policies for the \$316,000.00 punitive damages award?

In *Dayton Hudson Corp. v. American Mutual Liability Insurance Co.*, 621 P.2d 1155 (Okla. 1980) the Supreme Court of Oklahoma answered certified questions concerning liability insurance coverage for punitive or exemplary damages.

The Supreme Court first determined whether the language of the policy could be construed to extend coverage to punitive damages. Noting that insurance policies are liberally construed in favor of recovery, the Supreme Court held that the policy provision, "for all sums which the insured might become legally obligated to pay," was broad enough to include punitive damages. The pertinent liability provisions in this case are equally broad and this Court determines that each provides coverage for punitive damages. (American's policy provides coverage as to "all sums which the

Insured shall become legally obligated to pay as damages." Southern American's policy covers the "excess of the retained limit. . . which the insured may sustain by reason of liability imposed upon insured by law.")<sup>10</sup>

The second question addressed in *Dayton* was whether such coverage contravened the public policy of the State of Oklahoma. The Supreme Court adopted the reasoning advanced in *Northwestern National Casualty Co. v. McNulty*, 307 F.2d 432 (5th Cir. 1962) that a culpable party should not be allowed to shift the burden of the committed wrong to the insurer, because the purpose of punitive damages is to deter and punish the wrongdoer. The Supreme Court, therefore, concluded that public policy barred insurance coverage of punitive damages.<sup>11</sup>

The Supreme Court in *Dayton*, however, recognized one limited exception: liability imposed under the doctrine of *respondeat superior*.

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<sup>10</sup> While Southern American's policy excludes from its coverage various intentional or wilful misconduct of the insured, the punitive damages awarded by the jury were based on the insured's reckless and wanton disregard of another's rights and therefore do not fall within the ambit of the policy exclusions (Instruction No. 19, *Pinal v. Trade Winds Motor Hotel East*).

<sup>11</sup> In *Aetna Casualty & Surety Co. v. Craig*, 771 P.2d 212 (Okla. 1989), the Supreme Court of Oklahoma further explained its rationale in *Dayton*:

By allowing one to insure against such awards, the burden is shifted from the wrongdoer to the otherwise innocent insurer. Ultimately, of course, the burden is then passed to the consuming public in the form of higher insurance rates, generally. The public policy in support of punitive damages is thwarted by such a practice.

The Court concluded that **the** public policy of deterrence and punishment of wrongdoers would not be served if indemnification from the insurer were not **permitted** to employers held vicariously liable for the wrongs of **their** servants, "unless the employer's volition was either directly or indirectly an element in the commission of the harm." *Id.* at 1160.

Trade Winds was found negligent, even grossly so, in the maintenance of the hotel swimming pool. Trade Winds now argues that it falls within the vicarious liability exception because its only liability is due to the negligence of its employees. However, such argument merely begs the question as Trade Winds is a corporation which can only act through its officers and employees. The determinative question is whether Trade Winds directly or indirectly breached its duty to maintain the hotel pool.

In addition to Trade Winds' common law duty to use ordinary care in keeping the premises in reasonably safe condition for the use of its invitees (Instruction No.11, *Pinal v. Trade Winds Motor Hotel East*), there are duties imposed by statute and ordinance on Trade Winds as the owner of the premises (Instruction No. 13, *Pinal v. Trade Winds Motor Hotel East*). One of the applicable statutes states that

[a]ll public bathing places shall be maintained in a sanitary and safe condition, and all owners, managers, operators and any other attendants in charge of any public bathing pool *shall be responsible for the sanitation and safety* of such places during the season or seasons when the public bathing place is in use.<sup>12</sup>

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<sup>12</sup> 63 O.S. § 1-1015(a) (emphasis added).

Under both the common law and this statute, Trade Winds, as owner, had a duty to maintain the hotel swimming pool. The jury determined that its breach of that duty resulted in the death of Mario Pinal. The Court finds that Trade Winds is not within the class of innocent employers that the vicarious liability exception means to protect. Trade Winds' "positive wrongdoing"<sup>13</sup> makes it a culpable party who should not be permitted "to escape the civil consequences of its wrong"<sup>14</sup> by shifting its burden to its insurers.

Trade Winds contends that even if it is liable for the punitive damages arising from the verdict in the *Pinal* case, such damages are recoverable from American as compensatory damages, if Trade Winds succeeds in its bad faith claim against American. The Court recognizes that the insured's measure of damages in a bad faith claim<sup>15</sup> is the "entire amount of a judgment obtained against

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<sup>13</sup> *Dayton*, 621 P.2d at 1161.

<sup>14</sup> *Dayton*, 621 P.2d at 1160.

<sup>15</sup> As concerns the issue of punitive damages in the bad faith claim, recovery for bad faith does not in and of itself suggest a claim for punitive damages. *Davis v. National Pioneer Insurance Co.*, 515 P.2d 580, 583 (Okla. App. 1973); *Manis v. Hartford Fire Insurance Co.*, 681 P.2d 760, 762 (1984); *McCorkle v. Great Atlantic Insurance Co.*, 637 P.2d 583, 587 (1981). Neither motion addresses whether the facts in this case support a finding of malice toward, or reckless disregard of the rights of Trade Winds, as the insured, to sustain an award of punitive damages under 23 O.S. § 9. The Court, therefore, will consider this issue either at the close of the plaintiff's evidence or at the close of all the evidence.

the insured regardless of any policy limitation." <sup>16</sup> Whether the exclusion of punitive damages from liability insurance coverage as a matter of public policy in the underlying suit should also exclude their recovery as damages in a subsequent bad faith claim is unclear. If the Court later finds bad faith, it will decide the issue at that time as a matter of law.

In conclusion, the Court hereby sustains in part and overrules in part the Motions for Partial Summary Judgment of Southern American and Trade Winds in accordance with the above.

IT IS SO ORDERED, this 20<sup>th</sup> day of September, 1990.



THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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<sup>16</sup> American Fidelity & Casualty Co. v. L.C. Jones Trucking Co., 321 P.2d 685, 687 (Okla. 1957). See also, National Mutual Casualty Co. v. Britt, 203 Okla. 175, 200 P.2d 405, 411 (1948); Boling v. New Amsterdam Casualty Co., 173 Okla. 160, 46 P.2d 916, 917 (1935); 40 A.L.R. 2d 168, 172 and 7C Appleman, Insurance Law and Practice § 4711, p. 414 (Berdal ed. 1979).

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

INTERNATIONAL TRAVEL & TOURIST  
Plaintiff(s),

vs.

No. 89-C-412-C

LAMA TOURS INTERNATIONAL  
Defendant(s).

FILED

SEP 20 1990

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

ORDER

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

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

In the action herein, notice pursuant to Rule 35A was mailed to counsel of record or to the parties, at their last address of record with the Court, on June 8, 1990. No action has been taken in the case within thirty (30) days of the date of the notice.

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

Dated this 19<sup>th</sup> day of Sept,  
1990.

  
United States District Judge H Dale Cook

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

**FILED**

SEP 20 1990

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

ANNABELLE WINTERS d/b/a SHARP'S )  
PAWN SHOP, )

Plaintiff, )

vs. )

CITY OF DEWEY, STATE OF OKLAHOMA, )  
LESTER ROGERS, as Chief of Police of )  
the City of Dewey, STEVE MAHAN, )  
Individually and as Detective, )  
LLOYD CHESSLER, Individually, and as )  
Detective, )

Defendants. )

Case No. 90-C-507-B

JOURNAL ENTRY OF JUDGMENT

This matter comes on before this Court on the 20th day of September, 1990, upon the Defendant's offer to confess judgment pursuant to Rule 68 of the Federal Rules of Civil Procedure and acceptance by Plaintiff.

The Plaintiff, Annabelle Winters d/b/a Sharp's Pawn Shop is present by her counsel, Laurence K. Donahoe, of Davis & Donahoe, P.A.. The Defendants, City of Dewey, State of Oklahoma, Lester Rogers, Steve Mahan and Lloyd Chessler, are present by their counsel, Jon B. Comstock, of Newton, O'Conner & Comstock.

The Court finds the Defendants' offer to confess judgment individually and in their official capacities and the Plaintiff's acceptance in proper form pursuant to Rule 68 of the Federal Rules of Civil Procedure, and judgment should be entered for Plaintiff in the amount of \$500.00.

The Court further finds all searches and seizures by the City of Dewey should be effected in compliance with State and Federal Law.

The Court further finds the City of Dewey should implement a procedure to ensure proper notice and due process to those holding property interests in goods in the custody of the City which were obtained from a pawnshop.

The Court further finds the Plaintiff and Defendants have agreed to provide for review by this Court the amount of attorney's fees, interest, and case expenses which shall be taxed as recoverable costs of this action. Further, the Plaintiff is directed to provide affidavit evidence as to her requested fees, interest, and case expenses within ten (10) days, and make motion requesting this Court's review, and set matter for hearing.

IT IS ORDERED judgment be entered for Plaintiff, Annabelle Winters d/b/a Sharp's Pawn Shop against all Defendants, in both their individual and official capacities, in the amount of \$500.00 with attorney fees, interest, and case expenses, all to be taxed as costs in accordance with the review of the Court as to the reasonableness of their amounts.

IT IS FURTHER ORDERED searches and seizures by the City of Dewey are to be effected in compliance with State and Federal Law.

IT IS FURTHER ORDERED the City of Dewey is directed, within 120 days from the entry of this judgment, to implement a procedure whereby pawnshop owners will be afforded due process

prior to the disposition of any property obtained from them by the City of Dewey.

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

**S/ THOMAS R. BRETT**

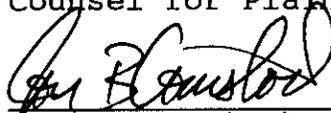
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**THOMAS BRETT**  
United States District Court Judge

APPROVED:



~~Laurence K. Donahoe~~  
3711 Classen Boulevard  
Oklahoma City, Oklahoma 73118  
(405) 528-4179  
Counsel for Plaintiff



---

Jon B. Comstock  
P.O. Box 3163  
Tulsa, Oklahoma 74101-3163  
Counsel for Defendants

*Entered*

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

FILED

SEP 19 1990

JAMES H. CLERK  
U.S. DISTRICT COURT

HARRY JAMES HALL,

Plaintiff,

v.

WILLIE HIGGINS, et. al.,

Defendants.

89-C-706-C

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate filed August 23, 1990 in which the Magistrate recommended that the Defendants' Motion to Dismiss be denied, except as to the allegations against Defendants in their "official capacities", which should be dismissed, and that the case be otherwise transferred to the United States District Court for the Eastern District of Oklahoma, where venue is proper.

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 Defendants' Motion to Dismiss is denied, except as to the allegations against Defendants in their "official capacities", which is dismissed, and that the case is otherwise transferred to the United States District Court for the Eastern District of Oklahoma, where venue is proper.

Dated this 18<sup>th</sup> day of September, 1990.

  
H. DALE COOK, CHIEF JUDGE  
UNITED STATES DISTRICT COURT

*entered*

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

SEP 19 1990

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

URE CO., a Texas corporation, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PORT CITY PROPERTIES, INC., )  
 d/b/a Hodges Warehouse, and )  
 SHEL TILKIN, individually, )  
 )  
 Defendants. )

No. 90-C-73-C

**ORDER**

Before the Court is the motion of the plaintiff to dismiss defendants' counterclaims.

Plaintiff and defendant Port City Properties, Inc., (Port City) entered into a lease agreement on November 1, 1989, whereby Port City leased certain real property owned by plaintiff. Plaintiff seeks to recover for alleged damage to a leased building.

Defendants have filed four counterclaims against plaintiff, alleging various acts of negligence on plaintiff's part. Plaintiff moves to dismiss the first, second and third counterclaims based upon certain lease language. The language in question reads as follows:

[Para.1] The lessor shall not be liable for any loss or injury to goods stored.

[Para.2] Lessee shall indemnify and hold harmless Lessor from and against any and all claims arising from Lessee's use of the premises, or from the conduct of Lessee' business or from any activity, work or things done, permitted or suffered by Lessee in or about the premises or elsewhere and shall further indemnify and hold harmless Lessor from and

against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this lease, or arising from any negligence of the Lessee, or any of the Lessee's agents, contractors, or employees, and from and against all costs, attorney fees, expenses, and liabilities incurred in the defense of any such claim. Lessee, upon notice from Lessor, shall defend the same at Lessee's expense by counsel satisfactory to Lessor. Lessee, as a material part of the consideration to Lessor, hereby assumes all risk of damage to property or injury to persons, in, upon or about the premises, arising from any cause and Lessee hereby waives all claims in respect thereof against Lessor.

Plaintiff argues that the quoted language precludes the defendants' counterclaims. Defendants' response is twofold: (1) the language in paragraph 1 refers to damage to goods stored, while defendants' alleged damages relate to loss of business; (2) the language in paragraph 2 exculpates plaintiff from liability to third parties in the event of Port City's negligence, but does not exculpate plaintiff from its own negligence.

It is established that a party to a contract may limit or eliminate liability for his own negligence if he is on an equal bargaining footing with the other contracting party, but such contractual provisions are not the favorites of the law and hence are strictly construed. Sterner Aero AB v. Page Airmotive, Inc., 499 F.2d 709, 713-14 (10th Cir. 1974). Such a provision must be clear, explicit and unambiguous in its intention to exculpate a contracting party from the consequences of its own negligence. Id. at 714. Upon review, the Court concludes that the quoted language in paragraph 2 does not clearly and unambiguously exculpate plaintiff from its own negligence. Cf. Fretwell v. Protection Alarm Co., 764 P.2d 149, 152-3 (Okla. 1988). Therefore, the present motion must be denied.

It is the Order of the Court that plaintiff URE Co's motion to dismiss defendants' counterclaims is hereby DENIED.

*IT IS SO ORDERED* this 19 day of September, 1990.

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

FILED

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

SEP 19 1990

CLERK  
U.S. DISTRICT COURT

THORN C. HUFFMAN and )  
JOHN A. ERIKSSON, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 ALTEC INTERNATIONAL, INC., )  
 a foreign corporation, )  
 )  
 Defendant. )

Case No. 90-C-686-C

ORDER

The parties, having jointly applied to the Court for an order remanding this action to the District Court of the State of Oklahoma, County of Tulsa, and directing that each party bear their own costs, expenses and attorney fees incurred as a result of the removal, it is

ORDERED that the joint application of the parties to remand be and is hereby granted and that the parties be directed to bear their own costs, expenses and attorney fees, and it is further

ORDERED that this action be and is hereby remanded to the District Court of the State of Oklahoma, County of Tulsa, that the clerk of this court shall mail a certified copy of this Order to the clerk of the said state court at Tulsa, Oklahoma, and that the said State Court thereupon proceed with this action, Huffman, et al. v. Altec International, Inc., Tulsa County Court Clerk No. CJ-90-3077, pursuant to 28 U.S.C. § 1447(c).

Dated: September 19, 1990.

  
H. Dale Cook  
United States District Judge



counsel that he would not cross examine them because it would "make the jury angry".

The Supreme Court has set the standard for judging the efficiency of counsel in a criminal case in Strickland v. Washington, 466 U.S. 668 (1984). "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper function of the adversarial process that the trial cannot be relied on as having produced a just result." Id. at 686. For a convicted defendant to claim that counsel's assistance was so defective as to require reversal a two-prong showing must be made:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

To succeed therefore, the petitioner must show both that her attorney's performance fell below an objective standard of reasonableness and but for counsel's inadequacies the result of the proceedings would have been different.

There is no factual basis shown by the petitioner that the alleged failure of her attorney to cross examine certain witnesses was unreasonable or that a more effective cross examination would have resulted in a different verdict. Based on the record in this case, this Court cannot conclude that petitioner was deprived of the effective assistance of counsel.

### Petitioner's Demeanor

Secondly, petitioner asserts that it was not pointed out at trial or at sentencing that she was consuming large dosages of anti-depressant medication while incarcerated at Tulsa County Jail and therefore she did not appear remorseful before the Court at sentencing, or to the jury during trial.

The Court has found no authority which would require defense attorney to explain to the jury a defendant's demeanor or the reason for the same. The petitioner has not asserted that she was under medication and therefore was incompetent to assist her attorney in her own defense. Nor has petitioner alleged that she was under medication at the time she committed the offense thereby mitigating the element of "malice".

Mere allegation that use of medication may have affected petitioner's appearance at trial and before the Court is not a sufficient basis for setting aside the conviction.

### Evidence Offered

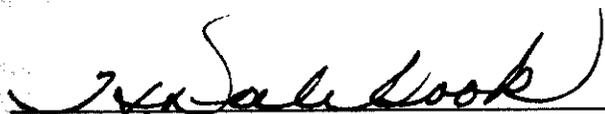
Finally, petitioner asserts that the jury was led to believe only the worst about her. Petitioner attacks the prosecutor's statement that malice aforethought can be shown by a second of thought prior to commission of an offense. Plaintiff contends that the fact she telephoned the fire department should mitigate against the element of malice.

Petitioner's claim that the evidence was insufficient to convict her may not be raised for the first time in a habeas

petition. Sufficiency of the evidence must be raised by direct appeal following sentencing or it is waived and not subject to collateral consideration by writ of habeas corpus.

For the aforesaid reasons, it is the Order of the Court that the petition filed by Marles G. Wilmer pursuant to 28 U.S.C. §2255 is hereby DENIED.

IT IS SO ORDERED this 18<sup>th</sup> day of September, 1990.



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

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

JOHN L. HARDIN, an individual, )  
)  
Plaintiff, )  
)  
vs. )  
)  
FIRST SECURITY MORTGAGE CO.; )  
RESOLUTION TRUST CORPORATION, as )  
Receiver for Cross Roads Savings )  
& Loan Association and its wholly )  
owned subsidiary Cross Roads )  
Financial Services, Inc, )  
MERRILL LYNCH REALTY OPERATING )  
PARTNERSHIP, a Delaware Limited )  
Partnership; MERRILL LYNCH MORTGAGE )  
CORPORATION, a New York Corporation; )  
THE RADERGROUP, INC., an Oklahoma )  
Corporation, and; CITICORP MORTGAGE, )  
INC., formally known as CITICORP )  
HOMEOWNERS, INC., a Delaware )  
Corporation, )  
)  
Defendants. )  
)  
\_\_\_\_\_ )

Case No. 89-C-1033-B

1990  
U.S. DISTRICT COURT

NOTICE OF DISMISSAL

The Plaintiff, John L. Hardin, pursuant to FED. R. CIV. P. 41(a)(1), hereby dismisses all claims against the defendant, Merrill Lynch Mortgage Corporation, without prejudice to refiling.

JANELLE H. STELTZLEN & ASSOCIATES

By Janelle H. Steltzlen  
Janelle H. Steltzlen OBA #8601  
1150 East 61st Street  
Tulsa, OK 74136

ATTORNEY FOR JOHN L. HARDIN

**CERTIFICATE OF MAILING**

I hereby certify that on the 19th day of September, 1990, I mailed a true and correct copy of the foregoing Notice of Dismissal with sufficient postage prepaid to the following:

J. Daniel Morgan  
Michael G. Daniel  
GABLE & GOTWALS  
2000 Fourth National Bank Building  
Tulsa, OK 74119-5447

**ATTORNEYS FOR RESOLUTION TRUST CORPORATION**

Chris Knight  
SANDERS & CARPENTER  
624 South Denver, Suite 202  
Tulsa, OK 74119

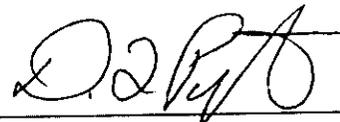
**ATTORNEYS FOR THE RADERGROUP, INC.**

Stephen B. Riley  
CHAPEL, RIGGS, ABNEY, NEAL & TURPEN  
502 West Sixth Street  
Tulsa, OK 74119

**ATTORNEYS FOR FIRST SECURITY MORTGAGE CO.**

Janelle H. Steltzlen OBA #8601  
1150 East 61st Street  
Tulsa, OK 74136

**ATTORNEY FOR JOHN L. HARDIN**



\_\_\_\_\_  
Dan L. Payton

FILED

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

SEP 18 1990

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

SHELTER INSURANCE COMPANIES, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MARVIN FELKINS, JR., et al., )  
 )  
Defendants. )

No. 89-C-967-E

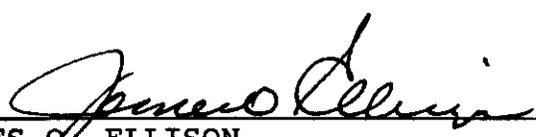
ORDER

The Court has for consideration the Report and Recommendations of the Magistrate filed August 30, 1990. 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 Recommendations of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that this action be administratively closed, the parties to advise the Court immediately when the state appeals court rules and thereafter take appropriate action in the case, either reopening same or dismissing the matter.

ORDERED this 18<sup>th</sup> day of September, 1990.

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



Respectfully submitted,

WORKS, LENTZ & POTTORF, INC.

By: Mark G. Robb

Mark G. Robb, OBA #11489  
Mapco Plaza, Suite 200  
1717 South Boulder  
Tulsa, Oklahoma 74119  
(918) 582-3191

Attorneys for Plaintiff,  
Hillcrest Medical Center

SNEED, LANG, ADAMS,  
HAMILTON, & BARNETT

By: G. Steven Stidham

G. Steven Stidham, OBA #8633  
2300 William Center Tower II  
Two West Second Street  
Tulsa, Oklahoma 74103  
(918) 583-3145

Attorneys for Defendant/Third Party  
Plaintiff

CERTIFICATE OF MAILING

I, Mark G. Robb, do hereby certify that on the 18<sup>th</sup> day of September, 1990, I caused to be mailed a true and correct copy of the above and foregoing instruction, proper postage thereon prepaid, to G. Steven Stidham, Attorney for Defendant/Third Party Plaintiff, 2300 Williams Center Tower II, Two West Second Street, Tulsa, Oklahoma 74103; and M. D.

Bedingfield, Attorney for Third Party Defendants, 502 West Sixth Street, Tulsa, Oklahoma  
74119.



---

Mark G. Robb

File No. 8355283

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

FILED

SEP 18 1990

FEDERAL DEPOSIT INSURANCE  
CORPORATION, et al.,

Plaintiffs,

vs.

HOWARD L. MILLER, et al.,

Defendants.

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

No. 89-C-872-E

ORDER

The Court has for consideration the Report and Recommendations of the Magistrate filed August 30, 1990. 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 Recommendations of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Default Judgment is hereby granted and default is entered against Howard L. Miller and Linda A. Miller. It is further ORDERED that upon Plaintiff's application, an evidentiary hearing shall be set to determine the amount of the judgment to be finally entered. Plaintiff shall make its application on or before September 28, 1990.

ORDERED this 18<sup>th</sup> day of September, 1990.



JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

**FILED**

SEP 18 1990

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

DENNIS STEPHEN WALDON,

Petitioner,

vs.

No. 90-C-216-E

MIKE PARSONS, Warden and the  
ATTORNEY GENERAL OF THE STATE  
OF OKLAHOMA,

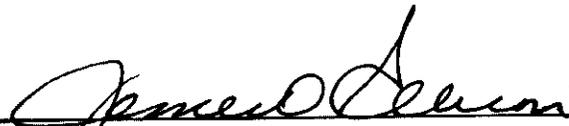
Respondents.

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed August 29, 1990. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is dismissed.

ORDERED this 18<sup>th</sup> day of September, 1990.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

**SEP 18 1990**

THRIFTY RENT-A-CAR SYSTEM, INC., )  
an Oklahoma corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
LOGAN E. GREEN, )  
an individual, )  
 )  
Defendant. )

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

Civil Action No.

90 C-0139-E

**ORDER GRANTING PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT AND JUDGMENT THEREON**

Upon the Plaintiff's Motion for **Summary Judgment**, filed herein on the 6th day of August, and there being no response or **opposition** filed within the time provided therefor by the Defendant, the Court finds as follows:

1. The facts stated in **Plaintiff's Motion** for Summary Judgment are deemed admitted.
2. There is no genuine issue as to **any material fact** necessary to support a Judgment for the Plaintiff.
3. The Plaintiff is entitled to **Judgment** as a matter of law, pursuant to Rule 56, Fed. R. Civ. P., in the full amount **sought, including** its costs and a reasonable attorney fee.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff's Motion for **Summary Judgment**, filed on the 6th day of August, 1990, be and

is hereby granted and judgment is hereby entered in favor of the Plaintiff and against the Defendant in the principal amount of \$185,494.61, plus interest through date of Judgment at the contract rate, plus interest on that total at the statutory rate until paid, plus its costs and a reasonable attorney fee to be determined upon application of the Plaintiff.

IT IS SO ORDERED this 18 day of Sept, 1990.

S/ JAMES O. ELLISON

---

Judge of the District Court

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

FILED

SEP 18 1990

JOHN S. STEVENS, CLERK  
U.S. DISTRICT COURT

ECC ENERGY CORPORATION,  
Plaintiff,

vs.

CABOT PIPELINE CORPORATION;  
DYCO PETROLEUM CORPORATION;  
and WESTAR TRANSMISSION  
COMPANY, a division of  
CRANBERRY PIPELINE CORPORATION,  
Defendants.

No. 89-C-261-B ✓

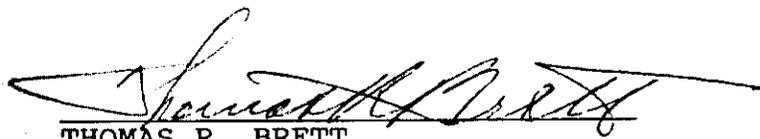
J U D G M E N T

In accord with the Order filed September 18, 1990, sustaining the Motion for Summary Judgment filed by Defendants, Cabot Pipeline Corporation and Westar Transmission Company, a division of Cranberry Pipeline Corporation, and sustaining the Motion for Summary Judgment filed by Defendant, Dyco Petroleum Corporation, and denying the Motion for Partial Summary Judgment filed by the Plaintiff, ECC Energy Corporation, the Court hereby enters Judgment in favor of the Defendants Cabot Pipeline Corporation and Westar Transmission Company, a division of Cranberry Pipeline Corporation, and against the Plaintiff, ECC Energy Corporation, and in favor of the Defendant, Dyco Petroleum Corporation and against the Plaintiff, ECC Energy Corporation. Plaintiff shall take nothing on its claims herein against any of the Defendants. Costs are assessed against the Plaintiff and each party is to pay its respective

65

attorney's fees.

Dated this 18th day of **September**, 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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FIDELITY FINANCIAL SERVICES,  
INC., an Oklahoma corporation,

Plaintiff,

vs.

JAMES M. ADKINS, et al.,

Defendants,

and

UNITED STATES OF AMERICA on  
behalf of the Secretary of  
Veterans Affairs,

Third-Party Plaintiff,

vs.

PEOPLES SAVINGS & INVESTMENTS,  
INC.,

Third-Party Defendants.

**F I L E D**

**SEP 18 1990**

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

Civil Action No. 89-C-958-B  
Case No. CJ-89-5347  
(Tulsa County District Court)

**JOINT STIPULATION OF DISMISSAL**

The Third-Party Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney; the Plaintiff, Fidelity Financial Services, Inc., an Oklahoma corporation, by their attorney of record, Cliff Stark; the Defendants, James M. Adkins and Cornetta Adkins, by their attorney of record Ty H. Stites; the Defendant, Tulsa Development Authority, by its attorney of record Doris L. Fransein; and the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, by J. Dennis Semler, Assistant District

Attorney, hereby jointly stipulate that this action may be dismissed without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

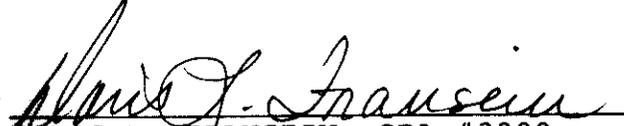
UNITED STATES OF AMERICA

TONY M. GRAHAM  
United States Attorney

PETER BERNHARDT, OBA #741  
Assistant United States Attorney  
3600 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

  
DON E. GASAWAY, OBA #3276  
Attorney for Plaintiff,  
Fidelity Financial Services, Inc.

  
TY H. STITES, OBA #11176  
Attorney for Defendants,  
James M. Adkins and Cornetta Adkins

  
DORIS L. FRANSEIN, OBA #3000  
Attorney for Defendant,  
Tulsa Development Authority

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

FILED

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

SEP 18 1990

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES OTIS FOWLKES

Defendant.

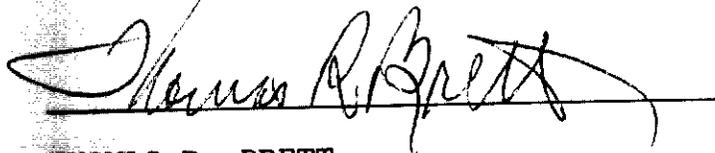
No. 89-CR-28-01-B ✓

90-C-776-B

ORDER

Currently before the Court is Defendant James Otis Fowlkes' Motion to Modify or Reduce Sentence pursuant to Fed.R.Cr.P. 35 (b). In its order of May 18, 1990, the Court denied an earlier Rule 35(b) Motion by the defendant. The Court reiterates its statement in that order that the government must move for a reduction of sentence under Rule 35(b) before such motion can be entertained by the Court. As the government has not so moved, defendant's motion is denied.

IT IS SO ORDERED, this 18<sup>th</sup> day of September, 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**

**SEP 18 1990**

ANTHONY BARNHART SHATOS, )

Petitioner, )

vs. )

EDWARD EVANS, WARDEN AND THE )  
ATTORNEY GENERAL OF THE STATE )  
OF OKLAHOMA, )

Respondents. )

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

No. 90-C-551-E

**O R D E R**

The Court has for consideration the Report and Recommendations of the Magistrate filed August 27, 1990. 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 Recommendations of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is hereby dismissed.

ORDERED this 18<sup>th</sup> day of September, 1990.



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

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

FILED

SEP 18 1990

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

THELMA R. SPENCER and )  
ROBERT E. SPENCER, )  
individually and as husband )  
and wife, )

Plaintiffs, )

vs. )

No. 90-C-640-E

KEVIN COLE; AMERICAN FAMILY )  
MUTUAL INSURANCE COMPANY, )  
a foreign corporation; )  
UNITED SOUTHERN ASSURANCE )  
COMPANY, a foreign )  
corporation; PORT CASTAWAYS; )  
KATHY HIX, as owner, )  
proprietor and/or license )  
holder of Port Castaways; and )  
PHILLIPS 66 COMPANY, a )  
Delaware corporation, and a )  
subsidiary of PHILLIPS )  
PETROLEUM COMPANY, a Delaware )  
corporation, d/b/a WASHINGTON )  
EXPRESS CONVENIENCE-DELI, )  
a/k/a PHILLIPS 66 FOOD PLAZA, )

Defendants. )

ORDER

NOW on this 18<sup>th</sup> day of September, 1990, this matter comes on upon Plaintiffs' Motion to Dismiss.

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

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that defendant, Phillips Petroleum Company, ONLY, be dismissed without prejudice as to refileing.

S/ JAMES O. ELISON

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF MAILING

I, TED G. VOGLE, hereby certify that on the \_\_\_ day of September, 1990, I mailed a true and correct copy of the above and foregoing instrument to the following: Janet M. Reasor, 1272 Adams Building, Bartlesville, Oklahoma 74004, Mr. Wm. S. Hall, Park Centre, Suite 1400, 525 South Main, Tulsa, Oklahoma 74103-4409, Mr. John Dunnery, 2417 East Skelly Drive, Tulsa, Oklahoma 74105, and to Johnny P. Akers, 117 East Frank Phillips, Bartlesville, Oklahoma 74003, with proper postage thereon fully prepaid.

---

TED G. VOGLE

*entered*

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

**FILED**

SEP 17 1990

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

FEDERAL DEPOSIT INSURANCE )  
CORPORATION, in its capacity )  
as Receiver for First National )  
Bank and Trust Company of )  
Cushing, Oklahoma, )

Plaintiff, )

vs. )

No. 90-C-341-C

JERRY CONREY and JOSEPH )  
E. MOUNTFORD, )

Defendants. )

**ORDER**

Before the Court is the motion of plaintiff Federal Deposit Insurance Corporation (FDIC) to dismiss the counterclaim filed by Joseph E. Mountford. The FDIC asserts dismissal based on lack of subject matter jurisdiction in that the counterclaim raises allegations sounding in tort, and therefore defendant Mountford must first exhaust administrative remedies and then assert his claim against the proper party, the United States.

In his defense and counterclaim Mountford asserts that in May, 1985, he was approached by plaintiff's predecessor (a representative from the First National Bank of Cushing, hereafter "Bank") who inquired whether he would be interested in selling the property which is the subject of this action. Mountford asserts that he agreed to sell the property for \$160,000 and that the Bank was to apply the purchase money proceeds in toto to a note and mortgage held by the Bank against another property held by

Mountford (his home and farm). Defendant Conrey was the purchaser of the subject property. Mountford asserts that on May 31, 1985, Mountford met with a vice president and loan officer of the Bank and Conrey. At this meeting, Mountford executed a warranty deed in favor of Conrey. Conrey signed a promissory note in favor of the Bank and, in turn, mortgaged the subject property as collateral for the note.

Mountford asserts that although the loan papers show that the funds were loaned to Conrey for purchase money, the bank records reveal that Mountford never received the purchase money. Mountford contends that he had repeatedly made demand on Conrey for the purchase money, but was told the sale had not "closed".

On August 9, 1989, Mountford brought suit against Conrey in state court for fraud and misrepresentation in the sale of the subject property. The parties settled the case by Conrey executing to Mountford a quitclaim deed in the subject property.

On March 10, 1988, the Bank was declared insolvent and FDIC was appointed as Receiver and successor in interest to the assets of the Bank.

The FDIC brings this action against defendant Conrey seeking collection under the promissory note and foreclosure against the property.

In his pleadings, Mountford has admitted execution and delivery of the warranty deed to the subject property. He asserts, however, because he never received consideration for the deed, that the deed is invalid and thus so is Conrey's subsequent mortgage given to the Bank. Mountford contends that since the loan

agreement reflects that he did not receive the purchase money, the FDIC had knowledge of the lack of consideration in the transfer of the deed. As affirmative relief against the FDIC, Mountford seeks declaratory judgment that both the warranty deed and the mortgage are void for lack of consideration; recovery of lost rental income and damages for alleged destruction, deterioration and waste to said property.

In FDIC v. Kasal, No. 89-5491 (8th Cir. Aug. 31, 1990) the Eighth Circuit recently issued an opinion that is decisive of the matters raised herein. In Kasal, the court held that any type of secret unwritten side agreement regarding payment or non-payment on a note which tends to diminish or defeat the interests of FDIC, is barred by 12 U.S.C. §1823(e). Accordingly, any unwritten agreement as to Conrey's obligation to pay Mountford cannot be asserted by Mountford against the FDIC to defeat its interest in the outstanding promissory note or property held as collateral. Public policy behind §1823(e) supports this conclusion. As stated by the Eighth Circuit: "To allow appellants the benefit of the alleged unapplied payments would undermine the statutes's purpose of allowing federal and state bank examiners to rely on a bank's records." (slip opinion at p.3).

However, the Eighth Circuit determined that under the recent amendment to 12 U.S.C. §1819<sup>1</sup> federal courts now have subject jurisdiction to hear counterclaims against the FDIC as receiver of

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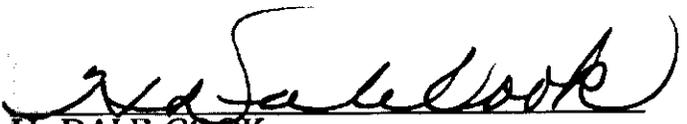
<sup>1</sup>12 U.S.C. §1819 (Fourth) of the Federal Deposit Insurance Act has recently been amended by Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub.L.No. 101-73, §209(3) and (4), 103 Stat. 183, 216-17 (1989).

a failed bank. In Kasal, the defendants filed counterclaims (and affirmative defenses) alleging breach of contract, negligence, promissory estoppel and misrepresentation. The court held, however, that since these claims are based on the secret unwritten side agreement with the bank president, the agreement cannot be enforced against the FDIC. The Eighth Circuit dismissed the counterclaims with prejudice.

The Court herein concludes that it has subject matter jurisdiction to determine Mountford's counterclaim. The counterclaim does arise out of an alleged secret unwritten agreement with Conrey and accordingly is unenforceable against the FDIC.

It is therefore the Order of the Court that the motion of FDIC to dismiss the counterclaim filed by defendant Joseph E. Mountford is hereby GRANTED. The counterclaim is dismissed with prejudice.

IT IS SO ORDERED this 17<sup>th</sup> day of September, 1990.

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

*Certain  
As only*

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

FILED  
SEP 13 1990  
U.S. DISTRICT COURT

NINTH DISTRICT PRODUCTION CREDIT )  
ASSOCIATION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
BILLY GENE DOOLIN, et al., )  
 )  
Defendants. )

Case No. 87-C-546 C

ORDER DISMISSING WOOD OIL CO.,  
KAMO ELECTRIC COOPERATIVE, INC.  
AND NORWEST BANK MINNEAPOLIS, N.A.

On the 13<sup>th</sup> day of Sept., 1990, this matter comes on for hearing before the Court. The Court FINDS as follows:

1. That the defendants, Wood Oil Co., KAMO Electric Cooperative, Inc. and Norwest Bank Minneapolis, N.A., will not be substantially prejudiced by their dismissal in the above-entitled action, and
2. That counsel for the defendants, Wood Oil Co., KAMO Electric Cooperative, Inc. and Norwest Bank Minneapolis, N.A., have been consulted by counsel for NDPCA and counsel for such defendants have no objection to the dismissal of such defendants in the above-entitled action.

IT IS THEREFORE ORDERED that the defendants, Wood Oil Co., KAMO Electric Cooperative, Inc. and Norwest Bank Minneapolis, N.A., be, and hereby are, dismissed without prejudice in the above-entitled action, with each party to bear its own costs, and that such dismissal is without prejudice to

plaintiff's cause of action in any respect or against any other parties hereto.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

NINTH DISTRICT PRODUCTION  
CREDIT ASSOCIATION

By:   
G. Blaine Schwabe III - OBA #8001  
Kevin M. Coffey - OBA #11791

Of the Firm:

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ATTORNEYS FOR NINTH DISTRICT  
PRODUCTION CREDIT ASSOCIATION

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

*entered*

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

GEORGE S. PITNER; LARAYNE D. )  
PITNER; COUNTY TREASURER, Creek )  
County, Oklahoma; and BOARD OF )  
COUNTY COMMISSIONERS, Creek )  
County, Oklahoma, )

Defendants. )

CIVIL ACTION NO. 88-C-1501-C

DEFICIENCY JUDGMENT

This matter comes on before the Court this 13<sup>th</sup> of Sept, 1990, on the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment which Motion was filed on the 8th day of August, 1990, and a copy of the Motion was mailed to George S. Pitner and LaRayne D. Pitner, Box 463, Verden, Oklahoma 73092, and all counsel of record. The Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, appeared by Tony M. Graham, United States Attorney for the Northern District of Oklahoma through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendants, George S. Pitner and LaRayne D. Pitner, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on May 16, 1989, in favor of the Plaintiff United States of America, and against the Defendants, George S. Pitner and LaRayne D. Pitner, with interest and costs to date of sale is \$40,406.59.

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

The Court further finds that the appraised value of the real property at the time of sale was \$23,500.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered May 16, 1989, for the sum of \$20,809.00 which is less than the market value.

The Court further finds that the said Marshal's sale was confirmed pursuant to the Order of this Court on the 7th day of September, 1990.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, George S. Pitner and LaRayne D. Pitner, as follows:

Principal Balance as of 5/16/89	\$31,430.87
Interest	6,100.90
Late Charges to Date of Judgment	318.00
Appraisal by Agency	425.00
Management Broker Fees to Date of Sale	987.42
Abstracting	201.00
Publication Fees of Notice of Sale	123.95
Appraisers' Fees	105.00
Taxes	<u>714.45</u>
TOTAL	\$40,406.59
Less Credit of Appraised Value	- <u>23,500.00</u>
DEFICIENCY	\$16,906.59

plus interest on said deficiency judgment at the legal rate of 7.95 percent per annum from date of deficiency judgment until

paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, George S. Pitner and LaRayne D. Pitner, a deficiency judgment in the amount of \$16,906.59, plus interest at the legal rate of 7.95 percent per annum on said deficiency judgment from date of judgment until paid.

(Signed) H. Dale Cook

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UNITED STATES DISTRICT JUDGE

NNB/css

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

BILLY RAY MOFFETT,  
Plaintiff,

vs.

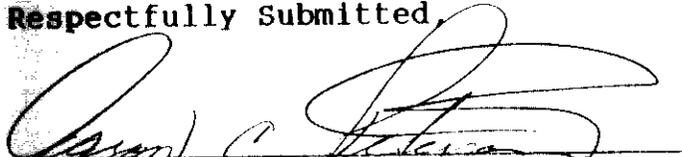
UNITED STATES OF AMERICA,  
Defendant.

Case No. 90-C-401 C

DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, BILLY RAY MOFFETT, and dismisses this action with prejudice in that this case has been settled by mutual agreement between the parties hereto.

Respectfully Submitted,



Aaron C. Peterson  
Attorney for Plaintiff  
5200 South Yale Avenue, Suite 601  
Tulsa, Oklahoma 74135-7491  
918/481-5767



Billy Ray Moffett, Plaintiff