

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

IN RE:) No. M-1417
ASBESTOS CASES) ASB (I) 5187

Norma Lancaster and)
Charles Lancaster, Deceased,)
Plaintiffs,)
-vs-)
FIBREBOARD CORP., et al.,)
Defendants.)

No. 88-C-919-B

FILED
DEC 31 1990

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

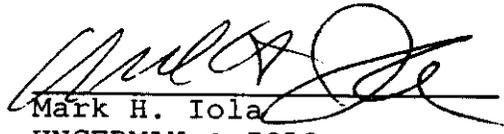
ORDER OF DISMISSAL

Upon joint application of the plaintiffs and defendants, Owens-Corning Fiberglas Corporation, Owens-Illinois, H.K. Porter and Keene Corporation for dismissal of these defendants, is granted. Said defendants are dismissed from the above styled action without prejudice to the further refiling thereof.

S/ THOMAS R. BRETT

United States District Judge

APPROVED:



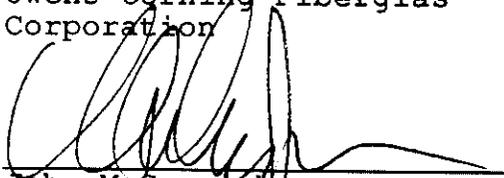
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

3/28/89

AMOCO PRODUCTION COMPANY,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
THE INTERIOR, and the
NATIONAL PARK SERVICE OF THE
UNITED STATES DEPARTMENT OF
THE INTERIOR

Case No. 89-C-209-B ✓

MEMORANDUM AND ORDER

Amoco Production Company appeals from the final decision of the Chief Appeals Officer for the Department of the Interior denying Amoco's request for certification of the Philcade Building in Tulsa, Oklahoma as a "certified historic structure" as required for income tax credit under the Internal Revenue Code, 26 U.S.C. Section 48(g), and the denial by the Keeper of the National Register to retroactively remove from the Register the Philcade as an historic building.

After a thorough review of the final administrative decision of the National Park Service of the Department of the Interior, the Court finds that the decision was not violative of the Administrative Procedure Act, 5 U.S.C. Sections 706(2)(A), (D), (E), and neither declaratory nor equitable relief will be granted. Therefore, the Court finds in favor of the defendants, National Park Service and Department of the Interior, and against the plaintiff, Amoco.

BACKGROUND

This action centers on the rehabilitation by Amoco of the 13-story Philcade Building located in downtown Tulsa, Oklahoma. Original construction of the Philcade began in 1929 by Waite Phillips, a prominent Tulsa philanthropist and industrialist, and was completed in 1931. The Philcade was designed by Oklahoma architect Leon Senter, and is considered one of his most important works.

The building houses commercial activities on its ground floor, mezzanine and second floor areas. Marble pilasters, ornamental plaster frieze and ceiling comprise the Philcade's ground floor interior, with its corridors containing terrazzo floors, marble wainscot, and solid mahogany office doors. The shape of the building's exterior third through thirteenth floors originally formed a deep "U" or "H" shape, with two tower wings forming a light well and allowing natural ventilation for interior spaces. Terra cotta and cast iron cover the building's exterior and the wings contain light colored brick, double-hung steel windows and brick chevron pilasters.

In the early 1980's, the Philcade was in need of rehabilitation in order to make it compliant with modern safety requirements.¹ Amoco sought to make the required structural safety changes while maintaining the historical character of the building. After drawing plans containing a number of different options for

¹As originally constructed, the Philcade's long wings formed dead-end corridors which, in a fire or other emergency, could entrap an entire wing's occupants.

renovating the building, Amoco met with the Oklahoma State Historic Preservation Office in July, 1984 to advise them of the rehabilitation plans and to seek the federal income tax credits provided under statute.

Amoco's decision to rehabilitate and modernize the Philcade was guided, in part, by the tax incentive provisions of the Economic Recovery Tax Act of 1981. Under that Act, two modes of tax incentives allowed a building owner to obtain either (1) a 20 percent tax credit for rehabilitation of structures at least 40 years old or (2) a 25 percent tax credit for the rehabilitation of a "certified historic structure." 26 U.S.C. Section 46(a)(2)(F)(i) (West Supp. 1984).

To qualify for the 20 percent tax credit, a building owner need not seek National Park Service approval; the only substantive requirement was that the building be at least 40 years old. Consistent with the two methods of seeking federal tax subsidies, the 20 percent tax credit was not available if expenditures were "attributable to the rehabilitation of a certified historic structure." 26 U.S.C. Section 46(g)(2)(B)(iv).

Qualification for the 25 percent tax credit is a much more complicated procedure and requires two part certifications by the Secretary of the Interior, acting through the National Park Service. Part I requires that the property be certified as a historic structure through nomination for inclusion on the National Register of Historic Places. Part II dictates that the rehabilitation project must be certified by the National Park

Service as consistent with the historic character of the building. 26 U.S.C. Section 48(g). The certification process begins through the State Historic Preservation Officer who makes recommendations to the National Park Service as to both parts of the certification process. These recommendations by state historic officers are generally followed by the National Park Service, but the final decision by law must be made by the Secretary upon review of the application and related information. 36 C.F.R. Section 67.4(b)(3), (5). Part II certification, through state historic officer recommendation, may be sought at any point after Part I certification, even after actual rehabilitation work has begun, but the regulations encourage certification prior to building rehabilitation. 36 C.F.R. Section 67.6(a)(1). Undertaking rehabilitation prior to National Park Service approval subjects the building owner to the risks of non-certification. Id.

Amoco claims that it presented representatives of the State Historic Preservation Officer, at the July 1984 meeting, its plans for the Philcade, which included the construction of a connecting link between the open wings of the "U", partially set back, which would eliminate potential entrapment of the occupants of the wings.² The National Park Service contests the scope of the meeting, presenting evidence that the discussions of the

²A second option considered but rejected by Amoco involved the construction of internal stairways at the ends of each wing. Such construction, Amoco claimed, would have "weakened the building structurally," and would have interrupted vital computer operations. The government contends that the decision to choose the connecting link option was a matter of preference and not one of necessity.

rehabilitation were preliminary, that the State Historic Preservation Officer's representatives discussed the tax credit and certification procedure, and that the representatives informed Amoco of the risks of undertaking rehabilitation prior to Part II National Park Service certification.

In July 1986, the Oklahoma Preservation Review Committee considered the request by Amoco for Part I certification, i.e. the nomination of the Philcade for listing on the National Register of Historic Places. The parties dispute whether rehabilitation plans were presented; but evidence exists in the administrative record which shows that construction had already begun on the Philcade and Amoco had been informed of the risks therein. Nonetheless, the Committee decided to nominate the Philcade for Part I certification. On September 18, 1986, the Keeper of the National Register approved the nomination and the Philcade was placed on the National Register.

On November 25, 1986, Amoco sought Part II certification for the Philcade from the State Historic Preservation Officer. The State Historic Preservation Officer recommended certification, subject to certain conditions, and sent the application to the National Park Service Rocky Mountain Regional Office in Denver, Colorado on February 13, 1987. Evidence in the administrative record reveals that the State Historic Preservation Officer recommended that the Park Service further review the application because of a perceived lack of information concerning demolition, substantial interior alterations and construction of the new

addition to the Philcade.

On April 21, 1987, the National Park Service denied Amoco's Part II application by determining that the rehabilitation was not "consistent with the historic character of the property or the district in which it is located and the project does not meet the Secretary of the Interior's 'Standards for Rehabilitation'." Specifically, the Park Service found that the proposed construction of a connecting link between the building's two wings, proposed changes to the Philcade's interior, and the proposed replacement of the building's steel double-hung windows with bronze aluminum sash, each and of themselves constituted a failure of the Secretary's standards and necessitated certification denial. The National Park Service considered the proposed connecting link a critical flaw in the rehabilitation plans:

If constructed as proposed, major character defining features of the building will be destroyed. The most damaging work item is the addition of a connecting link between the east and west wings. The connector changes the historic appearance of the building by 'filling in' the deep space created by the two wings. The architectural detailing of the two wings and the "U" shape of the building with its decorative friezes and chevron pilasters make a strong statement that would be destroyed if filled in by the connector as is proposed.

Administrative Record, Exhibit K, pp. 3-4.

Amoco appealed the certification denial by the National Park Service to Ernest Allen Connally, the Park Service's Chief Appeals Officer in Washington, D.C. After a de novo review, the Appeals Officer on March 31, 1988 dismissed the objections of the regional office to the building interior alterations, and to the steel windows, which Amoco had offered to repaint in a more historically

accurate color. The Appeals Officer nonetheless denied the appeal based on the addition of the connecting link, holding that Amoco's decision to construct the link was a matter of preference, among available approaches to the safety code problems, which "radically impair[ed] the essential character of the Philcade." According to the Appeals Officer:

The overall character of the Philcade Building rests in its integrity as a complete architectural composition, and not merely on individual ornamental elements, rich though they certainly are on the lower levels of the building. The shape of the building, determined in large measure by the unadorned wings and the deep well, gives the whole a presence that is evident from even a cursory glance at photographs taken before the project began

In an era before air conditioning, it was essential to provide as much natural ventilation, as well as natural light, as possible for interior spaces. This requirement was met, as in the Philcade Building, by extending wings alongside a lightwell, thereby vastly increasing the exterior surface area and providing ventilation to the interior. The arrangement permitted light to enter offices on both sides of the corridors This practical architectural solution to a major practical problem resulted in the characteristic building form seen here, typically of buildings erected in the 1920s and 1930s. (It was, furthermore, a distinctly American solution. This form is not usually found, for example, in European buildings of the same era.

Chief Appeals Officer Decision at 6 (parenthetical original).

Amoco thereafter filed a Petition for Reconsideration on March 31, 1988 and asserted that: (1) The Philcade's most important historic and architectural feature was its lobby/arcade and not its external form; (2) the decision to construct the connecting link, and not internal stairs, was not a "matter of preference" but was made to prevent damage to the lobby/arcade and the exterior street-level facade; (3) the placement of the connecting link, slightly

set-back into the building, and the addition's design and materials preserves the original historic form and architectural style and character; (4) the National Park Service had previously certified other rehabilitation projects involving similar "infill" additions.

On October 12, 1988, the Chief Appeals Officer, after analyzing voluminous additional material submitted by Amoco, determined that the previous decisions of the National Park Service denying certification were proper. The Appeals Officer strongly disagreed with the assertion of Amoco's expert, Professor Wilson, that the lobby/arcade, and not the external form, was the character-defining feature of the building. The Appeals Officer stated: "The external form . . . was the dominant determinant of its overall character; it was the overriding expression of the organizing concept of the building as a coherent work of architecture." Construction of the connecting link cannot be reconciled with the historic character of the building, according to the Appeals Officer, and the harm done to the form of the building is immense.

Addressing Amoco's second point, the Chief Appeals Officer asserted that none of the evidence provided by Amoco showed that the internal stair option was unworkable or impossible; that Amoco, prior to its first meeting with the State Historic Preservation Officer, chose not to consider the internal stair option, as such an operation would lead to disruption of the computer operations housed in the building. Although a matter of preference involving difficult choices and technical problems, Amoco nonetheless must,

according to the Appeals Officer, "forego the historic preservation tax credit if the work does not meet the minimum statutory test for certification."³ Chief Appeals Officer Decision on Reconsideration at 3. Therefore, the Appeals Officer could not accept the alteration to the Philcade's "historic form as a trade-off for the preservation of the lobby."

Although the regulations provide that each project is unique and is individually assessed prior to certification, the Appeals Officer addressed the contention by Amoco that other buildings having similar "infill" constructions obtained National Park Service certification. Each of the buildings suggested by Amoco for which National Park Service certification ensued, the Falls Building in Memphis, Tennessee and the Daniel Boone Hotel in Wheeling, West Virginia, have different light well sizes and locations and thus, according to the Appeals Officer, can not be equated with the Philcade's light well. The addition to the Folger Shakespeare Library in Washington, D.C. was constructed in the building's rear, so that the historic nature of the building remained intact after rehabilitation. The Northwestern Knitting Company's construction of infills connecting several buildings of different sizes in Minneapolis was not similar at all to the other projects cited. As a final point, the Chief Appeals Officer

³The Chief Appeals Officer also noted that even if construction of the connecting link was the only possible means to remedy the safety code problems, the regulations do not allow the National Park Service to certify a building rehabilitation project it considers inconsistent with the historic character of the building. See 36 C.F.R. Section 67.7(d).

commented that the rehabilitation of the Philcade was an admirable one that required the expenditure of a great deal of time and money; nevertheless, the drastic change to the structure required that the certification be denied.⁴

On December 4, 1989, Amoco petitioned the State Historic Preservation Officer requesting the delisting of the Philcade from the National Register pursuant to 36 C.F.R. Section 60.15(a)(4),⁵ which authorizes the Keeper to remove properties from the National Register where there has been prejudicial procedural error in the

⁴Additionally, the Chief Appeals Officer made the following comment:

I wish to make it clear that my determination regarding this project is based on its effects on the Philcade Building, not on Amoco's failure to submit an application before commencing rehabilitation work. Amoco was free to apply for National Park Service review before, during, or after rehabilitation work. However, if by waiting to apply until the project was well underway, Amoco reached a point of no return, it may not place the blame retrospectively on the Oklahoma State Historic Preservation Office for Amoco's own failure to act.

Chief Appeals Officer Decision on Reconsideration at 6.

⁵36 C.F.R. Section 60.15 provides:

(a) Grounds for removing properties from the National Register are as follows: (1) The property has ceased to meet the criteria for listing in the National Register because the qualities which caused it to be originally listed have been lost or destroyed, or such qualities were lost subsequent to nomination and prior to listing; (2) additional information shows that the property does not meet the National Register criteria for evaluation; (3) error in professional judgment as to whether the property meets the criteria for evaluation; (4) prejudicial procedural error in the nomination or listing process.

nomination and listing process.⁶ The State Historic Preservation Officer responded by maintaining that no procedural error occurred during the nomination of the Philcade, and that photographs and other documentation provided during the procedure established the building's eligibility for placement on the National Register. The decision to nominate the Philcade to the National Register, according to the Preservation Officer, was not based on proposed additions to the building, nor tax considerations.

The Keeper of the National Register on February 2, 1990 determined that no procedural error had occurred in the nomination and listing of the Philcade, and that removal based on equitable considerations was not allowed. Buildings are listed according to information available at the time of application, and, stated the Keeper, there is no duty for the State Historic Preservation Officer to inform the National Park Service of any proposed rehabilitation to the building. A building can be removed from the National Register pursuant to 36 C.F.R. Section 60.15(a)(1) if the building goes through a significant change and has lost the qualities for which it was nominated. Despite the construction by Amoco of the connecting link, the Keeper determined that the Philcade, considered as a whole, retained "sufficient integrity of location, design, setting, materials, workmanship, feeling, and association within the meaning of 26 C.F.R. [Section] 60.4 to

⁶Amoco claimed the procedural error occurred as a result of the State Historic Preservation Officer's failure to inform the National Park Service that Philcade was to be rehabilitated. The Park Service may have then questioned Amoco's plans before the Philcade was listed on the National Register.

continue to qualify it for listing within the National Register as a significant example of the Art Deco style as developed in Tulsa, Oklahoma." Keeper's Administrative Record, Exhibit 9 at 4.

On March 16, 1989, Amoco commenced this action for judicial review of the National Park Service's denial of certification. Amoco alleged that the certification denial was violative of the Administrative Procedure Act, 5 U.S.C. Sections 706(2)(A), (D), (E) as it was allegedly arbitrary, capricious, an abuse of discretion, not in accordance with law, and was unsupported by substantial evidence. Amoco sought a directive from the Court to the National Park Service granting Amoco certification for the Philcade project. After seeking retroactive delisting with the Keeper of the National Register, Amoco amended its complaint seeking a declaration that the Philcade be retroactively delisted. Specifically, Amoco charged that the listing of the Philcade on the National Register was a "mistake and should be declared void ab initio." Such a retroactive delisting would account for "equity" by placing Amoco in its original position prior to seeking certification, thus allowing it to obtain the 20 percent tax credit.

A motion for summary judgment was filed by Amoco on September 25, 1990 and by the National Park Service on September 17, 1990. In its brief supporting its motion for summary judgment, Amoco argues that: (1) the National Park Service ignored evidence in the record that construction of the connecting link did not alter the most significant feature of the Philcade, its lobby/arcade, and that the rehabilitation work was consistent with the building's

historic character; (2) the National Park Service cited no authority to support its findings concerning the architectural and historic significance of the exterior form of the Philcade in comparison with other buildings local and national; and (3) the National Park Service's certification denial in this case conflicts with its approval of comparable rehabilitation projects. As to its claim for delisting of the Philcade from the National Register, Amoco argues that the Court through its equitable powers should remedy the "Catch-22" which confronts Amoco as a result of the failure by the Keeper to delist. The original listing, Amoco argues, was a mistake and now it is left with a building for which none of the rehabilitation expenditures may receive favorable tax credits.

The National Park Service, in response to the claims of Amoco, argues that: (1) The Park Service's decision denying certification of the Philcade project was the result of reasoned decision-making based on the standards for "certified rehabilitation" and should be sustained; (2) the Chief Appeals Officer exercised reasonable decision-making in his decision denying certification on appeal and on reconsideration because the connecting link did not satisfy the Secretary's Standards for Rehabilitation and because building codes do not overcome a determination regarding rehabilitation; and a site inspection by the Park Service was neither required nor necessary; and (3) decisions by the National Park Service in other proceedings are distinguishable from the Philcade project and do not require a different result. The National Park Service further

argues that review of the Keeper's determination not to delist the Philcade from the National Register is governed by provisions of the Administrative Procedures Act and that Congress intended for the consequences which result from a failure to preserve properly historic resources.

On October 23, 1990 the parties agreed that the evidentiary record be closed in this matter and that the Court render its determination on the record before it. On November 30, 1990, this Court heard oral arguments in the matter which included an on-site viewing of the Philcade Building.

ISSUES

- I. Whether the decision by the National Park Service denying certification for the Philcade Building as a "Certified Historic Structure" was arbitrary or capricious or otherwise violative of the Administrative Procedure Act, 5 U.S.C. Section 500, et seq.

- II. Whether the Court, on the basis of equitable considerations, should direct the Keeper of the National Register to delist the Philcade Building from the National Register.

DISCUSSION

- I. Whether the decision by the National Park Service denying certification for the Philcade Building as a "Certified Historic Structure" was arbitrary or capricious or otherwise violative of the Administrative Procedure Act, 5 U.S.C. Section 500, et seq.

The scope of review with regard to administrative decisions of an agency is governed by the provisions of the Administrative Procedure Act. 5 U.S.C. Section 500 et seq. This court must strike down the findings and conclusions of an agency that are, inter alia, "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," or are "unsupported by substantial evidence in the case. 5 U.S.C. Section 706(2); Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971); Yaffe Iron and Metal Co. v. EPA, 774 F.2d 1008 (10th Cir. 1980). The Court's review is narrow, but it does not substitute its judgment for that of the agency, nor does it merely "rubber stamp" the Secretary's action. Volpe, supra; Grynberg v. Watt, 717 F.2d 1316 (10th Cir. 1983); Thomas v. Sullivan, 876 F.2d 666, 669 (8th Cir. 1989). Moreover, a court must confine its review to the record of the agency and "additional evidence is not to be admitted." Roberts v. Morton, 549 F.2d 158, 160 (10th Cir.), cert. denied, 434 U.S. 834 (1977).⁷

Amoco argues that the National Park Service ignored evidence in the record supporting the position that the most significant feature of the Philcade was its lobby/arcade and not its external

⁷It should be noted at this juncture that neither the arguments presented before the Court nor its viewing of the Philcade on November 30, 1990 will be used in its determination of the issues at hand.

form, and that the rehabilitation work was consistent with the building's historic character. According to Amoco, the record contains expert evidence that construction of the connecting link did not adversely affect the building's character. Amoco contends the National Park Service failed to present contrary evidence, and never viewed the building; thus, statements by the Park Service concerning the importance of the external form were conclusory and not reasoned from the facts.

The National Park Service argues that under the Secretary's Standards for Rehabilitation the agency is granted discretionary authority in certification after a consideration of all relevant factors. The Chief Appeals Officer evaluated the project based on "before" photographs, and information and history contained in the official documentation furnished by Amoco in its application for nomination to be placed on the National Register. Each of Philcade project's shortcomings were fully identified and explained in the Appeals Officer's decisions and each holding had a rational basis under the Secretary's Standards.

The National Park Service also vigorously defends the charge that it failed to make a reasoned decision because it did not conduct an on-site inspection of the Philcade. Initially, the Park Service notes that inspections are authorized under 36 C.F.R. Section 67.6(e) but are not required; a site visit in most cases is not necessary or practical as complete documentation, including photographs, as recommended under the regulations. The administrative record is replete with photographs of the Philcade

both prior to and after rehabilitation, and the building's interior and exterior portions are clearly evident. Combined with architectural drawings of the building, the National Park Service argues that there are no grounds whatsoever to suggest that it was unable to make a reasoned decision based on the record before it.

The Court finds the National Park Service's arguments persuasive and rejects Amoco's contention that the Park Service provided an unreasoned or conclusory certification denial. The National Park Service is necessarily bound by regulatory standards defining certification of historic structures, but it also is vested with discretionary authority upon evaluation of all relevant evidence. Evidence in this case included the aforementioned photographs and architectural drawings, the statement of Professor Wilson, and all other information contained in the Part I and Part II applications (in addition to information supplied by Amoco on appeal and reconsideration).

A site visit by the National Park Service to the Philcade certainly would not have been detrimental to its consideration of Amoco's application. Ample evidence existed from these applications, however, to make a reasoned analysis and decision, and a finding that evidence supports the decision of the National Park Service.

Essentially, Amoco's contention boils down to a question concerning the architectural significance of the two wings, which it claims is overshadowed by the interior lobby. On numerous occasions, however, Amoco referred to the exterior architecture in

its description of the historic nature of the Philcade. It commented in Part I of its application: "The wing and well configuration of the office floors together with the large windows offered each tenant reasonable comfort in an era before modern air conditioning." Attachment A, Item 7. Combined with information concerning the history of such structures in the 1920's and 1930's, it was not unreasonable for the National Park Service to determine that the characteristic historic nature of the Philcade was its exterior form. Moreover, the National Park Service determination included an evaluation of all relevant evidence regarding the Philcade including the interior and exterior. It simply does not follow that, because the Park Service differed with Amoco in what it considered the Philcade's chief historic characteristic, its determination was unreasonable.

Amoco argues further that evidence of other rehabilitations where the National Park Service granted certification compels it to make a similar ruling in this case. It is not necessary for the Court to elaborate on each of the case examples provided by Amoco, as the Court rejects the attempt to bind the National Park Service's discretionary authority to precedent. Each application must be viewed individually, and a reasoned decision must be made with certification only upon a project's consistency with the Secretary's Standards for Rehabilitation. Having considered and rejected these other projects, the Chief Appeals Officer went beyond what was necessary in order to make his reasoned decision. That decision denying certification will not be disturbed.

II. Whether the Court, on the basis of equitable considerations, should direct the Keeper of the National Register to delist the Philcade Building from the National Register.

Amoco seeks to enlist the equitable powers of the Court to direct the Keeper of the National Register to retroactively delist the Philcade Building from the National Register and thereby remedy what it considers the unfair result caused by the National Park Service's certification denial. Without retroactive delisting, Amoco will not have available federal tax credits for the Philcade's rehabilitation expenditures. These tax credits were initially made unavailable by the failure of the Park Service to certify the Philcade as a "certified historic structure." This so-called "Catch 22" situation should be remedied, according to Amoco, by placing it in the position it would have been in had the Philcade not been listed on the National Register.

The National Park Service responds to Amoco's call for equitable relief by arguing that there must first be a lack of an adequate remedy at law. That legal remedy, it claims, can be sought by Amoco through judicial review pursuant to the Administrative Procedure Act. The Park Service cites Pomeroy for the assertion that "wherever the rights of the parties are clearly governed by rules of law, courts of equity will follow such legal rules." 2 J. Pomeroy, Equity Jurisprudence Section 425, pp. 189-90 (5th ed. 1941). Amoco's rights are governed by law, according to the National Park Service, because Congress intended that a flawed rehabilitation of a certified historic structure would lead

to the same result Amoco is faced with.

Amoco seeks a remedy, however, which does not rest in law. The National Park Service could not grant, under the regulations, the relief Amoco seeks in this case since the delisting of a historic structure cannot be done retroactively. 36 C.F.R. Section 67.6(f). Review under the Administrative Procedures Act standards by a Court would clearly have no remedial effect in this situation. Thus, the Court must consider the issue based on equitable principles.

Although Amoco can seek the Court's equity jurisdiction, the equities of this particular scenario do not favor retroactive delisting of the Philcade from the National Register. Amoco was aware of the modes of obtaining federal tax credits prior to its attempt to have the Philcade listed on the National Register. The choice to have it nominated for listing, and the completion of Part I of the two part certification process, necessarily requires that it fulfill the Secretary's Standards for Rehabilitation. The attendant risk of pursuing such a course involves potential denial of certification, as was seen in this case. The risks involved necessitate that a building owner seek approval prior to, or in the early stages, of rehabilitation. Preliminary approval of projects is allowed and suggested by the regulations. Having been informed of such risks by both the State Historic Preservation Officer and the National Park Service, Amoco cannot now claim that it was unaware of the consequences of certification denial.

Furthermore, to allow the retroactive delisting of the

Philcade and thus make Amoco's expenditures available for tax credits at the 20 percent level would permit a building owner to improperly rehabilitate a certified historic structure, obtain a retroactive decertification, and then claim the federal tax credit for the non-historic rehabilitation. See Internal Revenue Service Letter to Keeper of National Register, Keeper's Administrative Record, Exhibit 8 at 3. While Congress sought to provide incentive for historic rehabilitation, it also sought "to provide a strong disincentive for failing to properly rehabilitate a certified structure." *Id.* Therefore, the Court finds that such a retroactive delisting would not further the Congressional intent with regard to rehabilitation of historic structures.

Finally, the Court notes that Amoco has expended substantial sums in its rehabilitation of the Philcade. Through a series of questionable judgments in its approach to the certification process, and in analyzing the potential risks which necessarily are involved in administrative procedures, Amoco has placed itself in the present unfavorable situation. The National Park Service acted reasonably and within its discretion in making its decisions regarding the Philcade project, and gave thoughtful and thorough review upon appeal and reconsideration of its certification denial. Having observed no arbitrary or capricious abuse of discretion, the Court finds that the actions of the National Park Service were proper and its decisions are hereby affirmed.

While the case came before the Court on cross motions for summary judgment, the parties have stipulated that the evidentiary

record in this case be deemed closed and that the Court may adjudicate the merits based on the record before it. Since the parties have stipulated to the evidence, and not the facts, the action is properly before the Court on a motion for judgment on the merits pursuant to Rule 52 of the Federal Rules of Civil Procedure. After a careful consideration of the stipulated evidence and the briefs, the Court finds that the decisions of the National Park Service were not arbitrary, capricious, an abuse of discretion, or unsupported by substantial evidence, and were in accordance with law, and the decision therefore was not violative of the Administrative Procedures Act. Therefore, the Court finds in favor of defendants, the Department of the Interior and the National Park Service, and against the plaintiff, Amoco, and denies Amoco's request for declaratory and injunctive relief.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 18th day of December, 1990.


Bruce M. Van Sickle, Judge
United States District Court

FILED

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

CLERK
COURT

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

No. 88-C-1621-B

J U D G M E N T

In accordance with the Findings of Fact and Conclusions of Law entered herein on November 19, 1990, Judgment is hereby entered in favor of the Plaintiff, Wanda Linda O'Leary, and against the Defendant, Oklahoma Department of Human Services, in the amount of \$51,418.22 as of December 31, 1990, plus pre-judgment interest of \$1,819.70 to such date, plus post-judgment interest from and after such date at the annual rate of 7.02% until paid.

Costs and attorneys fees are assessed against the Defendant if timely applied for under Local Rule 6.

DATED this 31st day of December, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED
DEC 31 1990
Jack C. Silver, Clerk
U.S. DISTRICT COURT

BILLY GENE MARSHALL,)
)
 Petitioner,)
)
 v.)
)
 DAN REYNOLDS, et al,)
)
 Respondents.)

90-C-491-B ✓
90-C-492-B

ORDER

The Applications of Petitioner **Billy Gene Marshall** for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 are now **before** the Court. Case Nos. 90-C-491-B and 90-C-492-B were consolidated on September 20, 1990. Petitioner was convicted in Osage County District Court, of Perjury, A.F.C.F. (Case No. CRF-74-728) and sentenced to ten (10) years, and Robbery by Fear, A.F.C.F. (Case No. CRF-73-394) and sentenced to thirty (30) years. Petitioner has exhausted **his state** remedies in both cases. He now seeks federal habeas relief alleging due process violations because of constitutional defects in the former convictions used to enhance **each** sentence in the above cases. Petitioner's arguments in each case are identical. **Respondents**, however, have moved to dismiss the attack on the older 1973 conviction for **Robbery**, while responding to the merits of the attack on the 1974 conviction for **Perjury**.

1. CONVICTION FOR ROBBERY--Case No. CRF-73-395

Respondent argues with respect to the 1973 conviction and sentence for Robbery (Case No. CRF-73-394), that since **Petitioner** has served his sentence for this crime, he is no longer "in custody" for purposes of 28 U.S.C. §2254. This Court agrees. The U.S.

Supreme Court in *Melang v. Cook*, 109 S.Ct. 1923 (1989), was presented with the question whether a habeas petitioner remains "in custody" under a conviction for which the sentence imposed has fully expired. *Melang* held explicitly that a habeas petitioner *does not*.¹ The Court hereby concludes that Petitioner's attack on the 1973 conviction for Robbery must be dismissed for failure to satisfy the "in custody" requirement of §2254.

2. CONVICTION FOR PERJURY--Case No. CRF-74-728

Petitioner was placed on parole for this crime after serving two years, and remains on parole at this time. Although not physically held pursuant to the perjury conviction, a prisoner placed on parole *does satisfy* the "in custody" requirement for purposes of §2254. *Jones v. Cunningham*, 371 U.S. 236, 242 (1963). Therefore, The Court will proceed to consider the Response and Traverse as to the Petition for habeas relief from the sentence and conviction for perjury.

As grounds for entitlement to habeas relief, Petitioner argues that a 1971 Kansas conviction was used to enhance the punishment for the perjury conviction, and that the Kansas conviction was constitutionally defective. Specifically, Petitioner argues that the Kansas conviction is invalid because prior to pleading guilty in Kansas he was not advised of the right to confront his accusers and be free from self-incrimination (Count I), and he was not advised of his right to appeal (Count II). In its Response, Petitioner asserts that habeas relief should be denied because the Oklahoma State Court applied a procedural bar to the claims now presented.

¹ Petitioner questions whether Respondent has juggled his various sentences so as to moot this habeas attack. The Department of Corrections records submitted by Respondent do not lend themselves to such an interpretation.

Although Petitioner filed a **direct appeal** of the perjury conviction, in his appeal he did not raise the possible invalidity of the Kansas conviction used to enhance. When Petitioner did raise it later through Oklahoma's Post-Conviction Relief Act (22 O.S. §§1080, et seq.), he was denied relief by the **trial court**. He then presented the Kansas conviction issue to the Oklahoma Court of Criminal Appeals in an appeal from the denial of post conviction relief. (See, Brief of Appellant, Case No. PC 90 0385, filed April 13, 1990, Exhibit "C" to Respondents' Response.) In affirming the trial court, the Court of Criminal Appeals raised a state procedural bar and refused to consider the merits of Marshall's claims. The Oklahoma court held,

Petitioner's instant allegations of error were not raised in either direct appeal and he has failed to provide a sufficient reason why the issues were not previously asserted. The doctrine of res judicata bars consideration in post-conviction proceedings of issues which have been or which could have been raised on direct appeal. Petitioner is therefore barred from asserting any claims which could have been raised previously in his direct appeal.

(See, Order Denying Post-Conviction Relief, No. PC 90 351 & No. PC 90 385, filed May 1, 1990, Exhibit "B" to Respondents' Response) (citations omitted). The judgment of the Oklahoma Court of Criminal Appeals "**clearly and expressly**" rests on a state procedural bar, as required by *Harris v. Reed*, 109 S.Ct. 1038, 1043 (1989). See also, *Shafer v. Stratton*, 906 F.2d 506 (10th Cir. 1990).

The issue now is whether this **Court** should exercise its equitable power to overlook Petitioner's state procedural default. *Dugger v. Adams*, 109 S.Ct. 1211 (1989). In deciding whether to review a defaulted claim, the U.S. Supreme Court employs the "cause" and "prejudice" test first enunciated in *Wainwright v. Sykes*, 433 U.S. 72 (1977). See, *Dugger v. Adams*, 109 S.Ct. 1211; *Harris v. Reed*, 109 S.Ct. 1038; *Teague v. Lane* 109 S.Ct. 1060

(1989). In *Dugger* the Court observed, "In *Wainwright v. Sykes*, 433 U.S. 72, 87 (1977), this Court required that habeas petitioners show 'cause' and 'prejudice' before federal courts will review claims that the state courts have found procedurally defaulted. We have reaffirmed this requirement on several occasions." *Dugger*, 109 S.Ct. at 1215 (citations omitted).

In *Harris*, the Supreme Court reinforced the principle that, "[u]nder *Sykes* and its progeny, an adequate and independent finding of procedural default will bar federal habeas review of the federal claim, unless the habeas petitioner can show 'cause' for the default and 'prejudice' attributable thereto; or demonstrate that failure to consider the federal claim will result in a 'fundamental miscarriage of justice'". *Harris v. Reed*, 109 S.Ct. at 1043 (citations omitted). See also, *Amadeo v. Zant*, 486 U.S. 214, 221 (1988) ("In *Wainwright v. Sykes*, this Court adopted the 'cause and prejudice' requirement of *Francis v. Henderson*, for all petitioners seeking federal habeas relief on constitutional claims defaulted in state court.") (Emphasis added.)

In the case at bar, Petitioner has not demonstrated "cause" for failing to raise the issues in his direct appeal nor "prejudice" in the sense that it would have changed the outcome of his appeal. "Accordingly, absent cause and prejudice, this court will not address [Petitioner's] argument." *Shafer v. Stratton*, 906 F.2d at 509. As a result, federal habeas relief on this ground will be denied.

3. CONCLUSION

Therefore, it is the Order of the Court that Billy Gene Marshall's Petition for a Writ of Habeas Corpus as to his conviction for Robbery by Fear, A.F.C.F. in Osage County Court Case No. CRF-73-394 is hereby DISMISSED.

It is further ordered that Billy Gene Marshall's Petition for Writ of Habeas Corpus, whereby he attacks his conviction for Perjury, A.F.C.F. in Osage County Court Case No. CRF-74-728 is hereby DENIED.

SO ORDERED THIS 28th day of Dec., 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Supreme Court in *Melang v. Cook*, 109 S.Ct. 1923 (1989), was presented with the question whether a habeas petitioner remains "in custody" under a conviction for which the sentence imposed has fully expired. *Melang* held explicitly that a habeas petitioner *does not*.¹ The Court hereby concludes that Petitioner's attack on the 1973 conviction for Robbery must be dismissed for failure to satisfy the "in custody" requirement of §2254.

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As grounds for entitlement to habeas relief, Petitioner argues that a 1971 Kansas conviction was used to enhance the punishment for the perjury conviction, and that the Kansas conviction was constitutionally defective. Specifically, Petitioner argues that the Kansas conviction is invalid because prior to pleading guilty in Kansas he was not advised of the right to confront his accusers and be free from self-incrimination (Count I), and he was not advised of his right to appeal (Count II). In its Response, Petitioner asserts that habeas relief should be denied because the Oklahoma State Court applied a procedural bar to the claims now presented.

¹ Petitioner questions whether Respondent has juggled his various sentences so as to moot this habeas attack. The Department of Corrections records submitted by Respondent do not lend themselves to such an interpretation.

Although Petitioner filed a direct appeal of the perjury conviction, in his appeal he did not raise the possible invalidity of the Kansas conviction used to enhance. When Petitioner did raise it later through Oklahoma's Post-Conviction Relief Act (22 O.S. §§1080, et seq.), he was denied relief by the trial court. He then presented the Kansas conviction issue to the Oklahoma Court of Criminal Appeals in an appeal from the denial of post conviction relief. (See, Brief of Appellant, Case No. PC 90 0385, filed April 13, 1990, Exhibit "C" to Respondents' Response.) In affirming the trial court, the Court of Criminal Appeals raised a state procedural bar and refused to consider the merits of Marshall's claims. The Oklahoma court held,

Petitioner's instant allegations of error were not raised in either direct appeal and he has failed to provide a sufficient reason why the issues were not previously asserted. The doctrine of res judicata bars consideration in post-conviction proceedings of issues which have been or which could have been raised on direct appeal. Petitioner is therefore barred from asserting any claims which could have been raised previously in his direct appeal.

(See, Order Denying Post-Conviction Relief, No. PC 90 351 & No. PC 90 385, filed May 1, 1990, Exhibit "B" to Respondents' Response)(citations omitted). The judgment of the Oklahoma Court of Criminal Appeals "clearly and expressly" rests on a state procedural bar, as required by *Harris v. Reed*, 109 S.Ct. 1038, 1043 (1989). See also, *Shafer v. Stratton*, 906 F.2d 506 (10th Cir. 1990).

The issue now is whether this Court should exercise its equitable power to overlook Petitioner's state procedural default. *Dugger v. Adams*, 109 S.Ct. 1211 (1989). In deciding whether to review a defaulted claim, the U.S. Supreme Court employs the "cause" and "prejudice" test first enunciated in *Wainwright v. Sykes*, 433 U.S. 72 (1977). See, *Dugger v. Adams*, 109 S.Ct. 1211; *Harris v. Reed*, 109 S.Ct. 1038; *Teague v. Lane* 109 S.Ct. 1060

(1989). In *Dugger* the Court observed, "In *Wainwright v. Sykes*, 433 U.S. 72, 87 (1977), this Court required that habeas petitioners show 'cause' and 'prejudice' before federal courts will review claims that the state courts have found procedurally defaulted. We have reaffirmed this requirement on several occasions." *Dugger*, 109 S.Ct. at 1215 (citations omitted).

In *Harris*, the Supreme Court reinforced the principle that, "[u]nder *Sykes* and its progeny, an adequate and independent finding of procedural default will bar federal habeas review of the federal claim, unless the habeas petitioner can show 'cause' for the default and 'prejudice' attributable thereto; or demonstrate that failure to consider the federal claim will result in a 'fundamental miscarriage of justice'". *Harris v. Reed*, 109 S.Ct. at 1043 (citations omitted). See also, *Amadeo v. Zant*, 486 U.S. 214, 221 (1988) ("In *Wainwright v. Sykes*, this Court adopted the 'cause and prejudice' requirement of *Francis v. Henderson*, for all petitioners seeking federal habeas relief on constitutional claims defaulted in state court.") (Emphasis added.)

In the case at bar, Petitioner has not demonstrated "cause" for failing to raise the issues in his direct appeal nor "prejudice" in the sense that it would have changed the outcome of his appeal. "Accordingly, absent cause and prejudice, this court will not address [Petitioner's] argument." *Shafer v. Stratton*, 906 F.2d at 509. As a result, federal habeas relief on this ground will be denied.

3. CONCLUSION

Therefore, it is the Order of the Court that Billy Gene Marshall's Petition for a Writ of Habeas Corpus as to his conviction for Robbery by Fear, A.F.C.F. in Osage County Court Case No. CRF-73-394 is hereby DISMISSED.

It is further ordered that Billy Gene Marshall's Petition for Writ of Habeas Corpus, whereby he attacks his conviction for Perjury, A.F.C.F. in Osage County Court Case No. CRF-74-728 is hereby DENIED.

SO ORDERED THIS 28th day of Dec., 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

DEC 28 1990

CLERK
U.S. DISTRICT COURT

JOSEPH J. POOLE,
Plaintiff,

vs.

CITY OF TULSA,
and PAUL STREIZK,
Defendants,

Case No. 89-C-110 B

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Fed.R.Civ.P. 41 (a) (1), the parties hereto stipulate that Plaintiff shall dismiss with prejudice this matter.

WHEREFORE, the parties request the Court enter an Order of Dismissal with Prejudice and require each party to bear its respective attorney's fees and costs.

DATED this 20th day of December, 1990.

By: Curley Higgins
Curley Higgins
Attorney for Plaintiff
Joseph J. Poole

By: Charles R. Fisher
Charles Fisher
Attorney for Defendants
City of Tulsa and
Paul Streizk

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

DEC 27 1988

MARY LOUISE RAMSEY,

Plaintiff,

v.

SECURITY NATIONAL BANK OF JENKS,
GARY GARDENER, JIMMIE HARDEMAN,
and RODNEY STINE,

Defendants.

Case No. 89-C-993-B

ORDER

This matter comes on for consideration upon the Motion to Dismiss, pursuant to Rule 12 (b), Federal Rules of Civil Procedure, filed herein by Defendants, Security National Bank (Security Bank), Jimmie Hardeman (Hardeman) and Rodney Stine (Stine).

Security Bank alleges the Court lacks subject matter jurisdiction because it is not an "employer" within the definition of the Age Discrimination In Employment Act (ADEA), 29 U.S.C. §621 *et seq*, in that Security Bank did not have "twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding year . . ." *Id.* §630(b).

Hardeman and Stine allege Plaintiff has failed to fulfill a condition precedent to filing a Complaint under ADEA against them in that she did not include them in either her Equal Employment Opportunity Commission (EEOC) or Oklahoma Human Right Commission (OKRC) filings.

According to the affidavit¹ of Karen Ginn, Cashier of Security Bank, the Security National Bank of Coweta, Oklahoma, and the Bank of Commerce, Jenks, Oklahoma, merged effective January 1, 1989. It is apparently undisputed that, prior to the merger, neither Bank had the requisite twenty employees to implicate ADEA. It is also apparently not in dispute the period of alleged discrimination occurred between February 10, 1989, and August 3, 1989, Plaintiff averring that she was demoted without cause and later replaced by a younger person at a higher salary, forcing her constructive discharge.

In opposition to Defendants' Motion to Dismiss, Plaintiff has filed her Response, with attachments. In order to properly consider these documents as well as Defendants' Affidavit, the Court would be required to convert the motion to dismiss to a Rule 56, Motion for Summary Judgment. Generally, 12(b) motions are not converted to motions for summary judgment. Nichols v. United States, 796 F.2d 361 (10th Cir.1986). However, a widely recognized exception to this rule is if the jurisdictional question is intertwined with the merits of the case, as in the present matter. Wheeler v. Hurdman, 825 F.2d 257 (10th Cir.1987), and cases cited therein. When subject matter jurisdiction is dependent upon the same statute which provides the substantive claim, the jurisdictional claim and the merits are considered to be intertwined. Wheeler, supra.

However, the Court is not inclined to consider the matter a Rule 56 motion because the pleadings, which do go beyond a motion

¹ The Affidavit was filed the day prior to the Motion, simultaneously with Defendants' Brief in Support of Defenses in Their Answer, adopted by Defendants in their Motion to Dismiss.

to dismiss, fail to supply sufficient undisputed facts upon which to predicate summary judgment.² The primary difference between the two motions is not the procedures but rather the effect of the ruling. A dismissal under 12(b) allows for the possibility of repleading the action to bring it within the subject matter jurisdiction of the Court; a grant of summary judgment resolves the issue on the merits and thus is with prejudice. Wheeler, supra. The Court concludes the present Motion must rise or fall as a Motion to Dismiss.

Plaintiff considers calendar year 1988 as being the critical time period upon which to apply the "twenty employees for twenty weeks" ADEA test. Defendants, on the other hand, allege the banks were separate entities during that year, and that after consolidation there occurred no twenty-week accumulation with twenty or more employees being employed.

The Court determines that "calendar year" does not automatically mean January 1 to December 31, but can mean any period of twelve consecutive calendar months. McGraw v. Warren County Oil Co., 707 F.2d 990, (8th Cir.1983). Other Courts have given the statute a more literal interpretation. Zimmerman v. North American Signal Company, 704 F.2d 347, (7th Cir.1983). Since the alleged cause of action began on February 10, 1989, the twelve-month span within which to determine if there were twenty employees

² Both parties, particularly the Defendants, liberally sprinkle the record with factual allegations "which would have been shown had discovery been effected." See, for example, Defendants' Reply to Plaintiff's Response. Beginning at page 5 of the Reply, Defendants wax prolific on the separate factual differences of the two banks. None of this is in the record and before the Court.

for each working day in any twenty weeks within that span, is February 10, 1988, according to McGraw, and January 1, 1988, according to Zimmerman. It is of little matter which yardstick is used,³ since it is clear that, by either measurement, Security Bank did not have the requisite twenty employees in any part of 1988 unless the Court were to determine the two banks, Security and Bank of Commerce, were one under the statute. Such a determination would be beyond the present Motion to Dismiss and entirely without support in the record now before the Court.⁴

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

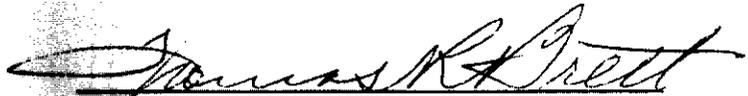
Plaintiff's Complaint alleges the Defendant, Security Bank, "employs in excess of fifteen (15) employees." This is inadequate

³ If critical to today's determination, the Court would conclude the Zimmerman interpretation is more consistent with the purposes of the statute.

⁴ The Court concludes that Plaintiff does indeed have a heavy burden in future proceedings, if the issue of the banks being considered one prior to their merger, comes before the Court. This is based upon Defendants' unsupported factual assertions which the Court presumes could be, at a later stage, fully documented.

to place Security Bank within the definition of "employer". *Id.* §630(b). The Court concludes Plaintiff's Complaint fails to allege the requisite jurisdictional facts to vest the Court with subject matter jurisdiction. This same jurisdictional defect applies equally to Defendants Hardeman and Stine. The Motion to Dismiss, on behalf of Defendants, Security National Bank, Jimmie Hardeman, and Rodney Stine should be and the same is hereby SUSTAINED,⁵ and Plaintiff's Complaint is dismissed, without prejudice.

IT IS SO ORDERED this 27 day of December, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

⁵ Hardeman and Stine's issue of failure to comply with EEOC and OHRC requirements is now moot.

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

FILED

DEC 26 1990

ALBERT EQUIPMENT COMPANY, INC.,)
an Oklahoma corporation,)
)
Plaintiff,)
)
v.)
)
NTO PURCHASING COMPANY,)
an Ohio corporation,)
)
Defendant.)

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

No. 90-C-621-B ✓

ORDER

Before the Court is the uncontested Motion for Partial Summary Judgment filed by the plaintiff, Albert Equipment Co., Inc. (Albert Equipment), against the defendant, NTO Purchasing Co. (NTO).

NTO, in its answer, admitted executing a promissory note on April 10, 1986 payable to Albert Equipment for the sum of \$89,342.76 plus interest, to be paid in installments of \$1,489.00 for 59 months. While the parties dispute the total amount due and owing, Albert Equipment seeks partial summary judgment for \$69,460.37, the amount not in dispute, plus twelve and one-quarter per cent (12.25%) interest¹ and reserves the right to bring the issue of the remaining contested amount to trial.

As NTO has admitted its obligation under the note for the

¹ The promissory note includes an interest rate of "Tulsa Prime + 3%." The affidavit attached to the plaintiff's motion attests that the note was in default as of November 12, 1987, and at the time of default, the Tulsa prime plus three per cent equaled twelve and one-quarter per cent (12.25%). As NTO has not contested the amount of interest by responding to the plaintiff's motion for partial summary judgment, the Court will assume the amount of interest to be uncontested.

above amount, and has waived its right to object to Albert Equipment's Motion for Partial Summary Judgment, the Court grants the motion in the amount of \$69,460.37 plus twelve and one-quarter per cent (12.25%) interest from November 12, 1987 until the date of payment.

IT IS SO ORDERED, this 26th day of December, 1990.

A handwritten signature in cursive script, reading "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

DEC 20 1991

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

IN RE:

ADKINS, DAVID HAROLD
SS: 408-88-4628

ADKINS, MARGARET ANN
SS: 441-36-9675

Debtors.

Blazer Financial
Services, Inc.

Appellant,

vs

David Harold Adkins and
Margaret Ann Adkins

Appellee

Case No. 90-02361-C
Chapter 7

U.S. District Court for
the Northern District of
Oklahoma
Case No. 90-C-1010C

NOTICE OF DISMISSAL

COMES NOW the appellant in the above styled appeal, Blazer Financial Services, Inc., by and through his attorney Jack A. Martin, and would, pursuant to Federal Rule 41(a)(1), give the Court Notice of to Dismissal of this appeal and would further state to the Court:

1. No reply brief or other responsive pleading has been made by the appellee and pursuant to Federal Rules of Civil Procedure, Rule 41(a)(1) an action may be dismissed by the plaintiff without order of court by filing notice of dismissal under these circumstances.

WHEREFORE, premises considered, the appellant notices the dismissal of this case.

Respectfully submitted,



JACK A. MARTIN
Suite 600, RSC Tower
6600 S. Yale Ave.
Tulsa, OK 74136
(918) 496-0094

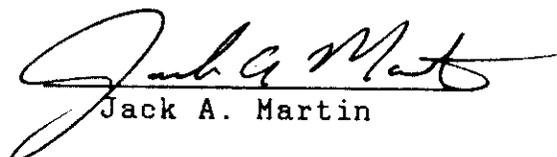
Attorney for Appellant,
Blazer Financial
Services, Inc.

CERTIFICATE OF MAILING

I, Jack A. Martin, do hereby certify that a copy of the Appellant's Notice of Dismissal was mailed on the 26th of December, 1990 to the following persons, postage prepaid.

Court Clerk
U.S. Bankruptcy Court for the Northern
District of Oklahoma
Grantson Building
111 West Fifth St.
Tulsa, OK 74103

Ronald Bernbaum
2828 E. 51st St., Suite 301
Tulsa, OK 74153
Attorney for Debtors



Jack A. Martin

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

FILED

DEC 20 1990

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

JOYCE FLOWERS, as surviving spouse)
and next of kin of PHILLIP FLOWERS,)
Deceased,)

PLAINTIFF,)

vs.)

CASE NO. 90-C 959 B

CLARK EQUIPMENT COMPANY, a Delaware)
corporation,)

DEFENDANT.)

STIPULATION OF DISMISSAL

COME NOW the parties hereto and stipulates to the dismissal of the above styled cause of action in its entirety, without prejudice, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, with each party to bear their own costs.



JOHN M. MERRITT - OBA #6146
Attorney for Plaintiffs



RICHARD M. ELDRIDGE - OBA #2665
Attorney for Defendant

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

LARRY H. HAUSLER, an Individual;)
and MICHAEL D. HUDSON, an)
Individual,)

Plaintiffs,)

vs.)

Case No. 90-C-504-B

CITIZENS BANK, N.A., a National)
Banking Association; JEROME)
FELDMAN, an Individual; and)
NETWORKS-U.S.A. XIX,)
INCORPORATED, a Florida)
Corporation,)

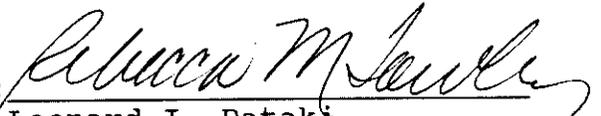
Defendants.)

STIPULATION OF DISMISSAL

Upon the stipulation of the undersigned attorneys for the parties to this action, it is hereby requested that the Clerk of the Court dismiss this action, without prejudice, with each party to bear its own costs.

Dated this 21st day of December, 1990.

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By: 
Leonard I. Pataki
OBA No. 6935
Rebecca M. Fowler
OBA No. 13682
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211

Attorneys for Plaintiffs,
Larry H. Hausler and Michael
D. Hudson


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P.O. Box 205
Sapulpa, Oklahoma 74067
(918) 227-2733

Attorney for Defendant,
Citizens Bank, N.A.


Robert Ader
1010 City National Bank Bldg.
25 West Flagler Street
Miami, Florida 33130

Attorney for Defendant,
Networks-U.S.A. XIX,
Incorporated

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

DEC 21 1990

COY ARTHUR HILL,

Petitioner,

v.

DAN REYNOLDS, et al,

Respondents.

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

90-C-769-B

ORDER

The application of Coy Arthur Hill for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is now before the Court. Hill was convicted in Osage County District Court Case No. CRF-85-140 of Attempted Robbery With a Dangerous Weapon, Assault With A Dangerous Weapon and Robbery With a Dangerous Weapon and sentenced to serve 40 years for each crime. There is currently pending a direct appeal filed in the Oklahoma Court of Criminal Appeals: *Hill v. State*, Case No. F-88-722. Hill's appellate brief is due February 4, 1991.

Hill comes to this Court seeking habeas relief arguing that the Oklahoma state corrective process is ineffective to protect his rights. See, 28 U.S.C. §2254(b). Hill explains that since his appeal was filed, his attorney has requested several extensions of time in which to file Hill's appeal brief, over Hill's objections. Hill transfers his dissatisfaction with counsel's performance to dissatisfaction with the Oklahoma state court corrective process, laying the blame in some sense on the Oklahoma court for allowing his counsel's requests for extensions.

As a general proposition a federal habeas corpus petition will be dismissed for

failure to exhaust state remedies where a direct appeal is pending in the state courts. *Parkhurst v. State of Wyoming*, 641 F.2d 775, 776 (10th Cir. 1981); *Kessinger v. Page*, 369 F.2d 799 (10th Cir. 1966). An exception lies where the state court corrective process is shown to be ineffective at protecting a petitioner's rights. Such is not the case here, however. The delay of which Petitioner complains of is the result of his counsel's own strategic planning, not some inherent delay in the appeal process. Hill has not exhausted his state remedies and the lapse of time does not, in and of itself, constitute a denial of due process. *Jones v. Crouse*, 360 F.2d 157, 158 (10th Cir. 1966).

Therefore, it is hereby ordered that the Petition for a Writ of Habeas Corpus be DISMISSED for failure to exhaust state remedies.

SO ORDERED THIS 21 day of dec, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

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

DEC 21 1990

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

WILMA LAIDLEY, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 LANTZ McCLAIN, et al.,)
)
 Defendants.)

No. 87-C-418-E

JUDGMENT

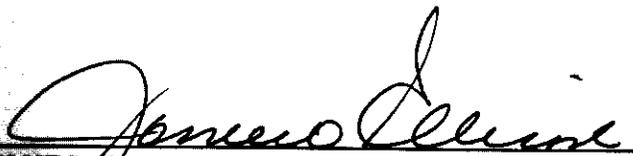
This action came on for consideration before this Court, Honorable James O. Ellison, District Judge, presiding and before the Tenth Circuit Court of Appeals, and the issues having been duly heard and a decision having been duly rendered,

IT IS THEREFORE ORDERED that Plaintiffs Bettye Redding, Cindy Thulin and Renee Waisner take nothing from the Defendants and that the action as to those Plaintiffs be dismissed on the merits.

IT IS FURTHER ORDERED that Defendants Ted Ritter in his official capacity and individually, Defendant Board of County Commissioners of Creek County and Defendant Lantz McClain in his official capacity as district attorney should be and are hereby dismissed from further proceedings.

IT IS FURTHER ORDERED that the action of Plaintiff Wilma Laidley against Defendant Lantz McClain individually on both the federal and pendant state claims shall proceed, with a Status and Scheduling Conference before Magistrate Wagner on January 9, 1991, at 1:30 o'clock P.m.

ORDERED this 21st day of December, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

DEC 21 1990

HOMeward BOUND, INC.,)
et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 THE HISSOM MEMORIAL CENTER,)
et al.,)
)
 Defendants.)

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

No. 85-C-437-E

JUDGMENT

In accordance with the orders previously entered by this court on September 15, 1988; December 23, 1988; June 19, 1990; and September 27, 1990, and the stipulation of the parties, the Court hereby enters the following judgment in favor of the plaintiffs.

The court enters judgment in favor of plaintiffs' counsel, Public Interest Law Center of Philadelphia, in the amount of \$520,123.00.

The claims for enhancement of base fees by Bullock & Bullock and PILCOP are hereby denied.

Entered this 21st day of December, 1990.



JAMES O. ELLISON
United States District Judge

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) 627-7100

ATTORNEYS FOR PLAINTIFFS



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

ATTORNEY FOR
DEPARTMENT OF HUMAN SERVICES

F I L E D

**IN THE UNITED STATES DISTRICT COURT DEC 21 1990
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

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

HOMeward BOUND, INC.
et al.,

Plaintiffs,

v.

THE HISSOM MEMORIAL CENTER,
et. al.,

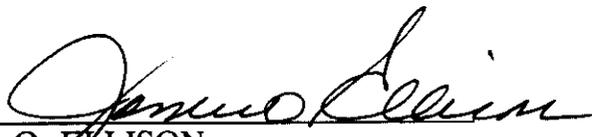
Defendants.

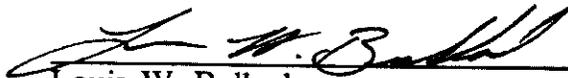
Case No. 85-C-437-E

JUDGMENT

In accordance with the Order entered on this 21st day of December, 1990, awarding Plaintiffs' counsel, Bullock & Bullock, interim base attorney fees and expenses, the Court hereby enters judgment in favor of Plaintiffs' counsel, Bullock & Bullock, in the amount of \$61,347.50 for base fees and \$5,328.90 for expenses. Plaintiffs' right to an enhancement of these fees shall be held in abeyance until the matter of Plaintiffs' rights to enhancement is resolved.

ORDERED this 21st day of December, 1990.


JAMES O. ELLISON
United States District Court



Louis W. Bullock
BULLOCK & BULLOCK
320 South Boston
Suite 718
Tulsa, Oklahoma 74103-3708
(918) 584-2001

ATTORNEYS FOR PLAINTIFFS



Charles Lee Waters
GENERAL COUNSEL
DEPARTMENT OF HUMAN SERVICES
P. O. Box 53025
Oklahoma City, Oklahoma 73152
(405) 521-3638

ATTORNEY FOR DEFENDANTS

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

VALERIE N. BUNDY a/k/a VALERIE
N. GILL; LLOYD L. GILL; COUNTY
TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

F I L E D

DEC 20 1990

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

CIVIL ACTION NO. 90-C-882-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 20th day
of Dec., 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, Valerie N.
Bundy a/k/a Valerie N. Gill and Lloyd L. Gill, appear not, but
make default.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Valerie N. Bundy a/k/a
Valerie N. Gill, acknowledged receipt of Summons and Complaint on
October 25, 1990; that the Defendant, Lloyd L. Gill, acknowledged
receipt of Summons and Complaint on October 24, 1990; that
Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged
receipt of Summons and Complaint on October 19, 1990; and that

Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on October 19, 1990.

It appears that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed his Answer on November 1, 1990; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on November 1, 1990; and that the Defendants, Valerie N. Gill a/k/a Valerie N. Bundy and Lloyd L. Gill, 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 Two (2), ROLLING MEADOWS, an addition to the Town of Glenpool, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on March 30, 1982, Steve L. Cooke and Mary Elaine Cooke executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$36,500.00, payable in monthly installments, with interest thereon at the rate of 13.25 percent per annum.

The Court further finds that, as security for the payment of the above-described note, Steve L. Cooke and Mary Elaine Cooke executed and delivered to the United States of

America, acting through the Farmers Home Administration, a real estate mortgage dated March 30, 1982 covering the above-described property. Said mortgage was recorded on April 2, 1982 in Book 4604 at Page 1277 in the records of Tulsa County, Oklahoma.

The Court further finds that on May 23, 1986, Steven L. Cooke and Mary Elaine Cook executed and delivered to Defendant, Valerie N. Bundy, a General Warranty Deed covering the above-described property which was recorded in Book 4944 at Page 1364 in the records of Tulsa County, Oklahoma.

The Court further finds that on May 23, 1986, an Assumption Agreement covering the above-described property was executed and delivered to the United States of America, acting through the Farmers Home Administration, by Defendant, Valerie N. Bundy, in the amount of \$37,200.00, payable in monthly installments, with interest thereon at the rate of 9.5 percent per annum.

The Court further finds that on May 23, 1986, Defendant, Valerie N. Bundy, executed and delivered to the United States of America, acting through the Farmers Home Administration, her promissory note in the amount of \$5,300.00, payable in monthly installments, with interest thereon at the rate of 9.5 percent (9.5%) per annum.

The Court further finds that as security for the payment of the above-described notes and the assumption agreement, the Defendant, Valerie N. Bundy, executed and delivered to the United States of America, acting through the

Farmers Home Administration, a mortgage dated May 23, 1986, covering the above-described property. Said mortgage was recorded on May 23, 1986, in Book 4944, Page 1365, in the records of Tulsa County, Oklahoma.

The Court further finds that a corrected mortgage was recorded on May 23, 1986 in Book 4944 at Page 1365, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 8, 1986, a Release From Personal Liability was executed by the Farmers Home Administration, releasing Steve L. Cooke and Mary Elaine Cook from liability on their mortgage covering the above-described property.

The Court further finds that on May 23, 1986, the Defendant, Valerie N. Bundy, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rates on the above-described assumption agreement and note were reduced.

The Court further finds that on July 11, 1988, the Defendants, Valerie N. Bundy a/k/a Valerie N. Gill and Lloyd L. Gill, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rates on the above-described assumption agreement and note were reduced.

The Court further finds that the Defendants, Valerie N. Bundy a/k/a Valerie N. Gill, 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, Valerie N. Bundy a/k/a Valerie N. Gill and Lloyd L. Gill, are indebted to the Plaintiff in the principal sum of \$41,721.82, plus accrued interest in the amount of \$5,855.21 as of June 14, 1990, plus interest accruing thereafter at the rate of 9.50 percent per annum or \$10.859 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of \$3,357.15, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$355.00, plus penalties and interest, for the year of 1989. Said lien is superior to the interest of the Plaintiff, United States of America.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendants, Valerie N. Bundy a/k/a Valerie N. Gill and Lloyd L. Gill, in the principal sum of \$41,721.82, plus accrued interest in the amount of \$5,855.21 as of June 14, 1990, plus interest

accruing thereafter at the rate of 9.50 percent per annum or \$10.859 per day until judgment, plus, plus interest thereafter at the current legal rate of 7.02 percent per annum until paid, and the further sum due and owing under the interest credit agreements of \$3,357.15, plus interest on that sum at the legal rate from judgment 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 for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$355.00, plus penalties and interest, for ad valorem taxes for the year 1989, plus the costs of this action.

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

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

First:

In payment of the costs of this action accrued and accruing incurred by the

Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$355.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

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

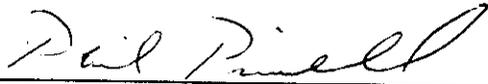
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



for
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-882-B

PB/esr

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

UNITED STATES OF AMERICA,
Plaintiff,

vs.

STEVE C. BEACH; SONYA J. BEACH;
DAVID L. WATKINS; DEBI L. WATKINS;
COUNTY TREASURER, Tulsa, Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa, Oklahoma,

Defendants.

DEC 20 1990

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

CIVIL ACTION NO. 90-C-662-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 20th day
of Dec, 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, Steve C.
Beach, Sonya J. Beach, David L. Watkins, and Debi L. Watkins,
appear not, but make default.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Steve C. Beach,
acknowledged receipt of Summons and Complaint on August 12, 1990;
that the Defendant, Sonya J. Beach, acknowledged receipt of
Summons and Complaint on August 12, 1990; that the Defendant,
David L. Watkins, acknowledged receipt of Summons and Complaint
on August 21, 1990; that Defendant, County Treasurer, Tulsa
County, Oklahoma, acknowledged receipt of Summons and Complaint

on August 3, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 3, 1990.

The Court further finds that the Defendant, Debi L. Watkins, 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 September 24, 1990, and continuing to October 29, 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, Debi L. Watkins, 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, Debi L. Watkins. 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 Defendant, County Treasurer, Tulsa County, Oklahoma, filed his Answer on August 23, 1990; that the Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on August 23, 1990; and that the Defendants, Steve C. Beach, Sonya J. Beach, David L. Watkins and Debi L. Watkins, 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 Three (3), Block Three (3), BLUE RIDGE ESTATES, an Addition to the City of Bixby, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on September 11, 1985, the Defendants, Steve C. Beach and Sonya J. Beach, executed and delivered to the United States of America, acting on behalf of

the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$51,000.00, payable in monthly installments, with interest thereon at the rate of 11.5 percent (11.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Steve C. Beach and Sonya J. Beach, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated September 11, 1985, covering the above-described property. Said mortgage was recorded on September 12, 1985, in Book 4891, Page 1442, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Steve C. Beach and Sonya J. Beach, 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, Steve C. Beach and Sonya J. Beach, are indebted to the Plaintiff in the principal sum of \$49,986.64, plus interest at the rate of 11.5 percent per annum from October 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$275.60 (\$20.00 docket fees, \$255.60 publication fees).

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

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Steve C. Beach and Sonya J. Beach, in the principal sum of \$49,986.64, plus interest at the rate of 11.5 percent per annum from October 1, 1989 until judgment, plus interest thereafter at the current legal rate of 7.02 percent per annum until paid, plus the costs of this action in the amount of \$275.60 (\$20.00 docket fees, \$255.60 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 Defendants, Steve C. Beach and Sonya J. Beach, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

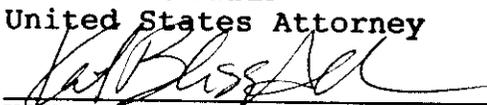
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

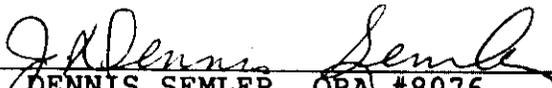
S/ THOMAS R. BREEL

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. 90-C-662-B
KBA/esr

RDW/ph

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

GOLDEN RULE INSURANCE COMPANY,)
)
Plaintiff,)
)
vs.)
)
SUSAN S. SWATEK,)
)
Defendant.)

Case No.: 90-C 134 C

FILED
SEP 26 1990

JOURNAL ENTRY OF JUDGMENT

NOW ON THIS 20 day of Sec., 1990, in accordance with the Joint Application for Judgment filed herein, and based upon the Plaintiff's Requests for Admissions which stand admitted for failure to deny, this Court adjudges and decrees that Golden Rule Insurance Company acted properly in voiding ab initio policy number 052568181 and that said insurer has no duty or obligation to pay any medical or hospital bills incurred by the insured prior to or subsequent to the effective date of said policy. Further, that said insurer was entitled to stop payment on the premium check as referenced in the Complaint, and that Defendant is denied any relief as sought herein.


U. S. DISTRICT COURT JUDGE

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

DEC 20 1999

THE CIT GROUP/FACTORING
MANUFACTURERS HANOVER (DEL.),
INC.,

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

Plaintiff,

vs.

Case No. 90-C-0009B

VIDEO COMMUNICATIONS, INC.,
and UNITED ENTERTAINMENT, INC.)

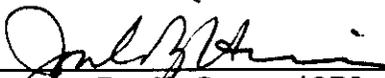
Defendants.

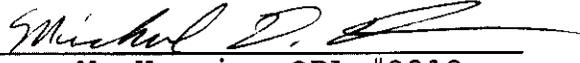
STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1) of the Federal Rules of civil Procedure, all parties stipulate to the dismissal with Prejudice of this action.

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

DOYLE & HARRIS


James P. McCann (OBA #5865)
Jon E. Brightmire (OBA #11623)
1000 Atlas Life Building
Tulsa, OK 74103
(918) 582-1211


Steven M. Harris, OBA #3913
Michael D. Davis, OBA #11282
2431 E. 61st Street, Suite 260
Tulsa, OK 74136
(918) 743-1276

Attorneys for Plaintiff,
The CIT Group/Factoring
Manufacturers Hanover
(Del.), Inc.

Attorneys for Defendants,
Video Communications, Inc.
and United Entertainment,
Inc.

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

FILED

DEC 20 1990

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

DOYLE E. OWEN, JR.,
Plaintiff,

vs.

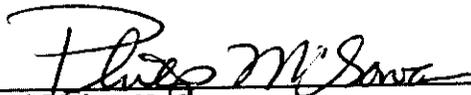
MID-CENTURY INSURANCE COMPANY
and MISSOURI PACIFIC RAILROAD
COMPANY, a Delaware corporation,
d/b/a/ UNION PACIFIC,

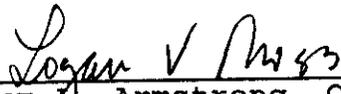
Defendant.

No. 89-C-615-B

STIPULATION OF DISMISSAL

COME NOW the parties to this litigation, Plaintiff Doyle E. Owen, Defendant Mid-Century Insurance Company and Defendant Missouri Pacific Railroad Company, by and through their attorneys and pursuant to F.R.Civ.Pro. 41(c), and stipulate to the dismissal without prejudice of Defendant Missouri Pacific Railroad Company's counterclaim against Plaintiff.


Phillip McGowan
SANDERS & CARPENTER
624 South Denver, Suite 202
Tulsa, Oklahoma 74119
(918) 582-5181
ATTORNEYS FOR PLAINTIFF


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Logan V. Moss, OBA #6463
TOM L. ARMSTRONG & ASSOCIATES
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(918) 587-3939
ATTORNEYS FOR DEFENDANT
MISSOURI PACIFIC RAILROAD CO.

David R. Robertson

David R. Robertson
WILBURN, MASTERSON & SMILING
2526-A East 71st Street
Tulsa, Oklahoma 74136
(918) 494-0414
ATTORNEYS FOR MID-CENTURY

Dale Ellis

Dale Ellis
KNOWLES, KING & SMITH
603 Expressway Tower
2431 East 51st Street
Tulsa, Oklahoma 74105
(918) 749-5566
ATTORNEYS FOR PLAINTIFF

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WONDA L. COX a/k/a WANDA L. COX;
FIDELITY FINANCIAL SERVICES, INC.;
TULNED UNIVERSAL, INC.; COUNTY
TREASURER, Tulsa County, Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

FILED

DEC 20 1990

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

CIVIL ACTION NO. 90-C-535-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 20th day
of Dec., 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, Wonda L.
Cox a/k/a Wanda L. Cox, Fidelity Financial Services, Inc., and
Tulned Universal, Inc., appear not, but make default.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Wonda L. Cox a/k/a Wanda L.
Cox, acknowledged receipt of Summons and Complaint on July 11,
1990; that the Defendant, Fidelity Financial Services, Inc.,
acknowledged receipt of Summons and Complaint on July 3, 1990;
that the Defendant; that Defendant, County Treasurer, Tulsa
County, Oklahoma, acknowledged receipt of Summons and Complaint

on June 21, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 21, 1990.

The Court further finds that the Defendant, Tulned Universal, Inc., 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 September 24, 1990, and continuing to October 29, 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, Tulned Universal, Inc., 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, Tulned Universal, Inc. 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 its present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendant served by publication.

It appears that the Defendant, County Treasurer, Tulsa County, Oklahoma filed his Answer on July 9, 1990; Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on July 9, 1990; and that the Defendants, Wonda L. Cox a/k/a Wanda L. Cox, Fidelity Financial Services, Inc., and Turned Universal, Inc., have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Twelve (12), Block Four (4), VALLEY VIEW ACRES ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on May 23, 1980, the Defendant, Wonda L. Cox, 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, her mortgage note in the amount of \$17,000.00, payable in monthly installments, with interest thereon at the rate of 13.5 percent (13.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Wonda L. Cox, 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 23, 1980, covering the above-described property. Said mortgage was recorded on May 23, 1980, in Book 4476, Page 795, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Wonda L. Cox a/k/a Wanda L. Cox, 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, Wonda L. Cox a/k/a Wanda L. Cox, is indebted to the Plaintiff in the principal sum of \$16,416.33, plus interest at the rate of 13.5 percent per annum from January 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$279.78 (\$20.00 docket fees, \$1.68 fees for service of Summons and Complaint, \$258.10 publication fees).

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Wonda L. Cox a/k/a Wanda L. Cox, in the principal sum of \$16,416.33, plus interest at the rate of 13.5 percent per annum from January 1, 1989 until judgment, plus interest thereafter at the current legal rate of 7.02 percent per annum until paid, plus the costs of this action in the amount of \$279.78 (\$20.00 docket fees, \$1.68 fees for service of Summons and Complaint, \$258.10 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, Wonda L. Cox a/k/a Wanda L. Cox, 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/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

Peter Bernhardt

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

J. Dennis Seidler

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-535-B

PB/esr

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

FILED

DEC 20 1990

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

DORIS H. CARTER,
Plaintiff,
v.
THE EVANS COMPANY, INC.,
Defendant.

No. 90-C-162-B

ORDER

For good cause shown and upon the stipulation of the parties,

IT IS HEREBY ORDERED that all remaining claims of the plaintiff against the defendant be and hereby are dismissed with prejudice to the right of the plaintiff to bring any further action against the defendant, each party to bear its own costs incurred to date.

Dated this 20th day of December, 1990.

S/ THOMAS R. BRETT

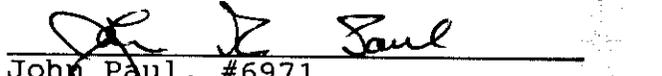
Thomas R. Brett,
United States District Judge

APPROVED:



Ronald V. Funk, #3182
201 W. 5th, Suite 530
Tulsa, Oklahoma 74103

Attorney for Plaintiff



John Paul, #6971
Richards, Paul, Richards & Siegel
Nine East Fourth Street, Suite 400
Tulsa, Oklahoma 74103

and



Margaret McMorrow-Love, #5538
Fellers, Snider, Blankenship,
Bailey & Tippens
2400 First National Center
Oklahoma City, Oklahoma 73102
405/232-0621

Attorneys for Defendant

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

LARRY DON WESLEY MAYNARD,)
)
 Plaintiff,)
)
 v.) 90-C-790-C ✓
)
 MONTE STROUT, LARRY STEWERT,)
 DISTRICT ATTORNEY, JUDGE RICHARD)
 PEARMAN,)
)
 Defendants.)

FILED

DEC 20 1990

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

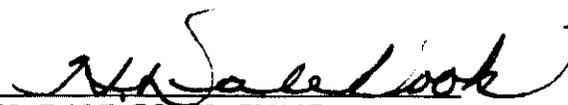
ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed November 28, 1990, in which the Magistrate recommended that the Motions to Dismiss of Defendants Strout, Pearman, and Stuart be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

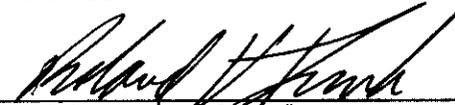
After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is therefore Ordered that the Motions to Dismiss of Defendants Strout, Pearman, and Stuart are granted and plaintiff's Civil Rights Complaint pursuant to 42 U.S.C. § 1983 is dismissed.

Dated this 19th day of December, 1990.

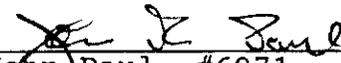

H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

APPROVED:

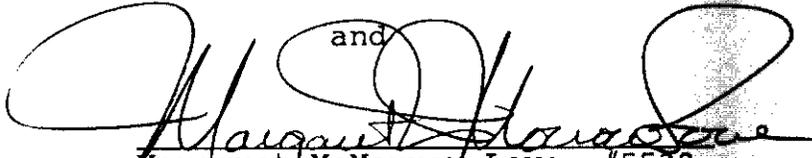


Ronald V. Funk, #3182
201 W. 5th, Suite 530
Tulsa, Oklahoma 74103

Attorney for Plaintiff



John Paul, #6971
Richards, Paul, Richards & Siegel
Nine East Fourth Street, Suite 400
Tulsa, Oklahoma 74103

and


Margaret McMorrow-Love, #5538
Fellers, Snider, Blankenship,
Bailey & Tippens
2400 First National Center
Oklahoma City, Oklahoma 73102
405/232-0621

Attorneys for Defendant

FILED
DEC 19 1990 4

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

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

VELMA L. MORNES o/b/o)
JESSE L. NORMENT and)
COLECIA NORMENT,)
)
Plaintiff,)
)
v.)
)
LOUIS W. SULLIVAN, M.D.,)
SECRETARY OF HEALTH AND)
HUMAN SERVICES,)
)
Defendant.)

90-C-97-B ✓

ORDER

The court has for consideration the Findings and Recommendations of the Magistrate filed October 5, 1990, in which the Magistrate recommended that this case be remanded to the Secretary for further proceedings. 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 Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is therefore Ordered that this case is remanded to the Secretary of Health and Human Services to obtain tax returns of the decedent wage earner from 1969 through 1978 to determine if they contain written acknowledgment by decedent that plaintiff's children were his under 42 U.S.C. § 416(h)(3)(C).

Dated this 19th day of Nov, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

DEC 19 1990

BRUCE A. BOETTCHER and)
MARY C. BOETTCHER,)
Plaintiffs,)

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

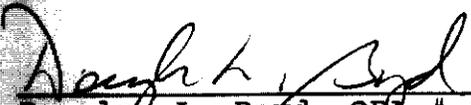
vs.)

Case No. 90-C-706 C

HOME OWNERS WARRANTY)
CORPORATION; CIGNA)
PROPERTY AND CASUALTY)
COMPANIES; and CIGNA)
INSURANCE COMPANY,)
Defendants.)

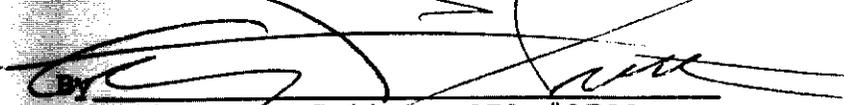
**JOINT STIPULATION OF
DISMISSAL WITH PREJUDICE**

Come now the Plaintiffs, Bruce A. Boettcher and Mary C. Boettcher, and the Defendant, CIGNA Property and Casualty Companies and CIGNA 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, each party to bear their own respective attorney's fees and costs of the litigation.



Douglas L. Boyd, OBA # 1020
320 S. Boston, Suite 1504
Tulsa, OK 74103
(918) 587-9186
ATTORNEY FOR PLAINTIFFS

**FELDMAN, HALL, FRANZEN,
WOODARD & FARRIS**



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

**ATTORNEYS FOR DEFENDANT, C I G N A
PROPERTY AND CASUALTY COMPANIES and
CIGNA INSURANCE COMPANY**

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

IN RE:) No. M-1417
ASBESTOS CASES) ASB (TW) 5

CHARLES PAUL SILL and)
ERMALENE SILL,) No. 88-C-715-E
LARRY EUGENE STOGSDILL and)
LOUISE STOGSDILL,) No. 88-C-719-E
SANFORD MARIAN BOWEN and)
GEORGIA BOWEN,) No. 88-C-772-C
LINDSEY RAY PATTON and)
MARY ELIZABETH PATTON,) No. 88-C-1394-E

Plaintiffs,

v.

ANCHOR PACKING COMPANY, et al.,

Defendants.

FILED

DEC 19 1990

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

ORDER ALLOWING
STIPULATED MOTION FOR DISMISSAL WITH PREJUDICE
(RESERVING CERTAIN RIGHTS)
AS TO DEFENDANT,
OWENS-CORNING FIBERGLAS CORPORATION

NOW on this 12th day of ~~November~~ December, 1990, this matter comes before the Court upon the Stipulated Motion for Dismissal With Prejudice (Reserving Certain Rights) filed by Plaintiffs and Defendant, Owens-Corning Fiberglas Corporation.

For good cause shown, said Motion is granted and the above-styled actions are hereby dismissed with prejudice, specifically preserving Plaintiffs' right to, and do not dismiss with prejudice,

their potential claims for cancer and fear of cancer, against the Defendant, Owens-Corning Fiberglas Corporation, only, specifically reserving Plaintiffs' rights as to all other parties or entities herein.

IT IS SO ORDERED.



JUDGE OF THE DISTRICT COURT



JUDGE OF THE DISTRICT COURT

DEC 19 1990

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

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

IN RE: ASBESTOS LITIGATION)

MASTER #1417)
ASB-TW _____)

- BOBBY LEE BAUER, and HELEN L. BAUER, Plaintiff's spouse,)
FRED FAULKNER, and MARGARET N. FAULKNER, Plaintiff's spouse,) No. 87-C-66-E
IRA ROY DENMAN,)
- JOHN FREDRICK TYREE, and V. MAXINE TYREE, Plaintiff's spouse,) No. 88-C-699-E
- EVERETT ORVILLE HEMANN, and MARIAN M. HEMANN, Plaintiff's spouse,) No. 88-C-701-E
- DENNIS LLOYD EARP, and PEGGY EARP, Plaintiff's spouse,) No. 88-C-704-B
- RUFUS HOWARD HOLT, and LETHA L. HOLT, Plaintiff's spouse,) No. 88-C-707-B
- CHARLES PAUL SILL, and ERMALENE SILL, Plaintiff's spouse,) No. 88-C-697-E
- LARRY EUGENE STOGSDILL, and LOUISE STOGSDILL, Plaintiff's spouse,) No. 88-C-715-E
- PATRICK W. PERRY, and VELMA L. PERRY, Plaintiff's spouse,) No. 88-C-719-E
- GEORGE GRANT HELTON, and MARY LEE HELTON, Plaintiff's spouse,) No. 88-C-745-E
- MARVIN EUGENE BEEHLER, and VIOLET L. BEEHLER, Plaintiff's spouse,) No. 88-C-797-E
- LELAND WEBSTER KAHLER, and EMMA J. KAHLER, Plaintiff's spouse,) No. 88-C-807-B

ORDER FOR DISMISSAL W/PREJUDICE (EAGLE-PICHER)

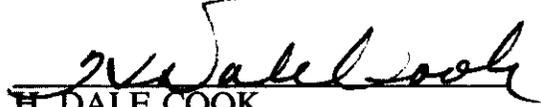
SWORN TO AND SUBSCRIBED TO before me this _____ day of _____ 1990, by _____ Clerk of the Court, and before me this _____ day of _____ 1990, upon reading.

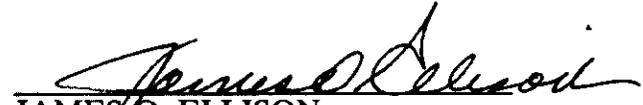
BRENDA GAY ANDREWS, and NICKEY C. ANDREWS, Plaintiff's spouse,	)	No. 88-C-808-E
RICHARD WARD WARNER, and LILLIE L. WARNER, Plaintiff's spouse,	)	No. 88-C-814-E
GEORGE DAVID KASTEN,	)	No. 88-C-836-B
JACK J. PHILLIPS, and DEANNE K. PHILLIPS, Plaintiff's spouse,	)	No. 88-C-888-B
JOHN BARNEY McCOIN, and EVA F. McCOIN, Plaintiff's spouse,	)	No. 88-C-890-E
VERNA BRADEN, Individually and as Surviving Wife of WILLIAM BRADEN, Deceased,	)	No. 88-C-905-B
HEDY MARIE MASTERSON, Individually and as Surviving Wife of IVAN LEON MASTERSON, Deceased,	)	No. 88-C-906-B
WOODROW WILSON WEBBER,	)	No. 88-C-948-E
CHARLES WATTERSON, and VERNA WATTERSON, Plaintiff's spouse,	)	No. 88-C-978-E
J.D. WARD, and ELSIE M. WARD, Plaintiff's spouse,	)	No. 88-C-980-B
EDWARD RANDOLPH WILBURN, and WILMA L. WILBURN, Plaintiff's spouse,	)	No. 88-C-1007-E
DOYLE JOHNSON, and LELA B. JOHNSON, Plaintiff's spouse,	)	No. 88-C-1032-E
CLARENCE LESTER ROOK, and BERTHA HAZEL ROOK, Plaintiff's spouse,	)	No. 88-C-1050-E
WILLIAM J. KELSO, and LORENE KELSO, Plaintiff's spouse,	)	No. 88-C-1082-E

NAOMI BLACK, Individually and as Surviving Wife of GLENDON EDWARD BLACK, Deceased,	) ) ) )	No. 88-C-1139-B
JAMES ARTHUR McAFFREY, and JEWELLE C. McAFFREY, Plaintiff's spouse,	) ) ) )	No. 88-C-1272-B
LINDSEY RAY PATTON, and MARY ELIZABETH PATTON, Plaintiff's spouse,	) ) ) )	No. 88-C-1394-E
NAYDEEN LADUKE, Individually and as Surviving Wife of WAYNE L. LADUKE, Deceased,	) ) ) )	No. 89-C-162-B
SANFORD MARIAN BOWEN, JR., and GEORGIA BOWEN, Plaintiff's spouse,	) ) ) )	No. 88-C-772-C
RESSIE MAE WALL, Individually and as Surviving Wife of JOSEPH PAUL WALL, Deceased,	) ) ) )	No. 88-C-1410-C
))))	
Plaintiffs,))))	
vs.))))	
ANCHOR PACKING COMPANY, et al.,))))	
Defendants.))))	

ORDER OF DISMISSAL

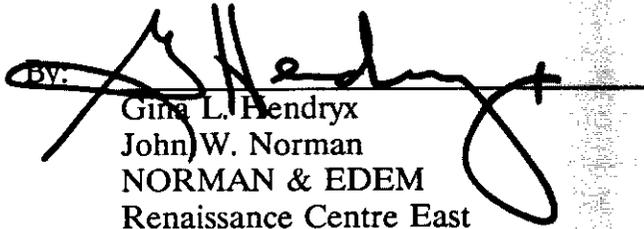
NOW ON THIS 18 day of Dec., 1990, this matter comes on for hearing by virtue of the Stipulation for Dismissal with Prejudice (specifically reserving certain claims) against the Defendant, Eagle-Picher Industries, Inc. only. For good cause shown, the Court finds that said Stipulation shall be granted and that Plaintiffs' claims (save and except Plaintiffs' potential claims for cancer and fear of cancer) be dismissed against the Defendant, Eagle-Picher Industries, Inc., only, reserving Plaintiffs' rights to any other parties to this action.

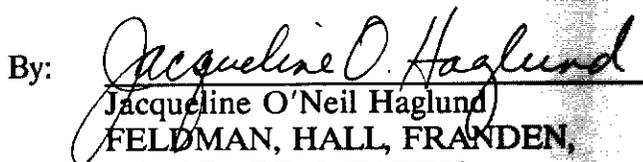

H. DALE COOK
UNITED STATES DISTRICT JUDGE


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

BY: 
Gina L. Hendryx
John W. Norman
NORMAN & EDEM
Renaissance Centre East
127 N.W. 10th
Oklahoma City, OK 73103
(405) 272-0200
Attorneys for Plaintiffs

By: 
Jacqueline O'Neil Haglund
FELDMAN, HALL, FRANDEN,
WOODARD & FARRIS
525 S. Main
Park Centre Bldg., Suite 1400
Tulsa, OK 74103
(918) 583-7129
Attorney for Eagle-Picher
Industries, Inc.

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

FILED

DEC 19 1990

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

STATE FEDERAL SAVINGS ASSOCIATION,)
by and through its Conservator,)
RESOLUTION TRUST CORPORATION, as)
successor-in-interest to certain)
assets of State Federal Savings)
and Loan Association,)

Plaintiff,)

vs.)

Case No. 90-C-810-B

TEAM DEVELOPMENT CORPORATION; JOHN)
F. CANTRELL, County Treasurer,)
Tulsa County; BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma; and HARRIET C. SHERRILL,)

Defendants.)

JOURNAL ENTRY OF JUDGMENT
AND DECREE OF FORECLOSURE

This cause comes on for hearing the 19th day of Dec,
1990, before the undersigned Judge of the United States District
Court for the Northern District of Oklahoma. The Plaintiff, State
Federal Savings Association, by and through its conservator,
Resolution Trust Corporation ("State Federal"), as successor-in-
interest to certain assets of State Federal Savings and Loan
Association, appears through its attorneys of record, Burk E.
Bishop and Leslie Zieren, of Boesche, McDermott & Eskridge. The
Defendant, Team Development Corporation, appears through its
attorney, Charles A. Gibbs, III. The Defendants, John W. Cantrell,
County Treasurer of Tulsa County, Oklahoma, and The Board of County
Commissioners of Tulsa County, Oklahoma, appear through their
attorney, J. Dennis Semler. The Defendant, Harriet C. Sherrill,

appeared pro se, but has filed no answer or other responsive pleading in the period of the extension granted her for that purpose, and is therefore in default.

The Court, having examined the pleadings and having heard statements offered by counsel, makes the following findings:

1. This Court finds that it has jurisdiction over the subject matter and all the parties to this action.

2. The Court further finds that all of the parties were personally served with a Summons and a copy of State Federal's Petition as evidenced by the verified returns of service filed in this case.

3. The Court further finds that Defendants, John F. Cantrell, County Treasurer of Tulsa County, Oklahoma, and The Board of County Commissioners of Tulsa County, Oklahoma, have filed their answers herein disclaiming any interest in the subject property.

4. The Court further finds that Defendant, Harriet C. Sherrill, filed an Application for Extension of Time to Respond to Complaint on October 10, 1990, and was granted such extension until October 25, 1990, and filed no responsive pleading herein.

5. On February 16, 1990, pursuant to Sec. 5(d)(2) of the Home Owners Loan Act of 1933 [as amended by Sec. 301 of The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (the "Act"), as enacted on August 9, 1989] the Director of the Office of Thrift Supervision issued Order No. 90-357 and placed State Federal Savings and Loan Association (the "Association") in Receivership and assumed exclusive custody and control of the

property and affairs of the Association. The Director of the Office of Thrift Supervision, through Order No. 90-357, also appointed Resolution Trust Corporation ("RTC") as the Receiver of the Association to have "all the powers of a conservator or receiver, as appropriate, granted under the Federal Deposit Insurance Act, and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators or receivers, as appropriate, of savings associations under this Act and any other provisions of law." The Director of the Office of Thrift Supervision subsequently issued Order No. 90-359, appointing RTC as the Conservator of State Federal Savings Association (the new, operating institution) to have "all the powers of a conservator or receiver, as appropriate, granted under Federal Deposit Insurance Act, and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators or receivers, as appropriate, of savings associations under this Act and any other provisions of law."

6. Subsequently, certain assets of the Association were sold and transferred from RTC as the Receiver for the Association to State Federal Savings Association, by and through its Conservator, RTC.

7. State Federal Savings Association, by and through its Conservator, RTC, purchased those certain assets that are involved in this action.

8. State Federal Savings Association, by and through its Conservator, RTC, has automatically succeeded to all rights and

interests of the Association and is accordingly the proper party as a matter of law.

9. The Court further finds that all the allegations contained in State Federal's Petition are true and that State Federal is entitled to an in personam judgment against Team Development Corporation in the principal amount of \$136,924.82, plus interest accrued thereon as of July 31, 1990, in the amount of \$4,507.12, plus interest accrued and accruing from July 31, 1990, until paid at the per diem rate of \$37.55, plus late charges of \$2,231.51, and abstract and title commitment expenses of \$250.00, plus a reasonable attorney's fee of \$2,500.00, for which amounts the subject mortgage is a first, prior, and superior lien upon the subject property and premises.

10. The Court further finds that State Federal has a valid, first and prior mortgage lien on the improvements and real estate described in the Petition by virtue of a mortgage given to secure payment of the indebtedness. The real estate is described as follows:

Lot Seventeen (17) in Block Five (5) of Hale Acres, an Addition in Tulsa County, Oklahoma, according to the recorded Plat thereof (the "Property").

11. The Court further finds that on October 5, 1990, John W. Cantrell, County Treasurer of Tulsa County, Oklahoma, and The Board of County Commissioners of Tulsa County, Oklahoma, filed an Answer stating that no taxes are due and owing on the Property.

12. The Court further finds that State Federal elects to have the Property sold with appraisal and that such election is approved and the sale shall be with appraisal.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court as follows:

A. That State Federal Savings Association, by and through its Conservator, Resolution Trust Corporation, as successor-in-interest to certain assets of State Federal Savings and Loan Association, shall have and recover of and from the Defendant, Team Development Corporation, judgment in the principal amount of \$136,924.82, plus note rate interest accrued through July 31, 1990, in the sum of \$4,507.12, with interest accruing from and after July 31, 1990, until paid in full at the rate of \$37.55 per diem, plus abstract and title commitment expenses of \$250.00, late charges of \$2,231.51, taxes, and a reasonable attorney's fee of \$2,500.00, with interest on the above sums until paid, for which amounts the mortgage is a first, prior, and superior lien upon the subject Property and premises.

B. That State Federal has a first and prior mortgage on the real estate and improvements on the Property. The mortgage lien of State Federal is adjudged and established to be a good and valid lien upon the Property and State Federal's judgment indebtedness is secured by the lien. Any and all right, title and interest which the Defendants, Team Development Corporation; John F. Cantrell, County Treasurer of Tulsa County, Oklahoma; The Board of County Commissioners of Tulsa County, Oklahoma; and Harriet C. Sherrill,

have or claim in the Property is subsequent, junior, subordinate and inferior to the mortgage lien of State Federal.

C. Upon failure of the Defendant, Team Development Corporation, to satisfy the lien described above, the Sheriff of Tulsa County, Oklahoma, shall levy upon the Property and, after having the Property appraised as provided by law, shall proceed to advertise and sell the Property according to law and shall immediately turn over the proceeds of the sale to the Clerk of this Court, who shall apply the proceeds arising from the sale as follows:

- First: To payment of the costs of this action and costs of the sale, including attorney's fees of State Federal's counsel;
- Second: To satisfy the judgments of State Federal as set forth in this Journal Entry; and
- Third: The residue, if any, shall be deposited with the Clerk of this Court to await further order of this Court.

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

E. Upon confirmation of the sale ordered, the Sheriff of Tulsa County, Oklahoma, shall execute and deliver a good and sufficient deed to the Property to the purchaser, which shall convey all the right, title, interest, estate and equity of

redemption of all the parties and each of them, and all the persons claiming under them or any of them, since the filing of this action and upon application of the purchaser, the Court shall issue a Writ of Assistance to the Sheriff of Tulsa County, Oklahoma, who shall place the purchasers in full and complete possession and enjoyment of the Property.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



Burk E. Bishop, OBA #813
Leslie Zieren, OBA #013757
Of BOESCHE, McDERMOTT & ESKRIDGE
800 ONEOK Plaza, 100 W. 5th
Tulsa, Oklahoma 74103
(918) 583-1777

ATTORNEYS FOR STATE FEDERAL SAVINGS
ASSOCIATION, by and through its
Conservator, RESOLUTION TRUST
CORPORATION, as successor-in-
interest to certain assets of
State Federal Savings and Loan
Association



Charles A. Gibbs, III, OBA #3341
427 S. Boston, Suite 1702
Tulsa, Oklahoma 74103
(918) 587-6640

ATTORNEYS FOR TEAM DEVELOPMENT CORPORATION

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above captioned matter be transferred to the United States District Court of the Southern District of Illinois.

S/ THOMAS R. BRETT

District Court Judge
Northern District of Oklahoma

AGREED TO:

*Robert F. Smith, for the firm and
Douglas W. Golden*

DOUGLAS W. GOLDEN
Attorney at Law
2417 East Skelly Drive
Tulsa, Oklahoma 74105

Bryan L. Smith

BRYAN L. SMITH,
Attorney at Law
201 West 5th, Suite 320
Tulsa, Oklahoma 74103

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

F I L E D

DEC 18 1990 *hm*

DR. THOMAS VANDERPOOL,
Plaintiff,
vs.
WENDY'S INTERNATIONAL, INC.,
Defendant.

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

No. 90-C-474-B ✓

O R D E R

Before the Court is the Motion to Dismiss filed by the defendant, Wendy's International, Inc. ("Wendy's"). Wendy's moves for dismissal on the grounds that the plaintiff, Dr. Thomas Vanderpool, is not the real party in interest, and that the plaintiff has failed to state a claim of breach of contract or of promissory estoppel against Wendy's.

Wendy's asserts that Dr. Thomas Vanderpool lacks standing to maintain this action because his alleged claims of breach of contract and promissory estoppel arose prior to his filing Chapter 11 bankruptcy on June 29, 1987, and in accordance with 11 U.S.C. §541(a)(1),¹ such claims belong to the bankruptcy estate.² While

¹ Section 541(a)(1) states that

The commencement of a case under section 301 . . . of this title creates an estate. Such estate is comprised of all of the following property, wherever located and by whomever held:

(1) . . . all legal or equitable interests of the debtor in property as of the commencement of the case.

the Court finds that the real party in interest is the trustee in bankruptcy for the benefit of the estate³ (in this case, Dr. Thomas Vanderpool, Debtor in Possession), the appropriate redress for this deficiency in pleading would be to allow Dr. Vanderpool the opportunity to amend his complaint to reflect that he brings this action as debtor in possession and not in his individual capacity. Dismissal would be warranted only if the plaintiff failed to so amend.

However, upon review of the complaint and its exhibits, the Court concludes that the plaintiff's action should be dismissed because the plaintiff fails to state a claim against Wendy's. To dismiss an action for failure to state a claim upon which relief can be granted it must appear beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41 (1957). Motions to dismiss under Fed.R.Civ.P. 12(b) admit all well-pleaded facts. *Jones v. Hopper*, 410 F.2d 1323 (10th Cir. 1969), cert. denied, 397 U.S. 991 (1970). While the allegations of the complaint must be taken as true and all reasonable inferences from them must be derived in

² In support, Wendy's attaches to its motion the plaintiff's Debtor's Amended Disclosure Statement and Statement of Financial Affairs for Debtor Engaged in Business in order to show that the plaintiff's cause of action against Wendy's was not listed on his bankruptcy schedules or disclosure statement as assets of the bankruptcy estate. Although the plaintiff objects to Wendy's attachment of these exhibits to its motion to dismiss, the Court can and does take judicial notice of the plaintiff's prior bankruptcy proceedings.

³ *In re Smith*, 640 F.2d 888, 892 (7th Cir. 1981); *In re Raymond Construction Co. of Florida, Inc.*, 6 Bankr. 793, 797 (Bankr. M.D. Fla. 1980).

favor of complainant, the Court is not bound to accept factual claims which are contradicted by exhibits attached to and by reference made a part of the complaint. *Olpin v. Ideal National Ins. Co.*, 419 F.2d 1250, 1255 (10th Cir. 1969), cert. denied, 397 U.S. 1074 (1970).

The viability of plaintiff's claims of breach of contract and promissory estoppel depends upon the plaintiff's allegation that the "[d]efendant entered into a written agreement with Plaintiff whereby Plaintiff agreed to purchase and Defendant agreed to sell certain company-owned stores located in the Tulsa market area." (Paragraph 17 of the Complaint). The plaintiff attached the referenced "written agreement"⁴ to the complaint - two letters of "mutual understanding," one dated July 11, 1986 and another dated October 20, 1986⁵ - each of which clearly states:

[i]t is understood that this letter does not create a legally binding obligation on you or Wendy's. It is the objective of both of us to execute and consummate a definitive agreement on the terms outlined above, with the customary warranties and representations, and including among others, the following conditions.

This language expressly contradicts the factual claim that the

⁴ Although the plaintiff attempts to draft around the applicable Statute of Frauds by nebulous allegations of part performance, the attempt is unavailing.

⁵ The Court infers from the complaint that the October 20, 1986 letter supplants the earlier July 11, 1986 letter. Otherwise, the plaintiff's argument that the "mutual understanding" included all material terms (i.e., number and location of stores to be purchased by the plaintiff, amount of purchase, "conditions precedent" and the date for satisfaction of "conditions precedent") is rather obfuscated by the fact that, except for the number and location of stores, the "assented to" terms changed from letter to letter.

plaintiff and Wendy's entered into a written agreement or contract for the sale of the thirteen Tulsa area franchises,⁶ and therefore, the Court is not bound to take such allegation as true. The Court finds that it is "beyond doubt that the plaintiff can prove no set of facts in support of his claim"⁷ that these letters constitute a contract for the sale of Wendy's franchises between the parties, which Wendy's breached.⁸ Furthermore, with language of the "mutual understanding" expressly disavowing a "legally binding obligation" between the plaintiff and Wendy's, the plaintiff's promissory estoppel claim that Wendy's "knew or reasonably should have known" that the letters would induce the plaintiff to rely on Wendy's "promise" to sell him the thirteen franchises, is equally untenable.

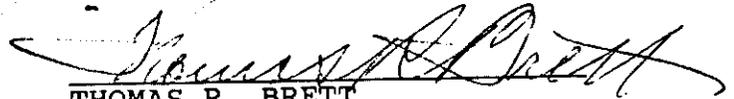
⁶ The plaintiff argues that the parties had a binding contract, even though they intended to execute a definitive agreement at a later date, citing in support *Western Contracting Corp. v. Sooner Construction Co.*, 256 F.Supp. 163, 168 (W.D. Okla. 1966). However, in *Western Contracting*, unlike the facts of this case, the contracting parties assented to all the terms of the contract and did not recite that no "legally binding obligation" was created.

⁷ *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)

⁸ Even if the "mutual understanding" had constituted a contract between the parties, the plaintiff would have further difficulty in showing that the letter dated June 2, 1987 establishes a breach. The letter addresses the financial problems of the plaintiff in maintaining his existing Wendy's franchises and outlines what assistance Wendy's would provide the plaintiff if he chose to meet certain conditions. These conditions are easily viewed as the "among others" the plaintiff must meet, as set out in the "mutual understanding," before the parties would execute a "definitive agreement." The letter merely states that "at this date, Wendy's is not willing to sell you any company-owned restaurant," pending resolution of the plaintiff's financial problems.

For the above reasons, the Court sustains Wendy's Motion to Dismiss for failure to state a claim.

IT IS SO ORDERED, this 18th day of December, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
TULSA DIVISION

FILED

DEC 18 1990 *jm*

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

RODERICK A. DeARMENT, Acting)
Secretary of Labor, United)
States Department of Labor,)
Plaintiff,)
v.)
T. C. PROMOTIONS and THOMAS W.)
COX, JR.,)
Defendants.)

Civil Action
No. 90-C-353-B ✓

JUDGMENT BY DEFAULT

Plaintiff's Motion for Default Judgment pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure having been duly considered, and it appearing to the Court that on April 23, 1990, this civil action was commenced; that on May 30, 1990, the summons and complaint were served upon defendant Thomas W. Cox, Jr.; that on July 11, 1990, the summons and complaint were served upon defendant T.C. Promotions; that on October 4, 1990, the Clerk of the Court entered default against Defendants pursuant to Rule 55(a) of the Federal Rules of Civil Procedure; that defendants have not moved pursuant to Rule 55(c) to set aside for good cause shown the entry of default against them; and that defendants are in violation of certain provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201 et seq.), it is therefore

ORDERED, ADJUDGED and DECREED that defendants, their officers, agents, servants, employees and all persons in active concert or participation with them be and they hereby are permanently enjoined and restrained from violating the provisions

of Sections 11(c), 12(c), 15(a)(4) and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq., hereinafter referred to as **the Act**, in any of the following manners:

1. Defendants shall **not**, contrary to Sections 11(c) and 15(a)(5) of the Act, 29 U.S.C. §§ 211(c) and 215(a)(5), fail to make, keep and preserve **adequate** and accurate records of the persons employed by them, **and** the wages, hours and other conditions and practices of **employment** maintained by them as prescribed by regulations **issued** by the Administrator of the Employment Standards Administration, United States Department of Labor (29 C.F.R. Part 516).

2. Defendants shall **not**, contrary to Sections 12(c) and 15(a)(4) of the Act, 29 U.S.C. §§ 212(c) and 215(a)(4), employ any oppressive child labor, **as** such term is defined in Section 3(1) of the Act, 29 U.S.C. § 203(1), in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the Act.

It is further ORDERED that the costs of this action be, and the same hereby are, taxed **against** defendants for which execution may issue.

SIGNED this 18th day of Dec, 1990.



UNITED STATES DISTRICT JUDGE

FILED

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

DEC 18 1990

JACK and NELLIE FIELDS,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

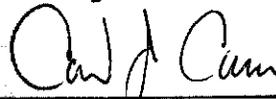
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Jack C. Silver, Clerk
U.S. DISTRICT COURT

Civil No. 90C-320B

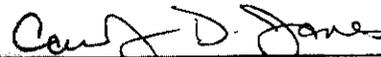
STIPULATION FOR DISMISSAL

It is hereby stipulated and agreed that the complaint in the above-entitled case be dismissed with prejudice, the parties to bear their respective costs, including any possible attorneys' fees or other expenses of this litigation.



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Tulsa, Oklahoma 74170
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Attorney for Plaintiffs

TONY M. GRAHAM
United States Attorney



CAROLYN D. JONES
Trial Attorney, Tax Division
U.S. Department of Justice
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Washington, D.C. 20044
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(FTS) 368-6637
Attorneys for the Defendant

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 18 1990

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

ONE HUNDRED THIRTY-FOUR)
THOUSAND SIX HUNDRED)
SIXTY-TWO AND 25/100 DOLLARS)
(\$ 134,662.25))
IN UNITED STATES CURRENCY,)

and)

ONE 1980 BUICK RIVIERA,)
VIN 4Z57RAE413112,)

Defendant.)

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

CIVIL ACTION NO. 89-C-1072-B

AGREED JUDGMENT OF FORFEITURE

IT NOW APPEARS that the forfeiture proceeding herein has been fully compromised and settled, as more fully appears in the written Stipulation For Compromise entered into by and between the Claimant, George Katsenis, and executed by his attorney, Charles Siegel, on the 30th day of November, 1990, and plaintiff, United States of America, and executed by Catherine J. Depew, Assistant United States Attorney for the Northern District of Oklahoma, on the 30th day of November, 1990, and filed herein on the 17th day of December, 1990, to which Stipulation for Compromise reference is hereby made and incorporated herein.

It further appearing that no other claims to said property have been filed since such property was seized and that no other persons have any right, title, or interest in the following-described defendant property:

One Hundred Thirty-four Thousand Six Hundred Sixty-two and 25/100 Dollars (\$134,662.25) In United States Currency,

and

One 1980 Buick Riviera, VIN 4Z57RAE413112.

Now, therefore, on motion of Catherine J. Depew, Assistant United States Attorney, and with the consent of Claimant, George Katsenis, it is

ORDERED that the claim of George Katsenis in the related administrative action be, and the same hereby is, dismissed with prejudice and without costs, and it is

FURTHER ORDERED, ADJUDGED, AND DECREED that \$124,662.25 in United States Currency and the defendant 1980 Buick Riviera, VIN 4Z57RAE413112, be, and they hereby are, condemned as forfeited to the United States of America and shall remain in the custody of the United States Marshal for disposition according to law, and it is

FURTHER ORDERED that the United States Marshal shall withhold from the \$134,662.25 seized from the Claimant, the sum of Five Thousand Dollars (\$5,000.00) which shall be paid to the United States Treasury Department, Internal Revenue Service, to

be applied toward the outstanding tax liability of the Claimant, George Katsenis, and shall further return the sum of Five Thousand Dollars (\$5,000.00) to the Claimant, George Katsenis, and it is

FURTHER ORDERED that the \$350.00 bond posted by the Claimant, George Katsenis, in the related administrative action as to the 1980 Buick Riviera, shall be forfeited to the United States of America for disposition according to law.

DATED this 18th day of Dec., 1990.

S/ THOMAS R. BRETT

THOMAS R. BRETT
Judge of the United States District
Court for the Northern District of
Oklahoma

CJD/ch
00975

JACK C. SILVER, CLERK
U.S. DISTRICT COURT
DEC 17 1990

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

IN RE:)
)
THOMAS, EARNEST LEON and) Case No. 83-01481-W
THOMAS, SHIRLEY GENE d/b/a)
Leon Thomas Farms,) District Ct. No. 89-C-791-B
)
Debtors.) Chapter 7

DISMISSAL

COMES NOW the Debtors, Earnest Leon Thomas and Shirley Gene Thomas d/b/a Leon Thomas Farms, and herewith dismiss the above styled and numbered appeal.

STAINER AND STAINER

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on all parties of the above captioned case on the 14 day of December, 1990.
Randolph P. Stainer
By: Cathy Clark

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

BONNIE BALDRIDGE,)
)
 Plaintiff,)
)
 VS.)
)
 NUTRITION HEADQUARTERS,)
 INC.,)
)
 Defendant and)
 Third Party)
 Plaintiff,)
)
 VS.)
)
 MITSUI-TOATSU CHEMICALS,)
 INC., (JAPAN), MITSUI-)
 TOATSU CHEMICALS, INC.,)
 (USA), and INDU-CHE)
 SALES, INC.,)
)
 Additional Third)
 Party Defendants.)

90-C 595 E

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

NOTICE OF DISMISSAL WITHOUT PREJUDICE

COMES NOW the Defendant and Third Party Plaintiff, Nutrition Headquarters, Inc., and would show the Court that it hereby dismisses without prejudice Indu-Che Sales, Inc. as to this party's Third Party Complaint against Indu-Che Sales, Inc. This movant would further show the court that the party Indu-Che Sales, Inc. has not served its Answer in this case or has said entity filed a Motion for Summary Judgment.

Therefore, this Defendant and Third Party Plaintiff, in accordance with Rule 41 of the Federal Rules of Civil Procedure, would dismiss its Third Party Complaint without prejudice as to the refiling of another action against Indu-Che Sales, Inc.

HUCKABY, FLEMING, FRAILEY, CHAFFIN
& DARRAH

By: _____

Michael R. Chaffin, OBA #1589
P. O. Box 533
Chickasha, Oklahoma 73023
(405) 224-0237

CERTIFICATE OF MAILING

I hereby certify that on the ___ day of December, 1990, I mailed a true and correct copy of the above and foregoing instrument to Mr. Anthony M. Laizure, P. O. Box 701110, Tulsa, Oklahoma 74170.

Michael R. Chaffin

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

RODGER WAYNE SLOAN; JOYCE
ELAINE SLOAN; COUNTY TREASURER,
Tulsa County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

F I L E D

DEC 17 1990

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

CIVIL ACTION NO. 90-C-175-B ✓

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 17 day of December, 1990. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by J. Dennis Semler, Assistant District Attorney, Tulsa County, Oklahoma; and the Defendants, Rodger Wayne Sloan and Joyce Elaine Sloan, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, Joyce Elaine Sloan, acknowledged receipt of Summons and Complaint on March 14, 1990; that the Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 6, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 6, 1990.

The Court further finds that the Defendant, Rodger Wayne Sloan, 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 September 14, 1990, and continuing through October 19, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, Rodger Wayne Sloan, 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, Rodger Wayne Sloan. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to his present or last

known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on March 22, 1990; that the Defendants, Rodger Wayne Sloan and Joyce Elaine Sloan, 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 Two (2), Block One (1), VANDEVER EAST FOURTH, an Addition to the City of Broken Arrow, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on July 31, 1987, the Defendants, Rodger Wayne Sloan and Joyce Elaine Sloan, 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 \$43,300.00, payable in monthly installments, with interest thereon at the rate of ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Rodger Wayne

Sloan and Joyce Elaine Sloan, 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 31, 1987, covering the above-described property. Said mortgage was recorded on August 5, 1987, in Book 5043, Page 1731, in the records of Tulsa County, Oklahoma.

The Court further finds that on March 27, 1989, Joyce Elaine Sloan executed a Quit-Claim Deed conveying her right, title, and interest in the above-described property to Rodger Wayne Sloan. Said Quit-Claim Deed was recorded on March 27, 1989, in Book 5173, Page 2162, in the records of Tulsa County, Oklahoma.

The Court further finds that Defendants, Rodger Wayne Sloan and Joyce Elaine Sloan, 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 Defendants, Rodger Wayne Sloan and Joyce Elaine Sloan, are indebted to the Plaintiff in the principal sum of \$42,995.28, plus interest at the rate of 10 percent per annum from December 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$282.37 (\$20.00 docket fees, \$13.72 fees for service of Summons and Complaint, \$248.65 publication fees).

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Rodger Wayne Sloan in rem and Joyce Elaine Sloan in personam, in the principal sum of \$42,995.28, plus interest at the rate of 10 percent per annum from December 1, 1988 until judgment, plus interest thereafter at the current legal rate of 7.02 percent per annum until paid, plus the costs of this action in the amount of \$282.37 (\$20.00 docket fees, \$13.72 fees for service of Summons and Complaint, \$248.65 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 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.

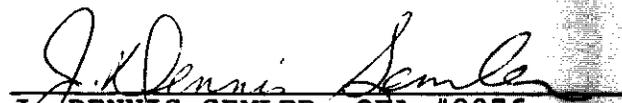
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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


UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


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


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

Judgment of Foreclosure
Civil Action No. 90-C-175-B

PP/css

FILED

DEC 17 1990

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

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

IN RE: ASBESTOS LITIGATION)

MASTER #1417)
ASB-TW-)

JEFF L. LOWE and HASEL FAYE LOWE,)
Plaintiffs,)

vs.)

CASE NO. 88-C-994-B

ANCHOR PACKING COMPANY, et al.,)
Defendants.)

JUDGMENT

This matter was called for trial on December 3, 1990, with the Honorable Layn R. Phillips presiding. The case was submitted to the jury on December 4, 1990 and a verdict was returned on December 5, 1990 in favor of the Defendants: Owens Corning Fiberglas Corporation; Pittsburgh Corning Corporation; Center for Claims Resolution consisting of Flexitallic Gasket Company, Inc., GAF Corporation, a corporation, individually and as successor to Ruberoid, Inc., a corporation, National Gypsum Company; Armstrong World Industries; Armstrong Corporation; Keene Corporation; Eagle Picher Industries; and The Milwhite Company.

In accordance with the verdict of the jury, Judgment is hereby entered in favor of the Defendants. Costs of the action may be awarded to Defendants if timely applied for under the Local Rules.

DATED this 17 day of December, 1990.


Layn R. Phillips,
United States District Judge

Approved as to form:

Norman & Edem

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Johnston & Baysinger

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Mills, Whitten, Mills,
Mills & Hinkle

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Liaison Counsel for Defendants

J Hayward
EP

Liz Myer P/C

12-7-90

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

IN RE:
ASBESTOS LITIGATION

) Master File M-1417
)
) ASB (TW)

FILED

DEC 17 1990

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

EUGENE WILLIAM STICH and
MYRTLE G. STICH

Plaintiffs,

v.

) No. 88-C-950-B
)
)

FIBREBOARD CORPORATION, et al.

JUDGMENT

This matter was called for trial on November 26, 1990, with the Honorable Layn R. Phillips presiding. The case was submitted to the jury on November 28, 1990 and a verdict was returned on November 28, 1990 in favor of the Defendants: Owens Corning Fiberglas Corporation; Pittsburgh Corning Corporation; Center for Claims Resolution consisting of Flexitallic Gasket Company, Inc., GAF Corporation, a corporation, individually and as successor to Ruberoid, Inc., a corporation, National Gypsum Company; Armstrong World Industries; Armstrong Corporation; Keene Corporation; Eagle Picher Industries; The Milwhite Company.

In accordance with the verdict of the jury, Judgment is hereby entered in favor of the Defendants. Costs of the action may be awarded to Defendants if timely applied for under the Local Rules.

DATED this 17 day of December, 1990.



Layn R. Phillips,
United States District Judge

Approved as to form:

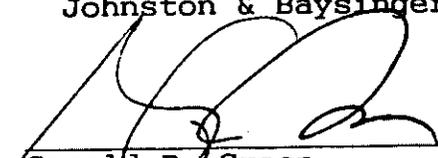
Norman & Edem

Approved as to changes of
December 5, 1990

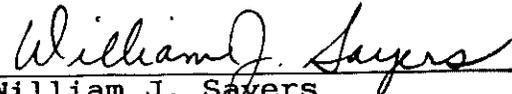
Norman & Edem


John W. Norman
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Attorneys for Plaintiffs

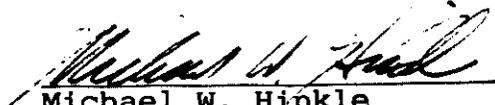
Pierce Couch Hendrickson
Johnston & Baysinger

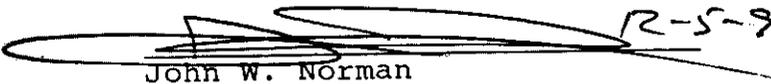

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Liaison Counsel for Defendants

 R-5-9
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Oklahoma City, OK 73103
(405) 272-0200
Attorneys for Plaintiffs

Approved as to form:

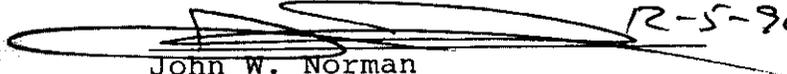
Norman & Edem

Approved as to changes of
December 5, 1990

Norman & Edem

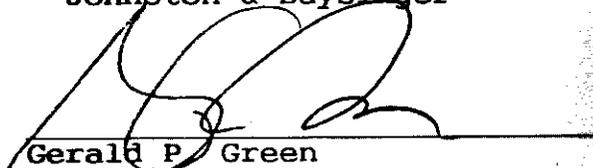


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FILED

DEC 17 1990

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

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

JAMES EUGENE ADAMS,)
)
 Plaintiff,)
)
 -vs-)
)
 GULF INSURANCE COMPANY,)
 a foreign corporation,)
)
 Defendant.)

Case No. 89 C-1058 - **B**

ORDER

On this 17 day of Dec, the plaintiff's Application for Dismissal With Prejudice of the above-entitled and numbered case comes before this Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that this case shall be dismissed with prejudice to future filings of all claims.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE