

**FILED**

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

1990

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

UNITED STATES OF AMERICA

vs.

REGINALD JASPER

Defendant.

CIVIL ACTION NO. 90-C-732-B

AGREED JUDGMENT AND ORDER OF PAYMENT

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

1. This Court has jurisdiction over the subject matter of this litigation and over all parties thereto. The Complaint filed herein states a claim upon which relief can be granted.
2. The defendant hereby acknowledges and accepts service of the Complaint filed herein.
3. The defendant hereby agrees to the entry of Judgment in the principal sum of \$1,654.83, plus accrued interest of \$7.19, until judgment, plus interest thereafter at the legal rate until paid, plus costs of this action, until paid in full.
4. Plaintiff's consent to the entry of this Judgment and Order of Payment is based upon certain financial information which defendant has provided it and the defendant's express representation to Plaintiff that he is unable to presently pay the amount of indebtedness in full and the further representation

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

(a) Beginning on or before the 15th day of October, 1990, the defendant shall tender to the United States a check or money order payable to the U.S. Department of Justice, in the amount of \$50.00, and a like sum on or before the 15th day of each following month until the entire amount of the Judgment, together with the costs and accrued postjudgment interest, is paid in full.

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

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

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

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Reginald Jasper, in the principal amount of \$1,654.83, plus accrued interest in the amount of \$7.19, plus interest at the rate of 3% until judgment, plus interest thereafter at the current legal rate of 7.51 percent per annum until paid, plus the costs of this action.

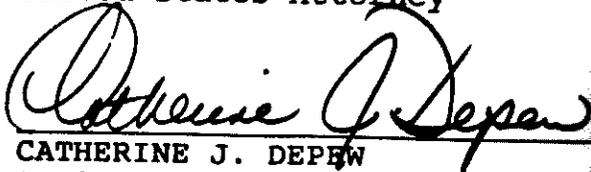
S/ THOMAS R. BRETT  

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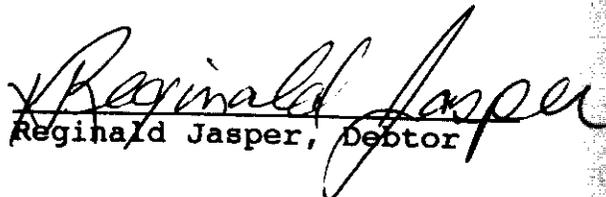
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

TONY M. GRAHAM  
United States Attorney

  
Catherine J. Depew

CATHERINE J. DEPEW  
Assistant United States Attorney

  
Reginald Jasper, Debtor

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

RACHEL BURRIS  
Plaintiff(s),

vs.

No. 89-C-822-C

FILED

OCT 31 1990 *jm*

AWC, INC  
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 31 day of oct., 1990.

*W. Dale Book*  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

NANCY E. BROWN a/k/a NANCY E.  
ADAIR; JACK BROWN; COUNTY  
TREASURER, Delaware County,  
Oklahoma; and BOARD OF COUNTY  
COMMISSIONERS, Delaware  
County Oklahoma,

Defendants.

CIVIL ACTION NO. 90-C-823-B

FILED

OCT 31 1990

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

ORDER

Upon the Motion of the United States of America acting on behalf of the Farmers Home Administration by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, to which no objections have been filed, it is hereby ORDERED that this action shall be dismissed without prejudice.

Dated this 31<sup>st</sup> day of Oct, 1990.

*Shouers*  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:  
TONY M. GRAHAM  
United States Attorney

*KBA*  
KATHLEEN BLISS ADAMS, OBA #13625  
Assistant United States Attorney  
3600 United States Courthouse  
Tulsa, OK 74103  
(918) 581-7463

KBA/esr

**FILED**

OCT 31 1990

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

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

MICHAEL GLENN WILSON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 HALLIBURTON SERVICES, INC., )  
 )  
 Defendant. )

No. 90-C 563 B

**ORDER OF DISMISSAL**

On motion of all parties, the petition and all other claims for relief herein are hereby dismissed with prejudice, with each party to bear his or its own attorneys' fees, costs, and expenses.

DATED this 31 day of Oct, 1990.

S/ THOMAS R. BRETT

\_\_\_\_\_  
THE HONORABLE THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

OCT 31 1990

W. G. HARRIS, CLERK  
U.S. DISTRICT COURT

SONNY THOMPSON, a minor, by and )  
through his Father and Next Friend )  
CHARLIE THOMPSON; et al., )

Plaintiffs )

vs. )

Case No. 89-C-362-B

HORACE MANN INSURANCE COMPANY )  
a Florida corporation, )

Defendant. )

ORDER

This matter comes on for consideration upon the Motion To Amend Judgment filed by the Defendant, Horace Mann Insurance Company, seeking to exclude prejudgment interest allowed by the Court in its Judgment entered herein on September 24, 1990, filed September 26, 1990.

Defendant argues that, irrespective of whether or not prejudgment interest applies to judgments based upon uninsured motorist coverage, it does not matter where, as here, the damages without consideration of interest exceed the policy limits. In this case the parties stipulated the damages exceeded the policy liability limits of \$300,000.00.<sup>1</sup> The Defendant argues this is the

<sup>1</sup> Plaintiffs had argued the policy limits were \$600,000.00, i.e. \$200,000.00 for each of the three separate policies, because the injured minor's parents had an additional claim for medical expenses incurred on behalf of their minor child. The parents urged upon the Court the limits of liability were increased thereby. The Court ruled otherwise in its Order dated September 24, 1990.

total liability of Defendant, save and except post-judgment interest.<sup>2</sup> The Court agrees. Under Oklahoma law, insurance carriers are obligated to pay an amount not exceeding the primary coverage, even including prejudgment interest, if applicable under 12 O.S. § 727. Morgan v. Graham, 228 F.2d 625 (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 Ok. 465, 160 P. 465 (1916); Maryland Casualty Co. v. Peppard, 53 Ok. 515, 157 P. 106 (1915); and Bossert v. Douglas, 557 P. 2d 1164 (Okla. Ct. App. 1976),

Reserved for decision another day is the issue of whether prejudgment interest is applicable to a judgment against an uninsured motorist carrier under 12 O.S. § 727, where the entire amount, including interest, does not exceed the policy limits.

The Court concludes the Defendant's Motion To Amend Judgment should be and the same is hereby SUSTAINED. The Court enters simultaneously herewith an Amended Judgment deleting prejudgment interest therefrom.

IT IS SO ORDERED this 31<sup>st</sup> day of October, 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> Post-judgment interest is not an issue herein in that the Defendant has paid to the Plaintiffs the sum of \$300,000.00, thereby mooting any further consideration.

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

FILED

OCT 31 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 ✓

A M E N D E D 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>, with 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. Each party is to pay its

<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.

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own attorneys' fees. Costs are assessed against Defendant, Horace Mann Insurance Company, if timely applied for under Local Rule 6.

DATED this 31<sup>st</sup> day of October, 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

OCT 31 1990

U.S. DISTRICT COURT

CLAUDE JAY ANDERSON, )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 FARMERS INSURANCE COMPANY, INC., )  
 a Kansas Insurance Corp., )  
 )  
 Defendant, )  
 )  
 and )  
 )  
 PHYSICIAN'S HEALTH PLAN OF )  
 OKLAHOMA, INC., )  
 )  
 Intervenor. )

89-C-193-B

ORDER

Before the Court for decision is the Motion for Summary Judgment of Intervenor Physician's Health Plan of Oklahoma, Inc. ("PHP"), regarding its claim of subrogation.

PHP is a health maintenance organization, which paid for health care services in the amount of \$17,825.78 on behalf of the Plaintiff, Claude Jay Anderson ("Anderson"), pursuant to a certificate of coverage issued to Anderson's wife. The medical expenses resulted from an automobile accident Plaintiff had, allegedly due to the negligence of Shelly Renee Tucker ("Tucker").

In the case before the Court, Anderson is seeking to recover damages from the Defendant, Farmers Insurance Company, Inc. ("Farmers"), based upon two insurance policies for uninsured/underinsured motorist coverage ("policies"), each in the amount of \$100,000. Anderson alleges that Tucker is an

uninsured/underinsured motorist under the terms of the policies.<sup>1</sup>

PHP argues that, by virtue of a subrogation clause contained in the certificate of coverage, it is entitled, as a matter of law, to recover the medical expenses which it has incurred for Anderson's benefit as a first priority claim against any proceeds recovered by Anderson pursuant to the Farmers' policies or from any liability insurance covering Tucker.

The certificate of coverage issued by PHP contains the following subrogation clause:

Upon providing Health Services under the Contract, PHP shall be subrogated to the Covered Person's rights of recovery from any third party, including his employer, alleged to be legally responsible to such Covered Person. PHP may require an assignment of said rights from Covered Person, to the extent of the reasonable value of services and benefits provided by it, plus reasonable costs of collection.

The Covered Person shall cooperate with PHP in assisting it to protect its legal rights under these subrogation provisions and acknowledges that PHP's subrogation rights shall be considered as the first priority claim against any such third party, to be paid before any other claims which may exist are paid, including claims for general damages by the Covered Person. The Covered Person shall do nothing to prejudice PHP's rights under this provision, either before or after the need for services or benefits under the Contract. PHP may, at its option, take such action as may be necessary and appropriate to preserve its rights under these subrogation provisions, including the right to bring suit in the name of the Covered Person. PHP may collect, at its option, such amounts from the proceeds of any settlement or judgment that

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<sup>1</sup> On July 6, 1990, this Court denied Farmers' Motion to Dismiss and sustained its Motion for Partial Summary Judgment on the issue of its bad faith in dealing with Anderson's claim.

may be recovered by such Covered Person or his legal representative, regardless of whether or not the Covered Person has been fully compensated. Any such proceeds of settlement or judgment shall be held in trust by the Covered Person for the benefit of PHP under these subrogation provisions, and PHP shall be entitled to recover reasonable attorney fees from such Covered Person incurred in collecting proceeds held by him.

On January 29, 1988, upon notice of Anderson's filing of a state court action seeking to recover for such injuries, PHP issued its Notice of Subrogation Lien Claim and Priority Thereof, asserting its lien in the amount of at least \$17,825.78 upon any sums of money recovered or collected by Anderson from any third party alleged to be legally responsible to him.

PHP asserts its rights of subrogation against Farmers based on the contractual obligations of Farmers to Anderson. In short, PHP claims that Farmers is a third party "legally responsible" to Anderson based on the policies. Anderson, on the other hand, denies that Farmers falls within the purview of the phrase "legally responsible"; he maintains that only the tortfeasor or one responsible under the doctrine of respondeat superior or by way of indemnity satisfies the definition of the phrase "legally responsible."

PHP's contractual right to subrogation against any proceeds paid by Farmers derives from Anderson's right of recovery, irrespective of whether Anderson's right arises from tort or contractual liability. Both the Tenth Circuit Court of Appeals and the Oklahoma Supreme Court have held that an insurance company's

right of subrogation may be asserted based upon a third party's contractual obligations to the insurance company's insured, when the insurance company has the claim of its insured for loss under the terms of its policy. See PaR Truck Leasing, Inc. v. Bonanza, Inc., 425 F.2d 695 (10th Cir. 1970); and Commercial Union Fire Insurance Co. v. Kelly, 389 P. 2d 641 (Okla. 1964). While those cases did not specifically interpret language in a subrogation clause, they nevertheless articulated general principles of subrogation law applicable to the case at bar.

PHP is entitled to a priority claim to any sums recovered by Anderson, whether from Farmers, the tortfeasor Tucker, or any liability insurer. The extent of PHP's claim is, of course, limited to the amount which it incurs or is required to pay for Anderson's medical expenses as a result of the accident.

PHP's right to recover has priority over Plaintiff attorney's lien. While the Oklahoma statutes (5 O.S. §6-9) and cases decided thereunder do not specifically address this issue, the source cited by Plaintiff counsel in support of its claim that PHP's subrogation interest should be subject to the payment of a fee to Plaintiff counsel explicitly controverts that proposition in the latter portion of the section quoted in counsel's brief:

Nevertheless, an attorney's lien on the client's interest in the judgment is acquired subject to existing and known equities, and is subordinate to prior liens upon a claim or the right to an award. Also, an attorney's lien is subject to any rights in the property or fund of his client which are valid against the client at the time the lien attaches.

See 7A CJS, Attorney and Client, §384.

Insofar as the subrogation clause in the certificate of coverage gave PHP a valid and enforceable right to the sums recovered by Anderson, the attorney's lien was necessarily taken subject to PHP's claim. Nevertheless, the Court is concerned that if PHP as subrogee should ultimately benefit from the efforts of Plaintiff's attorney, it ought rightfully pay a portion of the fees and expenses incurred in securing the recovery. This Court may deem it proper to hold a hearing at a later stage to determine in accordance with principles of equity what fees, if any, PHP should pay to Plaintiff's attorney. See Carter v. Wooley, 521 P. 2d 793 (Okla. 1974).

Having thus considered PHP's Motion for Summary Judgment in favor of its claim of subrogation, the Court finds that the Motion should be and is hereby SUSTAINED. Accordingly, PHP shall have a priority claim over and above Plaintiff, Anderson, to any sums recovered from Defendant, Farmers, as well as from any sums recovered from liability insurance coverage under which Tucker is insured. The priority claim shall be at least in the amount of \$17,825.78, and shall include any additional sums which PHP incurs for the payment of medical expenses on behalf of Anderson as a result of the accident with Tucker. Furthermore, the Court will consider Plaintiff Attorney's request for payment of fees and expenses from PHP at a later date.

IT IS SO ORDERED this 31<sup>ST</sup> day of OCTOBER, 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

MIDAMERICA FEDERAL SAVINGS AND )  
LOAN ASSOCIATION, )

Plaintiff, )

v. )

No. 88-C-1341-B )

SHERIDAN PROPERTIES, INC., )  
a Tennessee Corporation; )  
ROBERT J. PHILLIPS; WANDA N. )  
PHILLIPS; JUSTIN LYON; VIRGYL )  
D. JOHNSON; RAYMOND )  
M. BRIGGS and HELEN P. BRIGGS; )  
ERWIN LEE KING and EILEEN L. KING; )  
JAMES O. SHOEMAKER; MELANIE )  
SHOEMAKER; THOMAS C. HARMON; )  
DARVEN L. BROWN; FINIS W. SMITH; )  
DAVID W. GRAHAM; JOAN GRAHAM; )  
METROPOLITAN FEDERAL BANK, FSB, )  
formerly doing business as )  
Metropolitan Federal Savings )  
and Loan Association; and )  
TURNER CORPORATION OF )  
OKLAHOMA, INC., )

Defendants. )

and )

GREEN COUNTRY APPRAISAL SERVICE, )  
INC., and Oklahoma corporation, )

Third-Party Defendant. )

**F I L E D**

OCT 31 1990

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

**ORDER OF DISMISSAL**

Upon Motion of the Defendant, Raymond M. Briggs, and for good cause shown, all of the remaining claims of Raymond M. Briggs against Virgyl Johnson, and Pantego Properties are dismissed, each party to bear his or its own costs.

S/ THOMAS R. BRETT  
United States District Judge

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

MIDAMERICA FEDERAL SAVINGS AND )  
LOAN ASSOCIATION, )

Plaintiff, )

v. )

No. 88-C-1344-B )

SHERIDAN PROPERTIES, INC., )  
a Tennessee Corporation; )  
ROBERT J. PHILLIPS; WANDA N. )  
PHILLIPS; JUSTIN LYON; VIRGYL )  
D. JOHNSON; RAYMOND )  
M. BRIGGS and HELEN P. BRIGGS; )  
ERWIN LEE KING and EILEEN L. KING; )  
JAMES O. SHOEMAKER; MELANIE )  
SHOEMAKER; THOMAS C. HARMON; )  
DARVEN L. BROWN; FINIS W. SMITH; )  
DAVID W. GRAHAM; JOAN GRAHAM; )  
METROPOLITAN FEDERAL BANK, FSB, )  
formerly doing business as )  
Metropolitan Federal Savings )  
and Loan Association; and )  
TURNER CORPORATION OF )  
OKLAHOMA, INC., )

Defendants. )

and )

GREEN COUNTRY APPRAISAL SERVICE, )  
INC., and Oklahoma corporation, )

Third-Party Defendant. )

**F I L E D**

OCT 31 1990

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

**ORDER OF DISMISSAL**

Upon Motion of the Defendant, Raymond M. Briggs, and for good cause shown, all of the remaining claims of Raymond M. Briggs against Virgyl Johnson, David W. Graham, Joan Graham, Darven L. Brown and Finis W. Smith are dismissed, each party to bear his or its own costs.

S/ THOMAS R. BRETT  
\_\_\_\_\_  
United States District Judge

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

10-31-90 rw

CHAMP JENKINS,

Plaintiff,

vs.

No. 88-C-677-C

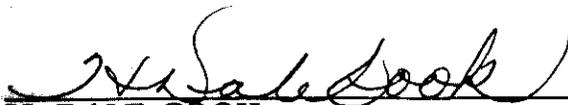
LOUIS W. SULLIVAN, M.D.,  
Secretary of Health and  
Human Services,

Defendant.

ORDER

This action is hereby remanded to the Secretary of Health and Human Services for further development of the record, in accordance with the Order and Judgment of the United States Court of Appeals for the Tenth Circuit.

IT IS SO ORDERED this 30<sup>th</sup> day of October, 1990.

  
H. DALE COOK

Chief Judge, U. S. District Court

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

UNITED STATES OF AMERICA,

Plaintiff,

LEON COOPER; WILLIE LEE WEARY;  
JACQUELINE A. WEARY a/k/a  
JACQUELINE A. FISHER; TULSA  
TEACHERS CREDIT UNION; COUNTY  
TREASURER, Tulsa County,  
Oklahoma; and BOARD OF COUNTY  
COMMISSIONERS, Tulsa County,  
Oklahoma,

Defendants.

OCT 30 1990

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

CIVIL ACTION NO. 90-C-186-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 29 day  
of October, 1990. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendants, Leon Cooper appears through James A.  
Beckert; 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, Willie Lee Weary, Jacqueline A. Weary a/k/a  
Jacqueline A. Fisher and Tulsa Teachers Credit Union, appear not,  
but make default.

The Court being fully advised and having examined the  
file herein finds that the Defendant, Leon Cooper, acknowledged  
receipt of Summons and Complaint on March 16, 1990; that  
Defendant, Tulsa Teachers Credit Union, acknowledged receipt of  
Summons and Complaint on March 12, 1990; that Defendant, County

Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 8, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 7, 1990.

The Court further finds that the Defendants, Willie Lee Weary and Jacqueline A. Weary a/k/a Jacqueline A. Fisher, 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 May 31, 1990, and continuing to July 5, 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, Willie Lee Weary and Jacqueline A. Weary a/k/a Jacqueline A. Fisher, 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, Willie Lee Weary and Jacqueline A. Weary a/k/a Jacqueline A. Fisher. 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 Administrator of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendant, Leon Cooper, filed his Answer on April 5, 1990; that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed its Answer on March 22, 1990; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on March 22, 1990; and that the Defendants, Willie Lee Weary, Jacqueline A. Weary a/k/a Jacqueline A. Fisher, and Tulsa Teachers Credit Union have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on March 3, 1988, Willie L. Weary and Jacqueline A. Weary a/k/a Jacqueline A. Fisher filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma,

Case No. 88-00525-C. On June 20, 1988, Discharge of Debtor was entered releasing the debtors from all dischargeable debts. The subject bankruptcy case was closed on September 28, 1988.

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 Sixteen (16), Block Nineteen (19), VALLEY VIEW ACRES ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded Plat thereof.

The Court further finds that on February 21, 1974, the Defendant, Leon Cooper, 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 \$9,500.00, payable in monthly installments, with interest thereon at the rate of 6 percent (6%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Leon Cooper, 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 21, 1974, covering the above-described property. Said mortgage was recorded on February 22, 1974, in Book 4107, Page 922, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Leon Cooper, 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, Leon Cooper, is indebted to the Plaintiff in the principal sum of \$6,974.82, plus interest at the rate of 6 percent per annum from May 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$253.59 (\$20.00 docket fee; \$1.44 fee for service of Summons and Complaint; and \$232.15 publication fee) accrued and accruing.

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

The Court further finds that the Defendants, Tulsa Teachers Credit Union, Willie Lee Weary, and Jacqueline A. Weary a/k/a Jacqueline A. Fisher are in default and claim no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Leon Cooper, in the principal sum of \$6,974.82, plus interest at the rate of 6 percent per annum from May 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 in the amount of \$253.59 (\$20.00 docket fee; \$1.44 fee for service of Summons and

Complaint; and \$232.15 publication fee) accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, Tulsa Teachers Credit Union, Willie Lee Weary, and Jacqueline A. Weary a/k/a Jacqueline A. Fisher have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Leon Cooper, 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.

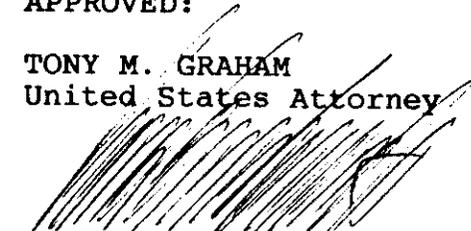
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

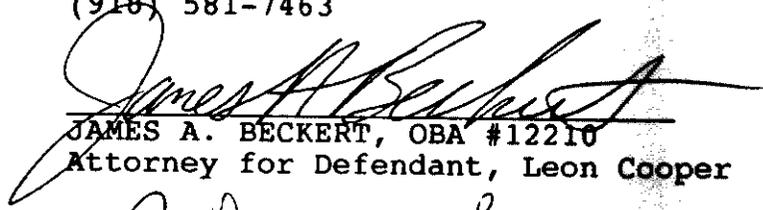
S/ JAMES O. ELLISON

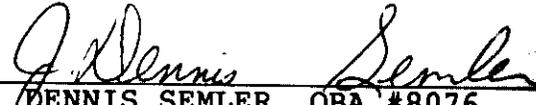
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

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

  
JAMES A. BECKERT, OBA #12210  
Attorney for Defendant, Leon Cooper

  
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-186-E

PB/esr

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

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

Plaintiff,

v.

HERBIE MIKELBERG,

Defendant.

Civil Action No. 90 C-440 E

**FILED**

OCT 30 1990

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

JUDGMENT

Nature of this Action

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.

Jurisdiction of the Court

2. This Court has jurisdiction of this cause of action under the Trademark Laws of the United States, 15 U.S.C. § 1121, and under the Judicial Code of the United States, 28 U.S.C. §§ 1338(a) and 1338(b).

Parties

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

4. Defendant, Herbie Mikelberg, is an individual residing in the Northern District of Oklahoma and having an address of 8888 South Lewis, Tulsa, Oklahoma 74137.

### Plaintiff's Federal Trademark Registrations

5. In accordance with the provisions of Federal law, Clark has obtained the following United States Trademark Registrations relating the Mark:

<u>Mark</u>	<u>Reg. No.</u>	<u>Issue Date</u>	<u>Goods/Services</u>
ESKIMO JOE'S	1,481,454	10-13-87	Restaurant services and retail clothing store services
ESKIMO JOE'S AND DESIGN services	1,501,689	08-23-88	Restaurant services and retail clothing store

### Plaintiff's Common Law Trademark

6. Since about 1976, Clark has used the following slogan on the reverse side of his tee shirts and sweatshirts: "Stillwater's Jumpin' Little Juke Joint". Although Clark has not as yet filed for Federal Trademark Registration on the slogan, Clark asserts trademark rights therein and asserts his common law rights to this trademark. This Mark will hereinafter be referred to as the "SLOGAN".

### Federal Statutory Trademark Infringement

7. The Court finds that the activities of the Defendant complained of in the Complaint constitute Federal trademark infringement under Title 15 U.S.C. § 1114(1).

8. The Court finds that the activities of the Defendant complained of in the Complaint constitute a false designation of origin and/or false description or representation of Defendant's services and is unlawful under 15 U.S.C. § 1125(a).

### Common Law Trademark Infringement and Unfair Competition

9. The Court finds that the activities of the Defendant complained of in the Complaint further constitute trademark infringement under the common law of the State of

Oklahoma.

10. The Court finds that the activities of the Defendant complained of in the Complaint further constitute unfair competition under the common law of the State of Oklahoma.

Injunction

11. The Defendant, Herbie Mikelberg, his agents, servants, employees and all other persons acting in concert with him, or any or all of them, are hereby permanently enjoined and restrained from using, in connection with the promotion, advertising or sale of tee shirts or other articles, the mark ESKIMO JOE'S or ESKIMO JOKE'S or the SLOGAN, and any mark or name confusingly similar thereto.

Accounting

12. The Court finds that the Plaintiff, Stanley K. Clark, dba Eskimo Joe's, and dba Joe's Clothes, has been damaged by the activities of the Defendant, Herbie Mikelberg, by an amount which has not yet been determined; therefore the Court orders an accounting to determine the profits of the Defendant resulting from his infringement and unfair competition, and that such profits be paid over to Plaintiff as an equitable remedy.

Attorney Fees

13. Pursuant to the provision of 15 U.S.C. § 1117, reasonable attorney fees are awarded to Plaintiff. The Plaintiff shall file an application for attorney fees with supporting documentation within fifteen (15) days of the date of this Judgment.

14. Plaintiff shall recover its costs of this action.

S/ JAMES O. ELLISON

10-29-90  
Date

\_\_\_\_\_  
United States District Judge

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

FILED  
OCT 30 1990

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

JIMMY K. BLACK

VS.

CASE NO. 90-C-0022E

BURLINGTON NORTHERN  
RAILROAD COMPANY

ORDER DISMISSING WITH PREJUDICE

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

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

DATED this 29 day of October, 1990.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

ROBERTS, MARRS & CARSON

BY:

Richard D. Marrs  
C. Clay Roberts, III  
OBA # 7632  
Richard D. Marrs  
OBA # 5705  
Timothy S. Gilpin  
OBA # 11844  
110 South Hartford  
Suite 111  
Tulsa, OK 74120  
(918) 582-6557

ATTORNEYS FOR PLAINTIFF,  
JIMMY K. BLACK

BY:

*J. A. Mackechnie*  
John A. Mackechnie  
OBA # 5603  
301 N.W. 63rd, Suite 505  
Oklahoma City, OK 73116  
(405) 843-7711

H. Daniel Spain  
Bar No. 18869700  
2600 Two Houston Center  
909 Fannin Street  
Houston, TX 77010  
(713) 650-6000

of WOMBLE & ASSOCIATES

ATTORNEYS FOR DEFENDANT,  
BURLINGTON NORTHERN RAILROAD  
COMPANY

KNIGHT & WILKERSON

BY:

*Bruce N. Powers*  
Bruce N. Powers  
OBA # 12522  
P. O. Box 1560  
Tulsa, OK 74101-1560  
(918) 584-6457

ATTORNEYS FOR THIRD-PARTY  
DEFENDANT, COMPLETE JANITORIAL  
SERVICE

ELLIOTT & MORRIS

BY:

*Eileen M. Morris*

Kenneth W. Elliott, Eileen M. Morris

OBA # 10899

119 N. Robinson, Suite 310

Oklahoma City, OK 73102

(405) 236-3600

ATTORNEYS FOR THIRD-PARTY  
DEFENDANT, CHARLES DREADFULWATER



June 18, 1990; and that Defendant, Board of County Commissioners, Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on June 19, 1990.

The Court further finds that the Defendant, Remodelers National Funding Corporation, assigned their interest in the subject real property to the United States of America on February 20, 1990 and filed said assignment in the records of Creek County, Oklahoma on Page 260 at Page 433, and should therefore be dismissed as a Defendant herein.

The Court further finds that the Defendants, Gary W. Hallemeier and Melissa K. Hallemeier, were served by publishing notice of this action in the Sapulpa Legal News, a newspaper of general circulation in Creek County, Oklahoma, once a week for six (6) consecutive weeks beginning July 26, 1990, and continuing to August 30, 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, Gary W. Hallemeier and Melissa K. Hallemeier, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstractor filed herein with respect to the last known

addresses of the Defendants, Gary W. Hallemeier and Melissa K. Hallemeier. 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 Kathleen Bliss Adams, 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 Defendants, County Treasurer, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, filed their Answer on June 21, 1990; that the Defendants, Gary W. Hallemeier and Melissa K. Hallemeier 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 Creek County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lots Fifteen (15) and Sixteen (16), Block Three (3), BURNETT'S REFINERY ADDITION to the City of Sapulpa, in Creek County, State of Oklahoma, as shown by the Recorded Plat thereof.

The Court further finds that on July 24, 1987, the Defendants, Gary W. Hallemeier and Melissa K. Hallemeier, 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 \$22,000.00, 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, Gary W. Hallemeier and Melissa K. Hallemeier, 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 July 24, 1987, covering the above-described property. Said mortgage was recorded on July 24, 1987, in Book 223, Page 1833, in the records of Creek County, Oklahoma.

The Court further finds that the Defendants, Gary W. Hallemeier and Melissa K. Hallemeier, 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,

Gary W. Hallemeier and Melissa K. Hallemeier, are indebted to the Plaintiff in the principal sum of \$21,730.59, plus interest at the rate of 10 percent per annum from August 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$206.20 (\$20.00 docket fees, \$178.20 publication fees, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of 1989 personal property taxes in the amount of \$17.27 which became a lien on the property. Said lien is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendants, Gary W. Hallemeier and Melissa K. Hallemeier, in the principal sum of \$21,730.59, plus interest at the rate of 10 percent per annum from August 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 in the amount of \$206.20 (\$20.00 docket fees, \$178.20 publication fees, \$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 Plaintiff for taxes, insurance,

abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Remodelers National Funding Corporation, has no right, title, or interest in the subject real property, and is hereby dismissed as a Defendant herein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have and recover judgment in the amount of \$17.27 for personal property taxes for the year 1989, plus the costs of this action.

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

First:

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

Second:

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

Third:

In payment of Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, in the amount of \$17.27, personal property taxes which are currently due and owing.

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

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

S/ JAMES O. ELLISON

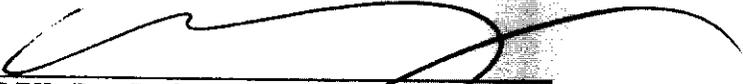
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney



KATHLEEN BLISS ADAMS, OBA #13625  
Assistant United States Attorney  
3600 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463



---

WESLEY R. THOMPSON, OBA #8993  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Creek County, Oklahoma

Judgment of Foreclosure  
Civil Action No. 90-C-531-E

KBA/esr

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

**FILED**  
OCT 30 1990

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

LEWIS AARON COOK, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MARK McCRORY, )  
 )  
 Defendant. )

90-C-210-B

ORDER

Now before the court are plaintiff's civil rights complaint pursuant to 42 U.S.C. § 1983 (Docket #2)<sup>1</sup> and defendant's Motion to Dismiss (#8). Plaintiff claims his Eighth Amendment rights were violated when defendant used excessive force to arrest him in a private residence on an unidentified date. Defendant seeks dismissal for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

The Supreme Court has held that a court addressing an excessive force claim under § 1983 must identify whether the source of the specific constitutional right allegedly infringed by the challenged application of force is the Fourth Amendment, which prohibits an unreasonable seizure of a person, or the Eighth Amendment, which prohibits cruel or unusual punishment. Graham v. Connor, 490 U.S. \_\_\_, 104 L.Ed.2d 443, 109 S.Ct. 1865, 1970 (1989). The validity of the claim is then to be judged by reference to the specific constitutional standard which governs that right, rather than to some generalized "excessive force" standard. Id. The Court made it very clear that, where the excessive force claim

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

arises in the context of an arrest or investigatory stop of a free citizen, it is properly characterized as one invoking the protections of the Fourth Amendment. The Court concluded that "all claims that law enforcement officers have used excessive force--deadly or not--in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard...." Id. at 1871 (emphasis in original). Once a prisoner is convicted, the Eighth Amendment protects him from excessive use of force. Id.

While plaintiff was convicted in April 1990, the events of which he complains occurred at the time he was a pretrial detainee and therefore he cannot assert an Eighth Amendment excessive force claim concerning those events. His civil rights complaint fails to state a claim upon which relief can be granted.

The court finds that defendants' Motion to Dismiss therefore should be and is granted. The court further provides that plaintiff has fifteen (15) days to file an amended complaint relating to a Fourth Amendment claim, failing which dismissal will stand.

Dated this 30<sup>th</sup> day of Oct., 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

OCT 30 1990

ENGINEERING DESIGN GROUP, INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
RICHARD BOSZE, )  
 )  
Defendant. )

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

Case No. 88-C-510-C

OF  
STIPULATION FOR DISMISSAL WITH PREJUDICE

Engineering Design Group, Inc. ("EDG") and Richard G. Bosze hereby stipulate for the dismissal with prejudice of all claims and counterclaims asserted in the above-captioned case. The parties have reached an agreement on attorneys' fees and will not make an application for fees or costs to the Court.

*J. Daniel Morgan*  
\_\_\_\_\_  
J. Daniel Morgan  
Gable & Gotwals  
20th Floor, Fourth National Bldg.  
Tulsa, OK 74119  
918/582-9201  
ATTORNEYS FOR PLAINTIFF

*Carl Parkhurst*  
\_\_\_\_\_  
Carl Parkhurst  
Hackler & Parkhurst  
19 E. Carl Albert Parkway  
P.O. Box 954  
McAlester, OK 74502  
ATTORNEYS FOR RICHARD BOSZE

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

**F I L E D**

OCT 30 1990

CHARLES E. SCHUPBACH,

Plaintiff,

-vs-

ANCHOR PACKING COMPANY, a  
corporation, et al,

Defendants.

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

NO. 88-C-1203 B

ORDER OF DISMISSAL

Now on this 30<sup>th</sup> day of OCT, 1990, the Court has

for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by Plaintiff and the Defendant, NRM Corporation. Based upon the representations and request of these parties as set forth in the foregoing stipulation, it is

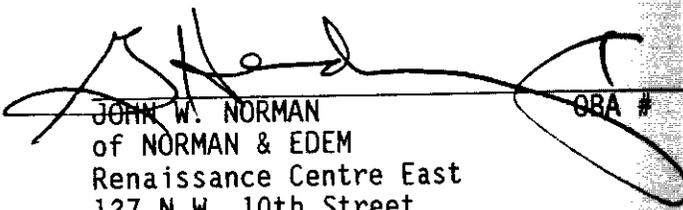
ORDERED that Plaintiff's Complaint and claims for relief against Defendant, NRM Corporation, is hereby dismissed without prejudice.

IT IS FURTHER ORDERED that each party shall bear its own costs.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

  
JOHN W. NORMAN  
of NORMAN & EDEM  
Renaissance Centre East  
127 N.W. 10th Street  
Oklahoma City, Oklahoma 73103-4903  
Telephone: 405/272-0200  
ATTORNEYS FOR PLAINTIFF

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



EILEEN M. MORRIS

OBA #10899

of ELLIOTT AND MORRIS

119 N. Robinson, Suite 630

Oklahoma City, Oklahoma 73102-4601

Telephone: 405/236-3600

ATTORNEYS FOR NRM CORPORATION

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

BRUCE C. BELL, a/k/a BRUCE  
COURTNEY BELL; LOIS R. BELL  
a/k/a LOIS RUBY BELL; BELLWOOD  
CORPORATION, a corporation;  
COUNTY TREASURER, Tulsa County,  
Oklahoma; and BOARD OF COUNTY  
COMMISSIONERS, Tulsa County,  
Oklahoma,

Defendants.

FILED

OCT 29 1990

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

CIVIL ACTION NO. 89-C-831-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 29<sup>th</sup> day  
of Oct., 1990. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Kathleen Bliss Adams, 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, Bruce C.  
Bell a/k/a Bruce Courtney Bell, Louis R. Bell a/k/a Lois Ruby  
Bell, and Bellwood Corporation, appear not, but make default.

The Court, being fully advised and having examined the  
court file, finds that the Defendant, Bruce C. Bell a/k/a Bruce  
Courtney Bell, acknowledged receipt of Summons and Complaint on  
November 10, 1989; that the Defendant, Bellwood Corporation, was  
served with Summons and Complaint on July 24, 1990; that  
Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged

*clm*

receipt of Summons and Complaint on October 11, 1989; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on October 10, 1989.

The Court further finds that the Defendant, Lois R. Bell a/k/a Lois Ruby Bell, 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 August 10, 1990, and continuing to September 14, 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, Lois R. Bell a/k/a Lois Ruby Bell, 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, Lois R. Bell a/k/a Lois Ruby Bell. 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 Kathleen Bliss Adams, 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 Defendants, County Treasurer, Tulsa County, Oklahoma, filed its Answer on October 25, 1989; that the Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on October 25, 1989; and that the Defendants, Bruce C. Bell a/k/a Bruce Courtney Bell, Lois R. Bell a/k/a Lois Ruby Bell, and Bellwood Corporation, 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 Seventeen (17),  
BURGESS HILL ADDITION to the City of Tulsa,  
Tulsa County, State of Oklahoma, according to  
the recorded plat thereof.

The Court further finds that on November 6, 1970, the Defendants, Bruce C. Bell and Lois R. Bell, 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 \$7,750.00, payable in monthly 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, Bruce C. Bell and Lois R. Bell, 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 November 6, 1970, covering the above-described property. Said mortgage was recorded on November 17, 1970, in Book 3946, Page 883, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Bruce C. Bell a/k/a Bruce Courtney Bell and Lois R. Bell a/k/a Lois Ruby Bell, 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, Bruce C. Bell a/k/a Bruce Courtney Bell and Lois R. Bell a/k/a Lois Ruby Bell, are indebted to the Plaintiff in the principal sum of \$5,731.94, plus interest at the rate of 8.5 percent per annum from July 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$237.43 (\$20.00 docket fees, \$4.68 fees for service of Summons and Complaint, \$212.75 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 personam against the Defendant, Bruce C. Bell a/k/a Bruce Courtney Bell, and a judgment in rem against Lois R. Bell a/k/a Lois Ruby Bell, in the principal sum of \$5,731.94, plus interest at the rate of 8.5 percent per annum from July 1, 1987 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 \$237.43 (\$20.00 docket fees, \$4.68 fees for service of Summons and Complaint, \$212.75 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 for the preservation of the subject property.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Bruce C. Bell a/k/a Bruce Courtney Bell, 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:**

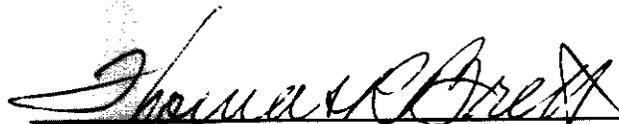
In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

**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.

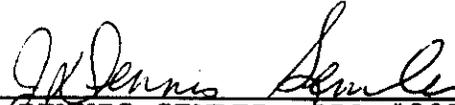
  
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney



KATHLEEN BLISS ADAMS, OBA #13625  
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. 89-C-831-B

KBA/esr

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

OCT 29 1983

CLERK  
COURT

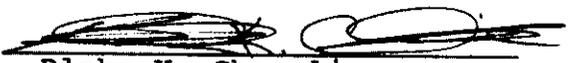
CRUMIE G. DELOZIER, an  
individual residing in  
Oklahoma,  
  
Plaintiff,  
  
v.  
  
SAHARA CORPORATION, a Kansas  
corporation, and LARRY BROWN,  
an individual, residing in  
Kansas and JOHN DOE,  
  
Defendants.

Case No. C-0145-B

**STIPULATION OF DISMISSAL**

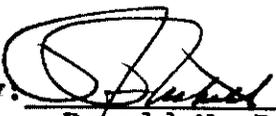
COMES NOW the Plaintiff, Crumie G. Delozier, and the Defendants Sahara Corporation and Larry Brown by and through their attorneys, and pursuant to Rule 41(a)(1), Fed. R. Civ. P., hereby stipulate to the dismissal of the above-captioned action with prejudice.

SHIPLEY & INHOFE

By:   
Blake K. Champlin  
3401 First National Tower  
Tulsa, Oklahoma 74103  
(918) 582-1720

For the Plaintiff  
CRUMIE G. DELOZIER

GABLE & GOTWALS

By:   
Ronald N. Ricketts  
Suite 2000  
15 West 6th Street  
Tulsa, Oklahoma 74119-1217

For the Defendant  
SAHARA CORPORATION and  
LARRY BROWN

FILED

OCT 29 1990

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

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

MIDAMERICA FEDERAL SAVINGS AND )  
LOAN ASSOCIATION, )

Plaintiff, )

vs. )

Case No. 88-C-1344-B

SHERIDAN PROPERTIES, INC., )  
a Tennessee Corporation; )  
ROBERT J. PHILLIPS; WANDA N. )  
PHILLIPS; JUSTIN LYON; VIRGYL )  
D. JOHNSON; RAYMOND M. BRIGGS; )  
ERWIN LEE KING; JAMES O. )  
SHOEMAKER; THOMAS C. HARMON; )  
HELEN P. BRIGGS; EILEEN L. KING; )  
MELANIE SHOEMAKER; DARVEN L. )  
BROWN; FINIS W. SMITH; DAVID W. )  
GRAHAM; JOAN GRAHAM; )  
METROPOLITAN FEDERAL BANK, FSB, )  
formerly doing business as )  
Metropolitan Federal Savings )  
and Loan Association; and )  
TURNER CORPORATION OF OKLAHOMA, )  
INC., )

Defendants. )

and )

GREEN COUNTRY APPRAISAL )  
SERVICE, INC., an Oklahoma )  
Corporation, )

Third-Party Defendants. )

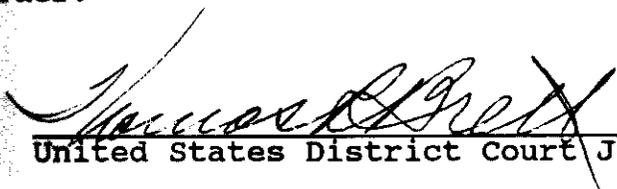
ORDER

This matter comes on before me the undersigned Judge pursuant to the Joint Motion to Dismiss with Prejudice Certain Claims Asserted by the Plaintiff Local America Bank of Tulsa, F.S.B. ("Local America") and the counterclaim asserted by the Defendant Raymond M. Briggs ("Briggs"). For good cause shown,

the Court FINDS that the Joint Motion should be granted.

IT IS THEREFORE ORDERED, AND ADJUDGED that all claims asserted by Local America against Briggs including its Motion for Deficiency Judgment against Briggs are hereby dismissed with prejudice and all counterclaims asserted by Briggs against Local America and the Federal Deposit Insurance Corporation as Receiver for MidAmerica Federal Savings and Loan Association are hereby dismissed with prejudice, each party to pay his or its own costs.

IT IS FURTHER ORDERED that Local America's claims against all Defendants other than Briggs shall not be dismissed or otherwise affected by this order.

  
United States District Court Judge

F I L E D

OCT 29 1990

IN THE UNITED STATES DISTRICT COURT Jack C. Silver, Clerk  
NORTHERN DISTRICT OF OKLAHOMA U.S. DISTRICT COURT

US WEST FINANCIAL SERVICES,	)	
INC., a Colorado corporation,	)	
	)	
Plaintiff,	)	
	)	No. 88-C-1075-B
vs.	)	
	)	
MOORAD MANAGEMENT, INC., an	)	
Oklahoma corporation, et al.,	)	
	)	
Defendants.	)	

ORDER OF DISMISSAL WITH PREJUDICE

There comes before the Court on this 29<sup>th</sup> day of October, 1990, the Motion for Order of Dismissal with Prejudice filed herein by US West Financial Services, Inc. ("US West") seeking dismissal of all claims by and between US West and Ralph Richter. It appearing to the Court that the Motion is made upon good cause shown, the Court finds that the same should be, and is, hereby granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that all claims asserted by US West against Richter in its Complaint are hereby dismissed with prejudice, and all claims asserted by Richter against US West in his Countereclaim are dismissed with prejudice, with each party to bear their own costs.

S/ THOMAS R. BRETT  
United States District Judge

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

EST 29 1990

U.S. DISTRICT COURT

CRUMIE G. DELOZIER,

Plaintiff,

v.

Case No. 90-C-387-B

SAHARA CORPORATION, a Kansas  
corporation, and LARRY BROWN,  
an individual,

Defendants.

**STIPULATION OF DISMISSAL**

COMES NOW the Plaintiff, Crumie G. Delozier, and the Defendants Sahara Corporation and Larry Brown, by and through their attorneys, and pursuant to Rule 41(a)(1), Fed. R. Civ. P., hereby stipulate to the dismissal of the above-captioned action with prejudice.

SHIPLEY & INHOFE

By: 

Blake K. Champlin  
3401 First National Tower  
Tulsa, Oklahoma 74103  
(918) 582-1720

For the Plaintiff  
CRUMIE G. DELOZIER

GABLE & GOTWALS

By: 

Ronald N. Ricketts  
Suite 2000  
15 West 6th Street  
Tulsa, Oklahoma 74119-1217

For the Defendant  
SAHARA CORPORATION and  
LARRY BROWN

F I L E D

OCT 29 1990

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

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

US WEST FINANCIAL SERVICES, )  
INC., a Colorado corporation, )  
 )  
Plaintiff, )  
 ) No. 88-C-1075-B  
vs. )  
 )  
MOORAD MANAGEMENT, INC., an )  
Oklahoma corporation, et al., )  
 )  
Defendants. )

ADMINISTRATIVE CLOSING ORDER

Having been advised that defendants Robert C. Harris, David Duncan, and Gary R. Davis have filed for bankruptcy protection under the United States Bankruptcy Code, and that further proceedings herein against said defendants are stayed by virtue of 11 USC §362, the Court FINDS AND ORDERS that this case be administratively closed as against said defendants.

IT IS FURTHER ORDERED that this Administrative Closing Order is without prejudice to the plaintiff, US West Financial Services, Inc. ("US West"), and that upon obtaining relief from the Automatic Stay of 11 USC §362 US West may reopen this case as against said defendants.

\_\_\_\_\_  
S/ THOMAS R. BRETT

United States District Judge

Orig.

FILED

OCT 29 1990

CLERK  
U.S. DISTRICT COURT

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

MID-CONTINENT CONCRETE COMPANY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 LONE STAR INDUSTRIES, INC., )  
 )  
 Defendant. )

No. 90-C-189-C ✓

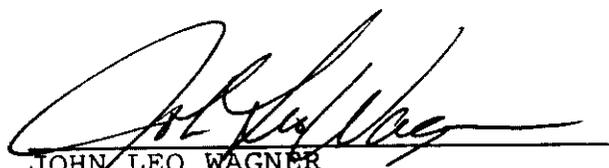
ORDER OF DISMISSAL

This Court, having reviewed the Stipulation of Dismissal filed by the parties, finds that this case should be dismissed with prejudice to the refiling of same. Thus, it is

ORDERED that the complaint, counterclaim and all claims for relief are dismissed with prejudice to the refiling of same.

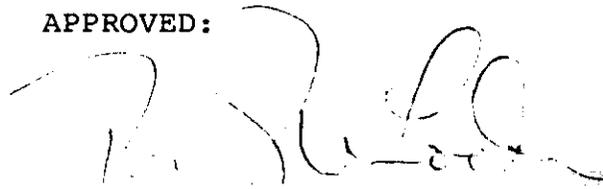
IT IS FURTHER ORDERED that the parties shall bear their respective costs, expenses and attorney fees.

IT IS SO ORDERED this 29<sup>th</sup> day of October, 1990.



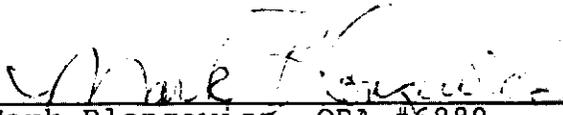
JOHN LEO WAGNER  
UNITED STATES MAGISTRATE

APPROVED:



Joel L. Wohlgemuth, OBA #9811  
Thomas M. Ladner, OBA #5161  
NORMAN & WOHLGEMUTH  
2900 Mid-Continent Tower  
Tulsa, Oklahoma 74103

ATTORNEYS FOR PLAINTIFF,  
MID-CONTINENT CONCRETE COMPANY



Mark Blongewicz, OBA #6889  
HALL, ESTILL, HARDWICK, GABLE,  
GOLDEN & NELSON, P.C.  
4100 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, Oklahoma 74172

ATTORNEYS FOR DEFENDANT,  
LONE STAR INDUSTRIES, INC.



receipt of Summons and Complaint on June 25, 1990; that the Defendant, Shirley Patricia Cook, acknowledged receipt of Summons and Complaint on June 26, 1990; that the Defendant, Thelma L. Brown a/k/a Thelma Louise Brown was served with Summons and Complaint on August 20, 1990; that the Defendant, James Brown a/k/a James A. Brown, was served with Summons and Complaint on August 20, 1990; that the Defendant, Robert G. Fry, Jr., was served with Summons and Complaint on August 17, 1990; that the Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 18, 1990; and that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 13, 1990.

It appears that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed his Answer on July 2, 1990; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on July 2, 1990; that the Defendant, Troy L. Cook a/k/a Troy Lee Cook, filed his Answer on July 12, 1990; and that the Defendants, Shirley Patricia Cook, Thelma L. Brown a/k/a Thelma Louise Brown, James Brown a/k/a James A. Brown, and Robert G. Fry, Jr., 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 Eight (8) in Block Four (4) in Sharon Heights Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on March 6, 1968, the Defendants, Troy L. Cook a/k/a Troy Lee Cook and Shirley Patricia Cook, 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 \$11,200.00, 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 Defendants, Troy L. Cook a/k/a Troy Lee Cook and Shirley Patricia Cook, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated March 6, 1968, covering the above-described property. Said mortgage was recorded on March 7, 1968, in Book 3839, Page 2197, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Troy L. Cook a/k/a Troy Lee Cook and Shirley Patricia Cook, 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, Troy L. Cook a/k/a Troy Lee and Shirley Patricia Cook, are indebted to the Plaintiff in the principal sum of \$5,434.86, plus interest at the rate of 6 percent per annum from August 1, 1989

until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$29.96 (\$20.00 docket fees, \$9.96 fees for service of Summons and Complaint).

The Court further finds that the Defendants, Thelma L. Brown a/k/a Thelma Louise Brown; James Brown a/k/a James A. Brown; and Robert G. Fry, Jr., 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 Defendants, Troy L. Cook a/k/a Troy Lee Cook and Shirley Patricia Cook, in the principal sum of \$5,434.86, plus interest at the rate of 6 percent per annum from August 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 in the amount of \$29.96 (\$20.00 docket fees, \$9.96 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; Thelma L. Brown a/k/a Thelma Louise Brown; James Brown a/k/a James A. Brown; and Robert G. Fry, Jr., have no right, title or interest in the subject real property.

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

First:

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

Second:

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

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

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

S/ THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney



---

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



---

TOM COOK, OBA #12,251  
Attorney for Defendant, Troy L. Cook  
a/k/a Troy Lee Cook



---

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-500-B

PB/esr

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

**F I L E D**

OCT 29 1990 

VICTOR JOEL COOPER, )  
)  
Petitioner, )  
)  
v. )  
)  
JAMES SAFFLE, et al, )  
)  
Respondents. )

90-C-338-B  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

**ORDER**

Petitioner seeks federal habeas corpus relief, attacking the constitutionality of convictions from Tulsa County District Court, Case Numbers CRF 85-4910 and CRF 85-4921. These convictions although now expired, were used to enhance a 1988 Oklahoma County sentence he is currently serving. Respondent moves to dismiss arguing that Petitioner is not "in custody" for purposes of 28 U.S.C. §2254.

In the recent case of *Gamble v. Parsons*, 898 F.2d 117 (10th Cir. 1990), the Tenth Circuit Court of Appeals noted that *Maleng v. Cook*, 109 S.Ct. 1923 (1989) (per curiam), "left open the question of to what extent a petitioner may challenge an expired conviction in an attack on a conviction for which the petitioner is in custody, when the latter conviction has been enhanced by the prior one". *Id.* (Emphasis in original.) In *Gamble*, the Tenth Circuit addressed a petition similar to the one at bar and held the "in custody" requirement was satisfied.

As we read *Maleng*, it precludes a defendant from challenging a fully-expired conviction in isolation even though it may have potential collateral consequences in some future case. Further, even if the fully-expired conviction has, in fact, been used to enhance a subsequent sentence, it may not be attacked directly in a habeas action. Rather, the attack must be

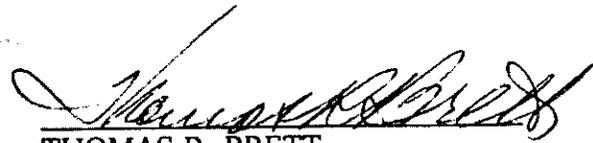
directed toward the enhanced sentence under which the defendant is in custody. However, if the attack is so directed, the defendant may argue that his present sentence is improper because it has been enhanced by a prior, unconstitutional conviction.

Id. (Emphasis added.) *Gamble* went on to liberally construe the pro se petition as asserting a challenge to his present conviction because the Traverse explained that his current sentence had been enhanced by the prior conviction.

Likewise, in the case at bar, the pro se Petition and Traverse explain that the current sentence has been enhanced by the prior convictions. And like *Gamble*, the Petition here must be liberally construed. Construing the Petition in that manner, the Court finds that it does assert a challenge to the 1988 Oklahoma County conviction Petitioner is presently serving, thus satisfying the "in custody" requirement.

Therefore, Defendant's Motion to Dismiss is hereby, denied. Because the 1988 sentence formally under attack is from a state court within the jurisdiction of the Western District of Oklahoma, this case is hereby transferred to the Western District of Oklahoma for further proceedings. 28 U.S.C. §2241(d).

SO ORDERED THIS 29<sup>th</sup> day of Oct., 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

FILED

OCT 29 1990

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

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

WILLIE D. SHANNON

:  
:  
:  
:  
:  
:

VS.

NO. 90-C 774B

BURLINGTON NORTHERN  
RAILROAD COMPANY

ORDER DISMISSING WITH PREJUDICE

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

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

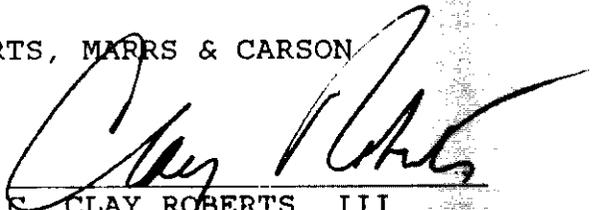
DATED this 29<sup>th</sup> day of Oct, 1990.

  
JUDGE PRESIDING

APPROVED:

ROBERTS, MARRS & CARSON

BY:

  
S. CLAY ROBERTS, III  
OBA # 7632  
RICHARD D. MARRS  
OBA # 5705  
110 South Hartford  
Suite 111  
Tulsa, Oklahoma 74120  
(918) 582-6557

ATTORNEYS FOR PLAINTIFF

FILED  
OCT 29 1990  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

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

TOWN & COUNTRY BANK, )  
)  
vs. )  
)  
DON ROBERT HEFNER and CAROL )  
MAUDE HEFNER; WILSON SPORTING )  
GOODS CO., INC.,; AMERICAN )  
SPORTSWEAR, INC. and IRS )

Case No. 88-C-1553 B

DEFICIENCY JUDGMENT

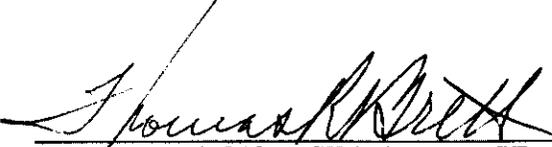
On this 29<sup>th</sup> day of October, 1990, there came on for hearing the Motion of Plaintiff, the Federal Deposit Insurance Corporation ("FDIC"), for leave to enter a Deficiency Judgment herein filed on the 28th day of March, 1990, and served upon the Defendants Don Robert Hefner and Carol Maude Hefner by first class mail to their attorney of record. Movant appears by its attorneys of record, Gable & Gotwals, Inc., by Larry D. Thomas, and said Defendants appear not.

The Court, upon consideration of said Motion and the pleading herein, finds that the fair and reasonable market value of the mortgaged premises as of the date of the Sheriff's Sale herein, to-wit, the 2nd day of January, 1990, was \$50,001.00.

The Court further finds that the aggregate amount of the Judgment rendered herein in favor of the FDIC, together with the interest, attorney's fees and costs, amounts to \$102,948.40, and that the FDIC, accordingly, is entitled to a Deficiency Judgment against the Defendants Don Robert Hefner and Carol Maude Hefner, for said amount, minus the market value of the property in the sum of \$50,001.00, as above determined, to-wit, the sum of \$52,947.40.

IT IS ACCORDINGLY ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff, the FDIC, have and recover of and from Defendants Don Robert Hefner and Carol Maude Hefner, and each of them, jointly and severally, a deficiency judgment in the amount of \$52,947.40, plus interest accruing at the rate of Chase Manhattan Prime

plus 3% from and after January 2, 1990, the continuing cost of this action, for all of which let execution issue.

  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

GABLE & GOTWALS, INC.

By:

\_\_\_\_\_  
Larry D. Thomas, OBA #8945  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119

Attorneys for Plaintiff,  
Town & Country Bank,  
an Oklahoma banking corporation

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

FILED

OCT 29 1990

KEVIN K. BULLER,  
Plaintiff,

v.

THE UNITED STATES,  
Defendant,

v.

HERBERT L. MASLAN,  
Counterclaim Defendant.)

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

CASE NO. 89-C-345-*CB*

STIPULATION <sup>OF</sup> FOR PARTIAL DISMISSAL

It is hereby stipulated and agreed that the complaint filed by the plaintiff, Kevin K. Buller, against the United States and the counterclaim filed by the United States against plaintiff, Kevin K. Buller, in the above-entitled case be dismissed with prejudice, the parties to bear their respective costs including any possible attorney's fees or other expenses of this litigation.

THIS STIPULATION IS FILED IN CASE NO. 89-C-345-*CB*  
RECORD THIS SPENT BY JUDGE or Magistrate

*J. M. Riseling*  
TED M. RISELING  
Riseling & Associates  
Inverness Park  
2510 East 21st Street  
Tulsa, Oklahoma 74114  
(918) 747-0111  
Attorney for Plaintiff

*Kimberley S. Forseth*  
KIMBERLEY S. FORSETH  
Department of Justice  
Tax Division  
Ben Franklin Station  
Post Office Box 55  
Washington, D.C. 20044  
(202) 514-6540  
Attorney for Defendant

**FILED**

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

OCT 29 1990

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

MIDAMERICA FEDERAL SAVINGS AND  
LOAN ASSOCIATION,

Plaintiff,

vs.

Case No. 88-C-1341-B ✓

SHERIDAN PROPERTIES, INC.,  
a Tennessee Corporation;  
ROBERT J. PHILLIPS; WANDA N.  
PHILLIPS; JUSTIN LYON; RAYMOND  
M. BRIGGS and HELEN P. BRIGGS;  
ERWIN LEE KING and EILEEN  
L. KING; JAMES O. SHOEMAKER;  
MELANIE SHOEMAKER; THOMAS C.  
HARMON; PANTEGO PROPERTIES  
INC., an Oklahoma Corporation;  
and CARPETLAND, INC.

Defendants.

and

VIRGYL D. JOHNSON and GREEN  
COUNTRY APPRAISAL SERVICE,  
INC., an Oklahoma corporation,

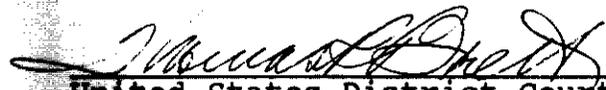
Third-Party Defendants.

**ORDER**

This matter comes on before me the undersigned Judge pursuant to the Joint Motion to Dismiss with Prejudice Certain Claims Asserted by the Plaintiff Local America Bank of Tulsa, F.S.B. ("Local America") and the counterclaim asserted by the Defendant Raymond M. Briggs ("Briggs"). For good cause shown, the Court FINDS that the Joint Motion should be granted.

IT IS THEREFORE ORDERED, AND ADJUDGED that all claims asserted by Local America against Briggs including its Motion for Deficiency Judgment against Briggs are hereby dismissed with prejudice and all counterclaims asserted by Briggs against Local America and the Federal Deposit Insurance Corporation as Receiver for MidAmerica Federal Savings and Loan Association are hereby dismissed with prejudice, each party to pay his or its own costs.

IT IS FURTHER ORDERED that Local America's claims against all Defendants other than Briggs shall not be dismissed or otherwise affected by this order.

  
United States District Court Judge

JCD/bt  
10/18/90

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

WESLEY GRUNDEN, Administra- )  
tor of the Estate of SYLVIE )  
GRUNDEN, Deceased, )

Plaintiff, )

vs. )

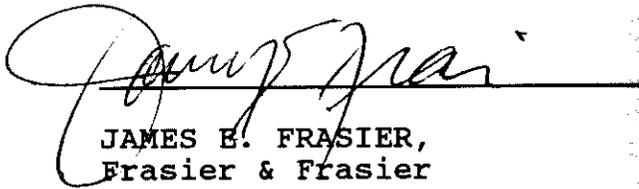
Case No.: 90-C-0131-E

ANDY DOMINGUEZ, JR, and )  
WANDA DOMINGUEZ, d/b/a GRAND )  
LAKE MANOR, and GRAND LAKE )  
MANOR NURSING HOME, LTD., )  
an Oklahoma partnership, )  
d/b/a GRAND LAKE MANOR, )

Defendants. )

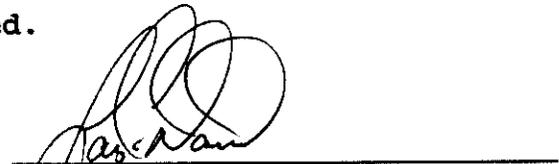
DISMISSAL WITH PREJUDICE BY STIPULATION

Come now all parties to the above-styled and  
numbered cause of action, through their attorneys of record  
and pursuant to Rule 41 of the Federal Rules of Civil Proce-  
dure, and by stipulation, agree to the Dismissal of the above-  
styled and numbered lawsuit, with prejudice to the Plaintiff's  
right of refiling the same, as all issues of law and fact have  
been fully compromised and settled.



JAMES E. FRASIER,  
Frasier & Frasier  
P.O. Box 799  
Tulsa, Oklahoma

Attorney for Plaintiff



JAMES C. DANIEL,  
ROGERS, HONN & ASSOCIATES  
2417 E. Skelly Drive  
Tulsa, Oklahoma 74105

Attorney for Defendants

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

FEDERAL DEPOSIT INSURANCE CORPORATION,  
in its corporate capacity,

Plaintiff,

vs.

Case No. 88-C-547E

THEODORE V. ANDERSON and LUCINDA B.  
ANDERSON, husband and wife, EDWARD  
LEIGH COVINGTON, COMMONWEALTH MORTGAGE  
COMPANY OF AMERICA, L.P., Limited  
Partnership, AUTOMATION TECHNIQUES,  
INC., an Oklahoma corporation, CATOOSA  
DEVELOPMENT AUTHORITY, an Oklahoma  
Public Trust, AIR CARGO EQUIPMENT, a  
Delaware corporation, J. RONALD  
HENDERSON, WOLF POINT INDUSTRIAL  
PARKWAY OWNERS ASSOCIATION, an  
Oklahoma corporation not for profit,  
and WOLF POINT INDUSTRIAL PARKWAY  
WEST OWNERS ASSOCIATION, an Oklahoma  
corporation not for profit, TULSA  
COUNTY COMMISSIONERS,

Defendants.

**F I L E D**

OCT 26 1990

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

JOURNAL ENTRY OF JUDGMENT

This matter comes on before the Court this 25<sup>th</sup> day of  
October, 1990, Plaintiff Federal Deposit Insurance  
Corporation, in its corporate capacity, ("FDIC"), appears by and  
through its attorney of record, R. Kevin Layton of Boesche,  
McDermott & Eskridge, Defendants Theodore V. Anderson, Lucinda B.  
Anderson and Edward Leigh Covington appear by and through their  
attorney of record, George W. Owens, of Owens and McGill,  
Commonwealth Mortgage Company of America, L.P. ("Commonwealth")  
appears by and through its attorney of record John B. Wimbish,  
Catoosa Development Authority, Tulsa County Commissioner,

Automation Techniques, Inc. and Air Cargo Equipment having disclaimed herein, and J. Ronald Henderson, Wolf Point Industrial Parkway Owners Association, and Wolf Point Industrial Parkway West Owners Association appearing not. And it appearing to the Court that this is a suit upon two promissory notes and for foreclosure of two Mortgages upon real estate, securing the same which said real estate is located in the County of Tulsa, State of Oklahoma.

The Court thereupon examined the pleadings, process and files in this cause, and being fully advised in the premises finds that due and regular service of the Summons and Complaint has been made upon all the defendants in this action. The Court further finds that Defendants J. Ronald Henderson, Wolf Point Industrial Parkway Owners Association and Wolf Point Industrial Parkway West Owners Association although duly served with summons and complaint in this cause more than 20 days prior to this date have failed to plead or otherwise defend as required by the Federal Rules of Civil Procedure, and are thereby adjudged in default. The Court further finds that this foreclosure is made subject to the mortgage interest of Commonwealth in and to the residential property involved and further finds the remaining defendants Theodore V. Anderson, Edward Leigh Covington, and Lucinda B. Anderson have agreed to the terms of this Journal Entry of Judgment.

WHEREFORE, the Court finds that :

1. On or about May 8, 1986, the Oklahoma State Banking Department declared the Bank of Commerce and Trust Company ("Commerce Bank") insolvent, and pursuant to Okla. Stat. Tit. 6, §

1205 appointed FDIC as liquidating agent for the bank.

2. FDIC in its corporate capacity has succeeded to all right, title and interest of Commerce Bank in and to the Notes and Mortgages hereafter described.

3. On or about the 17th day of December, 1982, for good and valuable consideration, Theodore V. Anderson ("Anderson") and Edward Leigh Covington ("Covington") made, executed and delivered to Commerce Bank a Promissory Note in the principal sum of \$630,000.00, with interest on the unpaid balance at the rate of 70% of Bank of Commerce Prime max. 14% min. 9%. ("Note A")

4. Despite demand by FDIC, Anderson and Covington have failed to make the payments as contracted, and default has been made in the terms and conditions of Note A.

5. Note A has been in default since May 8, 1986, and by reason of the default FDIC has declared all sums under Note A immediately due and payable.

6. As of May 14, 1990, there was due and owing to FDIC under Note A the principal sum of \$592,132.17, plus accrued interest of \$221,033.98, plus interest continuing to accrue thereon at the per diem rate of \$146.02.

7. FDIC has paid \$14,194.21 in taxes for 1985 and 1986, and as of August 31, 1988, has paid a tax certificate in the amount of \$1,310.55, covering part of the property secured by Note A, therefore, the amount owing under Note A must be increased by \$15,504.76 to reflect the total amount paid by FDIC for tax

deficiencies on the properties. There is still due and owing to the Tulsa County Assessor unpaid taxes on Lot 4 Block 1 of the property securing Note A.

8. Pursuant to the terms of Note A, FDIC is entitled to its costs and a reasonable attorney's fee of 15% of all sums due upon default for prosecuting this action.

9. On or about the 17th day of December, 1982, Anderson and Covington executed and delivered to the Catoosa Development Authority a Mortgage (the "Commercial Mortgage") covering the following described real property located in Tulsa County, together with all improvements located thereon, to-wit:

Lots Four (4) and Five (5), Block One (1) WOLF POINT INDUSTRIAL PARKWAY WEST an addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof, and all improvements located thereon (the "Industrial Parkway West Property").

The Commercial Mortgage was duly recorded and acknowledged according to law and after mortgage tax was paid thereon, said Commercial Mortgage was filed of record in the office of the County Clerk of Tulsa County, on the 17th day of December, 1982, and recorded in Book 4657, Pages 750 to 767, inclusive.

10. On or about December 17, 1982, the Catoosa Development Authority for good and valuable consideration assigned the Commercial Mortgage to Commerce Bank, which assignment was duly recorded in the office of the County Clerk of Tulsa County, State of Oklahoma, on the 21st day of December, 1982, in Book 4657, Pages 768 to 771, inclusive. The Commercial Mortgage secures the

indebtedness of Anderson and Covington as evidenced by Note A.

11. By virtue of the default under Note A, and pursuant to the terms of the Commercial Mortgage, FDIC is entitled to foreclose the Industrial Parkway West Property and have the same sold with or without appraisal, said option being reserved until time of judgment or any time prior thereto, and to have the proceeds of such sale applied in reduction of the indebtedness owed to FDIC under the terms of Note A, including payment of costs, expenses, and attorney fees incurred by FDIC.

12. The Commercial Mortgage constitutes a first valid, prior and superior mortgage lien and security interest in and to the Industrial Parkway West Property in favor of FDIC subject only to unpaid ad valorem taxes on the property, if any. The interest of the Defendants herein are junior, inferior and subordinate to the right, title and interest of the FDIC in and to the Industrial Parkway West Property.

13. FDIC has the right to receive all rents, receipts, revenues, income and profits from the Industrial Parkway West Property now or hereafter pursuant to the assignment of the interest of Anderson and Covington in and to certain leases on the property on December 17, 1982, to Bank of Commerce and Trust, as recorded in the office of the County Clerk of Tulsa County, Book 4657, Page 771.

14. On or about December 19, 1985, for good and valuable consideration, Anderson and Covington made, executed and delivered

to Commerce Bank a promissory note in the principal sum of \$33,000.00 with interest on the unpaid balance at the rate of 2% above Bank of Commerce prime ("Note B").

15. Despite demand by the Plaintiff, Anderson & Covington have failed to make the required payments and therefore default has been made in the terms and conditions of Note B.

16. Note B has been in default since May 8, 1986, and by reason of the default by Anderson and Covington, FDIC has declared all sums under Note B immediately due and payable.

17. As of May 14, 1990, there was due and owing to FDIC the principal sum of \$32,900.00, plus accrued interest of \$24,077.20, plus interest continuing to accrue at the rate of \$16.68 per diem.

18. Pursuant to the terms of Note B, FDIC is entitled to its costs and a reasonable attorney's fee of 15% of all sums due on default.

19. On or about the 17th day of December 1985, Theodore V. Anderson and Lucinda B. Anderson executed and delivered to Commerce a mortgage (the "Residential Mortgage") covering the following described real property located in Tulsa County, Oklahoma, together with all improvements located thereon, to-wit:

Lot Twenty-Five (25), Block Four (4), WOODLAND VIEW FIRST ADDITION, an addition in Tulsa County, State of Oklahoma according to the recorded plat thereof (the "Woodland View Property")

20. The Residential Mortgage was duly executed and acknowledged according to law, and after mortgage tax was paid

thereon, it was recorded in the Tulsa County records.

21. The Residential Mortgage secures the indebtedness evidenced by Note B.

22. By virtue of the default under Note B, and pursuant to the terms of the Residential Mortgage, FDIC is entitled to foreclose upon the Woodland View Property and to have the same sold with or without appraisal, said option being reserved until time of judgment or until any time prior thereto, and to have the proceeds of such sale applied in reduction of the indebtedness owed to FDIC under the terms of Note B, including the payment of costs, expenses and attorneys fees incurred by FDIC.

23. The Residential Mortgage constitutes a first, valid, prior and superior mortgage lien and security interest in and to the Woodland View Property in favor of FDIC subject only to the first mortgage interest of Commonwealth and unpaid ad valorem taxes on the property, if any. The interests of the defendants herein are junior, subordinate and inferior to the right, title and interest of FDIC in and to the Woodland View Property.

24. Defendant Covington has filed Bankruptcy in the United States Bankruptcy Court for the Northern District of Oklahoma Case No. 90-00749-W. The Industrial Parkway West Property has been abandoned from Covington's Estate and the stay modified to allow an in rem judgment to be taken against Covington.

25. Defendant Anderson has filed Bankruptcy in the United States Bankruptcy Court for the Northern District of Oklahoma Case

No. 90-02167-W. The Industrial Parkway West Property and the Woodland View Property have been abandoned from Anderson's Estate and the Stay modified to allow an in rem judgment to be taken against Anderson.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that Plaintiff Federal Deposit Insurance Corporation, in its corporate capacity have and recover judgment in rem against defendants Theodore V. Anderson and Edward Leigh Covington with regard to Note A in the principal amount of \$592,132.17, plus accrued interest in the amount of \$221,033.98, plus interest continuing to accrue from and after May 14, 1990, at the per diem rate of \$146.02, plus \$15,504.76 for tax deficiencies paid, plus a reasonable attorney's fee of 15% of all sums due on default, plus the costs of this action, and with regard to Note B in the principal amount of \$32,900.00, plus accrued interest of \$24,077.20, plus interest continuing to accrue from and after May 14, 1990, at the per diem rate of \$16.68, plus a reasonable attorney's fee of 15% of all sums due on default, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commercial Mortgage covering the Industrial Parkway West Property created a first, prior and superior lien in and to said property in favor of FDIC, subject to unpaid ad valorem taxes on the property, if any, and that the interests of the Defendants herein are subsequent, junior and inferior to the Mortgage lien and interest

of FDIC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Residential Mortgage covering the Woodland View Property created a first, prior and superior lien in and to said property in favor of FDIC, subject to the mortgage interest of Commonwealth and unpaid ad valorem taxes on the property, if any, and that the interests of the Defendants herein are subsequent junior and inferior to the Mortgage lien of FDIC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that a Special Execution and Order of Sale shall issue out of the office of the District Court Clerk in this cause, directed to the Sheriff of Tulsa County to levy upon, advertise and sell with appraisal after due and legal notice the Industrial Parkway West Property and the Woodland View Property and to pay the proceeds of said sale to the Clerk of this Court as provided for by law for application as follows: First, to all costs and expenses of the sale of the property; Second to the payment of all costs and expenses incurred herein by Plaintiff; Third, to the payment of the judgment of the Plaintiff herein on the respective Notes at issue in the amounts herein set forth; Fourth, the balance, if any, to be paid to the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that from and after the date of sale of the Industrial Parkway West Property and the Woodland View Property as herein directed and the confirmation of such sale by the Court, the parties to this action

with the exception of Commonwealth's mortgage interest in the Woodland View Property and the Tulsa County Commissioners with regard to unpaid ad valorem taxes, if any, shall be forever barred and foreclosed of and from any lien upon or claim adverse to the right, title and interest of the purchaser at said sale, and the Defendants hereto and all persons claiming by, through or under them since the commencement of this action are hereby perpetually enjoined and restrained from ever setting upon, setting up or asserting any lien upon or right, title, interest or equity of redemption in or to the property adverse to the right, title and interest of the purchaser at such sale, if same be had and confirmed, and that upon proper application by the purchaser, the said court clerk shall issue a Writ of Assistance to the sheriff of said county who shall thereupon and forthwith place said purchaser in full and complete enjoyment of the premises.

IT IS SO ORDERED.

S/ JAMES O. ELLISON

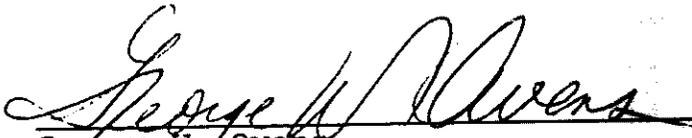
\_\_\_\_\_  
Judge of the District Court

APPROVED AS TO FORM:



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ATTORNEYS FOR FEDERAL DEPOSIT  
INSURANCE CORPORATION



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ATTORNEY FOR THEODORE V. ANDERSON,  
LUCINDA B. ANDERSON AND EDWARD COVINGTON

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

STEPHEN MARK GARRETT, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 ROBERT A. SILLS, an individual, )  
 THERL J. WHITTLE, in his official )  
 capacity as OTTAWA COUNTY SHERIFF )  
 and the BOARD OF COUNTY )  
 COMMISSIONERS )  
 OF OTTAWA COUNTY, OKLAHOMA, )  
 a political subdivision of the )  
 State of Oklahoma )  
 )  
 Defendants. )

No. 88-C-590-B

**FILED**  
OCT 26 1990  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

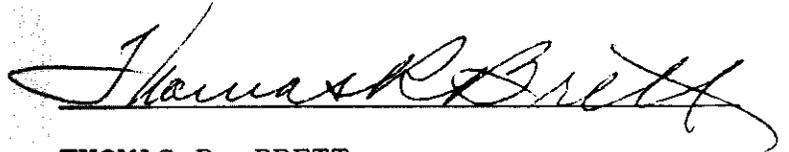
ORDER

In keeping with the verdict of the jury entered this date, judgment is hereby entered in reference to the Plaintiff Stephen Mark Garrett's 42 U.S.C. §1983 claim against the defendants Robert A. Sills and Ottawa County, Oklahoma, and to the Plaintiff Stephen Mark Garrett's pendent state claims for wrongful termination and intentional interference with contractual relations against Ottawa County, Oklahoma in the total sum of \$102,664.00. (Relative to the judgment on the state pendent claims, Ottawa County's liability is limited to the sum of \$100,000.00, pursuant to 51 O.S. §154 A.2..)

Post-judgment interest at the rate of 7.78% per annum is assessed on the said 42 U.S.C. §1983 judgment, and pre-judgment interest at the rate of 10% per annum from June 24, 1988 until October 26, 1990 and post-judgment interest at the rate of 7.78% per annum is assessed relative to the judgment on the state pendent claims.

Costs are assessed against the defendants on said 42 U.S.C. §1983 claim and against the Defendant Ottawa County on said state pendent claims, if timely applied for pursuant to Local Rule 6. The Plaintiff is entitled to an award of attorneys' fees relative to the 42 U.S. C. §1983 judgment if timely applied for pursuant to Local Rule 6.

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



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

OCT 29 1990

CLERK  
COURT

THE HOME-STAKE OIL & GAS )  
COMPANY, THE HOME-STAKE ROYALTY )  
CORPORATION and ROBERT C. )  
SIMPSON, )

Plaintiffs, )

vs. )

Case No. 90-C-396-B ✓

ROBERT S. TRIPPET, CAMERON DEE )  
SEWELL, RUSSELL S. NORVELL, )  
R. KENNETH SPARKS, JOHN R. )  
SIMPSON, III, AGO COMPANY, )  
AGR CORPORATION, and AGO/AGR )  
Limited Partnership, )

Defendants. )

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

The Court has for consideration the Reports of Special Master, John T. Kipp, as follows: Report of June 12, 1990 (filed June 13, 1990); Report of June 26, 1990, (filed July 5, 1990); Report of July 2, 1990 (filed July 17, 1990); Report of September 9, 1990, (filed September 28, 1990); Report of September 19, 1990 (filed September 28, 1990). The clerk's Notice of filing, pursuant to Fed. R. Civ. P. 53(e) (1), of the reports has been completed, and the parties have been allowed ten days after being Noticed of the filing of the reports for serving written objections to the reports. A hearing was held on September 13, 1990, relating to all reports except the September 9 and September 19, 1990 reports. No further hearing has been requested by parties as to the latter two

reports. Defendant Cameron Sewell has filed, on October 15, 1990, a written Response to the Special Master's Report dated September 19, 1990. No other party has filed a response. The matter is now considered submitted to the Court for Findings of Fact, Conclusions of Law, and Order.

Based upon the Reports of the Special Master, all exceptions and objections thereto, and all suggested findings of fact and conclusions of law, the Court herewith enters the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. The following abbreviations will obtain herein:
  - (a) Oil & Gas -- The Home-Stake Oil & Gas Company
  - (b) Royalty -- The Home-Stake Royalty Corporation
  - (c) The Companies -- Oil & Gas and Royalty
  - (d) Special Master -- John T. Kipp, Special Master appointed by Agreed Order dated May 11, 1990, filed May 14, 1990.
  - (e) Sewell -- Defendant Cameron Dee Sewell
  - (f) Simpson -- Plaintiff, Robert C. Simpson
  - (g) Management -- The persons nominated for election by the Boards of Oil & Gas and Royalty per the Proxy Statements dated and mailed April 16, 1990.
  - (h) Board or Boards -- The Boards of Directors of Oil & Gas and Royalty.
  - (i) State court case -- An action filed April 30, 1990, No. CJ-90-02111, in the District Court of Tulsa County, Oklahoma, captioned The Home-Stake Oil & Gas Company, The Home-Stake Royalty Corporation and Robert C. Simpson v. Robert S. Trippet, Cameron Dee Sewell and Russell S. Norvell.
2. On April 16, 1990, the Boards issued Notice and Proxy

Statements for the 1990 Annual Shareholder Meetings of each of the Companies to be held May 7, 1990. The Bylaws provide that the meetings shall be held on the first Monday in May of each year. Article XI of the Bylaws provides that the Bylaws may be amended by a vote of a majority of the shareholders of each company.

3. A group of shareholders led by Sewell owning a significant but not a majority block of shares in each of the Companies proposed to nominate a competing slate of nominees for election to the Boards at the May 7, 1990, meeting.

4. On April 30, 1990, Oil & Gas and Royalty filed the State court case.

5. On May 3, 1990, the Boards voted to postpone indefinitely the 1990 annual meeting set for May 7, 1990.

6. On May 7, 1990, Plaintiffs filed this action, sought and were granted emergency hearings, on May 8 & 9, on Plaintiffs' Application for a Temporary Restraining Order (TRO).

7. After the TRO hearings, the Court determined the 1990 Annual Shareholders Meetings of the Companies would be held within thirty days next.

8. After the May 9, 1990 hearing the parties stipulated that the Court would enter an Agreed Order which was signed on May 11, and filed on May 14, 1990.

9. All parties either approved the Agreed Order through counsel or failed to file any objection thereto.

10. The Agreed Order provided for the appointment of a Special Master pursuant to Rule 53 of the Federal Rules of Civil

Procedure.

11. The parties selected John T. Kipp, a corporate and securities law practitioner from Dallas, TX., to serve as Special Master and to supervise the proxy contest for the rescheduled annual meetings set for June 11, 1990.

12. The Agreed Order provided that the Court would make a further order concerning the source of payment of the Special Master's compensation.

13. At the recommendation of the Special Master, the rescheduled annual meeting dates were changed from June 11 to June 25, 1990.

14. The 1990 Annual Shareholders Meetings of the Companies were held June 25, 1990, under the supervision of the Special Master. The results of the meetings were reported in the June 26, 1990 Report of the Special Master, filed July 5. Management prevailed in the election of directors by a margin of 54% to 46% in Oil & Gas and 62% to 38% in Royalty. A bylaw amendment proposed by Sewell requiring that directors retire at age 70 was defeated. A charter amendment proposed by management was defeated.

15. As of December 31, 1989, the shareholders' equity of Oil & Gas was \$7,219,779.00, and the shareholders' equity in Royalty was \$10,311,564.00.

16. The Special Master has applied for fees and expenses, including his counsel, through September 19, 1990, in the total amount of \$133,047.77.

17. None of the parties, Plaintiffs nor Defendants, have

objected to the amount of hours spent nor the amount of the costs and fees of the Special Master, who was selected by agreement of the parties.

18. According to the pleadings submitted by the parties, Simpson is the record owner of .01% of the stock in Oil & Gas and .001% in Royalty.

19. According to the pleadings submitted by the parties, Sewell is the record owner of .35% of the stock in Oil & Gas and .67% of the stock in Royalty.

COMMENTS BY THE SPECIAL MASTER  
ADOPTED BY THE COURT

20. The Special Master did not "censor" the Defendants' proxy materials to be sent out prior to the elections significantly more than the materials submitted by the Plaintiffs.

21. The Special Master did not "approve" proxy materials submitted by either Plaintiffs or Defendants. Instead, after commenting on and requiring revisions to proxy materials, the Special Master did not object to the use of such proxy materials. Materials submitted by both Plaintiffs and Defendants were substantially revised.

22. The Special Master did not believe that the "largest expenditures" of time were caused by Defendants' disclosures relating to reserves and operating history or by the need to address the simultaneous solicitation of consents and proxies. The Special Master believes that issues raised, and disclosures made, by the Plaintiffs also occupied a large portion of the Special

Master's time.

23. The Special Master required both parties to make numerous and substantial changes in their proxy materials. The Special Master believed that he spent:

(a) more time in reviewing the basic proxy solicitation materials submitted by the Defendants than those by the Plaintiffs;

(b) more time responding to and considering legal issues raised by the Plaintiffs than by the Defendants;

(c) more time responding to correspondence received from the Plaintiffs than from the Defendants; and

(d) more time responding to more "sets" of revised proxy materials, and follow-up proxy materials, submitted by the Plaintiffs.

24. Although the Special Master stated to the Court on June 28, 1990, that much of the work was due to the raising of multiple issues on a frequent basis by the plaintiff, the Special Master also confirms that he spent substantial amounts of time reviewing proxy solicitation materials submitted by the Defendants. The Special Master was otherwise unable to determine with any greater specificity whether the Plaintiffs or the Defendants required more of the Special Master's time. However, the perception of the Special Master was that more time was spent in dealing with contentions of Plaintiffs.

25. The Special Master believes that the costs of holding an annual meeting of shareholders and preparing routine proxy solicitation materials are rightfully and typically borne by the

company.

26. The Special Master believes the total time and effort expended in reviewing the Defendants' proxy materials, on the one hand, and in reviewing the Plaintiffs' proxy materials and responding to the issues raised by Plaintiffs, on the other hand, were roughly equivalent.

#### CONCLUSIONS OF LAW

1. Compensation of a Special Master shall be fixed by the Court and charged upon such of the parties as the Court may direct. Rule 53, Federal Rules of Civil Procedure.

2. The action of the Boards on May 3, 1990, in canceling the 1990 shareholder meetings was not improper under the circumstances herein.

3. The actions of the Defendants, particularly Cameron Sewell, in engaging in a contested proxy fight, the ultimate result of which could have conceivably displaced much if not all of Management, was not improper under the circumstances herein.

4. The Court concludes that while management ultimately prevailed on the Board of Directors control issue, the dispute grew out of a good faith difference of opinion of the stockholders, including the intra-family dispute.

5. The Court concludes assessment of the costs of the Special Master lies within the sound discretion of the Court. Brock v. Ing, 827 F.2d 1426 (10th Cir. 1987).

6. The Court concludes the following assessment of the costs

of the Special Master should be and the same is hereby entered:<sup>1</sup>

(a) two-thirds (2/3rds) of the Special Master's costs and fees (\$88,698.52) are to be borne by the Companies in proportions equating to their respective stockholders' equity as of December 31, 1989, which the Court determines to be Home-Stake Royalty Corporation, \$52,154.64, and Home-Stake Oil & Gas Corporation, \$36,543.88<sup>2</sup>.

(b) one-third (1/3rd) of the Special Master's costs and fees (\$44,349.25) are to be borne, in equal shares but with joint and several liability, by the Defendants, Robert S. Trippet, Cameron Dee Sewell, Russell S. Norvell, R. Kenneth Sparks, John R. Simpson, III, AGO Company, AGR Corporation and AGO/AGR Limited Partnership, and Plaintiff, Robert C. Simpson.

(c) Notwithstanding any of the above, all of the parties listed in (a) and (b) above are jointly and severally liable for the entire costs and fees of the Special Master, to-wit: (\$133,047.77).

(d) If any party is required, because of joint and several liability, to pay more than his, hers or its proportionate share, a right to contribution shall exist.

(e) The parties are directed and ordered to pay the entire amount of the Special Master's costs and fees into the

---

<sup>1</sup> The following allocation of costs and fees of the Special Master substantially coincides with the recommendation of the Special Master.

<sup>2</sup> See the Court's Orders of July 30, 1990, and August 15, 1990, for fuller discussion of the Companies' respective stockholders' equity percentages.

Registry of the Court on or before November 16, 1990.

7. To the extent inconsistent with the instant Order, the Court's Orders of July 30, 1990, and August 15, 1990, are set aside.

8. Except as inconsistent with the instant Order, the Court approves the Reports of Special Master John T. Kipp, as follows: Report of June 12, 1990 (filed June 13, 1990); Report of June 26, 1990 (filed July 5, 1990); Report of July 2, 1990 (filed July 17, 1990); Report of September 9, 1990 (filed September 28, 1990); Report of September 19, 1990 (filed September 28, 1990).

A Judgment will be entered simultaneously in accord with the Findings of Fact, Conclusions and Order expressed herein.

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

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED

OCT 26 1990

CLERK  
U.S. DISTRICT COURT

THE HOME-STAKE OIL & GAS )  
COMPANY, THE HOME-STAKE ROYALTY )  
CORPORATION and ROBERT C. )  
SIMPSON, )

Plaintiffs, )

vs. )

Case No. 90-C-396-B

ROBERT S. TRIPPET, CAMERON DEE )  
SEWELL, RUSSELL S. NORVELL, )  
R. KENNETH SPARKS, JOHN R. )  
SIMPSON, III, AGO COMPANY, )  
AGR CORPORATION, and AGO/AGR )  
Limited Partnership, )

Defendants. )

J U D G M E N T

In accord with Findings of Fact, Conclusions of Law and Order, entered simultaneously herewith, Judgment is entered against the Plaintiff, Home-Stake Royalty Corporation, in the amount of \$52,154.64, and against the Plaintiff, Home-Stake Oil & Gas Corporation, in the amount of \$36,543.88, and against the Plaintiff, Robert C. Simpson and the Defendants, Robert S. Trippet, Cameron Dee Sewell, Russell S. Norvell, R. Kenneth Sparks, John R. Simpson, III, AGO Company, AGR Corporation and AGO/AGR Limited Partnership in the amount of \$44,349.25, and in favor of the Clerk of the Court for the Northern District of Oklahoma, for the benefit of the Special Master, John T. Kipp, in the amount of \$133, 047.77, with interest thereon from and after November 16, 1990, at the

annual rate of 7.78%

Such total judgment in the amount of \$133,047.77 with interest after November 16, 1990, as stated, is rendered against all parties, jointly and severally, as provided in said Findings of Fact, Conclusions of Law, and Order.

Dated this 26<sup>th</sup> day of October, 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

11-26-90

DEBORAH S. MARSHALL and  
CHARLES MARSHALL, husband  
and wife,  
Plaintiffs,

Case No. 88-C-1213-P

vs.

NELSON ELECTRIC, a Unit of  
General Signal, LUTHER NOAH,  
and DOES I-X, inclusive,  
and GENERAL SIGNAL  
CORPORATION,  
Defendants.

PARTIAL JUDGMENT ON JURY VERDICT

This action came on before the Court and Jury, the Honorable Layn R. Phillips presiding. The Plaintiff, DEBORAH S. MARSHALL, appeared in person and by her attorneys, Mary W. Morris and Sandra L. Tolliver; the Defendant, NELSON ELECTRIC, A Unit of General Signal Corporation, appeared by its attorneys, Michael J. Gibbens and Randall J. Snapp; and the Defendant, LUTHER NOAH, appeared in person and by his attorney of record, William E. Hughes. Testimony was heard September 27 and 28, 1990, and October 1 and 2, 1990, at which time the Court recessed following the close of Plaintiff's case. The Court resumed with Defendant, Luther Noah, and Defendant, Nelson Electric's cases on October 16, 1990, and continuing October 17 and 18, 1990. The issues were duly tried and the jury duly returned a verdict on October 19, 1990, on the issue of intentional infliction of emotional distress. The jury also answered Special Interrogatories submitted by the Court as follows:

"Question 1: Was Nelson Electric's liability based in whole or in part on the following:

- A. Nelson ignoring the conduct of Noah after it knew or should have known of the harassment?  
Yes  X  No \_\_\_\_\_ (Check One)
- B. Nelson acquiescing [sic] in the conduct of Noah after it knew or should have known of the harassment?  
Yes  X  No \_\_\_\_\_ (Check One)
- C. Nelson failing to take prompt action after it knew or should have known of the conduct of Noah in sexually harassing plaintiff?  
Yes  X  No \_\_\_\_\_ (Check One)
- D. Loaning of employees into Dept. 411?  
Yes  X  No \_\_\_\_\_ (Check One)
- E. Plaintiff's layoff from Dept. 411 in July 1987?  
Yes  X  No \_\_\_\_\_ (Check One)
- F. Employment of other individuals in Dept 411 after September 12, 1986?  
Yes  X  No \_\_\_\_\_ (Check One)
- G. Conduct of Bill Hardee in March or April 1987?  
Yes  X  No \_\_\_\_\_ (Check One)
- H. Conduct of Nelson Electric after September 12, 1986?  
Yes  X  No \_\_\_\_\_ (Check One)

If yes, briefly describe such conduct. You may also refer to any of the above questions which you may have answered "yes" in responding to this question. If you answer "no" to this question, fill in nothing below.

It was our feeling that Nelson was not consistent [sic] with documented procedures in:

- A. Layoffs  
B. Bump rights

C. Recall Procedures

It was also our feeling that Nelson had limited procedures on what identified sexual harassment and no procedures or methods of employees or management to deal with this problem.

Question 2: Focusing on your compensatory damage awards, why was the amount of compensatory damages against Noah \$2500, whereas the amount of compensatory damages against Nelson \$93,000? Briefly explain.

Noah was under employment of Nelson Electric who focused on production, not employee relations. Had proper procedures been documented for sexual harassment and correction, more of the responsibility would have fallen on Noah.

Refer to Question - 1A, B, C."

The Court then directed the entry of a partial judgment on the above jury claim and issues upon express determination that there is no just reason for delay and upon an express direction for entry of a partial judgment. As a result IT IS ORDERED AND ADJUDGED:

That Plaintiff, DEBORAH S. MARSHALL, recover against the Defendant, LUTHER NOAH, the sum of TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00) as compensatory damages, plus the sum of TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00) as punitive damages, together with interest as provided by law and;

and

That Plaintiff, DEBORAH S. MARSHALL, recover against the Defendant, NELSON ELECTRIC, a Unit of General Signal Corporation, in the sum of NINETY-THREE THOUSAND AND NO/100 DOLLARS (\$93,000.00) as compensatory damages, plus the sum of SIXTY-TWO

THOUSAND AND NO/100 DOLLARS (\$62,000.00) as punitive damages,  
together with interest provided by law.

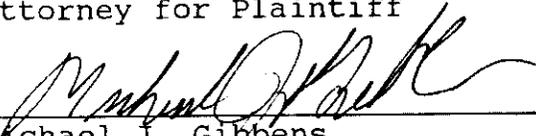
The Court will entertain an application for costs and  
attorney's fees, if appropriate, upon entry of a final judgment  
resolving Defendants' Motions for Judgment Notwithstanding the  
Verdict, or in the Alternative, Motion to Alter or Amend Judgment  
or for New Trial, deemed filed October 26, 1990, and the Title VII  
claim in this action.

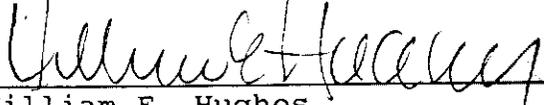
DATED this 27<sup>th</sup> day of October, 1990.

  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM ONLY:

  
Mary W. Morris  
Attorney for Plaintiff

  
Michael J. Gibbens  
Attorney for Defendant, Nelson Electric  
A Unit of General Signal Corporation

  
William E. Hughes  
Attorney for Defendant, Luther Noah

FILED

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

SEP 25 1990

CLERK  
U.S. DISTRICT COURT

DEBRA ANN MARTIN, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 WAL-MART STORES, INC., )  
 a foreign corporation, )  
 )  
 Defendant. )

No. 89-C-646-B

ORDER

The Court has before it for decision the Motion for Judgment Notwithstanding the Verdict of the Defendant pursuant to Fed.R.Civ.P. 50(b). This is an alleged slip and fall personal injury action. The case was tried to a jury on September 17, 19 and 20, 1990. The evidence established that Plaintiff was a customer of the Defendant's store in Tulsa County, Oklahoma on Sunday, August 14, 1988. While in the women's restroom facility about 3:15 P.M. Plaintiff slipped on the tile floor, on a liquid slippery substance, as she walked a few feet from exiting a restroom stall. There was dispute in the evidence relative to the extent of Plaintiff's low back injury.

The Plaintiff's evidence established that the store opened to the public at 12:00 o'clock noon and there was considerable customer traffic over the approximately three-hour period before Plaintiff's fall. Plaintiff's evidence also established that the restroom had been cleaned and inspected at closing time at 10 P.M. the preceding evening. The Defendant's store had a one-hour inspection and cleaning policy that had not been followed relative to this women's restroom. The evidence did not establish what the

liquid slippery substance was upon which Plaintiff slipped and fell nor how it got on the floor, or how long it had been there. There was also evidence that a waste paper basket had overflowed and there was some paper on the floor. At the conclusion of Plaintiff's evidence the Court overruled the Defendant's Motion to Dismiss on the theory of Glover v. Montgomery Ward and Co., 536 P.2d 401 (Okla. 1974), to the effect that a fact question was presented regarding Defendant's negligence because the subject restroom floor had not been inspected or cleaned since 10 P.M. the night before and there was heavy customer traffic over the three-hour period the store was open.

Relevant evidence introduced by the Defendant was the deposition testimony of former store employee Michelle M. Cantrell. Mrs. Cantrell testified that on the day of the incident she was employed in the service desk refund department (Cantrell Depo. p. 6). Incident to her employment she was to inspect the ladies' restroom for obstructions or anything that might cause an accident (Depo. pp. 7, 45). Approximately 15 minutes before Plaintiff fell Mrs. Cantrell was in the ladies' restroom using the facilities. Before exiting she inspected the whole restroom floor for anything thereon that might cause an accident. The lighting was good and nothing was on the floor such as a liquid slippery substance. (Depo. pp. 9-10, 17-18, 37, 39). The Plaintiff offered no testimony in rebuttal to that of Mrs. Cantrell.

After expressing some reluctance the Court submitted the case to a jury and on September 20, 1990, the jury returned awarding the

Plaintiff personal injury damages in the sum of \$110,000.00.

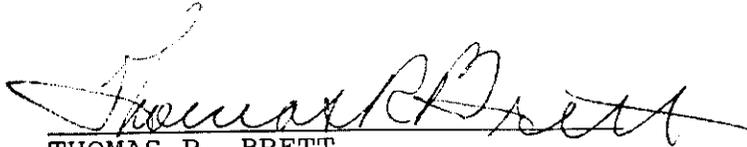
Thus, the issue presented is whether the evidence created a fact question for determination by the trier of fact. The Tenth Circuit Court of Appeals has previously stated that a judgment notwithstanding the verdict should be cautiously and sparingly granted, and is appropriate only when the evidence points but one way and is susceptible to no reasonable inferences which may sustain the position of the party against whom the motion is made. E.E.O.C. v. Prudential Federal Savings & Loan Assn., 763 F.2d 1166, 1171 (10th Cir.), *cert. denied*, 474 U.S. 946, 106 S.Ct. 312, 88 L.Ed.2d 289 (1985); Joyce v. Atlantic Richfield Company, 651 F.2d 676, 680 (10th Cir. 1981); Symons v. Mueller Company, 493 F.2d 972, 976 (10th Cir. 1974); and Lucas v. Dover Corporation, Norris Div., 857 F.2d 1397 (10th Cir. 1988).

The Court must look to the law of Oklahoma in this diversity action in determining whether a *prima facie* case of negligence has been established. The duty of the storekeeper is to reasonably inspect its aisles and passageways for the safety of invitees and to warn of or correct existing dangerous conditions of which it knew or in the exercise of ordinary care should have known. Rogers v. Hennessee, Okl., 602 P.2d 1033 (1979); Safeway Stores, Inc. v. Spicer, 490 P.2d 251 (1971); Safeway Stores, Inc. v. Feedback, 390 P.2d 519 (1964); and Safeway Stores, Inc. v. Criner, Okl., 380 P.2d 712 (1963).

The storekeeper is not an insurer of the safety of customer-invitees.

The Court concludes that as the testimony of witness Cantrell was not rebutted, Plaintiff failed to establish a *prima facie* case submissible to the trier of fact and the Defendant's Motion for Directed Verdict at the conclusion of all of the evidence should have been sustained. Witness Cantrell's testimony established that no foreign matter, such as that upon which the Plaintiff fell, was on the floor approximately 15 minutes before Plaintiff fell so it remains to speculation and conjecture, and the evidence necessary to establish an inference of negligence is lacking. McConnell v. Oklahoma Gas & Electric Co., Okl., 563 P.2d 632 (1977), and Southwestern Greyhound Lines, Inc. v. Smith, 277 P.2d 157 (Okla. 1959). Therefore, Defendant's Motion for Judgment Notwithstanding the Verdict is hereby SUSTAINED and a separate Judgment shall be accordingly entered.

DATED this 25<sup>th</sup> day of October, 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FEDERAL DEPOSIT INSURANCE )  
CORPORATION, )

Plaintiff, )

vs. )

REX D. FRATES and )  
DALE E. FRATES, )

Defendants. )

Case No. 89-C-1028-C **F I L E D**

**OCT 25 1990**

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

ORDER TO DISMISS WITHOUT PREJUDICE

COMES ON FOR CONSIDERATION the Joint Motion to Dismiss without Prejudice filed by the Plaintiff and the Defendant. The Court considering the same finds the Motion should be granted and therefore orders the case be dismissed without prejudice.

(Signed) H. Dale Cook

U.S. BANKRUPTCY JUDGE

*District*

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

OCT 25 1988

JACK DAVIS, CLERK  
U.S. DISTRICT COURT

IN RE:

FITZGERALD, DeARMAN &  
ROBERTS, INC.,

Debtor.

P. DAVID NEWSOME, JR.,  
TRUSTEE FOR THE LIQUIDATION  
OF FITZGERALD, DeARMAN &  
ROBERTS, INC.,

Plaintiff,

vs.

THE EXCHANGE NATIONAL BANK  
OF CHICAGO,

Defendant.

Bankruptcy Case No.  
88-01859-W (SIPA)

Adversary No. 89-0302-W

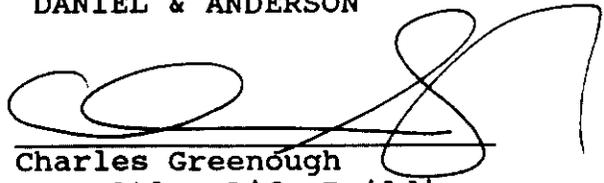
Case No. 90-C-711-B

STIPULATION <sup>OF</sup> ~~FOR~~ DISMISSAL OF APPEAL

P. David Newsome, Jr., Trustee for the Liquidation of Fitzgerald, DeArman & Roberts, Inc., Plaintiff, and Exchange National Bank of Chicago, Defendant, pursuant to Bankruptcy Rule 8001(c)(2) stipulate to the dismissal of the appeal filed in this action by Exchange National Bank of Chicago.

This Stipulation <sup>of</sup> ~~for~~ Dismissal of Appeal is filed because Plaintiff and Defendant have reached a settlement of this Adversary Proceeding, which settlement has been approved by the Bankruptcy Court.

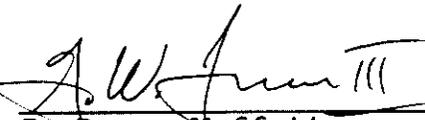
DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

By: 

Charles Greenough  
1000 Atlas Life Building  
Tulsa, Oklahoma 74103  
(918) 582-1211

Attorneys for the Defendant,  
Exchange National Bank of  
Chicago

CONNER & WINTERS

By: 

J. Denny Moffett  
G. W. Turner, III  
2400 First National Tower  
Tulsa, Oklahoma 74103  
(918) 586-5711

Attorneys for P. David  
Newsome, Jr., Trustee,  
the Plaintiff

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

OCT 25 1990  
U.S. DISTRICT COURT  
CLERK

DEBRA ANN MARTIN,

Plaintiff,

vs.

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

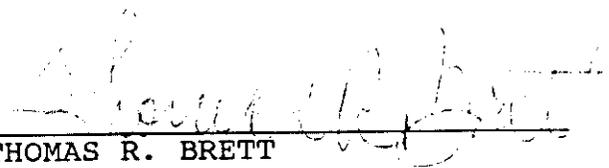
Defendant.

No. 89-C-646-B

J U D G M E N T

In keeping with the Order Sustaining the Defendant's Motion for Judgment Notwithstanding the Verdict entered this date, Judgment is hereby entered in favor of the Defendant, Wal-Mart Stores, Inc. and against the Plaintiff, Debra Ann Martin, and Plaintiff's action is hereby dismissed. Costs are assessed against the Plaintiff and each party is to pay their own respective attorney fees.

DATED this 25<sup>th</sup> day of October, 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OCT 24 1990 *at*

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD B. PRINGLE, R. PHILLIPS  
PRINGLE, RICHARD B. PRINGLE  
CHILDREN'S TRUST, and  
R. PHILLIPS PRINGLE CHILDREN'S  
TRUST,

Defendants.

Civil Action No.

99-C 893 E

CONSENT DECREE

Plaintiff, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), has filed a complaint herein alleging that Defendants, Richard B. Pringle, R. Phillips Pringle, Richard B. Pringle Children's Trust, and R. Phillips Pringle Children's Trust, have violated Part C of the Safe Drinking Water Act ("the Act"), 42 U.S.C. §§ 300h - 300h-7, and its implementing regulations codified at 40 CFR Part 147, Subpart GGG.

Defendants owned and/or operated three enhanced oil recovery injection wells known as Well Number 10, Well Number 12, and Well Number 13 (collectively, "the wells"). Well Number 10 is located in the Southeast Quarter of Section 30, Township 23 North, Range 11 East, Avant Field, Osage County, Oklahoma. Well Number 12 is located in the Northeast Quarter of Section 31, Township 23

North, Range 11 East, Avant Field, Osage County, Oklahoma. Well Number 13 is located in the Northwest Quarter of Section 29, Township 23 North, Range 11 East, Avant Field, Osage County, Oklahoma. The wells are "Class II injection wells" as defined at 40 CFR § 147.2902.

Defendants are "persons" within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

The United States and Defendants have consented to the entry of this Decree without trial of any issues, and the United States and Defendants hereby stipulate to the Court that in order to resolve the issues stated in the United States' Complaint, this Consent Decree should be entered.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over the subject matter of this action and over the parties pursuant to Section 1423(b) of the Act, 42 U.S.C. § 300h-2(b), and 28 U.S.C. §§ 1331, 1345, and 1355. The Complaint states a claim upon which relief may be granted under Section 1423(b) of the Act.

II. BINDING EFFECT

The provisions of this Consent Decree shall apply to and be binding upon the United States and Defendants and upon Defendants' officers, directors, agents, trustees, servants, employees, successors, assigns, attorneys, and all persons,

firms, and corporations acting under the control or direction of Defendants.

### III. PENALTY FOR PAST VIOLATIONS

Defendants shall pay a civil penalty in the amount of THREE THOUSAND SIX HUNDRED DOLLARS (\$3,600) in full satisfaction of the United States' claims for Defendants' violations of Part C of the Act and its implementing regulations as set forth in the Complaint filed herein through the date of lodging this Decree. Payment shall be made within thirty (30) days after the date of entry of this Decree by delivering a cashiers check in the sum stated above payable to the "Treasurer of the United States" to the United States Attorney for the Northern District of Oklahoma, U.S. Courthouse, Room 3600, 333 West Fourth Street, Tulsa, Oklahoma 74103. Simultaneously, copies of the check and the letter tendering such check shall be mailed to the Office of Regional Counsel, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Attn: Ms. Debora Strickley-Browning (6C-W); and to the Chief, Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, Attn: D.J. No 90-5-1-1-3284. Such payment shall not be deductible for federal taxation purposes.

### IV. NON-WAIVER PROVISIONS

A. This Consent Decree in no way affects or relieves Defendants of responsibility to comply with any Federal, State,

or local law or regulation. Nothing contained in this Decree shall be construed to prevent or limit the United States' rights to obtain penalties or injunctive relief under the Act or other federal statutes or regulations except as expressly specified herein.

B. The parties agree that Defendants are responsible for achieving and maintaining complete compliance with all applicable Federal and State laws, regulations, and permits, and that compliance with this Decree shall be no defense to any actions commenced pursuant to said laws, regulations, or permits.

C. This Consent Decree does not limit or affect the rights of Defendants or of the United States as against any third parties, nor does it limit the rights of third parties, not parties to this Consent Decree, against Defendants.

D. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Decree.

V. COSTS OF SUIT

Each party shall bear its own costs and attorney's fees in this action. Should Defendants subsequently be determined to have violated the terms and conditions of this Decree, then Defendants shall be liable to the United States for any costs and attorney's fees incurred by the United States in any actions against Defendants for noncompliance with this Decree.

VI. MODIFICATION

There shall be no modification of this Consent Decree without written approval of all of the parties to this Consent Decree and the Court.

VII. CONTINUING JURISDICTION OF THE COURT

The Court shall retain jurisdiction to enforce the terms and conditions of this Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Decree.

VIII. TERMINATION

This Decree shall terminate when Defendants have paid the civil penalty as provided for in Section III of this Decree.

IX. SIGNATORIES

The representatives of each party to this Consent Decree certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

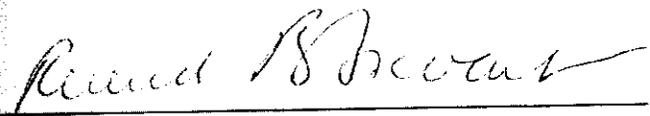
Dated and entered this 23<sup>rd</sup> day of October 1990.

  
UNITED STATES DISTRICT JUDGE

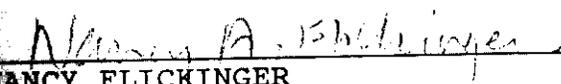
WE HEREBY CONSENT to the entry of this Decree.

FOR THE UNITED STATES OF AMERICA:

\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
RICHARD B. STEWART  
Assistant Attorney General  
Land and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
NANCY FLICKINGER  
Trial Attorney  
Environmental Enforcement Section  
Land and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530  
(202) 633-2600

\_\_\_\_\_  
TONY M. GRAHAM  
United States Attorney  
Northern District of Oklahoma

10-17-92  
DATE

BY:   
\_\_\_\_\_

Assistant United States Attorney  
Northern District of Oklahoma  
U.S. Courthouse, Room 3600  
333 West Fourth Street  
Tulsa, Oklahoma 74103

Feb 18 1990

DATE

*James M. Strock*

**JAMES M. STROCK**  
Assistant Administrator for  
Enforcement and Compliance  
Monitoring  
U.S. Environmental Protection  
Agency  
401 M Street, S.W.  
Washington, D.C. 20460

**FOR DEFENDANTS:**

DATE

*Richard B. Pringle*

**RICHARD B. PRINGLE**, Individually  
as Trustee for the **RICHARD B.**  
**PRINGLE CHILDREN'S TRUST**  
1508 Philtower Building  
Tulsa, Oklahoma 74103  
(918) 584-1926

DATE

*Feb. 21, 1990*

*R. Phillips Pringle*  
**R. PHILLIPS PRINGLE**, Individually  
and as Trustee for the **R.**  
**PHILLIPS PRINGLE CHILDREN'S TRUST**  
1508 Philtower Building  
Tulsa, Oklahoma 74103  
(918) 584-1926

CERTIFICATE OF SERVICE

I do hereby certify that the foregoing document was served on defendants by placing a stamped envelope, postage prepaid, containing the document in a United States mailbox on October 16, 1990, addressed to the following:

RICHARD B. PRINGLE  
R. PHILLIPS PRINGLE  
1508 Philtower Building  
Tulsa, Oklahoma 74103

DATE:

10-16-90

SIGNATURE:

Donna Lopez

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 KENNETH J. QUIST; JAN QUIST )  
 a/k/a JANICE C. QUIST; STATE OF )  
 OKLAHOMA ex rel. OKLAHOMA TAX )  
 COMMISSION; COUNTY TREASURER, )  
 Tulsa County, Oklahoma; and )  
 BOARD OF COUNTY COMMISSIONERS, )  
 Tulsa County, Oklahoma, )  
 )  
 Defendants. )

**F I L E D**

**OCT 24 1990**

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

CIVIL ACTION NO. 88-C-1514-B

DEFICIENCY JUDGMENT

This matter comes on before the Court this 24<sup>th</sup> of Oct., 1990, on the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment which Motion was filed on the 12th day of July, 1990, and a copy of the Motion was mailed to Donald E. Cummings, Attorney for Defendants, Kenneth J. Quist and Jan Quist a/k/a Janice C. Quist, Tulsa National Bank Building, 2087 East 71st Street, Suite 229, Tulsa, Oklahoma 74136, and all other counsel of record. The Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, appeared by Tony M. Graham, United States Attorney for the Northern District of Oklahoma through Phil Pinnell, Assistant United States Attorney, and the Defendants, Kenneth J. Quist and Jan Quist a/k/a Janice C. Quist, 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 22, 1989, in

favor of the Plaintiff United States of America, and against the Defendants, Kenneth J. Quist and Jan Quist a/k/a Janice C. Quist, with interest and costs to date of sale is \$30,383.88.

The Court further finds that the appraised value of the real property at the time of sale was \$3,500.00.

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 22, 1989, for the sum of \$4,000.00 which is more 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 4th day of October, 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, Kenneth J. Quist and Jan Quist a/k/a Janice C. Quist, as follows:

Principal Balance as of 5/22/89	\$21,871.23
Interest	7,179.04
Late Charges to Date of Judgment	354.12
Management Broker Fees to Date of Sale	613.30
Abstracting	103.00
Publication Fees of Notice of Sale	158.19
Appraisers' Fees	<u>105.00</u>
TOTAL	\$30,383.88
Less Credit of Sale Proceeds	- <u>4,000.00</u>
DEFICIENCY	\$26,383.88

plus interest on said deficiency judgment at the legal rate of \_\_\_\_\_ percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the sale proceeds 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, Kenneth J. Quist and Jan Quist a/k/a Janice C. Quist, a deficiency judgment in the amount of \$26,383.88, plus interest at the legal rate of 7.78 percent per annum on said deficiency judgment from date of judgment until paid.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

PP/css

MGM/adb

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

SHELTER INSURANCE COMPANY, a )  
Missouri Corporation, )

Plaintiff, )

vs. )

ROBERT FRANKLIN FISHER and )  
CRAIG ALLEN SIMON, a minor, )  
by and through his guardian, )  
JOHN DOE, )

Defendants. )

FILED

OCT 23 1990

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

Case No. 90 C 742 C

ORDER OF DISMISSAL WITHOUT PREJUDICE

Now on this 23 day of Oct, 1990, the above  
matter came on before me, the <sup>United</sup> States District Court pursuant to  
plaintiff's application for dismissal. Upon finding no objection  
from the defendants, the above action is hereby dismissed without  
prejudice with all parties are to pay their respective costs.

  
UNITED STATES DISTRICT JUDGE

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

EMCO INDUSTRIES, INC.

Plaintiff,

v.

CRANE CARRIER COMPANY,

Defendant.

Civil Action No. 89-C574-C

**FILED**

**OCT 23 1990**

CONSENT DECREE

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

ON THIS DATE, CAME the parties in this action, both of whom have undertaken discovery herein with respect to the issues of validity, infringement and enforceability of the patents-in-suit, and announce, prior to trial, that they have reached a settlement and are in agreement to the entry of this Consent Decree. The Court being of the opinion that judgment should be entered as agreed to by the parties, it is, therefore,

ORDERED, ADJUDGED AND DECREED that:

1. Plaintiff, Emco Industries, Inc. is a Texas corporation having its principal place of business in Plainview, Texas;
2. Defendant, Crane Carrier Company is a Delaware corporation having its principal place of business in Tulsa, Oklahoma;
3. This Court has jurisdiction over the subject matter and over the parties to this action;

4. United States Patent No. 3,910,434 entitled "Mechanically Actuated Sideloading Arrangement for a Vehicle Body", was duly and legally issued on October 7, 1975. Plaintiff is the owner of the entire right, title and interest in and to said patent;

5. United States Patent No. 4,427,333 entitled "Loader for a Vehicle Body" was duly and legally issued on January 24, 1984. Plaintiff is the owner of the entire right, title and interest in and to said patent;

6. United States Patents No. 3,910,434 and No. 4,427,333 and the claims thereof, except invalid claims 11 and 12 of No. 3,910,434, are good and valid in law and are enforceable;

7. The refuse vehicles in combination with container lifting mechanisms manufactured and sold by Defendant which are the subject of this action are commonly referred to as integrated side loaders and integrated front loaders; if unattached to an integrated side loader, the side lifting mechanisms for containers are commonly referred to as side loader mechanisms;

8. Defendant, Crane Carrier Company, has infringed each of the claims-in-suit of United States Patents No. 3,910,434 and No. 4,427,333 by manufacturing and selling its integrated side loader and side loader mechanisms;

9. Subject to the injunction, findings and conclusions herein, Plaintiff's claims and Defendants' counterclaims contained in the pleadings are dismissed with prejudice insofar as they pertain to Defendants' integrated side loaders and side loader mechanisms;

10. Plaintiff's claims and Defendants' counterclaims contained in the pleadings are dismissed without prejudice insofar as they pertain to Defendants' integrated front loaders;

11. This Court shall retain continuing jurisdiction over this cause for purposes of enabling the parties to apply to the Court for such orders, modifications, revisions or corrections that may be necessary for construction of this judgment and the injunction herein or for enforcement or compliance therewith;

12. The parties have reached an agreement in settlement and in lieu of damages they have entered into an ongoing License Agreement; therefore, there will be no damages awarded and no accounting shall be ordered.

13. Each party shall bear its own attorneys' fees and costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

14. INJUNCTION: Crane Carrier Company, its parent, subsidiaries and affiliated companies, their respective officers, directors, agents, servants, employees and distributors, and all other persons in active consort or participation with any of them are hereby enjoined:

(a) From infringing, inducing infringement of and contributorily infringing the valid claims of United States Patents No. 3,910,434 and No. 4,427,333, by the manufacture, sale or use of Defendants' integrated side loaders or side loader mechanisms,

(b) From making, using or selling any integrated side loaders or side loader mechanisms that would infringe valid claims of U.S. Patents No. 3,910,434 and 4,427,333 during the life of the aforesaid patents, provided, however, that this injunction shall not apply to the making, using or selling of integrated side loaders or side loaders covered by the license granted to Defendant pursuant to the settlement of this litigation.

SO ORDERED ON THIS the 22 day of October,

1990.

(Signed) N. Dale Cook

United States District Judge

APPROVED AS TO FORM AND CONTENT:

EMCO INDUSTRIES, INC.  
Plaintiff

By: E. Mickey Hubbard  
E. Mickey Hubbard  
John P. Pinkerton  
William D. Harris, Jr.  
George R. Schultz  
HUBBARD, THURMAN, TURNER,  
TUCKER & HARRIS  
2100 One Galleria Tower  
13355 Noel Road  
Dallas, Texas 75240  
(214) 233-5712

By: Laurence L. Pinkerton  
Laurence L. Pinkerton  
Deirdre Dexter  
CONNOR AND WINTERS  
2400 First National Tower  
Tulsa, Oklahoma 74103  
(918) 586-5711

ATTORNEYS FOR PLAINTIFF

CRANE CARRIER COMPANY  
Defendant

By: James R. Head  
James R. Head  
HEAD & JOHNSON, P.A.  
228 West 17th Place  
Tulsa, Oklahoma 74119  
(918) 584-4187

ATTORNEYS FOR DEFENDANT

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

BERNECE E. WARD; COUNTY )  
TREASURER, Tulsa County, )  
Oklahoma; and BOARD OF COUNTY )  
COMMISSIONERS, Tulsa County, )  
Oklahoma, )

Defendants. )

CIVIL ACTION NO. 90-C-233-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 23 day  
of October, 1990. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by J. Dennis Semler, Assistant District  
Attorney, Tulsa County, Oklahoma; and the Defendant, Bernece E.  
Ward, appears not, but makes default.

The Court being fully advised and having examined the  
court file finds that 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 Defendant, Bernece E.  
Ward, was served by publishing notice of this action in the Tulsa

Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning July 13, 1990, and continuing through 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, Bernece E. Ward, 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, Bernece E. Ward. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to her present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to

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

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on April 11, 1990; that the Defendant, Bernece E. Ward, 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:

The North Seventy (70) feet of Lot eight (8), Block Seventy-eight (78), Original Town of Collinsville, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on October 22, 1975, the Defendant, Bernece E. Ward, executed and delivered to the United States of America, acting through the Farmers Home Administration, her mortgage note in the amount of \$9,150.00, payable in monthly installments, with interest thereon at the rate of 8.125 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Bernece E. Ward, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated October 22, 1975, covering the above-described property. Said

mortgage was recorded on October 22, 1975, in Book 4187, Page 2289, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Bernece E. Ward, 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, Bernece E. Ward, is indebted to the Plaintiff in the principal sum of \$7,310.69, plus accrued interest in the amount of \$1,163.68 as of July 28, 1989, plus interest accruing thereafter at the rate of 8.125 percent per annum or \$1.6274 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$244.00 (\$20.00 docket fees, \$4.00 fees for service of Summons and Complaint, \$220.00 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, Bernece E. Ward, in the principal sum of \$7,310.69, plus accrued interest in the amount of \$1,163.68 as of July 28, 1989, plus interest accruing thereafter at the rate of 8.125 percent per annum or \$1.6274 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 \$244.00 (\$20.00 docket fees, \$4.00 fees for service of Summons and Complaint,

\$220.00 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.

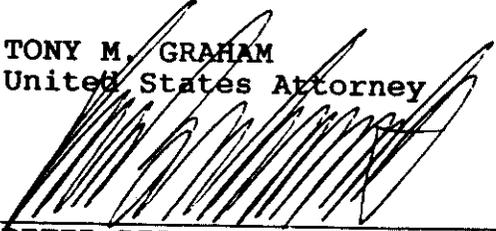
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the

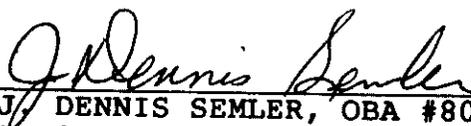
Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. BUSH  
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
PETER BERNHARDT, OBA #741  
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-233-E

PB/css



with Summons and Complaint on July 27, 1990; that the Defendant, Pauline Louise Casey, was served with Summons and Complaint on July 27, 1990; that the Defendant, Commercial Credit Plan, Inc., was served with Summons and Complaint on August 1, 1990; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on June 18, 1990; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 19, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 19, 1990.

It appears that the Defendants, John Lloyd Casey and Pauline Louise Casey, filed their Answer and Notice of Bankruptcy on July 6, 1990; that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed its Answer on July 9, 1990; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on July 9, 1990; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer on June 25, 1990; and that the Defendant, Commercial Credit Plan, Inc., has failed to answer and its default has therefore been entered by the Clerk of this Court.

The Court further finds that on August 30, 1989, John Lloyd Casey and Pauline Louise Casey filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 89-02599-C. On December 21, 1989, John Lloyd Casey and Pauline

Louise Casey were discharged, and the estate was closed on March 1, 1990.

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:

The South Half (S/2) of Lot Five (5), Block Twenty (20) MARTIN SECOND ADDITION to Tulsa, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on May 28, 1977, the Defendants, John Lloyd Casey and Pauline Louise Casey, 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 \$10,500.00, payable in monthly 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, John Lloyd Casey and Pauline Louise Casey, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated May 28, 1977, covering the above-described property. Said mortgage was recorded on May 31, 1977, in Book 4266, Page 1977, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, John Lloyd Casey and Pauline Louise Casey, 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, John Lloyd Casey and Pauline Louise Casey, are indebted to the Plaintiff in the principal sum of \$9,117.21, plus interest at the rate of 8.5 percent per annum from April 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$32.10 (\$20.00 docket fees, \$12.10 fees for service of Summons and Complaint).

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has liens on the property which is the subject matter of this action by virtue of income tax Warrant No. ITI8800259000 dated March 24, 1988 in the amount of \$297.51 plus penalties and interest, and income tax Warrant No. ITI8800260200 dated March 24, 1988 in the amount of \$779.99 plus penalties and interest. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$1.00 which became a lien on the property as of July 5, 1989. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, Board of County Commissioners, Tulsa County, Oklahoma, and Commercial

Credit Plan, Inc. 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 Defendants, John Lloyd Casey and Pauline Louise Casey, in the principal sum of \$9,117.21, plus interest at the rate of 8.5 percent per annum from April 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 in the amount of \$32.10 (\$20.00 docket fees, \$12.10 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 for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover judgment in the amount of \$1,077.50 plus penalties and interest.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$1.00 for personal property taxes for the year 1988, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Board of County Commissioners, Tulsa County, Oklahoma, and Commercial Credit Plan, Inc. 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 Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, in the amount of \$1,077.50 plus penalties and interest.

**Fourth:**

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$1.00, personal property taxes which are currently due and owing.

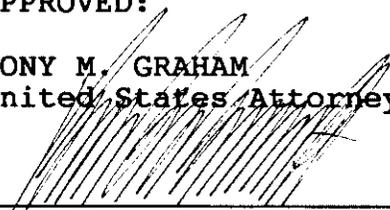
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

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

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

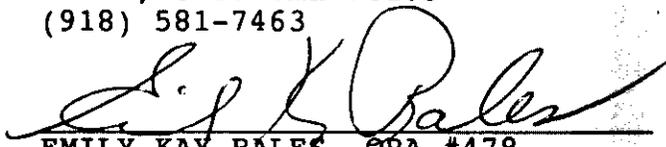
  
UNITED STATES DISTRICT JUDGE

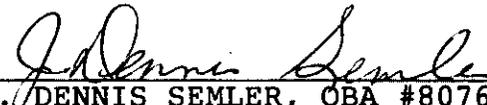
APPROVED:

  
TONY M. GRAHAM  
United States Attorney

---

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

  
EMILY KAY BALES, OBA #478  
Attorney for John Lloyd Casey and  
Pauline Louise Casey

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

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

Judgment of Foreclosure  
Civil Action No. 90-C-528-C  
PB/esr

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

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

Defendants.

CIVIL ACTION NO. 90-C-0066-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 23 day  
of October, 1990. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by J. Dennis Semler, Assistant District  
Attorney, Tulsa County, Oklahoma; the Defendant, Curtis A. Parks,  
appears not, having previously filed his Disclaimer; the  
Defendant, Tulsa Adjustment Bureau, Inc., appears not, having  
previously filed its Disclaimer; the Defendant, State of Oklahoma  
ex rel. Oklahoma Tax Commission, appears by its attorney, Lisa  
Haws; and the Defendants, Steven Jay Brown and Catherine Grace  
Brown, appear not, but make default.

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

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on February 20, 1990; that the Defendant, Curtis A. Parks, filed his Disclaimer on February 5, 1990; that the Defendant, Tulsa Adjustment Bureau, Inc. filed its Disclaimer on February 9, 1990; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer on February 16, 1990, and that the Defendants, Steven Jay Brown and Catherine Grace Brown, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on June 21, 1990, Steven Jay Brown and Catherine Grace Brown filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 90-C-01717-W. On September 13, 1990, 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 Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Eighteen (18), Block Seventeen (17)  
REGENCY PARK ADDITION, to the City of Tulsa,  
Tulsa County, State of Oklahoma, according to  
the Recorded Plat thereof.

The Court further finds that on May 30, 1985, the Defendants, Steven Jay Brown and Catherine Grace Brown, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$53,200.00, payable in monthly installments, with interest thereon at the rate of twelve percent (12%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Steven Jay Brown and Catherine Grace Brown, executed and delivered to the

United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated May 30, 1985, covering the above-described property. Said mortgage was recorded on May 31, 1985, in Book 4866, Page 1463, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Steven Jay Brown and Catherine Grace Brown, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Steven Jay Brown and Catherine Grace Brown, are indebted to the Plaintiff in the principal sum of \$52,608.39, plus interest at the rate of 12 percent per annum from April 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

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

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has liens on the property which is the subject matter of this action by virtue of Business Tax Warrant No. STS8600155802, in the amount of \$4,449.53 plus interest and penalties according to law; and by virtue of Business Tax Warrant No. STS8600235902, in the amount of \$14,325.86 plus interest and penalties according to law. These

liens are inferior to the interest of the Plaintiff, United States of America.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendants, Steven Jay Brown and Catherine Grace Brown, in the principal sum of \$52,608.39, plus interest at the rate of 12 percent per annum from April 1, 1988 until judgment, plus interest thereafter at the current legal rate of 7.78 percent per annum until paid, plus the costs of this action, 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;

**Third:**

In payment of the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, in the amount of \$18,775.39 plus interest and penalties according to law.

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

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

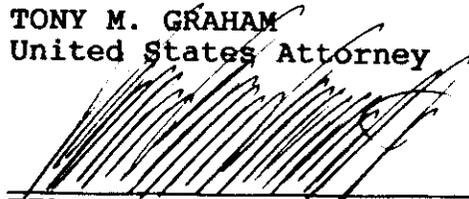
S/ JAMES O. ELLISON

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UNITED STATES DISTRICT JUDGE

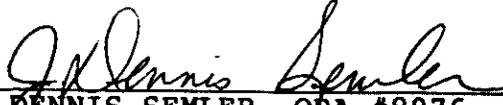
APPROVED:

TONY M. GRAHAM  
United States Attorney



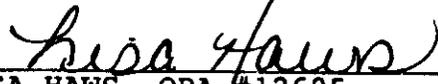
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PETER BERNHARDT, OBA #741  
Assistant United States Attorney  
3600 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463



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



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

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

PB/esr

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRIAN D. UNDERWOOD a/k/a  
BLAIN D. UNDERWOOD; SHARON A.  
UNDERWOOD; COUNTY TREASURER,  
Tulsa County, Oklahoma; and  
BOARD OF COUNTY COMMISSIONERS,  
Tulsa County, Oklahoma,

Defendants.

CIVIL ACTION NO. 90-C-242-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 23 day  
of Oct., 1990. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by J. Dennis Semler, Assistant District  
Attorney, Tulsa County, Oklahoma; and the Defendants, Brian D.  
Underwood a/k/a Blain D. Underwood and Sharon A. Underwood,  
appear not, but make default.

The Court being fully advised and having examined the  
court file finds that the Defendant, Brian D. Underwood a/k/a  
Blain D. Underwood, acknowledged receipt of Summons and Complaint  
on March 24, 1990; that 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 23, 1990.

The Court further finds that the Defendant, Sharon A. Underwood, was served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning 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, Sharon A. Underwood, 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, Sharon A. Underwood. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to her present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by

the Plaintiff, both as to subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on April 11, 1990; and that the Defendants, Brian D. Underwood a/k/a Blain D. Underwood and Sharon A. Underwood, 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 Six (6), GLEASON VILLAGE, an Addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on July 23, 1986, Brian D. Underwood and Sharon A. Underwood, 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 \$46,000.00, payable in monthly installments, with interest thereon at the rate of ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, Brian D. Underwood and Sharon A. Underwood 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 July 23, 1986, covering the above-described property. Said

mortgage was recorded on July 24, 1986, in Book 4957, Page 2599, in the records of Tulsa County, Oklahoma.

The Court further finds that on May 4, 1989, Sharon A. Underwood executed a Quit-Claim Deed conveying all right, title, or interest in the subject real property to Brian D. Underwood. Said Quit-Claim Deed was recorded on May 18, 1989 in Book 5184, Page 200, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Brian D. Underwood a/k/a Blain D. Underwood and Sharon A. Underwood, 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, Brian D. Underwood a/k/a Blain D. Underwood and Sharon A. Underwood, are indebted to the Plaintiff in the principal sum of \$45,486.53, plus interest at the rate of 10 percent per annum from August 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$240.00 (\$20.00 docket fees, \$220.00 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 Defendants, Brian D. Underwood a/k/a Blain D. Underwood in personam and Sharon A. Underwood in rem, in the principal sum of \$45,486.53, plus interest at the rate of 10 percent per annum from August 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 \$240.00 (\$20.00 docket fees, \$220.00 publication fees fee for recording Notice of Lis Pendens), 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.

S/ JAMES O. ELLISON

---

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney



---

PETER BERNHARDT, OBA #741  
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-242-E

PB/css

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

IN RE:

WOOD COMM FUND I, INC., an  
Oklahoma corporation,

Debtor,

CIMARRON FEDERAL SAVINGS AND  
LOAN ASSOCIATION,

Appellant,

vs.

WOOD COMM FUND I, INC.,

Appellee.

Bankruptcy Case No. 89-00520-C

FILED

OCT 23 1990 *dst*

District Court No. 90-C-630-E /

ORDER DISMISSING APPEAL

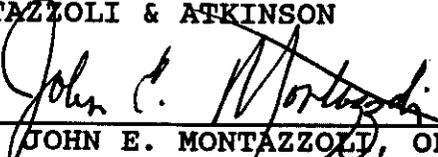
NOW on this 23<sup>rd</sup> day of October, 1990, the Application to Dismiss Appeal comes on for consideration, ex parte, wherein the Appellant seeks to dismiss the above-styled action, and the Court finds, after examining the file and for good cause shown, that said Application should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court, that the Appeal in the above-styled action be dismissed.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

MONTAZZOLI & ATKINSON

BY: 

JOHN E. MONTAZZOLI, OBA #6308  
JACK L. ATKINSON, OBA #372  
6701 North Broadway, Suite 214  
Oklahoma City, Oklahoma 73116  
(405) 842-0688

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

FILED  
OCT 23 1990 *dt*

RANDOLPH FRANKLIN DIAL,

Petitioner,

vs.

JACK COWLEY,

Respondent.

No. 88-C-1576-E ✓

*Jack C. Cowley, Clerk*

**ORDER**

This matter is before the Court on consideration of Petitioner's second ground for relief asserting that he was denied a post-examination competency hearing after being examined by a psychiatrist pursuant to Court order. The Court has reviewed the district court records in Case No. CRF-86-1657 including the transcript of the sentencing hearing held on August 11, 1986. The record shows that no competency hearing, designated as such, was held in the case. However, the Court finds that the evidence before the trial court was sufficient for the trial court to conclude that Petitioner was not incompetent to stand trial. The trial court procedure comported with the requirements of 22 O.S. 1981 §1175.1 et seq, and the Fourteenth Amendment; therefore Petitioner's petition should be denied.

IT IS THEREFORE ORDERED that Petitioner's petition for Writ of Habeas Corpus is denied.

ORDERED this 23<sup>rd</sup> day of October, 1990.

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

FILED

OCT 28 1990 *dt*

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

Jack C. Silver, Clerk  
DISTRICT COURT

JIMMY K. BLACK

:  
:  
:  
:  
:  
:

VS.

CASE NO. 90-C-0022E /

BURLINGTON NORTHERN  
RAILROAD COMPANY

ORDER DISMISSING WITH PREJUDICE

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

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

DATED this 28<sup>th</sup> day of October, 1990.

*James D. Silver*  
UNITED STATES DISTRICT JUDGE

ROBERTS, MARRS & CARSON

BY: *Richard D. Marrs*  
C. Clay Roberts, III  
OBA # 7632  
Richard D. Marrs  
OBA # 5705  
Timothy S. Gilpin  
OBA # 11844  
110 South Hartford  
Suite 111  
Tulsa, OK 74120  
(918) 582-6557

ATTORNEYS FOR PLAINTIFF,  
JIMMY K. BLACK

BY:

*J. A. Mackechnie*  
John A. Mackechnie  
OBA # 5603  
301 N.W. 63rd, Suite 505  
Oklahoma City, OK 73116  
(405) 843-7711

H. Daniel Spain  
Bar No. 18869700  
2600 Two Houston Center  
909 Fannin Street  
Houston, TX 77010  
(713) 650-6000

of WOMBLE & ASSOCIATES

ATTORNEYS FOR DEFENDANT,  
BURLINGTON NORTHERN RAILROAD  
COMPANY

KNIGHT & WILKERSON

BY:

*Bruce N. Powers*  
Bruce N. Powers  
OBA # 12522  
P. O. Box 1560  
Tulsa, OK 74101-1560  
(918) 584-6457

ATTORNEYS FOR THIRD-PARTY  
DEFENDANT, COMPLETE JANITORIAL  
SERVICE

ELLIOTT & MORRIS

BY: Eileen M. Morris  
Kenneth W. Elliott, Eileen M. Morris  
OBA # 10899  
119 N. Robinson, Suite 310  
Oklahoma City, OK 73102  
(405) 236-3600

ATTORNEYS FOR THIRD-PARTY  
DEFENDANT, CHARLES DREADFULWATER

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

**F I L E D**  
OCT 23 1990

TOWN & COUNTRY BANK, )

vs. )

DON ROBERT HEFNER and CAROL )  
MAUDE HEFNER; WILSON SPORTING )  
GOODS CO., INC.,; AMERICAN )  
SPORTSWEAR, INC. and IRS )

Jack C. Silver, Clerk  
U.S. DISTRICT COURT  
Case No. 88-C-1553 B

**DEFICIENCY JUDGMENT**

On this 23 day of October, 1990, there came on for hearing the Motion of Plaintiff, the Federal Deposit Insurance Corporation ("FDIC"), for leave to enter a Deficiency Judgment herein filed on the 28th day of March, 1990, and served upon the Defendants Don Robert Hefner and Carol Maude Hefner by first class mail to their attorney of record. Movant appears by its attorneys of record, Gable & Gotwals, Inc., by Larry D. Thomas, and said Defendants appear not.

The Court, upon consideration of said Motion and the pleading herein, finds that the fair and reasonable market value of the mortgaged premises as of the date of the Sheriff's Sale herein, to-wit, the 2nd day of January, 1990, was \$50,001.00.

The Court further finds that the aggregate amount of the Judgment rendered herein in favor of the FDIC, together with the interest, attorney's fees and costs, amounts to \$102,948.40, and that the FDIC, accordingly, is entitled to a Deficiency Judgment against the Defendants Don Robert Hefner and Carol Maude Hefner, for said amount, minus the market value of the property in the sum of \$50,001.00, as above determined, to-wit, the sum of \$52,947.40.

IT IS ACCORDINGLY ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff, the FDIC, have and recover of and from Defendants Don Robert Hefner and Carol Maude Hefner, and each of them, jointly and severally, a deficiency judgment in the amount of \$52,947.40, plus interest accruing at the rate of Chase Manhattan Prime

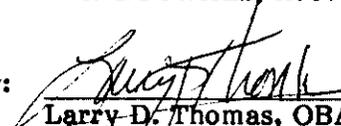
plus 3% from and after January 2, 1990, the continuing cost of this action, for all of which let execution issue.

S/ THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

GABLE & GOTWALS, INC.

By:

  
Larry D. Thomas, OBA #8945  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119

Attorneys for Plaintiff,  
Town & Country Bank,  
an Oklahoma banking corporation

**FILED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA OCT 23 1990

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

HILL CONSTRUCTION CORP., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ALLIANCE SHIPPERS, INC., )  
TULSA HELICOPTERS, INC., and )  
"XYZ" INSURANCE COMPANY, )  
 )  
Defendants. )

Civil No. 90-C-634-B

**NOTICE OF DISMISSAL OF DEFENDANT XYZ INSURANCE COMPANY**

Pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure, plaintiff Hill Construction Corp. hereby voluntarily dismisses its claim against defendant XYZ Insurance Company.

Plaintiff Hill Construction Corp. will continue this action against defendant Alliance Shippers, Inc.

  
Jonathan C. Neff, OBA No. 11145  
Charles Robert Burton, IV  
OBA No. 014195

- Of the Firm -

CROWE & DUNLEVY  
A Professional Corporation  
Suite 500  
321 South Boston  
Tulsa, Oklahoma 74103-3313  
(918) 592-9800

ATTORNEYS FOR PLAINTIFF

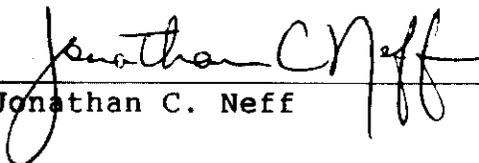
CERTIFICATE OF SERVICE

I, Jonathan C. Neff, hereby certify that on the 23 day of October, 1990, I caused a true and correct copy of the above and foregoing Dismissal of Defendant XYZ Insurance Company to be deposited in the United States mail, postage prepaid, and addressed to:

Fred Rahal, Jr.  
Chapel, Riggs, Abney, Neal & Turpen  
502 West Sixth Street  
Tulsa, Oklahoma 74119-1010

Joseph Michael Roberts, Esq.  
Grove, Jaskiewicz and Cobert  
1730 M. Street, N.W., Suite 501  
Washington, D.C. 20036

Jose E. Alfaro Delgado  
Calvesbert and Brown  
El Caribe Building  
San Juan, Puerto Rico 00901

  
Jonathan C. Neff

254.90B.JCN

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

OCT 22 1990

EMMETT NICK,

Plaintiff,

vs.

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

Defendants.

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

Case No. 90-C 136 B

**STIPULATION OF DISMISSAL**

COMES NOW, the Plaintiff, by and through Plaintiff's attorneys of record, RICHARDSON, MEIER & ASSOCIATES, P.C., by Ronald E. Hignight, and the remaining Defendant, TEAMSTERS LOCAL 886, by and through its attorneys of record, LAMPKIN, McCAFFREY & TAWWATER, by George McCaffrey, and STIPULATE to the voluntary dismissal of the above and foregoing action, without prejudice, pursuant to Rule 41(a)(1)(ii).

Respectfully submitted,

By

*George J. McCaffrey*  
George J. McCaffrey

**LAMPKIN, McCAFFREY & TAWWATER**

201 Robert S. Kerr, Ste 1100  
Oklahoma City, OK 73102  
(405) 272-9611

By

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

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

**RICHARDSON, MEIER & ASSOCIATES, P.C.**

5727 South Lewis, Suite 520  
Tulsa, Oklahoma 74105  
(918) 492-7674  
(800) 456-2825

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

FILED

OCT 22 1990

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

CHAUNCEY BRAUCHER and )  
NANCY BRAUCHER, husband )  
and wife, )

Plaintiffs, )

vs. )

Case No. 89 C-974 B

CIGNA INSURANCE COMPANY, a )  
corporation (formerly INA )  
UNDERWRITERS INSURANCE COMPANY), )

Defendant.)

JOINT STIPULATION OF  
DISMISSAL WITH PREJUDICE

Come now the Plaintiffs, Chauncey Braucher and Nancy Braucher,  
and the Defendant, CIGNA Insurance Company (formerly INA  
Underwriters Insurance Company), by their respective counsel, and  
pursuant to Rule 41 (a)(1)(ii), hereby stipulate that the above-  
entitled cause be dismissed with prejudice, the parties to bear  
their own cost and expense of litigation including, but not limited  
to, their own attorney's fees.

McGIVERN, SCOTT, GILLIARD,  
McGIVERN AND ROBINSON

By David R. Scott

David R. Scott, OBA # 8016  
P. O. Box 2619  
Tulsa, OK 74101-2619  
(918) 584-3391

ATTORNEYS FOR PLAINTIFF

~~FELDMAN, HALL, FRANDEN,  
WOODARD & PARRIS~~

By Anthony P. Sutton

Anthony P. Sutton, OBA #8781  
Park Centre - Suite 1400  
525 South Main  
Tulsa, OK 74103-4409  
(918) 583-7129

ATTORNEYS FOR DEFENDANT

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

FILED

OCT 22 1990

BILL A. CLAWSON,  
Plaintiff,

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

vs.

No. 90-C-206-E

LOUIS W. SULLIVAN, M.D.,  
SECRETARY OF HEALTH AND  
HUMAN SERVICES,

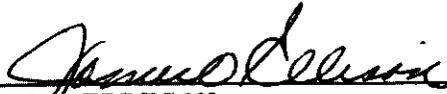
Defendant.

ORDER

This matter is before the Court on Plaintiff's Motion to Remand. After careful consideration of the record and the issues, the Court has concluded that this cause should be remanded to the Administrative Law Judge for further proceedings on new and additional evidence of an impairment to Plaintiff's upper extremities, pursuant to 42 U.S.C. §405(g).

IT IS THEREFORE ORDERED that Plaintiff's Motion to Remand is granted.

ORDERED this 19<sup>TH</sup> day of October, 1990.

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

FILED

OCT 22 1990

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

Jack C. Silver, Clerk  
DISTRICT COURT

M. LOUISE KENEY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PAUL McBRIDE, )  
 )  
 Defendant, )  
 )  
 and )  
 )  
 DOUBLE EAGLE MINING CO., )  
 )  
 Third Party Defendant. )

Case No. 88-C-239-E

ORDER OF JUDGMENT AS TO CERTAIN ISSUES

On the 11th day of July, 1990, the Court entered its Order determining certain issues presented at the trial of those issues, April 2, 1990. In that order the Court specifically determined that Plaintiff, as the sole heir of Sarah M. Burkhart, is entitled to the entire remainder of the trust property (except for any specific trust bequests not yet distributed) as an unanticipated remainder under Oklahoma law. The grounds and reasoning for this determination are set forth at greater length in the Order of July 11, 1990, and are adopted herein for purposes of this judgment.

Based on the foregoing it is therefore ORDERED, ADJUDGED AND DECREED that the trustee, Defendant Paul McBride, shall deliver to the offices of counsel for Plaintiff, within five days of the entry of this order, all bank records, including all bank account numbers and names of any bank or banking institution where trust property has been kept at any time during the existence of the trust; and shall within that same time obtain and properly execute signature

change cards and such other instruments changing control of any active accounts as may be required by the institution in which such active accounts are maintained; and

IT IS FURTHER ORDERED that the trustee, Defendant Paul McBride, shall within fifteen days of the entry of this order, prepare and deliver to the offices of Plaintiff's counsel, the following inventories and schedules:

- (a) a list of all property, real or personal, including all mineral interests, producing and non-producing, wherever located, which belongs or has ever belonged to the trust, showing the specific description of the property, the date acquired, the date disposed of (if no longer held by the trust), the consideration received from such disposition, and the disposition of such consideration, proceeds or receipts from such disposition;
- (b) a list of all monies received from any source, during the existence of the trust, including but not limited to the payments on the house mortgage received from the sale of Sarah Burkhart's house, showing the source of such monies; the date received, and the place where such monies were deposited or invested;
- (c) a list of all payments to any person, institution, or other entity, during the existence of the trust, showing the date, amount, payee, and purpose of the payment.

IT IS FURTHER ORDERED that Defendant trustee Paul McBride be and he hereby is, removed as trustee, and Plaintiff Louise Keney is hereby appointed as successor trustee, with full powers to complete

the terms of the trust, subject to the supervision and approval of this Court;

IT IS FURTHER ORDERED that upon delivery of the books and records of the present trustee, Plaintiff Keney is ordered to cause an audit of the accounts of the trust and of the predecessor trustee's stewardship, to be made, and to expend trust funds in such reasonable amounts as may be necessary to accomplish such accounting, and to report the results of such audit to the Court, and to apply for such further relief and immediate Court hearing based on said audit as she shall deem proper;

IT IS FURTHER ORDERED that prior to any distribution of trust funds, this Court must approve the accounting to be filed by Plaintiff Keney as successor trustee and must subsequently approve all marshalled assets and any proposed distribution.

ORDERED this 22<sup>d</sup> day of October, 1990.

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

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

FILED

OCT 19 1990

HILDA RICH,

Plaintiff,

vs.

THE ORIGINAL CHILI BOWL, INC.,  
an Oklahoma corporation,

Defendant,

and

ST. EDWARD MERCY MEDICAL CENTER, INC.,  
a foreign corporation, and AETNA LIFE  
AND CASUALTY COMPANY, a foreign  
corporation,

Intervenors.

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

Case No.: 89-C-106-B<sup>160</sup>

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 19 day of Oct, 1990, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.

S/ THOMAS R. BRETT  
United States District Judge

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

**F I L E D**

OCT 19 1990

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

IN RE: )  
)  
MID-REGION PETROLEUM, INC., )  
)  
Debtor. )  
)  
GENERAL AMERICAN )  
TRANSPORTATION CORPORATION, )  
)  
Plaintiff/Appellant, )  
)  
v. )  
)  
W. SCOTT MARTIN, TRUSTEE )  
for MID-REGION PETROLEUM, )  
INC., )  
)  
Defendant/Appellee. )

Bky. No. 83-01871-W

Case No. 90-C-258-B

**ORDER**

Now before the court is the appeal of General American Transportation Corporation ("GATC") of the Order of the United States Bankruptcy Court for the Northern District of Oklahoma filed March 15, 1990, which granted the trustee's objection of the proof of claim of GATC.

The facts as stipulated to by the parties are briefly as follows. On March 15, 1977, February 20, 1979, and October 10, 1979, GATC, as lessor, entered into various lease agreements with Mid-Region Petroleum, Inc. ("Mid-Region"), the debtor in the case, as lessee, involving seventy (70) railcars. Upon termination of the leases, the lessee was to promptly return the cars to GATC and would be liable for all accrued charges under the contract. On December 23, 1983, Mid-Region commenced this case in the bankruptcy

court and retained possession of the leased railcars. On March 5, 1984, W. Scott Martin was appointed as trustee, and on May 15, 1984, he sent a letter to GATC stating that the lease agreements were canceled. Following this letter, neither the trustee nor GATC took any further action to return the cars to the possession of GATC.

On June 20, 1984, the trustee filed a motion seeking authorization to reject various executory contracts with GATC, including the lease agreements in question. On July 24, 1984, the court entered an order rejecting the leases with GATC. None of the railcars was returned to the possession of GATC prior to July 24, 1984, and the trustee did not use the railcars at any time for the transaction of Mid-Region business or otherwise.

On August 15, 1988, GATC filed a First Amended Proof of Claim seeking \$240,234.67 as an unsecured claim and an Administrative Proof of Claim seeking \$112,547.36. The amounts were later corrected, making the First Amended Proof of Claim \$222,397.58 and the Administrative Claim \$176,062.34.

The trustee filed no objection to the First Amended Proof of Claim, entitling GATC to its unsecured claim for \$222,397.58. GATC claims the Administrative Claim is based on the rental payments due and owing from the commencement of the case on December 23, 1983 to the date of the entry of the rejection order on July 24, 1984. The trustee filed an amended Motion and Notice of Acceptance and Objection to Claims on September 25, 1989, seeking disallowance of GATC's Administrative Claim on the ground that GATC performed no services and incurred no expenses post-petition which benefitted the estate.

The issues involved here are whether GATC is entitled to administrative rent due to the retention by the estate of the railcars post-petition without regard to their actual use

by the estate or benefit to the estate **from** that retention, and if so, during what time period the rent is awardable and the **amount** of the rental rate.

Bankruptcy Rule 8013 sets forth a "**clearly erroneous**" standard for appellate review of bankruptcy rulings with respect to **findings of fact**. In re: Morrissey, 717 F.2d 100, 104 (3rd Cir. 1983). However, this "**clearly erroneous**" standard does not apply to review of mixed questions of law and fact, which are subject to the de novo standard of review. In re: Ruti-Sweetwater, Inc., 836 F.2d 1263, 1266 (10th Cir. 1988); In re: Mullett, 817 F.2d 677, 679 (10th Cir. 1987). This appeal **challenges** the legal conclusion drawn from the facts presented at trial, so de novo review is proper.

GATC concedes that its leases of **cars** to Mid-Region were executory contracts as of the commencement of Mid-Region's Chapter 11 case and that the executory contracts were formally rejected on July 24, 1984, by **the unequivocal** act of the trustee. The court concluded that the effective date of **rejection** was the date the trustee gave notice to GATC of his intent to reject, i.e. May 15, 1984, **and** found this date to be the termination date of any possible claim of GATC to "**administrative rent**" under the leases.

As executory contracts, the leases **could** be assumed or rejected by the trustee at any time before confirmation of a plan under 11 U.S.C. § 365(d)(2). The Bankruptcy Code provides at 11 U.S.C. § 502(g) that:

A claim arising from the **rejection**, under section 365 of this title or under a plan under chapter 9, 11, 12, or 13 of this title, of an executory contract or unexpired lease of **the debtor** that has not been assumed shall be determined, and shall be **allowed** under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before **the date** of the filing of the petition.

GATC filed a general unsecured claim for pre-petition debts and for what it considered to be damages from the rejection of its leases, including the cost of retrieval of the cars. GATC did not include unpaid post-petition rent as a part of its claim for damages from the rejection of its leases, but assigned the post-petition rent separate status as "administrative rent" and filed a separate, administrative-priority claim for it. The former claim was not objected to, but the latter claim had to be decided by the court.

The Bankruptcy Court concluded that, because the leases were not assumed, which would have required a cure of the default by payment of accrued post-petition rent at the contract rate under 11 U.S.C. § 365(b)(1)(A), there was no obligation to pay the post-petition rent when the leases were rejected. It decided that the accrued but unpaid post-petition rent was "[a] claim arising from the rejection" of a lease, and must be treated as just another pre-petition general unsecured claim pursuant to 11 U.S.C. § 502(g).

GATC argues that the general unsecured claim is an administrative expense, a favored type of post-petition claim that is given priority over most other claims against the assets of the bankruptcy estate, under 11 U.S.C. § 503(b)(1)(A). This section includes as administrative expenses "the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case...."

The Bankruptcy Court assumed for purposes of its opinion that there is a conflict between 11 U.S.C. § 502(g) and 11 U.S.C. § 503(b)(1)(A) regarding the treatment of post-petition rent on a rejected lease and that, notwithstanding 11 U.S.C. § 502(g), administrative expense priority under 11 U.S.C. § 503 may be given to post-petition rent

on a rejected lease to some extent and under the proper circumstances. The question which the court considered was to what extent and under what circumstances post-petition rent on a rejected lease qualifies as an administrative expenses under 11 U.S.C. § 503.

The burden was on GATC to show its entitlement to an administrative expense priority. In re Amarex, Inc., 853 F.2d 1526, 1530 (10th Cir. 1988). No evidence was presented that Mid-Region or the trustee ever made any use of GATC's cars at any time after the commencement of the Chapter 11 case on December 23, 1983.

The term "administrative rent" does not appear in the Bankruptcy Code. There is no provision in 11 U.S.C. § 503 for payment of post-petition rent on a rejected lease as an administrative expense. The only section of § 503 which might include such rent would be § 503(b)(1)(A), if the rent were an actual, necessary cost of preserving the estate. In this case, there was no evidence that the retention of the cars "preserved the estate" or was "necessary" for any purpose whatever. GATC claimed administrative expense priority on the basis of loss to GATC, not on the basis of benefit to the bankruptcy estate. The Bankruptcy Code does not give administrative expense priority on the sole basis of creditor loss.

GATC argued that the benefit to the estate was GATC's acquiescence in the estate's retention of the leased cars, sparing the estate the trouble and expense of responding to demands for acceptance or rejection of the leases early in the case. However, there is no merit to this argument that sparing the estate a small amount in attorney's fees while the estate incurred \$176,062.34 in rents "preserved the estate". There is also no merit to

GATC's "equity" claim based on its alleged deprivation of the use of the leased cars by the trustee's failure to accept or reject the leases for an extended period. The trustee's inaction did not deprive GATC of anything, as GATC could have moved at any time after commencement of the case to require acceptance or rejection within a specified period under 11 U.S.C. § 365(d)(2), thereby mitigating its own losses. GATC did not do so, claiming it was deterred by the transaction cost. The other creditors of the estate should not suffer as a result of GATC's inaction.

GATC relied on Kneeland v. American Loan & Trust Co., 136 U.S. 89 (1890), as "controlling authority" which mandated allowance of its claim. However, as the Bankruptcy Court pointed out, this case antedated the Bankruptcy Code of 1978 and its predecessor, the Bankruptcy Act of 1898. It was not a bankruptcy case, but dealt with equity receivership and foreclosure sale of a railroad. There were two different receiverships in the case; a receivership instigated by a judgment creditor, to reach surplus earnings of the railroad to apply them to the judgment debt, and a receivership instigated by trustees under real estate mortgages to foreclosure mortgages on railroad real estate, which involved disposing of the railroad's personalty as well. The personalty included "leased" railroad cars, although the "lease" was intended as security and the "lessor" in effect had a lien on the railroad rolling stock. The railroad having been liquidated, the question was how the proceeds should be divided, and in particular whether "rent" on the rolling stock accrued during the receiverships should be charged against the real estate mortgagees and in favor of the "lessor" or lien-holder of the rolling stock. The Supreme Court held that rent should not be charged against the real estate mortgagees for the

period of the first receivership, but only for the period of the second receivership. GATC did not mention the first receivership and the Supreme Court's ruling with regard to it, and rested its argument on the second receivership and the Supreme Court's ruling relating to it.

The Bankruptcy Court found, and this court agrees, that the second receivership in Kneeland bears little resemblance to the Chapter 11 bankruptcy now before this court. In particular, what is property of the estate in this Chapter 11 case is determined by statute, 11 U.S.C. § 541, and is not determined at the option of the debtor or trustee, so there is no basis for treating possession of the cars upon commencement of the case as an implied consent to payment of rent. The Kneeland decision is not persuasive in the case at bar.

GATC also relied on Fred Sanders Co., 22 B.R. 902 (Bankr. S.D.Mich. 1982). In that case the court found that, unless the debtor established that the payments were not reasonable, the lessor's administrative claim under § 503(b)(1)(A) for accumulated lease payments on three vans from the filing of the bankruptcy proceeding to the date of the return of the property was to be computed by reference to the payments stipulated in the lease. The claim was not to be computed by reference to the benefit conferred on the debtor, which did not use the vehicles prior to rejection of the lease. The majority of cases cited in Sanders involved real estate leases.

This court finds more well-reasoned the decision in In re Grant Broadcasting of Philadelphia, Inc., 16 Col. Bankr. Cases 1116 (1987), which rejected the ruling of the Sanders court, saying it would create tremendous pressure on debtors to quickly reject as many contracts as possible before confirmation of a plan. Additionally, the Tenth Circuit

in In re Amarex, Inc., 853 F.2d at 1530, held that the appropriate test for determining eligibility for an administrative expense priority is the extent to which the consideration supporting the claimant's right to payment was both supplied and beneficial to the debtor-in-possession in the operation of the business. The Amarex court awarded fees constituting an annual bonus to an attorney, which he became entitled to after the bankruptcy was filed, only for services rendered which were both supplied and beneficial to the debtor-in-possession in the operation of the estate. Id. at 1532.

Having reviewed the evidence before the Bankruptcy Court at the time it made the rulings being appealed, this court finds that the Bankruptcy Court did not err in concluding that GATC had failed to show that it should be given administrative expense priority for post-petition rent of its railcars under the rejected leases, at the contract rate or in any amount whatsoever, therefore rendering the other two issues in the case moot. The Bankruptcy Court therefore was correct in granting the trustee's objection to GATC's administrative expense claim and denying GATC's claim for post-petition rent on the rejected leases insofar as administrative expense priority was sought and allowing that claim under 11 U.S.C. § 502(g) insofar as it was not duplicative of its other claims.

It is therefore ordered that the Bankruptcy Court's decisions in this matter be and hereby are affirmed.

Dated this 19 day of Oct., 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

**F I L E D**

**OCT 19 1990**

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

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

PATRICIA DILLON, MITCH REIDLE )  
and KAREN REIDLE, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
TOASTMASTER, INC., )  
 )  
Defendant/Third Party )  
Plaintiff, )  
 )  
vs. )  
 )  
PROCTOR-SILEX, INC., )  
 )  
Third Party Defendant. )

Case No.: 89 C 539 B

**ORDER OF DISMISSAL**

NOW ON THIS 19 day of September, 1990, upon application of the parties herein, this case, together with all claims of whatever nature herein, is dismissed with prejudice, each party to bear their respective costs of whatever nature.

S/ THOMAS R. BRETT

\_\_\_\_\_  
U. S. DISTRICT COURT JUDGE



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

FILED

OCT 18 1988 4

CLERK  
U.S. DISTRICT COURT

HELEN JENEAN BURK,

Plaintiff

v.

KMART CORPORATION,

Defendant.

No. 86-C-440-B ✓

ORDER

This matter comes on for consideration upon the Motion for Summary Judgment filed by Defendant, KMART CORPORATION, on June 15, 1990, on the only remaining claim to be addressed by the Court, i.e. Plaintiff, Helen Jenean Burk's claim of sexual discrimination. Plaintiff, although being granted an extension to respond to Defendant's Motion, has not responded, implicating Local Rule 15 (B). Defendant's statement of undisputed facts will be considered by the Court, due to the absence of any disputation by Plaintiff, as deemed admitted for summary judgment purposes.

THE UNCONTROVERTED FACTS

1. Plaintiff was hired by KMART on or about December 5, 1983, as Loss Prevention Manager at KMART's Broken Arrow Store No. 7250.
2. On or about May 15, 1984, Plaintiff transferred from the Broken Arrow store to Tulsa, Oklahoma Store No. 4473. At Store No. 4473, the Plaintiff served as Loss Prevention Manager as well.
3. On or about January 9, 1986, Plaintiff voluntarily quit her employment with KMART.

4. Plaintiff's remaining factual allegation of sexual discrimination relates to a comment made by her District Manager of Loss Prevention, Ed Williams, in which she alleges he stated that he would not recommend the Plaintiff for the job because she was a woman with small children and that he knew the corporate office would not consider her.

5. Beside the alleged comment made by Mr. Williams in his conversation with the Plaintiff, the Plaintiff does not allege any other facts constituting sexual discrimination by the company.

6. Although, Plaintiff alleges that KMART acted on Mr. Williams' supposed recommendation, to the contrary Mr. Frank Cardinal, then the Director of Operations in charge of selecting the successor, did not act on any recommendation of Mr. Williams.

7. Paul Worley, the ultimate successor to Ed Williams as District Manager of Loss Prevention, had previously served as Loss Prevention Manager at KMART Store No. 3114 in Pine Bluff Arkansas since November 8, 1973.

8. Mr. Cardinal was already well familiar with the qualifications and longstanding history of excellence with the corporation of Mr. Worley.

9. Even Burk has admitted that Mr. Worley was associated with the company and served as a Loss Prevention Manager in Arkansas for a far longer duration than the Plaintiff.

10. Notwithstanding the Plaintiff's allegations, Mr. Williams has indicated that any informal opinion he may have reached regarding his preference for successor was specifically not based on the Plaintiff's sex, but rather on other objective criteria

related to Mr. Worley's qualifications.

The critical fact that can be gleaned from the above is that, irrespective of Williams' informal opinion being or not being based on the Plaintiff's sex, Williams' comments are immaterial since he was not the decision-maker as to whom was to be promoted. Nor did Cardinal act upon Williams' comments, even if made. Williams' putative comments are insufficient as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

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

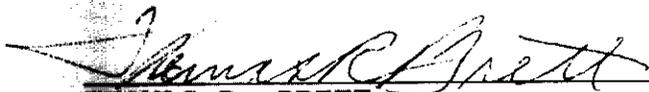
"The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of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

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

The Court concludes the Defendant's Motion for Summary

Judgment, on the single remaining issue of sex discrimination,  
should be and the same is hereby SUSTAINED.

IT IS SO ORDERED this 19 day of October, 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  
OCT 19 1990

CLERK  
U.S. DISTRICT COURT

HELEN JENEAN BURK, )  
Plaintiff )  
v. )  
KMART CORPORATION, )  
Defendant. )

No. 86-C-440-B ✓

J U D G M E N T

In accord with the Order filed October 19, 1990, sustaining the Motion for Summary Judgment filed by Defendant, KMART, the Court hereby enters Judgment in favor of the Defendant, KMART and against the Plaintiff, Helen Jenean Burk. Plaintiff shall take nothing on her claims herein against the Defendant. Costs are assessed against the Plaintiff and each party is to pay its respective attorney's fees.

Dated this 19th day of October, 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

FILED

OCT 17 1990

Jud. C. Silver, Clerk  
DISTRICT COURT

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

SAM McREYNOLDS and MARY )  
FRANCES McREYNOLDS, )

Plaintiffs, )  
vs. )

Case No. 89-C-961-E

TRAVELERS INDEMNITY COMPANY, )  
an insurance corporation; )  
MONKEM COMPANY, INC., a )  
corporation; STOOPS EXPRESS, )  
INC., a corporation; ELI LILLY )  
AND COMPANY, a corporation; )  
and JACK A. FLUKER, )

Defendants. )

ORDER OF DISMISSAL WITHOUT PREJUDICE OF  
CROSS-COMPLAINTS OF DEFENDANTS, MONKEM  
COMPANY, INC., STOOPS EXPRESS, INC. AND  
JACK A. FLUKER AGAINST ELI LILLY COMPANY

Now on this 19<sup>th</sup> day of October, 1990, pursuant to the joint stipulation and motion of the Defendants, Monkem Company, Inc., Stoops Express, Inc., and Jack A. Fluker and Defendant, Eli Lilly Company, the cross-complaint against Eli Lilly Company is dismissed without prejudice.

S/ JAMES O. ELLISON

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

FILED

OCT 1 1990

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

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

BANK OF OKLAHOMA, N.A.,  
GROVE BRANCH

Plaintiff,

v.

THE ISLANDS MARINA, LTD., et al

Defendant

Case No. 88-C-1335-E

ORDER

COMES NOW, before the Court Defendant Jerry Courtney's Motion for Certification under Federal Rules Civil Procedure 54(b) in the above-entitled matter, the court finding that the motion is well-taken:

Hereby Orders that it is determined there is no reason for delay and directes that judgment be entered pursuant to its Order granting GenMar/Wellcraft Summary Judgment against Defendant Third Party Plaintiff Jerry Courtney making the Order entered June 1, 1990 a final appealable Order.

IT IS SO ORDERED THIS 19 DAY OF Oct, 1990

S/ JAMES O. ELLISON

\_\_\_\_\_  
Judge of the United States  
District Court

APPROVED AS TO FORM:

By: *Douglas E. Micheel*

Douglas E. Micheel, Mo. Bar #38371  
Frensley & Towerman, P.C.  
801 W. 47th Street, Suite 105  
Kansas City, Missouri 64112-1253  
(816) 531-5262

DEM1-27



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

**FILED**

OCT 19 1990<sup>03</sup>

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

PHILLIP LEE HULL, a minor, )  
by his natural parents, )  
guardians and personal )  
representatives, PHILLIP GENE )  
HULL AND TANYA LEE HULL, )  
husband and wife, and PHILLIP )  
GENE HULL, Individually, and )  
TANYA LEE HULL, Individually, )

Plaintiffs, )

vs. )

No. 88-C-1645-E ✓

UNITED STATES OF AMERICA, )

Defendant. )

**FINDINGS OF FACT**  
**AND**  
**CONCLUSIONS OF LAW**

NOW on this 19<sup>TH</sup> day of October, 1990 comes on for hearing the above styled case and the Court, being fully advised in the premises finds that this case was tried to the Court without a jury April 2 through April 13, 1990. Upon consideration of all the evidence in the record, arguments of counsel and controlling statutory and case law, the Court enters its Findings of Fact and Conclusions of Law.

1. This is a civil action brought by Phillip Lee Hull, a minor, by his natural parents, guardians and personal representatives, Phillip Gene Hull and Tanya Lee Hull, husband and wife, on his behalf and on their own behalves against the Defendant, United States of America, under the terms and provisions of the Federal Tort Claims Act.

The action is one for monetary damages by reason of negligence.

2. All Plaintiffs at the time of the events complained of were and are now residents of the Northern District of Oklahoma. The medical malpractice charged against the United States occurred at the Claremore Indian Hospital, Rogers County, within the Northern District of Oklahoma. Claremore Indian Hospital is owned and operated by the United States of America through the Indian Health Service of the Public Health Service of the U.S. Department of Health and Human Services.
3. Administrative claims were submitted by Plaintiffs to the U.S. Public Health Service on January 28, 1988. The parents claimed in their individual capacity for \$7.5 million each and on behalf of their son, a minor, Phillip Lee Hull, in the amount of \$15 million. There was no final administrative determination made by Defendant during the statutory six month period. Plaintiffs filed this civil action on December 22, 1988.
4. The Defendant United States of America on December 5, 1989 filed in these proceedings an admission of liability which left as the only remaining issue for trial the amount of damages to be awarded to Plaintiffs.
5. The admitted negligence of the Defendant was the direct cause of the following injuries to the Plaintiff Phillip Lee Hull: severe hypoxic ischemic encephalopathy, cerebral palsy, with spastic quadriplegia, and

developmental delay.

6. Based upon such admitted damages caused by such negligence, Plaintiffs claim the following damages:
  - A. Phillip Lee Hull: economic losses, including lost wages, lost earning capacity, costs of medical treatment and costs of special housing and transportation; and non-economic losses consisting of loss of enjoyment of life, mental and physical pain, suffering and disfigurement, past, present and future, as well as permanent disability.
  - B. Each of the parents claims loss of household services of the minor, and loss or impairment of the aid, comfort, society and companionship of the minor.
7. Plaintiffs Tanya Lee Hull and Phillip Gene Hull were married on August 28, 1986. Their respective ages were 19 and 24.
8. Tanya Lee Hull received her prenatal care through the Indian Health Services. Phillip Lee Hull was born at Claremore Indian Hospital on June 28, 1987.
9. Plaintiff Tanya Lee Hull received injuries in the delivery of Phillip Lee Hull by reason of the negligence of the United States.
10. Plaintiff Phillip Gene Hull was present during the birth of his son and immediately thereafter.
11. Plaintiff Phillip Lee Hull is a white male having a life

expectancy of 69.8 years from the time of the trial. This finding is based upon the totality of the expert testimony in the case. The most compelling and persuasive evidence is that Plaintiff, Phillip Lee Hull, will experience a full life expectancy.

12. By reason of the negligence of the Defendant Phillip Lee Hull will require extraordinary medical services and support. The following are determined by the Court to be reasonable and necessary:

A. Physical Therapy:

(a) Until age 21 - 1 hour, 3 x per week at \$75.00 per hour; \$225 per week x 52 = \$11,700 per year x 18 years = \$210,600 - 16 weeks (\$3,600) = \$207,000.00

(b) Age 21 to 45 - 1 hour, 1 x week at \$75.00 per hour; \$75 x 52 = \$3,900 per year x 24 years = \$93,600 \$ 93,600.00

(c) Age 45 to 69.8 - 1 hour, 2 x per week at \$75.00 per hour; \$150 x 52 = \$7,800 per year x 24.8 years = \$193,440 \$193,440.00

Physical Therapy Total = \$494,040.00

B. Occupational Therapy:

(a) Until age 21 - (see Physical Therapy (a) above) = \$207,000.00

(b) Age 21 to 45 - (see Physical Therapy (b))

above) =

\$ 93,600.00

(c) Age 45 to 69.8 - (see Physical Therapy (c)

above) =

\$193,440.00

Occupational Therapy Total =

\$494,040.00

C. Speech Therapy:

(a) Until age 21 - (see Physical Therapy (a)

above) =

\$207,040.00

(b) Age 21 to 45 - (see Physical Therapy (b)

above) =

\$ 93,600.00

(c) Age 45 to 69.8 - (see Physical Therapy (c)

above) =

\$193,440.00

Speech Therapy Total =

\$494,040.00

D. Nursing: 6 hours per month at \$50.00 per hour =

\$300 per month = \$3,600 per year; To age 4 = \$2,400

[8 months]; From 69 to 69.8 [ $\$3,600 \times .8$ ] = \$2,880;

From 4 to 69 =  $65 \times \$3,600 = \$234,000 + \$2,400 +$

$\$2,880 =$

Nursing Total =

\$239,280.00

E. Nutritionist:

(a) Until age 21 - 52 hours per year at \$40.00 per

hour = \$2,080 per year; To age 4 = 36 weeks x

40 = \$1,440; 17 years at \$2,080 = \$35,360 +

$\$1,440 = \$36,800;$

(b) Age 21 to 69.8 - 12 hours per year at \$40.00 per hour = \$480 per year; From 21 to 69 = 48 x \$480 = \$23,040; From 69 to 69.8 = \$384 + \$23,040 = \$23,424;

Nutritionist Total = \$60,224.00

The Court does not find compelling evidence that would justify a finding of need for psychological services for Lee, his mother or father, and therefore declines to make a finding of such being medically necessary.

F. Case Management: \$200,000.00 to last over the course of Lee's lifetime.

G. Physicians and Hospitals:

(a) Pediatrician - 8 visits per year at \$80.00 per visit = \$640 per year; To age 4 = 8 months/12 months = .67 x \$640 = \$428.80; To age 69 = 65 x \$640 = \$41,600; To age 69.8 = .8 x \$640 = \$512 + \$41,600 + \$428.80 = \$ 42,540.80

(b) Orthopedic Consultation - 3.5 visits per year at \$87.50 per visit = \$306.25 per year; To age 4 = .67 x \$306.25 = \$205.19; To age 69 = 65 x \$306.25 = \$19,906.25; To age 69.8 = .8 x \$306.25 = \$245 + \$19,906.25 + \$205.19 =

\$ 20,356.44

(c) Inpatient Hospitalizations - \$500,000.00 to last over the course of Lee's lifetime.

(d) Ophthalmological - \$200.00 per year; To age 4

= \$200 x .67 = \$134; To age 69 = 65 x \$200 = \$13,000; To age 69.8 = .8 x \$200 = \$160 =

\$ 13,294.00

(e) Medication - \$30.00 per month for the rest of his life = \$360 per year; To age 4 = \$30 x 8 = \$240; To age 69 = 65 x \$360 = \$23,400; To age 69.8 = .8 x \$360 = \$288 =

\$ 23,928.00

(f) Inpatient Physician Expenses based on a calculation of \$187.50 per year; To age 4 = .67 x \$187.50 = \$125.63; To age 69 = 65 x \$187.50 = \$12,187.50; To age 69.8 = .8 x \$187.50 = \$150 =

\$ 12,463.13

H. Therapy Aide: \$2,121,790.00 to last over the course of Lee's lifetime;

I. Fund Management: \$784,717.50 to last over the course of Lee's lifetime;

J. Therapeutic Equipment, computers and switches: \$661,933.00 to last over the course of Lee's lifetime;

K. Adaptive wheelchair: \$22,167.00;

L. Customized vehicle and periodic equipment: \$79,530.00 for van; \$48,246.00 for van maintenance.

13. Lost Wages and impairment of earning capacity in the amount of \$1,601,474.00.

14. Plaintiffs have established through competent evidence that because of Defendant's negligence they have suffered and are entitled to money damages for pain and suffering in the following amounts:

Lee Hull	<u>\$250,000.00</u>
Tanya Hull	<u>\$150,000.00</u>
Phillip Hull	<u>\$100,000.00</u>

The amounts designated for Tanya and Phillip Hull may be paid to them via the channels normally designated for successful plaintiffs in personal injury actions. The Court finds that the sums payable to Lee Hull, however, must be placed in a trust fund on behalf of Lee Hull. The parties are directed to prepare and file an agreed form of Trust Origination Documents, with the necessary stipulations, within twenty (20) days of these Findings of Fact and Conclusions of Law.

15. The Trustees to be empowered by the Trust Origination Documents must be approved by the Court at a subsequent hearing. Although the Court is firmly convinced that a structured settlement would be in the best interests of both parties, under the prevailing law, the Court cannot order such a settlement. The Trust will not be reversionary in the event of Lee Hull's early and untimely death, but is directed by the Court to be reduced appropriately should Lee ever be placed in an institutional environment. See Reilly v. United States, 665 F.Supp. 976 (D.R.I. 1987).

16. Any sums for attorneys' fees or costs must specifically be awarded by this Court at a subsequent hearing to be set upon proper application by the parties.

IT IS THEREFORE ORDERED that, liability having been admitted by Defendant United States of America, total recovery by Plaintiffs Lee Hull, Tanya Hull and Phillip Hull is \$8,414,063.87 as set forth above. The amounts designated for Tanya and Phillip Hull may be paid to them via the channels normally designated for successful plaintiffs in personal injury actions. The Court finds that the sums payable to Lee Hull, however, must be placed in a trust fund on behalf of Lee Hull. The Trustees to be empowered by the Trust Origination Documents must be approved by the Court at a subsequent hearing. The Trust will not be reversionary in the event of Lee Hull's early and untimely death, but is directed by the Court to be reduced appropriately should Lee ever be placed in an institutional environment. Any sums for attorneys' fees or costs must specifically be awarded by this Court at a subsequent hearing to be set upon proper application by the parties. The parties are directed to prepare and file an agreed form of Trust Origination Documents, with the necessary stipulations, within twenty (20) days of these Findings of Fact and Conclusions of Law.

ORDERED this 19<sup>th</sup> day of October, 1990.

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

FILED

OCT 1 1990

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

Jack C. Stone, Clerk  
DISTRICT COURT

SAM McREYNOLDS and MARY )  
FRANCES McREYNOLDS, )

Plaintiffs, )

vs. )

Case No. 89-C-961-E

TRAVELERS INDEMNITY COMPANY, )  
an insurance corporation; )  
MONKEM COMPANY, INC., a )  
corporation; STOOPS EXPRESS, )  
INC., a corporation; ELI LILLY )  
AND COMPANY, a corporation; )  
and JACK A. FLUKER, )

Defendants. )

ORDER OF DISMISSAL WITH PREJUDICE  
OF PLAINTIFFS' CLAIMS AGAINST ALL DEFENDANTS

NOW on this 19<sup>th</sup> day of October, 1990, pursuant to the joint stipulation of the parties in the above-styled and numbered cause, the Court hereby orders that the causes of action of the Plaintiffs, Sam McReynolds and Mary Frances McReynolds, against all Defendant are hereby dismissed with prejudice to the refiling of same with each party to pay their own costs.

S/ JAMES O. ELLISON

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

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

**F I L E D**

OCT 15 1990

THE FEDERAL DEPOSIT INSURANCE  
CORPORATION,

Plaintiff,

vs.

THOMSON ENERGY MANAGEMENT, INC.,  
a Texas corporation, et al.,

Defendants.

Case No. 89-C-909-E

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

**ORDER OF ADMINISTRATIVE CLOSURE**

Upon the application of the parties, this case is hereby administratively closed for a period of 90 days pending final resolution through settlement. The case may be reopened for the entry of any necessary orders or upon application of any party in the event of a failure of the settlement. In the event the case is not reopened within the 90-day period from the date of this Order, the case shall be dismissed without 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

OCT 18 1990 *ds*

KWB, INC., et.al.,  
Plaintiffs,  
vs.  
ARKLA, INC.,  
Defendant.

No. 88-C-602-E ✓

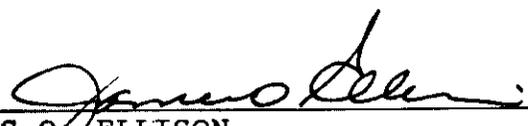
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

**JUDGMENT**

This action came on for consideration before the Court, 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 Plaintiffs take nothing from the Defendant, that the action be dismissed on the merits, and that the parties shall bear their respective costs.

ORDERED this 11<sup>th</sup> day of October, 1990.

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

**FILED**

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

OCT 14 1990

MICHAEL'S RANCH, a Nevada  
Limited Partnership,

Plaintiff,

vs.

SUN OIL COMPANY, a Delaware  
Corporation, and MID-CONTINENT  
PIPELINE COMPANY, an Oklahoma  
Corporation

Defendants.

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

No. 89-C-1008-E

**ORDER OF DISMISSAL**

This matter comes on for hearing on the Joint Application of the Plaintiff, Michael's Ranch, and Defendants, Sun Oil Company and Mid-Continent Pipeline Company, for a dismissal with prejudice of the above captioned cause. The Court, being fully advised, having reviewed the Stipulation, finds that the parties herein have entered into a compromise settlement covering all claims involved in this action, which this Court hereby approves, and that the above entitled cause should be dismissed with prejudice to the filing of a future action pursuant to said Stipulation.

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

Dated this 5<sup>th</sup> day of October, 1990.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE  
FOR THE NORTHERN DISTRICT  
OF OKLAHOMA

Wm D Perrine  
WILLIAM D. PERRINE  
ATTORNEYS FOR DEFENDANTS

Glenn J. Shrader  
GLENN J. SHRADER  
ATTORNEY FOR PLAINTIFF

*Entered*

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

OCT 18 1990

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

DENNIS A. SKINNER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 TOTAL PETROLEUM, INC., )  
 )  
 Defendant. )

No. 82-C-1118-C

**ORDER**

On August 10, 1990 the Court entered its Findings of Fact and Conclusions of Law determining that Total Petroleum had fired Dennis Skinner in retaliation for having assisted Fritz Damberville. Plaintiff was awarded back pay, reinstatement and attorney fees, the amount of fees to be determined upon application.

On September 14, 1990, plaintiff filed his itemized statement of attorney fees. Defendant has filed its response, setting forth specific objections.

Plaintiff seeks fees and costs as prevailing party on his claim brought pursuant to Title VII of the Civil Rights Act of 1964.

This action was filed in 1982 and originally included a conspiracy claim under 42 U.S.C. §1985 (against two individual officers of Total Petroleum), a claim based on 42 U.S.C. §1981 and a claim for intentional infliction of emotional distress under

Oklahoma law. Plaintiff voluntarily dismissed the conspiracy action and the two individual defendants in 1984. The intentional infliction claim was voluntarily dismissed prior to trial in 1985.

On February 25, 1985, the jury returned a verdict under 42 U.S.C. §1981, awarding plaintiff \$3,945.48 with no accompanying punitive damages. On July 22, 1985, the Court entered judgment for plaintiff on his Title VII claim for \$40,251.43.

Defendant appealed and plaintiff cross-appealed. The Tenth Circuit vacated the judgments and remanded the case for new trial. Plaintiff thereafter voluntarily dismissed his §1981 claim.

At the second trial, plaintiff requested under Title VII \$122,562 in back pay, reinstatement and "prejudgment interest". Plaintiff was awarded back pay in the amount of \$64,499.02 and reinstatement.

In his application, plaintiff requests attorney fees in the amount of \$154,883.75, a 100% enhancement, and expenses in the sum of \$4,021.81.

Plaintiff requests attorney fees in the following calculations:

Louis Bullock	504.00 hours x \$175.00	= \$88,900.00
Patricia Bullock	294.25 hours x 145.00	= 42,702.50
James Bullock	186.25 hours x 125.00	= 23,281.25

Defendant raises four specific objections. First, defendant asserts that plaintiff is not entitled to recover for time spent on unsuccessful claims or claims which were voluntarily dismissed prior to trial. Second, plaintiff is not entitled to attorney fees spent on preparing and presenting the first trial since the

judgment was vacated by the Circuit. Third, plaintiff should not be compensated for time expended on appeal since plaintiff subsequently dismissed the §1981 claim. Fourth, plaintiff's success was limited since the Court rejected his claim for "prejudgment interest".

An award of reasonable attorney fees to the prevailing party is authorized under 42 U.S.C. §2000e(k). The base fee, or lodestar, is calculated by taking the number of hours reasonably expended on litigation multiplied by a reasonable hourly rate. Hensley v. Eckerhart, 461 U.S. 424 (1983). However, the Court is to consider other factors in awarding fees. In this case, plaintiff has prevailed on only one of the original claims filed, the remainder being voluntarily dismissed at various stages of litigation.

Plaintiff's claims for conspiracy under §1985 and intentional infliction of emotional distress under state law only peripherally relate to plaintiff's claim under Title VII. These two claims were dismissed fairly early in the history of this litigation.

Plaintiff's claim under §1981 was voluntarily dismissed following remand from the Circuit; however, his §1981 claim clearly related directly to his Title VII claim.

If the unsuccessful and successful claims involve a common core of facts or are based on related legal theories, the Court must compare the plaintiff's overall relief with the number of hours reasonably expended on the litigation. Hensley at 435. If the plaintiff obtained "excellent results", his attorney should be fully compensated for all time reasonably expended. Id. However,

if the plaintiff obtained only "partial or limited success", the Court may reduce the base fee if the amount requested is excessive in relation to the relief awarded.

This Court has taken defendant's objections into consideration. The Court finds that time spent by plaintiff in preparing his claims under §1985 and conspiracy should not be recoverable. Additionally, since the plaintiff voluntarily dismissed his §1981 claim after remand, time spent in preparing for a jury trial, as compared to a nonjury trial, is not compensable.

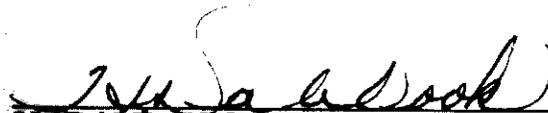
The Circuit Court's vacating the judgments in both the §1981 and Title VII awards does cast doubt on the status of plaintiff as prevailing party in the first case. Additionally, during the second trial, this Court did not find persuasive plaintiff's expert witness's theory of "prejudgment interest". Accordingly, it is proper for this Court to conclude that plaintiff's overall success was limited.

Mindful of these factors, the Court is also aware of the important function of civil rights cases in society. The Civil Rights Act is designed to vindicate federal constitutional and statutory rights, and a prevailing party should recover substantial attorney fees.

Balancing these interests, the Court finds and concludes that plaintiff's request for attorney fees should be reduced by twenty percent (20%) to reflect the proper amount involved in consideration of the results obtained.

It is therefore the Order of the Court that plaintiff is awarded attorney fees in the sum of \$123,907.00 and expenses in the sum of \$4,021.81 over and against defendant Total Petroleum, Inc.

IT IS SO ORDERED this 19<sup>th</sup> day of October, 1990.



H. DALE COOK

Chief Judge, U. S. District Court

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

OCT 17 1990  
CLERK  
U.S. DISTRICT COURT

DONNA JONES, as next of kin )  
ALLEEN ASBURY, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
RONNIE L. NICKENS, )  
 )  
Defendant, )  
 )  
and LOUIS W. SULLIVAN, M.D., )  
Secretary, United States )  
Department of Health and )  
Human Services, )  
 )  
Third-Party Defendant. )

90-C-371-C /

ORDER

The parties' briefs and arguments come before this court on the United States Department of Health and Human Services' Motion for Summary Judgment. The court, after being fully advised in the premises, orders, adjudges, and decrees that:

The Department of Health and Human Services' Motion for Summary Judgment is sustained.

The \$10,000.00 liability insurance limits of defendant Nickens is subject to various liens herein.

Pursuant to federal and state law, the proceeds shall be divided as follows:

- |    |   |            |
|----|---|------------|
| 1. | Ninde Funeral Directors<br>(balance of funeral expenses)        | \$2,356.75 |
| 2. | Donna Jones<br>(reimbursement funeral expenses partial payment) | \$ 323.00  |

3. Ash, Crews & Reid \$1,316.55  
(\$500 attorney fee; \$816.55 court costs)
4. Tulsa Radiology Associates, Inc. \$1,336.00  
(medical services provided to deceased from  
2-4-88 to 6-29-88)
5. Department of Health and Human \$4,667.70  
Services

Plaintiff's attorneys are directed to pay the above ordered sums upon negotiation of the draft payable herein to plaintiff, her attorneys, and the Department of Health and Human Services.

It is so ordered.

Dated this 17<sup>th</sup> day of October, 1990.

  
JOHN LEO WAGNER  
UNITED STATES MAGISTRATE

FILED

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

86 OCT 17 1990  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

BILLY JACK DODD,

Plaintiff,

vs.

Case No. 89-C-947-E ✓

NATIONAL ZINC DIVISION, a  
Division of ST. JOE MINERALS  
CORPORATION, a New York  
Corporation,

Defendant.

ORDER

This matter having come before me upon motion of Zinc Corporation of America, an unincorporated division of Horsehead Industries, Inc., a Delaware corporation, through their counsel Richard J. Eagleton of Doerner, Stuart, Saunders, Daniel & Anderson, and upon review of the matters herein and for good cause shown,

IT IS HEREBY ORDERED that Movant's Motion to Dismiss is hereby granted, *and this case is dismissed with prejudice.*

Dated this 16<sup>th</sup> day of October, 1990.

*James D. Lewis*  
United States District Court Judge

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

FILED

OCT 17 1990 *ds*

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. )

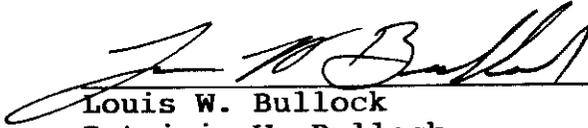
JUDGMENT

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

ENTERED this 17<sup>th</sup> day of ~~September~~ <sup>OCTOBER</sup>, 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  
Judith Gran  
PUBLIC INTEREST LAW CENTER  
125 South 9th Street, Suite 700  
Philadelphia, PA 19107  
(215)627-19107

ATTORNEYS FOR THE PLAINTIFF



Kay Mildren  
OKLAHOMA STATE DEPARTMENT OF EDUCATION  
2500 North Lincoln Boulevard  
Oklahoma City, OK 73105-4599  
(405)521-4890

Robert Nance  
ASSISTANT ATTORNEY GENERAL  
Chief, Federal Division  
420 West Main, Suite 550  
Oklahoma City, OK 73102  
(405)521-3921

ATTORNEYS FOR STATE DEPARTMENT OF EDUCATION

CERTIFICATE OF MAILING

The undersigned does hereby certify that on the 16 day of September, 1990, a true and correct copy of the above and foregoing document was mailed, postage prepaid, to:

Kay Mildren  
OKLAHOMA STATE DEPARTMENT OF EDUCATION  
2500 North Lincoln Boulevard  
Oklahoma City, OK 73105-4599  
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ATTORNEY FOR STATE DEPARTMENT OF EDUCATION

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ATTORNEY FOR STATE DEPARTMENT OF EDUCATION

Roger Stuart  
DEPARTMENT OF HUMAN SERVICES  
P.O. Box 53025  
Oklahoma City, OK 73152-3025  
(405)521-3638  
ATTORNEY FOR DEFENDANTS

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

  
Patricia W. Bullock

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

BOB ROSS, Individually; WIND RIVER  
PRODUCTS, INC., an Arkansas  
Corporation; UNITED STATES FIDELITY  
AND GUARANTY INSURANCE COMPANY, a  
Maryland Corporation; STATE FARM  
MUTUAL AUTOMOBILE INSURANCE COMPANY  
an Illinois Corporation; LEXINGTON  
INSURANCE COMPANY, a Delaware  
Corporation; and CHEROKEE NATION OF  
OKLAHOMA, a sovereign nation,

Plaintiffs,

vs.

GENERAL ELECTRIC COMPANY, a New  
York Corporation,

Defendant.

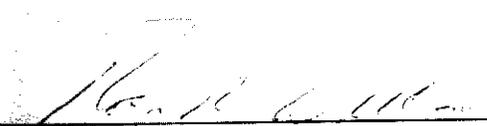
FILED

11/17/89  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

No. 89-C-653-B

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the Plaintiffs and the Defendant in the above-styled cause of  
action and stipulate to a Dismissal With Prejudice to refiling of the above-  
styled lawsuit.

  
\_\_\_\_\_  
Roger R. Williams  
Attorney for Plaintiffs, Bob Ross,  
Individually; Wind River Products, Inc., an  
Arkansas corporation; United States Fidelity  
and Guaranty Insurance Company, a Maryland  
corporation; State Farm Mutual Automobile  
Insurance Company, an Illinois corporation;  
Lexington Insurance Company, a Delaware  
corporation; and Cherokee Nation of Oklahoma,  
a sovereign nation

  
\_\_\_\_\_  
Jerry D. Stritzke  
Attorney for Defendant, General Electric Co.



UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

**OCT 16 1990**

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SUSAN L. BURRELL; ROSS L.  
BURRELL; JOHN DOE, Tenant; County  
Treasurer, Rogers County,  
Oklahoma; BOARD OF COUNTY  
COMMISSIONERS, Rogers County,  
Oklahoma,

Defendants.

CIVIL ACTION NO. 90-C-529-B

**ORDER**

Upon the Motion of the United States of America acting on behalf of the Farmers Home Administration by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, to which no objections have been filed, it is hereby ORDERED that this action shall be dismissed without prejudice.

Dated this 16<sup>th</sup> day of Oct., 1990.

S/ THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:  
TONY M. GRAHAM  
United States Attorney

*Phil Pinnell*

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HOWARD LEE HENDERSON a/k/a  
HOWARD HENDERSON; BRENDA  
FRAZIER a/k/a BRENDA A. FRAZIER  
a/k/a BRENDA ANN FRAZIER;  
WILLIE DON FRAZIER; AMERICAN  
STATE BANK OF TULSA, OKLAHOMA;  
STATE OF OKLAHOMA ex rel.  
OKLAHOMA TAX COMMISSION; COUNTY  
TREASURER, Tulsa County,  
Oklahoma; and BOARD OF COUNTY  
COMMISSIONERS, Tulsa County,  
Oklahoma,

Defendants.

**F I L E D**

OCT 16 1990

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

CIVIL ACTION NO. 88-C-1457-E

DEFICIENCY JUDGMENT

This matter comes on before the Court this 16 of  
Oct, 1990, on the Motion of the Plaintiff United States  
of America for leave to enter a Deficiency Judgment which Motion  
was filed on the 16th day of July, 1990, and a copy of the  
Motion was mailed to Howard Lee Henderson a/k/a Howard Henderson,  
2540 North Madison Avenue, Tulsa, Oklahoma 74106 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 Peter Bernhardt, Assistant United States  
Attorney, and the Defendant, Howard Lee Henderson a/k/a Howard  
Henderson, 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 19, 1989, in favor of the Plaintiff United States of America, and against the Defendant, Howard Lee Henderson a/k/a Howard Henderson, with interest and costs to date of sale is \$17,973.09.

The Court further finds that the appraised value of the real property at the time of sale was \$4,500.00.

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 19, 1989, for the sum of \$5,334.00 which is more 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 3rd day of October, 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 Defendant, Howard Lee Henderson a/k/a Howard Henderson, as follows:

Principal Balance as of 5/19/89	\$11,836.99
Interest	4,389.72
Late Charges to Date of Judgment	147.84
Management Broker Fees to Date of Sale	647.90
Abstracting	167.78
Publication Fees of Notice of Sale	170.86
Appraisers' Fees	105.00
1988 Taxes	206.00
1989 Taxes	<u>301.00</u>
TOTAL	\$17,973.09
Less Credit of Sale Proceeds	- <u>5,334.00</u>
DEFICIENCY	\$12,639.09

plus interest on said deficiency judgment at the legal rate of 7.78 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the sale proceeds 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 Defendant, Howard Lee Henderson a/k/a Howard Henderson, a deficiency judgment in the amount of \$12,639.09, plus interest at the legal rate of 7.78 percent per annum on said deficiency judgment from date of judgment until paid.

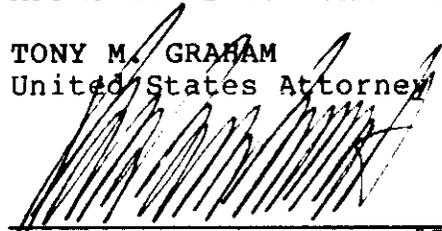
S/ JAMES O. ELLISON

---

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

OCT 16 1980

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

LAWRENCE SLADE,

Plaintiff,

vs.

ANTHONY M. FRANK,  
Postmaster General,

Defendant.

No. 87-C-192-C

ORDER

This matter is before the Court for final determination following a hearing on plaintiff's objections to the Magistrate's recommendation that plaintiff's action be dismissed with prejudice. After considering the briefs, arguments and legal authority, the Court finds as follows.

Undisputed Facts

Plaintiff, a black male and ten-point veteran, took an examination in 1971 with the defendant, the United States Postal Service (Postal Service), and his name was placed on the employment register. In early 1975, he took the clerk-carrier examination and his name was placed on the clerk-carrier register. In September 1975, plaintiff was called for training, but was rejected for the opening because he was serving probation for a misdemeanor conviction. Plaintiff obtained a release from probation and was accepted by the Postal Service into pre-employment training. He

was again called for employment but prior to commencing work, plaintiff was told that all hiring had been postponed.

In April 1976, plaintiff was again called for employment but was not hired when he informed the Postal Service that he had received a third misdemeanor conviction.

On April 22, 1976, plaintiff filed an informal complaint with Samuel Burns, the Equal Employment Opportunity (EEO) Counselor with the Postal Service in Tulsa, asserting that he was unjustly denied employment due to his misdemeanor convictions.

On January 3, 1977, plaintiff filed a formal complaint with the EEO Division of the Postal Service in Memphis, Tennessee. In the complaint, plaintiff sought a back pay award. The complaint was referred to an internal EEO officer for investigation.

On September 23, 1977 the internal investigator, Mrs. J. W. Bostic, issued her findings, which stated that due to plaintiff's repeated arrests and convictions he was not selected three times from the employment register and was subsequently removed, as required by the Postal Service Personnel Handbook; that caucasian applicants were also not selected for employment; and that none of the applicants selected for employment had arrest or conviction records.

On December 13, 1977, the EEO Division within the Postal Service issued its "proposed decision" denying any claim of racial discrimination against the plaintiff. This was followed by a May 10, 1978 "final decision".

On May 23, 1978 plaintiff appealed this decision to the U. S. Civil Service Commission, Appeals Review Board. The Civil Service Commission referred the matter to the Equal Employment Opportunity Commission (EEOC) in Washington, D. C. The EEOC set aside the "final decision" of the Postal Service on procedural error. The EEOC determined that the Postal Service issued its "final decision" on the basis that plaintiff failed to timely appeal the "proposed decision" and request a hearing. The EEOC concluded that the Postal Service had failed to properly notify plaintiff of his right to appeal and request a hearing.

The matter was referred to an EEOC complaint examiner in Houston, Texas. On March 19, 1984 the complaint examiner issued her findings and recommendations. The complaint examiner analyzed plaintiff's case under a disparate impact theory and concluded that more black applicants have arrest records than caucasian applicants. Accordingly the Postal Service's policy of denying employment to applicants with three former convictions had an adverse impact on black applicants. The examiner concluded that plaintiff had been denied employment due to his race and recommended reinstatement with back pay and benefits.

Under EEOC regulations, the examiner's findings and recommendation was not a final decision but would become final unless the Postal Service accepted it without modification.

On April 24, 1984 the Postal Service rejected the recommendation by stating that plaintiff had shown no evidence of disparate treatment and no evidence of racial discrimination.

Additionally, the Postal Service rejected analyzing plaintiff's claim under the disparate impact theory.

Plaintiff appealed, once again, to the EEOC. On January 17, 1987 the EEOC opined that plaintiff had established a prima facie case of racial discrimination thereby shifting the burden back to the Postal Service to determine job relatedness of the convictions.

The EEOC's decision read:

The agency [Postal Service] is ordered to reevaluate appellant's convictions to determine whether they are job related. If it is determined that the convictions are job related, the agency is ordered to consider the relevant factors as articulated in this decision to determine whether they render the appellant unfit for employment by the agency. If it is determined that appellant's convictions do not render him unfit for employment, the agency is ordered to place appellant's name back on its hiring register(s) for clerk-carrier positions. The agency shall inform the Commission of its determination in writing.

Additionally, plaintiff was advised that this was a final decision with right to appeal to the appropriate United States District Court. The EEOC did not award attorney fees or back pay nor was a request for the same made by plaintiff to the EEOC.

On March 18, 1987 the Postal Service issued its final decision:

[i]t has been determined that appellant's convictions are job related and that in light of the relevant factors outlined in the Commission's decision, the conviction would have rendered him unfit for postal employment in 1976.

The Postal Service also advised plaintiff that even though it was rejecting his claim of race discrimination and determining that his convictions were job related, since his convictions were now over ten years old, they would no longer be considered if he chose to submit a current employment application.

On March 18, 1987 plaintiff filed the instant suit pursuant to 42 U.S.C. §2000e-16(c). The complaint alleged that it was an

appeal from a final decision rendered by the EEOC concerning plaintiff's claim of equal protection under Title VII, seeking compensation for attorney fees and past due wages. Plaintiff contends this controversy has lasted eleven years and has forced him to hire an attorney. Plaintiff seeks \$50,000 in attorney fees and \$360,000 for financial injury and pecuniary loss.

Plaintiff asserts "the Equal Employment Opportunity Commission, Appeals Division, ruled in favor of plaintiff in January 15, 1987 but did not address the issue of back wages and attorney fees to which the plaintiff is rightfully entitled. From this decision, plaintiff appeals."

Plaintiff failed to name the proper defendant, and the Postal Service did not receive actual notice of the suit until after the limitation period. This Court dismissed plaintiff's suit under Rule 15(c) F.R.Cv.P. Plaintiff appealed and the Tenth Circuit reversed the dismissal.<sup>1</sup>

Following remand, defendant filed a motion for support of summary judgment on the merits, asserting that plaintiff could not establish a prima facie case of disparate impact and the employment policy at issue serves a legitimate employment purpose.

Plaintiff opened his response brief, as follows:

... after time to consider the matter, it appears that the hiring policies and procedures of the U. S. Postal Service are no longer discriminatory toward plaintiff. Therefore plaintiff hereby withdraws his claim for lost wages.

---

<sup>1</sup>Lawrence Slade v. U. S. Postal Service, No. 87-2679 (10th Cir. July 19, 1989).

Then pursuant to Rule 56 F.R.Cv.P. plaintiff requested judgment against defendant for his "remaining claim for attorney fees." Plaintiff contends that within the meaning of 42 U.S.C. §2000e-5(k) he is the "prevailing party" from the decision rendered by the EEOC on January 15, 1987 and the Tenth Circuit Court of Appeals on July 19, 1989.

Decision of the Court

An administrative procedure is set forth in 29 C.F.R. §1613 et al., for claims of denial of equal opportunity in employment brought by applicants and employees of the federal government against federal agencies. After review of this procedure, the Court finds and concludes that plaintiff is not a prevailing party within the meaning of 42 U.S.C. §2000e-5(k).

Plaintiff claims prevailing party status from the issuance of three separate decisions.

First, the March 19, 1984 finding and recommendation by the complaint examiner that plaintiff had been discriminated against on the basis of his race when he was not hired by the Postal Service because of his misdemeanor convictions.

Under 29 C.F.R. §1613.220(d) the recommended decision of the complaint examiner did not become a final decision because the Postal Service timely rejected the decision and notified plaintiff of his right to appeal to the EEOC. Only if the decision had become final would plaintiff be considered a prevailing party.

Second, the January 17, 1987 decision of the EEOC finding race discrimination and directing the Postal Service to re-evaluate job relatedness of the convictions.

Under 29 C.F.R. §1613.234 the EEOC may remand a complaint to the federal agency if it considers that further action is necessary. This decision is final unless either party files a timely request to reopen.

Under the undisputed facts, the Postal Service received the order of the EEOC to re-evaluate plaintiff's convictions to determine if they were job related. The Postal Service, by written response, determined that the convictions were job related. At this juncture, plaintiff had three options. Under §1613.234(b) plaintiff could petition the EEOC to reopen. Under §1613.239(c) plaintiff could appeal to this Court the agency's refusal to implement corrective action or commence de novo proceedings.

On March 18, 1987 plaintiff elected to appeal to this Court. However, prior to seeking a determination on the merits, plaintiff abandoned his substantive claim under Title VII and reiterated his claim for attorney fees.

The final agency action which prompted plaintiff's appeal was the March 18, 1987 decision of the Postal Service. As to that decision plaintiff was not a prevailing party. By filing this civil action, under §1613.263, all actions involving the administrative procedure terminated.

During the pendency of this civil action, no settlement has been reached and no determination rendered on the merits. Accordingly, plaintiff is not a prevailing party.

Third, plaintiff contends that he won an appeal to the Tenth Circuit on a significant procedural right relating to discrimination cases which will help future litigants.

The opinion issued by the Tenth Circuit was a mere procedural finding and has no civil rights implications. Thus, plaintiff cannot rely on this opinion for attorney fees under 42 U.S.C. §2000e-5(k).

Accordingly, the Court affirms the findings and recommendation of the Magistrate.

It is therefore the Order of the Court that plaintiff Lawrence Slade's action is hereby dismissed, with prejudice.

*IT IS SO ORDERED* this 16<sup>th</sup> day of October, 1990.

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

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

FILED

OCT 16 1990

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

PAVITER CORPORATION, a  
general partnership of the  
Republic of Singapore,

Plaintiff,

v.

C&S EQUIPMENT SALES, INC., an  
Oklahoma Corporation, MICHAEL T.  
RAWLINS, S&S ERECTION & RENTALS,  
INC., a Missouri Corporation,  
HAROLD STOUT, a Missouri  
resident, and RAWLINS MANU-  
FACTURING, INC., an Oklahoma  
corporation, RONALD B.  
STOCKWELL, an Oklahoma resident,  
HAROLD CLARK, an Oklahoma  
resident, and R. BLACK, INC.,  
a Kansas company,

Defendants.

Case No. 89-C-1017C

STIPULATION OF DISMISSAL  
WITHOUT PREJUDICE

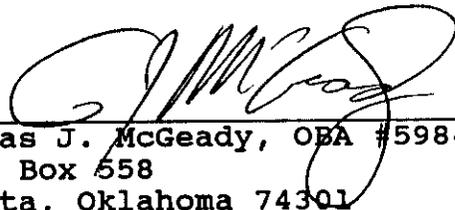
COME NOW S&S Erection & Rentals, Inc. and Harold Stout,  
cross-claimants, and C&S Equipment Sales, Inc., cross-claim  
defendant, and, pursuant to Fed.R.Civ.P. 41(a)(1)(ii), hereby  
stipulate to the dismissal of the said cross-claim of S&S  
Erection & Rentals, Inc. and Harold Stout against C&S Equipment  
Sales, Inc.

CORNISH & SCHNEIDER, INC.

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

ATTORNEYS FOR DEFENDANTS,  
S&S ERECTION & RENTALS, INC. and  
HAROLD STOUT

LOGAN, LOWRY, JOHNSTON, WEST,  
McGEADY, CURNUTTE & LOGAN

By 

Thomas J. McGeady, OBA #5984  
P.O. Box 558  
Vinita, Oklahoma 74301  
(918) 256-7511

ATTORNEYS FOR DEFENDANTS,  
C&S EQUIPMENT SALES, INC.  
and HAROLD CLARK

CERTIFICATE OF MAILING

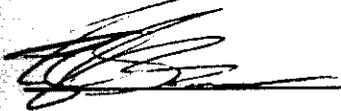
I, the undersigned, certify that on the 16th day of October, 1990, a true and correct copy of the above and foregoing was mailed by First Class U.S. Mail to the following attorneys of record with proper postage prepaid thereon:

James M. Reed  
Hall, Estill, Hardwick,  
Gable, Golden & Nelson  
4100 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, Oklahoma 74172

Thomas J. McGeady  
Logan Lowry, Johnston,  
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Post Office Box 3645  
Tulsa, Oklahoma 74101-3645

James W. Keeley  
Gill & Keeley  
Suite 680  
1400 South Boston Building  
Tulsa, Oklahoma 74119



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

OCT 16 1990

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

PAVITER CORPORATION, a )  
general partnership of the )  
Republic of Singapore, )  
 )  
Plaintiff, )

v. )

C&S EQUIPMENT SALES, INC., an )  
Oklahoma Corporation, MICHAEL T. )  
RAWLINS, S&S ERECTION & RENTALS, )  
INC., a Missouri Corporation, )  
HAROLD STOUT, a Missouri )  
resident, and RAWLINS MANU- )  
FACTURING, INC., an Oklahoma )  
corporation, RONALD B. )  
STOCKWELL, an Oklahoma resident, )  
HAROLD CLARK, an Oklahoma )  
resident, and R. BLACK, INC., )  
a Kansas company, )  
 )  
Defendants. )

Case No. 89-C-1017C

STIPULATION OF DISMISSAL  
WITHOUT PREJUDICE

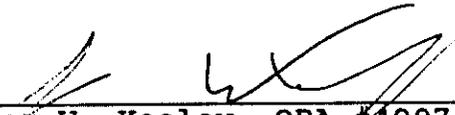
COME NOW S&S Erection & Rentals, Inc. and Harold Stout,  
cross-claimants, and Rawlins Manufacturing, Inc. and Michael T.  
Rawlins, cross-claim defendants, and, pursuant to Fed.R.Civ.P.  
41(a)(1)(ii), hereby stipulate to the dismissal of the said  
cross-claim of S&S Erection & Rentals, Inc. and Harold Stout  
against Rawlins Manufacturing, Inc. and Michael T. Rawlins.

CORNISH & SCHNEIDER, INC.

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

ATTORNEYS FOR DEFENDANTS,  
S&S ERECTION & RENTALS, INC. and  
HAROLD STOUT

GILL & KEELEY

By 

James W. Keeley, OBA #4907  
1400 South Boston Building  
Suite 680  
Tulsa, Oklahoma 74119  
(918) 587-1988

ATTORNEY FOR MICHAEL T. RAWLINS  
and RAWLINS MANUFACTURING, INC.

CERTIFICATE OF MAILING

I, the undersigned, certify that on the 15<sup>th</sup> day of October, 1990, a true and correct copy of the above and foregoing was mailed by First Class U.S. Mail to the following attorneys of record with proper postage prepaid thereon:

James M. Reed  
Hall, Estill, Hardwick,  
Gable, Golden & Nelson  
4100 Bank of Oklahoma Tower  
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Thomas J. McGeady  
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Suite 680  
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Tulsa, Oklahoma 74119



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

**F I L E D**

**OCT 16 1990**

BERNARD SPENCER,

Plaintiff,

v.

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

Defendant.

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

89-C-527-B

**ORDER**

The Court has for consideration the Report and Recommendation of the United States Magistrate filed September 7, 1990 in which the Magistrate recommended that the Defendant's Motion to Dismiss be granted.

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

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

It is, therefore, Ordered that the Defendant's Motion to Dismiss is granted.

Dated this <sup>th</sup> 16 day of Oct., 1990.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE