

FILED

JAN 10 1991

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

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

ANITA M. DESCHER,)
)
 Plaintiff,)
)
 vs.)
)
 AMERICAN FOUNDRY GROUP)
 INCORPORATED, an Oklahoma)
 corporation; REXNORD HOLDINGS)
 INC., a Delaware corporation;)
 and DANA CORPORATION, a Delaware)
 corporation,)
)
 Defendants.)

Case No. 90-C-213-B

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, and pursuant to Rule 41 (a) of the Rules of Civil Procedure, gives notice hereby of her dismissal of the above styled cause. The defendant American Foundry Group Incorporated has not been served summons and complaint. The remaining defendants have been dismissed by stipulation in accordance with Rule 41 (a) (1) (ii).



THOMAS H. HULL 11039
COUNCIL OAK CENTER
1717 SOUTH CHEYENNE AVE.
TULSA, OK 74119

(918) 583-3300

CERTIFICATE OF MAILING

I, Thomas H. Hull, do hereby certify that on this _____ day
of _____, 1991, I mailed a true and correct copy of
the above and foregoing to the following, with correct postage
prepaid:

Mr. James L. Kincaid
Mr. Mark O. Costley
Ms. Madalene A.B. Witterholt
CROWE & DUNLEVY
A Professional Corporation
Suite 606
320 South Boston
Tulsa, Oklahoma 74103



Thomas H. Hull

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

FEDERAL DEPOSIT INSURANCE)
CORPORATION, in its capacity)
as Receiver for First National)
Bank and Trust Company of)
Cushing, Cushing, Oklahoma,)
)
Plaintiff,)
)
vs.)
)
JERRY CONREY and JOSEPH E.)
MOUNTFORD,)
)
)
Defendants.)

Case No. 90-C-341-C ✓

F I L E D

JAN 10 1991 *pw*

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

JOURNAL ENTRY OF JUDGMENT

This cause came on for consideration by the Court on the Motion for Summary Judgment of the Plaintiff, Federal Deposit Insurance Corporation, in its capacity as Receiver for First National Bank and Trust Company of Cushing, Cushing, Oklahoma ("FDIC") as against Defendant Jerry Conrey ("Conrey") and Defendant Joseph E. Mountford ("Mountford"). The issues having been duly tried and a decision duly rendered,

IT IS ORDERED, ADJUDGED, AND DECREED that judgment in personam in favor of Federal Deposit Insurance Corporation, in its capacity as Receiver for First National Bank and Trust Company of Cushing, Cushing, Oklahoma, be hereby entered as against Defendant Jerry Conrey and that the Plaintiff recover from him the amount of \$188,686.27, plus accrued interest as of and including April 16, 1990, in the amount of \$87,584.96, plus interest accruing from and after said date at the default rate of \$72.37 per diem until date of judgment, plus all reasonable costs and expenses, including, but not limited to real estate ad valorem taxes advanced, plus post-

judgment interest from the date of this judgment until paid in full at the rate of 7.02% per annum, all of which constitutes a lien on the Property until fully discharged.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Plaintiff is awarded a reasonable attorney fee, the specific amount of which is to be determined upon proper application to the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment in rem be hereby entered as against Defendants Jerry Conrey and Joseph Mountford, as FDIC's mortgage interest, in and to the Property described as follows:

A tract of land in the South Half (S/2) of the Southwest Quarter (SW/4) of the Southwest Quarter (SW/4) of Section Twenty-nine (29), Township Twenty-eight (28) North, Range Twenty-three (23) East of the Indian Meridian, more particularly described as follows: Beginning at the Northeast corner of said S/2 SW/4 SW/4; thence South 660 feet; thence West 198 feet; thence North 660 feet; thence East 198 feet to the point of beginning, containing 3 acres, more or less, according to the Government Survey thereof, in Ottawa County, State of Oklahoma

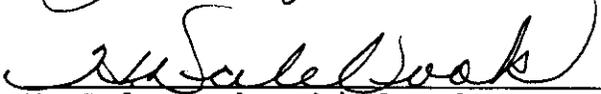
is a first, prior, valid and enforceable lien upon that property securing FDIC's judgment. Any and all right, title, and/or interest of the Defendants named herein in and to the Property is junior, inferior and subordinate to the lien and interests of FDIC, except as to unpaid real estate ad valorem taxes.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of Defendant Jerry Conrey to satisfy the lien described above, and upon submission by FDIC to the Clerk of this Court of a Special Writ of Execution and Order of Sale to be issued by the Clerk, should FDIC so choose to submit same, the Sheriff of Ottawa County, State of Oklahoma, shall levy upon the Property, by advertising and selling, as upon execution, the Property, with

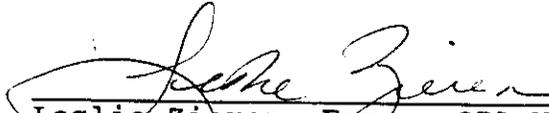
appraisement, with the proceeds therefrom being applied first to expenses of sale, and next to reduction of the indebtedness due and owing to FDIC by virtue of the judgment herein, with the balance, if any remaining, to be paid into Court subject to further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants herein and all persons claiming under them from and after the filing of this action be thereupon barred, restrained, and enjoined from having or asserting any right, title, or interest or other right of redemption in and to the Property and that a Writ of Assistance shall issue upon request of the purchaser to the Sheriff, who shall place the purchaser in full and complete possession and enjoyment of the Property.

SO ENTERED this 9th day of January, 1991.

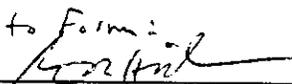

H. Dale Cook, Chief Judge
United States District Court
for the Northern District of
Oklahoma

APPROVED: Journal Entry of Judgment, Case No. 90-341-C, In the United States District Court for the Northern District of Oklahoma



Leslie Zieren, Esq., OBA No. 9999
BOESCHE, McDERMOTT & ESKRIDGE
800 ONEOK Plaza, 100 W. 5th St.
Tulsa, Oklahoma 74103

COUNSEL FOR PLAINTIFF

As to Form: 

Steven Hickman, Esq
FRAZIER & FRAZIER
1700 S. W. Blvd., Ste. 100
P. O. Box 799
Tulsa, OK 74101

COUNSEL FOR JERRY CONREY

APPROVED: Journal Entry of Judgment, Case No. 90-341-C, In the United States District Court for the Northern District of Oklahoma



Allan C. Wilcox
Attorney at Law
516 Pearl
P. O. Box 1622
Joplin, MO 64802

COUNSEL FOR JOSEPH E. MOUNTFORD

F I L E D

JAN 9 1991

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

Timothy Dwyer and Laurie Dwyer,)
Individually, and as Parents and Next)
Friends of Christopher Adam Dwyer, a)
Minor Child,)

Plaintiffs,)

vs.)

Central Life Assurance Company, a)
foreign corporation,)

Defendant.)

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

Case No. 90-C-671-B

STIPULATED DISMISSAL WITH PREJUDICE

It appearing to the satisfaction of this court that all matters and controversies have been compromised by and between the parties, as evidenced by the signatures of their attorneys below, therefore,

IT IS ORDERED that the plaintiffs' suit be, and the same is hereby, dismissed with prejudice;

IT IS FURTHER ORDERED that defendant's counterclaim for declaratory relief be, and the same is hereby, dismissed with prejudice; and,

IT IS FURTHER ORDERED that the dismissal of the above-entitled action be without cost to either party.

S/ THOMAS R. BRETT

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

HERROLD & HERROLD, INC.

By: *Marlin R. Davis*

Marlin R. Davis, OBA 10777
520 Galleria Tower I
7130 South Lewis Avenue
Tulsa, Oklahoma 74136-5426
(918) 494-4050
Attorneys for Plaintiffs

FELDMAN, HALL, FRANDEN, WOODARD & FARRIS

By: *Larry G. Taylor*

Larry G. Taylor, OBA 8877
John R. Woodard, III, OBA 9853
ParkCentre - Suite 1400
525 South Main
Tulsa, OK 74103-4409
(918) 583-7129
Attorneys for Defendant

and

COOPER & KELLEY, P.C.
Thomas B. Kelley
1660 Wynkoop Street
Suite 900
Denver, CO 80202-1197
(303) 825-2700
Attorneys for Defendant

F I L E D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA JAN 9 1991

UNION BANK AND TRUST,
BARTLESVILLE, OKLAHOMA,

Plaintiff,

vs.

BYRON E. BROWN,

Defendant.

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

Case No. 89-C-541-B

ORDER

NOW, on this 9th day of January, 1991, there comes for hearing the Stipulation for Dismissal With Prejudice of the parties hereto, the Federal Deposit Insurance Corporation as substituted party Plaintiff and the Defendant, Byron E. Brown. And the Court, after being fully advised in the premises, finds the Stipulation to be well taken.

IT IS, THEREFORE, HEREBY ORDERED the above captioned matter shall be dismissed with prejudice.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

Christopher L. Coyle, OBA #1979
Robinson, Lewis, Orbison,
Smith & Coyle
P.O. Box 1046
Tulsa, Oklahoma 74101
(918) 583-1232

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

LINDA KAY BOSWELL,)
)
 Plaintiff,)
)
 vs.)
)
 THE CITY INSURANCE COMPANY,)
 a foreign insurer,)
)
 Defendant,)
)
 vs.)
)
 CHANDRAKUMAR S. SINNADURAI,)
)
 Third Party Defendant.)

No. 90-C-321-E

FILED
 JAN 9 1991
 Jack C. Silver, Clerk
 U.S. DISTRICT COURT

STIPULATION OF DISMISSAL

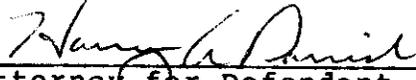
COME NOW the Plaintiff, Linda Kay Boswell, the Defendant, The City Insurance Company, and the Third Party Defendant, Chandrakumar S. Sinnadurai, by and through their respective attorneys, and in accordance with Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedures, hereby stipulate to the dismissal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

JOHN F. MCCORMICK, JR.

John F. McCormick

 Attorney for Plaintiff

HARRY A. PARRISH


Attorney for Defendant

RICHARD D. GIBBON


Attorney for Third Party Defendant

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JAN 9 1991

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 GERALD D. BRANEN and ARLENE)
 BRANEN, husband and wife,)
)
 Defendants.)

CIVIL ACTION NO. 90-C-824-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 9th day
of January, 1991. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
and the Defendants, Gerald D. Branen and Arlene Branen, appear by
their attorney, W. Kirk Clausing.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Gerald D. Branen,
acknowledged receipt of Summons and Complaint on October 15,
1990; and that the Defendant, Arlene Branen, acknowledged receipt
of Summons and Complaint on October 15, 1990.

It appears that the Defendants, Gerald D. Branen and
Arlene Branen, filed their Answer on November 20, 1990.

The Court further finds that on February 15, 1984, the
Defendants, Gerald D. Branen and Arlene Branen, executed and
delivered to the United States of America, acting through the
Farmers Home Administration, their promissory note in the amount
of \$65,000.00, payable in yearly installments, with interest
thereon at the rate of 10.25 percent (10.25%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Gerald D. Branen and Arlene Branen, executed and delivered to the United States of America, acting through the Farmers Home Administration, the following financing statements and security agreements thereby creating in favor of Farmers Home Administration a security interest in certain crops, livestock, farm equipment and motor vehicles described therein.

<u>Instrument</u>	<u>Dated</u>	<u>Filed</u>	<u>County</u>	<u>Number</u>
Security Agreement	2-15-84			
Security Agreement	4-22-85			
Security Agreement	7-30-86			
Financing Stmt.	2-17-84	2-17-84	Nowata	195
Continuation Stmt.	11-29-88	11-29-88	Nowata	147
OK EFS-1	11-10-88	11-10-88	Sec. of State	882863
Financing Stmt.	2-17-84	2-17-84	Rogers	665
Continuation Stmt.	11-30-86	11-30-86	Rogers	1954

The Court further finds that the Defendants, Gerald D. Branen and Arlene Branen, made default under the terms of the aforesaid note and security agreements by reason of their failure to make the yearly installments due thereon, which default has continued, and that by reason thereof the Defendants, Gerald D. Branen and Arlene Branen, are indebted to the Plaintiff in the principal sum of \$50,850.93, plus accrued interest in the amount of \$14,940.76 as of December 15, 1989, plus interest accruing thereafter at the rate of 10.25 percent per annum or \$14.2801 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Gerald D. Branen and Arlene Branen, in the principal sum of \$50,850.93, plus accrued interest in the amount of \$14,940.76 as of December 15, 1989, plus interest accruing thereafter at the rate of 10.25 percent per annum or \$14.2801 per day until judgment, plus interest thereafter at the current legal rate of 7.0% percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by the Plaintiff for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Gerald D. Branen and Arlene Branen, 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 the subject 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 subject 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 subject 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 property or any part thereof.

S/ THOMAS R. BREW

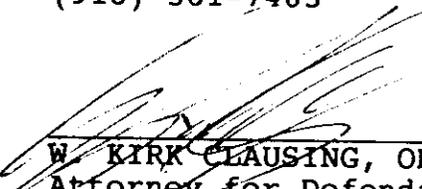
UNITED STATES DISTRICT JUDGE

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



W. KIRK CLAUSING, OBA #1725
Attorney for Defendants,
Gerald D. Branen and Arlene Branen

Judgment of Foreclosure
Civil Action No. 90-C-824-B

PP/esr

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

FILED

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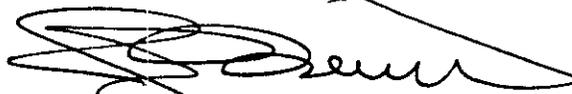
Jack C. Silver, Clerk
U.S. DISTRICT COURT

CONNIE FAULK,)
)
 PLAINTIFF,)
)
 V.)
)
 SHERITONE INTERNATIONAL, INC.,)
 an Illinois corporation;)
 SHERITECH CORP., a New York)
 corporation; ACME AGRICULTURAL)
 SUPPLY, INC., an Arkansas)
 corporation; and TAI FONG ELECTRIC)
 COMPANY, a Taiwanese corporation,)
)
 DEFENDANTS)

CASE NO. 90-C-395 B

DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff and hereby dismisses the above styled
action without prejudice to the filing of a future action against
SHERITECH CORP. only, reserving all rights to proceed against all
remaining parties or others who may be liable.

A handwritten signature in black ink, appearing to read "John M. Merritt", written over a horizontal line.

JOHN M. MERRITT - OBA #6146
MERRITT & ROONEY, INC.
P O BOX 60708
OKLAHOMA CITY, OKLAHOMA 73146
(405)236-2222

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January, 1991
a true and correct copy of the above and foregoing has been served upon
the following:

Sheritone International, Inc.,
by serving: MICHAEL SCHLESINGER,
25 E. Washington, St., Suite 1000,
Chicago, ILL.; Sheritech Corp.,
by serving: SHERITONE CORP., 2 W.
46th St., New York, NY 10036;
WILLIAM S. HALL, Park Center, Ste.
1400, 525 S. Main, Tulsa, OK 74103-
4409 Atty for ACME Agric. Supply;
TAI Fong Electric Company, by
serving: THE PRESIDENT OR CHIEF
EXECUTIVE OFFICER, 5 Tun Hwa
South Road, Louis Bldg., Taipei,
Taiwan



JOHN M. MERRITT - OBA #6146

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 EDWARD ALLEN LAMONT; IRMA BONITA)
 LAMONT; COUNTY TREASURER, Rogers)
 County, Oklahoma; BOARD OF)
 COUNTY COMMISSIONERS, Rogers)
 County, Oklahoma; and)
 EBB REEVES, D.O.,)
)
 Defendants.)

F I L E D

JAN 9 1991

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

CIVIL ACTION NO. 90-C-788-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 9th day
of January, 1991. 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, Rogers County,
Oklahoma, and Board of County Commissioners, Rogers County,
Oklahoma, appear by Ernest E. Haynes, Jr., Assistant District
Attorney, Rogers County, Oklahoma; the Defendant, Ebb Reeves,
O.D., appears by his attorney Mark G. Robb; and the Defendants,
Edward Allen Lamont and Irma Bonita Lamont, appear not, but make
default.

The Court being fully advised and having examined the
court file finds that the Defendants, Edward Allen Lamont and
Irma Bonita Lamont, acknowledged receipt of Summons and Complaint
on September 27, 1990; that the Defendant, Ebb Reeves, O.D.,
acknowledged receipt of Summons and Amended Complaint on
October 10, 1990; that Defendant, County Treasurer, Rogers

County, Oklahoma, acknowledged receipt of Summons and Complaint on October 5, 1990 and Summons and Amended Complaint on October 12, 1990; and that Defendant, Board of County Commissioners, Rogers County, Oklahoma, acknowledged receipt of Summons and Complaint on October 8, 1990 and Summons and Amended Complaint on October 9, 1990.

It appears that the Defendants, County Treasurer, Rogers County, Oklahoma, and Board of County Commissioners, Rogers County, Oklahoma, filed their Answer on October 15, 1990; that the Defendant, Ebb Reeves, O.D., filed his Answer on October 29, 1990; and that the Defendants, Edward Allen Lamont and Irma Bonita Lamont, 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 Rogers County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Six (6), in Block Eleven (11) of TRAILS END ESTATES, a Subdivision that lies in Section 31, Township 22 North, Range 15 East of the IB&M, Rogers County, Oklahoma, according to the recorded Plat thereof.

The Court further finds that on August 5, 1986, the Defendants, Edward Allen Lamont and Irma Bonita Lamont, 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

\$52,500.00, 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, Edward Allen Lamont and Irma Bonita Lamont, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated August 5, 1986, covering the above-described property. Said mortgage was recorded on August 6, 1986, in Book 738, Page 57, in the records of Rogers County, Oklahoma.

The Court further finds that on May 17, 1989, the Defendants, Edward Allen Lamont and Irma Bonita Lamont, executed and delivered to the United States of America, acting on behalf of the Secretary of Veterans Affairs, a Modification and Reamortization Agreement pursuant to which the entire debt due on that date was made principal and the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendants, Edward Allen Lamont and Irma Bonita Lamont, made default under the terms of the aforesaid note, mortgage, and the Modification and Reamortization Agreement by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Edward Allen Lamont and Irma Bonita Lamont, are indebted to the Plaintiff in the principal sum of \$54,855.81, plus interest at the rate of 9 percent per annum from September 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the

costs of this action in the amount of \$28.00 (\$20.00 docket fees, \$8.00 fee for recording Notice of Lis Pendens).

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

The Court further finds that the Defendant, Ebb Reeves, O.D., has a lien on the property which is the subject matter of this action by virtue an Affidavit of Judgment and Journal Entry of Judgment, in the amount of \$322.00 plus costs and an attorney's fee in the amount of \$32.00, with interest thereon on the unpaid balance at 12.350 percent per annum, Case No. SC-90-04212, dated April 24, 1990, filed on April 26, 1990, in the District Court, Tulsa County, Oklahoma, and recorded on May 7, 1990, in Book 830, Page 463 in the records of Rogers County, Oklahoma. Said lien is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Edward Allen Lamont and Irma Bonita Lamont, in the principal sum of \$54,855.81, plus interest at the rate of 9 percent per annum from September 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 \$28.00 (\$20.00 docket fees, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance,

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Ebb Reeves, O.D., have and recover judgment in the amount of \$322.00 plus costs and an attorney's fee in the amount of \$32.00, with interest thereon on the unpaid balance at 12.350 percent per annum, by virtue an Affidavit of Judgment and Journal Entry of Judgment, Case No. SC-90-04212, dated April 24, 1990, filed on April 26, 1990, in the District Court, Tulsa County, Oklahoma, and recorded on May 7, 1990, in Book 830, Page 463 in the records of Rogers County, Oklahoma.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Edward Allen Lamont and Irma Bonita Lamont, 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;

Third:

In payment of Defendant, Ebb Reeves, O.D., in
the amount of \$322.00 plus costs and an
attorney's fee in the amount of \$32.00, with
interest thereon on the unpaid balance at
12.350 percent per annum.

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.

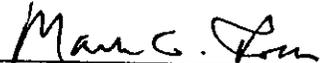
S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


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


MARK G. ROBB, OBA #
Mapco Plaza Building
1717 South Boulder, Suite 200
Tulsa, OK 74119


ERNEST E. HAYNES, JR., OBA #4007
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Rogers County, Oklahoma

Judgment of Foreclosure
Civil Action No. 90-C-788-B

KBA/css

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

JAN 9 1991

JOHN O. DENBO,)	
	)	Jack C. Silver, Clerk
Plaintiff and	)	U.S. DISTRICT COURT
Counterclaim Defendant,)	
)	
v.	)	Case No. 90-C-839-B
)	
UNITED STATES OF AMERICA,)	
)	
Defendant and)	
Counterclaim Plaintiff,)	
)	
v.)	
)	
ROBERT B. ALLRED,)	
)	
Counterclaim)	
Defendant.)	
_____)	

ORDER FOR FINAL JUDGMENT

THIS CAUSE is before the Court upon the Stipulation for Entry of Judgment filed by the defendant and counterclaim plaintiff, the United States of America, and a counterclaim defendant, Robert B. Allred. Upon a review of the stipulation, a review of the court file, and after due consideration, it being expressly determined pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay in the entry of final judgment on this order with respect to Robert B. Allred, since this order disposes of all of the claims asserted against him, it is

ORDERED AND ADJUDGED that the stipulation of the parties is hereby approved and adopted by the Court. It is further

ORDERED AND ADJUDGED that final judgment be entered herein in favor of the defendant and counterclaim plaintiff and against

the counterclaim defendant, Robert B. Allred, in the amount of \$107,226.42, plus interest from the date of assessment to the date of payment in accordance with law.

Dated Jan. 9, 1991.

S/ THOMAS R. BRETT
United States District Judge

TONY M. GRAHAM
United States Attorney

Martin M. Shoemaker
MARTIN M. SHOEMAKER
Trial Attorney
Office of Special Litigation
Tax Division
U.S. Department of Justice
P.O. Box 7238
Washington, D.C. 20044
Telephone: (202) 514-6491

Robert B. Allred
Robert B. Allred
Suite 201
9 E. 4th Street
Tulsa, OK 74103
Telephone: (918) 582-5944_

F I L E D

JAN 9 1991

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

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

L. E. SMITH,)
)
 Plaintiff,)
)
 v.)
)
 RODREGO REMIREZ, et al,)
)
 Defendants.)

89-C-995-B

L. E. SMITH,)
)
 Plaintiff,)
)
 v.)
)
 DR. VIVEIAN SCHECTNER, et al,)
)
 Defendants.)

89-C-996-B

Consolidated

ORDER

This order pertains to plaintiff L. E. Smith's Civil Rights Complaints filed pursuant to 42 U.S.C. § 1983 (Docket #2 and #3 respectively)¹. Plaintiff's Motions for Leave to proceed in forma pauperis were granted in December of 1989 and January of 1990 respectively. The cases were consolidated in April of 1990. Defendants' Motion to Dismiss (#10) was filed on July 31, 1990.

Defendants ask the court to test the complaints under the standard set forth in 28 U.S.C. § 1915(d). If found to be obviously without merit, they are subject to summary dismissal. Henriksen v. Bentley, 644 F.2d 852, 853 (10th Cir. 1981). The test to be applied is whether or not the plaintiff can make a rational argument on the law or the facts

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

to support his claims. Van Sickle v. Holloway, 791 F.2d 1431, 1434 (10th Cir. 1986). Applying the test to plaintiff's claims, the court finds that the instant actions should be dismissed as obviously without merit.

Plaintiff claims his Thirteenth and Fourteenth Amendment rights were violated when he was admitted to Eastern State Hospital and treated by the defendants, who are employees there. His allegations are unclear, but he seems to claim that he should have been discharged from the hospital prior to the actual date of discharge and that he should not have been required to take medication while he was there.

Defendants seek dismissal because the Eleventh Amendment bars suit against them. The Eleventh Amendment to the United States Constitution provides that "[t]he judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

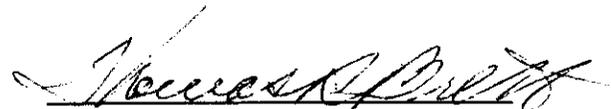
Although the language of the Amendment does not encompass suits against a state by its own citizens, the courts have consistently held that such suits are indeed barred by the Eleventh Amendment. Edelman v. Jordan, 415 U.S. 651, 663 (1974); Griess v. State of Colorado, 841 F.2d 1042 (10th Cir. 1988).

In Will v. Michigan Dept. of State Police, 491 U.S. ___, 109 S.Ct. 2304, 105 L.Ed. 2d 45 (1989), the Supreme Court held that a state official who is sued in his official capacity for nonprospective relief is not a "person" who can be sued under § 1983, so such a suit is not against the official, but rather is against his office and the state itself. Oklahoma has not waived its Eleventh Amendment immunity under 51 O.S. § 152.1, and therefore plaintiff cannot sue defendants in their official capacities.

In addition, plaintiff was placed in the hospital pursuant to court orders issued by Judge Alan Couch of the Cleveland County District Court on September 13, 1988, and Judge Jess Clanton of the Craig County District Court on June 28, 1989, and the Tenth Circuit has found that officials charged with executing a valid court order enjoy absolute immunity from liability for damages in a suit challenging conduct prescribed by the order. Turney v. O'Toole, 898 F.2d 1470, 1472 (10th Cir. 1990). "This quasi-judicial immunity applies with full force to a judicial order that a person be detained for mental evaluation." Id.

Therefore the court finds that plaintiff's civil rights claims pursuant to 42 U.S.C. § 1983 should be and are dismissed.

Dated this 9th day of Jan, 1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

JAN -9 1991 QK

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

PROFESSIONAL MARKETING AND)
MANAGEMENT CORPORATION)
an Oklahoma corporation,)
)
Plaintiff,)
)
v.)
)
AUTO TRUST, INC., a foreign)
corporation,)
)
Defendant/Third Party)
Plaintiff,)
)
v.)
)
PROFESSIONAL INVESTORS)
INSURANCE GROUP, INC., et al.,)
)
Third Party Defendants)

Case No. 90-C-567-B ✓

O R D E R

This matter comes on for consideration upon multiple objections to the Report and Recommendation (Report) of Magistrate Jeffrey S. Wolfe, which report was entered herein on September 13, 1990. Third Party Defendant, Professional Investors Insurance Group, Inc. (PIIGI), filed its objection September 13, 1990. Defendant and Third Party Plaintiff, Auto Trust, Inc. (ATI), filed its objection September 28, 1990. Also for consideration is ATI's Motion to Remand filed July 6, 1990, following PIIGI's removal of this matter from state court.

The Report made two specific recommendations: (1) That the

26

third party claim by Third Party Plaintiff, ATI, against Third Party Defendant, John Stephens (Stephens), be dismissed because ATI's counsel was not able to articulate, at a status conference, the factual basis for the claim that Defendant Stephens should be held personally liable for action taken on behalf of Professional Marketing and Management Corporation (PMMC); and, (2) That, because the Magistrate found ATI's action against PIIGI was sufficiently related to the bankruptcy of PMMC so as to fall within the Bankruptcy Court's jurisdiction as a core proceeding, it be referred to the Bankruptcy Court for handling and determination.

On November 21, 1990, the bankruptcy court entered an Order, in its case number 90-2639-W,¹ modifying the automatic stay imposed by 11 U.S.C. § 362(d) to allow this case to proceed in either this Court or the state court, if remanded. The parties agree this moots Magistrate's recommendation (2) and the Court, accordingly, declines to adopt such recommendation for that reason.

The Court concludes the Magistrate's recommendation (1) should also not be adopted but not because the Court disagrees with the recommendation. The Court expresses no agreement or disagreement with the recommendation. But because of the Court's view on ATI's Motion to Remand, any ruling on the Magistrates' recommendation (1) would be inappropriate.

According to the pleadings of the parties, including affidavits, this matter has been the subject of considerable

¹ In re Professional Marketing and Management Corp., United States District Court for the Northern District of Oklahoma.

litigation in Tulsa County District court over a period of several years. The state court suit was set for trial on July 10, 1990. PMMC, on June 22, 1990, filed a Chapter 7 Bankruptcy petition. PIIGI, PMMC's corporate parent (and third party defendant herein) removed the case to this Court on June 29, 1990, federal jurisdiction being based upon the state court action being related to the bankruptcy matter. On August 29, 1990, the Bankruptcy Court dismissed the action for failure of the debtor to appear at several scheduled meetings of creditors.

A status conference was scheduled before Magistrate Wolfe on September 11, 1990. On that same date, immediately prior to the status conference, PMMC again filed a Chapter 7 Bankruptcy petition.

28 U.S.C. § 1452 provides, in part, as follows:

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground.

There are many equitable grounds, including comity considerations. Thomasson v. Amsouth Bank, N.A., 59 B.R. 997 (N.D.Ala.1986). Where the action had been ready for trial prior to removal, and the state court was already familiar with the legal issues therein, which involved state law, remand is warranted under § 1452(b) on equitable grounds. Allen County Bank & Trust Co. v. Valvmatic Intern. Corp., 51 B.R. 578 (D.C.Ind.1985).

The Court concludes ATI's Motion to Remand should be and the same is hereby GRANTED. Accordingly, this case is REMANDED to the District Court for Tulsa County, State of Oklahoma.

IT IS SO ORDERED this 1st day of January, 1991.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

F I L E D

JAN 9 1991

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

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

L. E. SMITH,)	
)	
Plaintiff,)	
)	
v.	)	89-C-995-B
)	
RODREGO REMIREZ, et al,)	
)	
Defendants.)	

L. E. SMITH,)	
)	
Plaintiff,)	
)	
v.	)	89-C-996-B
)	
DR. VIVEIAN SCHECTNER, et al,	)	Consolidated
)	
Defendants.)	

ORDER

This order pertains to plaintiff L. E. Smith's Civil Rights Complaints filed pursuant to 42 U.S.C. § 1983 (Docket #2 and #3 respectively)¹. Plaintiff's Motions for Leave to proceed in forma pauperis were granted in December of 1989 and January of 1990 respectively. The cases were consolidated in April of 1990. Defendants' Motion to Dismiss (#10) was filed on July 31, 1990.

Defendants ask the court to test the complaints under the standard set forth in 28 U.S.C. § 1915(d). If found to be obviously without merit, they are subject to summary dismissal. Henriksen v. Bentley, 644 F.2d 852, 853 (10th Cir. 1981). The test to be applied is whether or not the plaintiff can make a rational argument on the law or the facts

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to support his claims. Van Sickle v. Holloway, 791 F.2d 1431, 1434 (10th Cir. 1986). Applying the test to plaintiff's claims, the court finds that the instant actions should be dismissed as obviously without merit.

Plaintiff claims his Thirteenth and Fourteenth Amendment rights were violated when he was admitted to Eastern State Hospital and treated by the defendants, who are employees there. His allegations are unclear, but he seems to claim that he should have been discharged from the hospital prior to the actual date of discharge and that he should not have been required to take medication while he was there.

Defendants seek dismissal because the Eleventh Amendment bars suit against them. The Eleventh Amendment to the United States Constitution provides that "[t]he judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

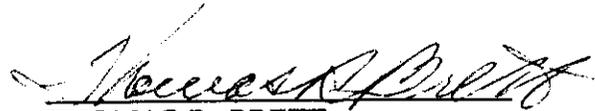
Although the language of the Amendment does not encompass suits against a state by its own citizens, the courts have consistently held that such suits are indeed barred by the Eleventh Amendment. Edelman v. Jordan, 415 U.S. 651, 663 (1974); Griess v. State of Colorado, 841 F.2d 1042 (10th Cir. 1988).

In Will v. Michigan Dept. of State Police, 491 U.S. ___, 109 S.Ct. 2304, 105 L.Ed. 2d 45 (1989), the Supreme Court held that a state official who is sued in his official capacity for nonprospective relief is not a "person" who can be sued under § 1983, so such a suit is not against the official, but rather is against his office and the state itself. Oklahoma has not waived its Eleventh Amendment immunity under 51 O.S. § 152.1, and therefore plaintiff cannot sue defendants in their official capacities.

In addition, plaintiff was placed in the hospital pursuant to court orders issued by Judge Alan Couch of the Cleveland County District Court on September 13, 1988, and Judge Jess Clanton of the Craig County District Court on June 28, 1989, and the Tenth Circuit has found that officials charged with executing a valid court order enjoy absolute immunity from liability for damages in a suit challenging conduct prescribed by the order. Turney v. O'Toole, 898 F.2d 1470, 1472 (10th Cir. 1990). "This quasi-judicial immunity applies with full force to a judicial order that a person be detained for mental evaluation." Id.

Therefore the court finds that plaintiff's civil rights claims pursuant to 42 U.S.C. § 1983 should be and are dismissed.

Dated this 9th day of June, 1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

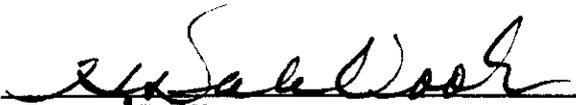
MOODY P. GILES,
Plaintiff,
v.
CITY OF MIAMI, OKLAHOMA,
a municipal corporation,
and, PLAN ADMINISTRATOR
OF EMPLOYEE GROUP HEALTH
PLAN,
Defendants

No. 90-C-866-C

FILED
JAN 8 - 1991 *pw*
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER APPROVING STIPULATION
FOR DISMISSAL WITH PREJUDICE

On this 4 day of Jan 1990, this matter comes on for consideration by the Court of the Stipulation for Dismissal with Prejudice in the above-captioned action, and the Court, having reviewed the Stipulation and being fully advised, finds the Stipulation should be approved, and the above-captioned is hereby dismissed with prejudice, each party bearing its own costs.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

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

HINDERLITER PENSION PLAN AND TRUST,
Plaintiff,
vs.
CONSOLIDATED COMMUNICATIONS NETWORK, INC., et al.,
Defendants.

Case No. 90-C-0853-C

FILED

JAN 8 - 1991

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

ORDER

NOW on this 4 day of Jan, 1991, the above reference matter comes on before this Court on the Plaintiff's Application for Dismissal wherein this Court has been informed that the above captioned matter has been resolved and settled. This Court finds that good cause has been shown and that the relief prayed for should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's Application for Dismissal be granted.

(Signed) M. Dale Cook

JUDGE OF THE DISTRICT COURT

HOWARD AND WIDDOWS, P.C.
Gene C. Howard
O.B.A.#4398
2021 South Lewis, Suite 570
Tulsa, Oklahoma 74104
(918) 744-7440

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

F I L E D

UNITED STATES OF AMERICA)

vs.)

KENNETH D. MILLER)

Defendant.)

JAN 8 - 1991

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

CIVIL ACTION NO. 90-C-382-C

AGREED JUDGMENT AND ORDER OF PAYMENT

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

1. This Court has jurisdiction over the subject matter of this litigation and over all parties thereto. The Complaint filed herein states a claim upon which relief can be granted.
2. The defendant hereby acknowledges and accepts service of the Complaint filed herein.
3. The defendant hereby agrees to the entry of Judgment in the principal sum of \$22,970.10, plus accrued interest of \$2,788.90 as of March 30, 1990, until judgment, plus interest thereafter at the legal rate until paid, plus costs of this action, until paid in full.
4. Plaintiff's consent to the entry of this Judgment and Order of Payment is based upon certain financial information which defendant has provided it and the defendant's express representation to Plaintiff that he is unable to presently pay

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

(a) Beginning on or before the 1st day of January, 1991, the defendant shall tender to the United States a check or money order payable to the U.S. Department of Justice, in the amount of \$100.00, and a like sum on or before the 1st day of each following month until the entire amount of the Judgment, together with the costs and accrued postjudgment interest, is paid in full.

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

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

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

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Kenneth D. Miller, in the principal amount of \$22,970.10, plus accrued interest in the amount of \$2,788.90 as of March 30, 1990, plus interest at the rate of 4% until judgment, plus interest thereafter at the current legal rate of 7.02 percent per annum until paid, plus the costs of this action.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

TONY M. GRAHAM
United States Attorney



KATHLEEN BLISS ADAMS
Assistant United States Attorney


KENNETH D. MILLER, Debtor

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

FILED

JAN 8 - 1991

RACHEL DAWN BURRIS,)
)
 Plaintiff,)
)
 vs.)
)
 AWC, INC., a corporation,)
)
 Defendant.)

Jack C. Silver, Clerk
U.S. DISTRICT COURT
Case No. 89-C-822-C

ORDER OF DISMISSAL WITH PREJUDICE

This matter having come before the Court this 4th day of January, 1990, upon the parties Joint Stipulation of Dismissal With Prejudice, the Court being fully advised in the premises, after due consideration finds that for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the Plaintiff's claims and causes of action against the Defendants are hereby dismissed with prejudice, with each party to bear his or her own costs and attorney fees.

[Signature]
United States District Judge

22

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

F I L E D

JAN 8 - 1991

CHARLES PARKS and RHONDA G. PARKS,)
husband and wife,)
)
Plaintiffs,)
)
v.)
)
BRUCE HINKLEY, M.D.,)
)
Defendant.)

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

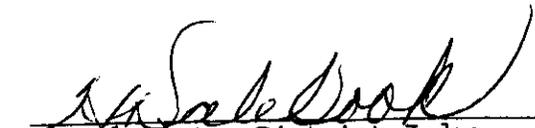
No. 90-C-208-C

STIPULATION FOR ORDER OF DISMISSAL AND ORDER OF DISMISSAL

COME NOW the Plaintiffs and the Defendant, and move this Court to dismiss this cause of action without prejudice. It is stipulated by each of the parties in this action that each party will bear their own costs and attorney fees.

Plaintiffs covenant and agree that, as consideration to the Defendant to induce him to enter into this Stipulation For Order Of Dismissal without prejudice, that should they, or either of them, again file any suit arising from the causes of action as pleaded herein or the facts underlying this suit, that said filing will only be in the United States District Court for the Northern District of Oklahoma, and that should Plaintiffs, or either of them, file such a suit in any other Court other than the United States District Court for the Northern District of Oklahoma, that said Court may summarily dismiss said action upon the motion of the Defendant.

IT IS THEREFORE ORDERED that this case be and is dismissed without prejudice, according to the covenants and agreements stated above.


United States District Judge

15

APPROVED:

Charles Parks
Charles Parks, Plaintiff

Rhonda Parks
Rhonda Parks, Plaintiff

Eugene Ralston
Eugene Ralston
Attorney for Plaintiffs

Walter D. Haskins
Walter D. Haskins
Attorney for Defendant

8-570/WDH/ch

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

FILED

JAN 7 1991

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

PHILLIPS PETROLEUM COMPANY,
and Subsidiaries

Plaintiff,

v.

UNITED STATES OF AMERICA,

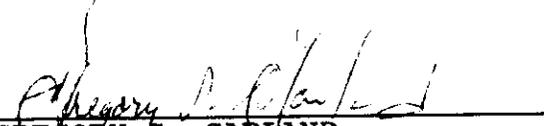
Defendant.

CIVIL NO. 87-C-408-E

STIPULATION OF DISMISSAL

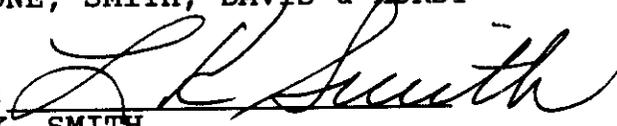
It is hereby stipulated and agreed that the complaint in the above-entitled case be dismissed with prejudice, the parties to bear their respective costs, including any possible attorneys' fees or other expenses of litigation.

D.W. MCNEILL
PHILLIPS PETROLEUM COMPANY
710 Plaza Office Building
Bartlesville, OK 74004
(918) 661-8278


GREGORY S. GARIAND
Attorney, Tax Division
Department of Justice
1100 Commerce St., Room 5B31
Dallas, Texas 75242
(214) 767-0293

BOONE, SMITH, DAVIS & HURST

ATTORNEY FOR UNITED STATES

By: 
L.K. SMITH
LLOYD G. MINTER
GARY L. MADDUX
500 ONEOK Plaza
100 West 5th Street
Tulsa, OK 74103
(918) 587-0000

ATTORNEYS FOR PLAINTIFF
PHILLIPS PETROLEUM COMPANY

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

F I L E D

JAN 7 1991

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

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

PLAINTIFF,

v.

LIFELINE HEALTHCARE GROUP, LTD.,
MICHAEL L. ANDERSON,
TRAVIS G. MILLER,
JOHN W. BENSON,
CECIL S. MATHIS,
CHARLES J. BAZARIAN,

DEFENDANTS

JAMCO ASSET TRUST,
MCT ASSET TRUST I,
SILVERADO IRREVOCABLE TRUST II, and
JANICE L. BAZARIAN TRUST,

NOMINAL DEFENDANTS.

CIVIL ACTION NO.

89 C-964 B

FINAL JUDGMENT OF PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF AS TO
CECIL S. MATHIS AND SILVERADO IRREVOCABLE TRUST II

Plaintiff, SECURITIES AND EXCHANGE COMMISSION ("COMMISSION"),
having filed its Complaint for Civil Injunction and Other Equitable
Relief herein, there having been no trial of this matter; defendant
CECIL S. MATHIS ("MATHIS") and nominal defendant SILVERADO
IRREVOCABLE TRUST II ("SILVERADO") having acknowledged in their
Consent and Undertaking filed herein receipt of the Summons and
Complaint filed in this matter; having admitted the in personam
jurisdiction of this Court, and the jurisdiction of this Court over
the subject matter of this action; having waived the entry of
Findings of Fact and Conclusions of Law under Rule 52 of the

Federal Rules of Civil Procedure with respect to the entry of this Final Judgment of Permanent Injunction and Other Equitable Relief ("Order"); having agreed, for purposes of this action only, without admitting or denying any of the allegations of the COMMISSION's Complaint, except as set forth herein, to the entry of this Order; it appearing that this Court has jurisdiction over the parties and subject matter of this action; it appearing that no further notice of hearing for the entry of this Order need be given; the Court being fully advised in the premises, and no just reason for delay appearing, it is hereby:

I.

ORDERED, ADJUDGED AND DECREED that defendant MATHIS, his respective agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, be and hereby are restrained and enjoined, directly and indirectly, in connection with the purchase or sale (including pledge or loan) of LIFELINE HEALTHCARE GROUP, LTD. ("LIFELINE") securities, or any other security, from making use of any means or instrumentalities of interstate commerce, or by use of the mails;

1. to employ any device, scheme or artifice to defraud;

or

2. to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or

3. to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

concerning, but not limited to, the following:

- (a) the value of assets owned by the issuer;
- (b) the amount of outstanding shares of stock of the issuer;
- (c) the identity of the owners of the issuer's stock;
- (d) the amount of stock beneficially held by the officers, directors, and controlling shareholders of the issuer's stock;
- (e) the nature and terms of any dividend declared by the issuer; and
- (f) other misrepresentations or omissions of similar purport and object.

II.

FURTHER ORDERED, ADJUDGED AND DECREED that defendant MATHIS, his respective agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, be and hereby are restrained and enjoined, directly and indirectly, from filing or aiding and abetting the filing with the COMMISSION, on behalf of LIFELINE or any other issuer, any annual report on

Form 10-K [17 C.F.R. § 249.310], quarterly report on Form 10-Q [17 C.F.R. § 249.308a], special report on Form 8-K [17 C.F.R. § 249.308] or any other report required to be filed pursuant to the Exchange Act, as amended [15 U.S.C. §78a, et. seq.], and the rules promulgated thereunder, which:

(a) contains any untrue statement of a material fact;

or

(b) fails to include the information expressly required to be included in such report; or

(c) fails to provide, in addition to the information expressly required to be included in such report, such further material information, if any, as may be necessary to present fully, fairly and accurately the information contained in such report and to make the statements made, in the light of the circumstances under which they were made, not misleading.

III.

FURTHER ORDERED, ADJUDGED AND DECREED that defendant MATHIS, his respective agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, be and hereby are restrained and enjoined, directly and indirectly, when acquiring, directly or indirectly, the beneficial ownership of any equity security of a class which is registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781], where such ownership constitutes, directly or indirectly, more than 5 percent

of such class, from failing to file statements with the plaintiff COMMISSION, within such period of time as may be specified in regulations promulgated by the COMMISSION, reflecting information required by Schedule 13-D [17 C.F.R. § 240.13d-101] or reflecting any material changes in the facts set forth in the statement required by Rule 13d-1(a) [17 C.F.R. § 240.13d-1(a)], including but not limited to, any material increase or decrease in the percentage of the class beneficially owned.

IV.

FURTHER ORDERED, ADJUDGED AND DECREED that defendant MATHIS and nominal defendant SILVERADO shall jointly and severally disgorge to the Special Master Pendente Lite in this action an amount of \$117,000, plus prejudgment interest thereon at a rate of 7.80% per annum from August 1, 1989 to December 31, 1989, and a rate of 6.4% from January 1, 1990 to the date of payment, within 20 days of the entry of this Order.

V.

FURTHER ORDERED, ADJUDGED AND DECREED that defendant MATHIS and nominal defendant SILVERADO shall transfer or deliver, or cause to be transferred or delivered, to the Special Master Pendente Lite in this action all the shares of the common stock of LIFELINE, and all the warrants of LIFELINE HOMECARE SERVICES, INC. (formerly JBW Ventures, Inc.), identified in Schedule A to their Consent and Undertaking, within 20 days of the entry of this Order.

VI.

FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this action in order to implement and carry out the terms of all Orders and Decrees that may be entered herein.

VII.

FURTHER ORDERED, ADJUDGED AND DECREED that this Order shall be binding on defendant MATHIS, nominal defendant SILVERADO and upon those persons in active concert or participation with them who receive actual notice of this Order, a copy of which may be served in person, by mail or by an officer of the COMMISSION.

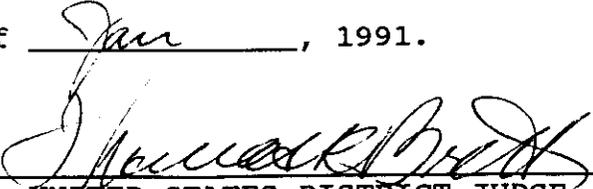
VIII.

FURTHER ORDERED, ADJUDGED AND DECREED that the Consent and Undertaking of defendant MATHIS and nominal defendant SILVERADO filed herein be, and same is, incorporated herein with the same force and effect as if fully set forth herein and, therefore, a breach of the terms of the Consent and Undertaking will constitute a breach of this Order.

IX.

There being no just reason for delay, the Clerk of this Court is hereby directed to enter this Final Judgment of Permanent Injunction and Other Equitable Relief pursuant to Rule 54 of the Federal Rules of Civil Procedure.

SIGNED on this 7th day of June, 1991.


UNITED STATES DISTRICT JUDGE

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

FILED

JAN 7 1991

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

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

PLAINTIFF,

v.

LIFELINE HEALTHCARE GROUP, LTD.,
MICHAEL L. ANDERSON,
TRAVIS G. MILLER,
JOHN W. BENSON,
CECIL S. MATHIS,
CHARLES J. BAZARIAN,

DEFENDANTS

JAMCO ASSET TRUST,
MCT ASSET TRUST I,
SILVERADO IRREVOCABLE TRUST II, and
JANICE L. BAZARIAN TRUST,

NOMINAL DEFENDANTS.

CIVIL ACTION NO.

89 C-964 B

FINAL JUDGMENT OF PERMANENT INJUNCTION
AS TO LIFELINE HEALTHCARE GROUP, LTD.

Plaintiff, SECURITIES AND EXCHANGE COMMISSION ("COMMISSION"),
having filed its Complaint for Civil Injunction and Other Equitable
Relief herein, there having been no trial of this matter; defendant
LIFELINE HEALTHCARE GROUP LTD., ("LIFELINE") by and through C.
Raymond Patton, Jr., the Court appointed Special Master for
LIFELINE, in its Stipulation and Consent filed herein, having
acknowledged receipt of the Summons and Complaint filed in this
matter; having admitted the in personam jurisdiction of this Court,
and the jurisdiction of this Court over the subject matter of this
action; having waived the entry of Findings of Fact and Conclusions

of Law under Rule 52 of the Federal Rules of Civil Procedure with respect to the entry of this Final Judgment of Permanent Injunction ("Order"); having agreed, for purposes of this action only, without admitting or denying any of the allegations of the COMMISSION'S Complaint, except as set forth herein, to the entry of this Order; it appearing that this Court has jurisdiction over the parties and subject matter of this action; it appearing that no further notice of hearing for the entry of this Order need be given; the Court being fully advised in the premises, and no just reason for delay appearing, it is hereby:

I.

ORDERED, ADJUDGED AND DECREED that defendant LIFELINE, its respective agents, servants, employees, attorneys, and all persons in active concert or participation with it who receive actual notice of this Order by personal service or otherwise, be and hereby are restrained and enjoined, directly and indirectly, in connection with the purchase or sale (including pledge or loan) of LIFELINE securities, or any other security, from making use of any means or instrumentalities of interstate commerce, or by use of the mails;

1. to employ any device, scheme or artifice to defraud;
- or
2. to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or

3. to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

concerning, but not limited to, the following:

(1) the financial status and condition of the issuer of the securities, whether detailed in financial statements or otherwise;

(2) the business prospects of the issuer of the securities;

(3) the probability or likelihood that the price of the securities of the issuer would increase or that an independent active trading market would exist for such securities;

(4) the value of assets owned by the issuer;

(5) the amount of outstanding shares of stock of the issuer;

(6) the identity of the owners of the issuer's stock;

(7) the amount of stock beneficially held by the officers, directors, and controlling shareholders of the issuer's stock;

(8) the nature and terms of any dividend declared by the issuer; and

(9) other misrepresentations or omissions of similar purport and object.

II.

FURTHER ORDERED, ADJUDGED AND DECREED that defendant LIFELINE, its respective agents, servants, employees, attorneys, and all persons in active concert or participation with it who receive actual notice of this Order by personal service or otherwise, be and hereby are restrained and enjoined, directly and indirectly, from filing with the COMMISSION, on behalf of LIFELINE or any other issuer, any annual report on Form 10-K [17 C.F.R. § 249.310], quarterly report on Form 10-Q [17 C.F.R. § 249.308a], special report on Form 8-K [17 C.F.R. § 249.308] or any other report required to be filed pursuant to the Exchange Act, as amended [15 U.S.C. §78a, et. seq.], and the rules promulgated thereunder, which:

(a) contains any untrue statement of a material fact;

or

(b) fails to include the information expressly required to be included in such report; or

(c) fails to provide, in addition to the information expressly required to be included in such report, such further material information, if any, as may be necessary to present fully, fairly and accurately the information contained in such report and to make the statements made, in the light of the circumstances under which they were made, not misleading.

III.

FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this action in order to implement and carry out the terms of all Orders and Decrees that may be entered herein.

IV.

FURTHER ORDERED, ADJUDGED AND DECREED that this Order shall be binding on defendant LIFELINE and upon those persons in active concert or participation with it who receive actual notice of this Order, a copy of which may be served in person, by mail or by an officer of the COMMISSION.

V.

There being no just reason for delay, the Clerk of this Court is hereby directed to enter this Final Judgment of Permanent Injunction pursuant to Rule 54 of the Federal Rules of Civil Procedure.

SIGNED on this 14 day of JANUARY, 1991.


UNITED STATES DISTRICT JUDGE

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

F I L E D

JAN 7 1991

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

PLAINTIFF,

v.

LIFELINE HEALTHCARE GROUP, LTD.,
MICHAEL L. ANDERSON,
TRAVIS G. MILLER,
JOHN W. BENSON,
CECIL S. MATHIS,
CHARLES J. BAZARIAN,

DEFENDANTS

JAMCO ASSET TRUST,
MCT ASSET TRUST I,
SILVERADO IRREVOCABLE TRUST II, and
JANICE L. BAZARIAN TRUST,

NOMINAL DEFENDANTS.

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

CIVIL ACTION NO.

89-C-964-B

FINAL JUDGMENT OF PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF AS TO
CHARLES J. BAZARIAN AND JANICE L. BAZARIAN TRUST

Plaintiff, SECURITIES AND EXCHANGE COMMISSION ("COMMISSION"),
having filed its Complaint for Civil Injunction and Other Equitable
Relief herein, there having been no trial of this matter; defendant
CHARLES J. BAZARIAN ("BAZARIAN") and nominal defendant JANICE L.
BAZARIAN TRUST ("JLB TRUST") having acknowledged in their Consent
and Undertaking filed herein receipt of the Summons and Complaint
filed in this matter; having admitted the in personam jurisdiction
of this Court, and the jurisdiction of this Court over the subject
matter of this action; having waived the entry of Findings of Fact
and Conclusions of Law under Rule 52 of the Federal Rules of Civil

Procedure with respect to the entry of this Final Judgment of Permanent Injunction ("Order"); having agreed, for purposes of this action only, without admitting or denying any of the allegations of the Commission's Complaint, except as set forth herein, to the entry of this Order; it appearing that this Court has jurisdiction over the parties and subject matter of this action; it appearing that no further notice of hearing for the entry of this Order need be given; the Court being fully advised in the premises, and no just reason for delay appearing, it is hereby:

I.

ORDERED, ADJUDGED AND DECREED that defendant BAZARIAN, his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, be and hereby are restrained and enjoined, directly and indirectly, in connection with the purchase or sale (including pledge or loan) of LIFELINE HEALTHCARE GROUP, LTD. ("LIFELINE") securities, or any other security, from making use of any means or instrumentalities of interstate commerce, or by use of the mails;

1. to employ any device, scheme or artifice to defraud;

or

2. to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or

3. to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

concerning, but not limited to, the following:

(1) the financial status and condition of the issuer of the securities, whether detailed in financial statements or otherwise;

(2) the business prospects of the issuer of the securities;

(3) the probability or likelihood that the price of the securities of the issuer would increase or that an independent active trading market would exist for such securities;

(4) the value of assets owned by the issuer;

(5) the amount of outstanding shares of stock of the issuer;

(6) the identity of the owners of the issuers stock;

(7) the amount of stock beneficially held by the officers, directors, and controlling shareholders of the issuer's stock;

(8) the nature and terms of any dividend declared by the issuer; and

(9) other misrepresentations or omissions of similar purport and object.

II.

ORDERED, ADJUDGED AND DECREED that defendant BAZARIAN, his respective agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, be and hereby are restrained and enjoined, directly and indirectly, when acquiring, directly or indirectly, the beneficial ownership of any equity security of a class which is registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78~~l~~], where such ownership constitutes, directly or indirectly, more than 5 percent of such class, from failing to file statements with the plaintiff COMMISSION, within such period of time as may be specified in regulations promulgated by the COMMISSION, reflecting information required by Schedule 13-D [17 C.F.R. § 240.13d-101] or reflecting any material changes in the facts set forth in the statement required by Rule 13d-1(a) [17 C.F.R. § 240.13d-1(a)], including but not limited to, any material increase or decrease in the percentage of the class beneficially owned.

III.

ORDERED, ADJUDGED AND DECREED that defendant BAZARIAN, his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, be and hereby are

FINAL JUDGMENT OF PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF AS TO CHARLES J. BAZARIAN
AND JANICE L. BAZARIAN TRUST

restrained and enjoined, directly and indirectly, when beneficially owning, directly or indirectly, more than 10 percent of any class of any equity security (other than an exempted security) which is registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781], or when serving as an officer or a director of the issuer of such security, from failing to file statements with the plaintiff COMMISSION, within such period of time as may be specified in regulations promulgated by the COMMISSION, reflecting their beneficial ownership of such security of said issuer and any changes in their beneficial ownership of such securities of said issuer.

IV.

ORDERED, ADJUDGED AND DECREED that defendant BAZARIAN and nominal defendant JLB TRUST shall jointly and severally disgorge \$30,000, plus prejudgment interest thereon at 8.25% per annum, said amount equal to the funds they obtained as a result of the activities alleged in the Commission's complaint in this matter, provided, however, that the payment of disgorgement of said amount is waived based upon their inability to pay as established through BAZARIAN'S testimony and other evidence they adduced, and upon the condition that BAZARIAN shall have testified fully and truthfully in all respects during his deposition taken in this matter and in his statement of financial condition filed herewith, concerning (1) the funds and stock received from LIFELINE, (2) the funds received from the sale (including pledge or loan) of LIFELINE stock, (3) the

disposition of such funds and stock, and (4) BAZARIAN's and JLB TRUST's financial condition including their assets, liabilities, income and expenses. Plaintiff COMMISSION, at any time following the entry of this Order, may petition the Court for a hearing to reconsider BAZARIAN'S and JLB TRUST'S inability to disgorge funds if the COMMISSION obtains information from any source that BAZARIAN's statements made during his deposition and in his statement of financial condition were inaccurate or incomplete in any material respect. In connection with any such petition the Court may consider all available remedies, including but not limited to, determining the appropriate amount of disgorgement, ordering the defendants to disgorge funds or assets, directing the forfeiture of any concealed assets or sanctions for contempt of this Court's order.

V.

ORDERED, ADJUDGED AND DECREED that defendant BAZARIAN and nominal defendant JLB TRUST shall transfer, or cause to be transferred, to the Special Master Pendente Lite previously appointed in this matter all the shares of the common stock of LIFELINE identified in Schedule A to their Consent and Undertaking, within 30 days from the entry of this Order.

VI.

ORDERED, ADJUDGED AND DECREED that all defendant BAZARIAN'S and nominal defendant JLB TRUST's rights, title and interest to the shares of common stock of LIFELINE identified in Schedule B to

their Consent and Undertaking are forthwith transferred to the Special Master Pendente Lite previously appointed in this matter.

VII.

ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this action in order to implement and carry out the terms of all Orders and Decrees that may be entered herein.

VIII.

ORDERED, ADJUDGED AND DECREED that this Order shall be binding on defendant BAZARIAN and nominal defendant JLB TRUST and upon those persons in active concert or participation with them who receive actual notice of this Order, a copy of which may be served in person, by mail or by an officer of the COMMISSION.

IX.

ORDERED, ADJUDGED AND DECREED that the Consent and Undertaking of BAZARIAN and JLB TRUST filed herein be, and same is, incorporated herein with the same force and effect as if fully set forth herein and, therefore, a breach of the terms of the Consent and Undertaking will constitute a breach of this Order.

X.

There being no just reason for delay, the Clerk of this Court is hereby directed to enter this Final Judgment of Permanent Injunction and Other Equitable Relief pursuant to Rule 54 of the Federal Rules of Civil Procedure.

SIGNED on this 7th day of January, 1991.


UNITED STATES DISTRICT JUDGE

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

F I L E D

JAN 7 1991

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

PLAINTIFF,

v.

LIFELINE HEALTHCARE GROUP, LTD.,
MICHAEL L. ANDERSON,
TRAVIS G. MILLER,
JOHN W. BENSON,
CECIL S. MATHIS,
CHARLES J. BAZARIAN,

DEFENDANTS

JAMCO ASSET TRUST,
MCT ASSET TRUST I,
SILVERADO IRREVOCABLE TRUST II, and
JANICE L. BAZARIAN TRUST,

NOMINAL DEFENDANTS.

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

CIVIL ACTION NO.

89-C-964-B

FINAL JUDGMENT OF PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF AS TO
MICHAEL L. ANDERSON AND JAMCO ASSET TRUST

Plaintiff, SECURITIES AND EXCHANGE COMMISSION ("COMMISSION"),
having filed its Complaint for Civil Injunction and Other Equitable
Relief herein, there having been no trial of this matter; defendant
MICHAEL L. ANDERSON ("ANDERSON") and nominal defendant JAMCO ASSET
TRUST ("JAMCO") having acknowledged in their Consent and Under-
taking filed herein receipt of the Summons and Complaint filed in
this matter; having admitted the in personam jurisdiction of this
Court, and the jurisdiction of this Court over the subject matter
of this action; having waived the entry of Findings of Fact and
Conclusions of Law under Rule 52 of the Federal Rules of Civil

Procedure with respect to the entry of this Final Judgment of Permanent Injunction and Other Equitable Relief ("Order"); having agreed, for purposes of this action only, without admitting or denying any of the allegations of the Commission's Complaint, except as set forth herein, to the entry of this Order; it appearing that this Court has jurisdiction over the party and subject matter of this action; it appearing that no further notice of hearing for the entry of this Order need be given; the Court being fully advised in the premises, and no just reason for delay appearing, it is hereby:

I.

ORDERED, ADJUDGED AND DECREED that defendant ANDERSON, his agents, servants, employees, attorneys in fact, and all persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, be and hereby are restrained and enjoined, directly and indirectly, in connection with the purchase or sale (including pledge or loan) of LIFELINE HEALTHCARE GROUP, LTD. ("LIFELINE") securities, or any other security, from making use of any means or instrumentalities of interstate commerce, or by use of the mails;

1. to employ any device, scheme or artifice to defraud;
- or
2. to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or

3. to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

concerning, but not limited to, the following:

(1) the financial status and condition of the issuer of the securities, whether detailed in financial statements or otherwise;

(2) the business prospects of the issuer of the securities;

(3) the probability or likelihood that the price of the securities of the issuer would increase or that an independent active trading market would exist for such securities;

(4) the value of assets owned by the issuer;

(5) the amount of outstanding shares of stock of the issuer;

(6) the identity of the owners of the issuer's stock;

(7) the amount of stock beneficially held by the officers, directors, and controlling shareholders of the issuer's stock;

(8) the nature and terms of any dividend declared by the issuer; and

(9) other misrepresentations or omissions of similar purport and object.

II.

ORDERED, ADJUDGED AND DECREED that defendant ANDERSON, his respective agents, servants, employees, attorneys in fact, and all persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, be and hereby are restrained and enjoined, directly and indirectly, from filing or aiding and abetting the filing with the COMMISSION, on behalf of LIFELINE or any other issuer, any annual report on Form 10-K [17 C.F.R. § 249.310], quarterly report on Form 10-Q [17 C.F.R. § 249.308a], special report on Form 8-K [17 C.F.R. § 249.308] or any other report required to be filed pursuant to the Exchange Act, as amended [15 U.S.C. §78a, et. seq.], and the rules promulgated thereunder, which:

- (a) contains any untrue statement of a material fact;
- or
- (b) fails to include the information expressly required to be included in such report; or
- (c) fails to provide, in addition to the information expressly required to be included in such report, such further material information, if any, as may be necessary to present fully, fairly and accurately the information contained in such report and to make the statements made, in the light of the circumstances under which they were made, not misleading.

III.

ORDERED, ADJUDGED AND DECREED that defendant ANDERSON, his respective agents, servants, employees, attorneys in fact, and all persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, be and hereby are restrained and enjoined, directly and indirectly, when acquiring, directly or indirectly, the beneficial ownership of any equity security of a class which is registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781], where such ownership constitutes, directly or indirectly, more than 5 percent of such class, from failing to file statements with the plaintiff COMMISSION, within such period of time as may be specified in regulations promulgated by the COMMISSION, reflecting information required by Schedule 13-D [17 C.F.R. § 240.13d-101] or reflecting any material changes in the facts set forth in the statement required by Rule 13d-1(a) [17 C.F.R. § 240.13d-1(a)], including but not limited to, any material increase or decrease in the percentage of the class beneficially owned.

IV.

ORDERED, ADJUDGED AND DECREED that defendant ANDERSON, his agents, servants, employees, attorneys in fact, and all persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, be and hereby are restrained and enjoined, directly and indirectly, when beneficially

owning, directly or indirectly, more than 10 percent of any class of any equity security (other than an exempted security) which is registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781], or when serving as an officer or a director of the issuer of such security, from failing to file statements with the plaintiff COMMISSION, within such period of time as may be specified in regulations promulgated by the COMMISSION, reflecting their beneficial ownership of such security of said issuer and any changes in their beneficial ownership of such security of said issuer.

V.

ORDERED, ADJUDGED AND DECREED that defendant ANDERSON and nominal defendant JAMCO shall transfer, or cause to be transferred, to the Special Master Pendente Lite previously appointed in this action all the shares of the common and preferred stock of LIFELINE identified in Schedule A to their Consent and Undertaking, and all securities (including stock and warrants) of any past or present subsidiary of LIFELINE which are in their custody, possession or control as identified in ANDERSON'S deposition taken in this matter, within 30 days of the entry of this Order.

VI.

ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this action in order to implement and carry out the terms of all Orders and Decrees that may be entered herein.

VII.

ORDERED, ADJUDGED AND DECREED that this Order shall be binding on defendant ANDERSON and nominal defendant JAMCO and upon those persons in active concert or participation with them who receive actual notice of this Order, a copy of which may be served in person, by mail or by an officer of the COMMISSION.

VIII.

ORDERED, ADJUDGED AND DECREED that the Consent and Undertaking of defendant ANDERSON and nominal defendant JAMCO filed herein be, and same is, incorporated herein with the same force and effect as if fully set forth herein, and, therefore, a breach of the terms of the Consent and Undertaking will constitute a breach of this Order.

IX.

There being no just reason for delay, the Clerk of this Court is hereby directed to enter this Final Judgment of Permanent Injunction and Other Equitable Relief pursuant to Rule 54 of the Federal Rules of Civil Procedure.

SIGNED on this 7th day of January, 1991.


UNITED STATES DISTRICT JUDGE

FILED

JAN 7 1991

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

DARRYL S. HAYES, an
individual,

Plaintiff,

vs.

THE CITY OF NOWATA, et al.,

Defendants.

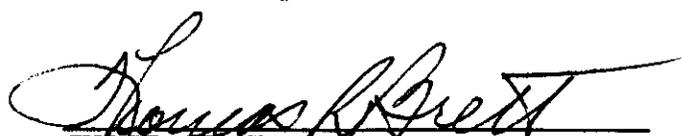
Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 89-C-382-B ✓

ORDER OF DISMISSAL WITH PREJUDICE

For good cause shown, and upon Application of the Plaintiff, any and all claims and causes of action are hereby dismissed with prejudice against The City of Nowata, Jack Hughes and Jay Robertson.

IT IS FURTHER ORDERED by the Court that, for good cause shown and upon Application of the Plaintiff, any and all claims and causes of action are dismissed with prejudice against Bill Cody and Edward Hawn, except to the extent of any liability of Edward Hawn and Bill Cody acting as employees of the County of Nowata.


JUDGE OF THE DISTRICT COURT

its order dated November 7, 1990, and concludes herein that although the petition for writ of habeas corpus does assert alleged United States constitutional and Speedy Trial violations, it is clear to the Court from the record supplied and before it at this time, that the petitioner, Louis Lovitt Washington, has not exhausted state remedies prior to bringing such claim to this federal court as required under *Anderson v. Harless*, 459 U.S. 4 (1982); *Rose v. Lundy*, 455 U.S. 509 (1982); and *Jones v. Hess*, 681 F.2d 688 (10th Cir. 1982).

The Court, therefore, dismisses the petition for writ of habeas corpus filed by the petitioner on October 29, 1990 pursuant to 28 U.S.C. §2241 for failure to exhaust state remedies.

IT IS SO ORDERED, this 4th day of January, 1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA **F I L E D**

JAN 4 1991

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

THE F&M BANK & TRUST COMPANY,)
an Oklahoma banking corpora-)
tion,)
)
Plaintiff,)
)
v.)
)
JACK WILDER, an individual,)
)
Defendant.)

Case No. 90-C-220-B

JUDGMENT

The Plaintiff's Motion for Summary Judgment having come on before the Court, and the Court having filed its orders on October 4, 1990, and November 29, 1990, and, pursuant to the parties' stipulation as to the proper interest rate;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff, The F&M Bank & Trust Company, have and recover judgment against Defendant, Jack Wilder, in the principal sum of Fifty-Six Thousand, Six Hundred Sixty-Six and No/100 Dollars (\$56,666.00), together with accrued interest of Eleven Thousand One Hundred Ninety-Five and 42/100 Dollars (\$11,195.42), as of December 26, 1990, and further accruing thereafter on the principal balance at 13.00% (\$20.46 per diem) until paid, and \$107.90 in other loan charges.

S/ THOMAS R. BRELL
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM ONLY:

By: Tom Hillis
R. Tom Hillis - OBA #12338

BOONE, SMITH, DAVIS, HURST
& DICKMAN
500 ONEOK Plaza
100 West 5th Street
Tulsa, Oklahoma 74103
(918) 587-0000
ATTORNEYS FOR PLAINTIFF, THE
F&M BANK & TRUST COMPANY

By: Terry M. Thomas
Terry M. Thomas

NORMAN & WOHLGEMUTH
2900 Mid-Continent Tower
Tulsa, Oklahoma 74103
(918) 583-7571

- and -

Randall L. Mitchell
SCHUYLER, ROCHE & ZWIRNER
One Prudential Plaza
130 East Randolph Street
Suite 3800
Chicago, Illinois 60601
(312) 565-2400
ATTORNEYS FOR DEFENDANT,
JACK WILDER

iib:wilder.jud

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

F I L E D

JAN 4 1991 *DA*

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

THE FEDERAL DEPOSIT INSURANCE CORPORATION, as Manager of the Federal Savings & Loan Insurance Corporation Resolution Fund,

Plaintiff,

vs.

REGIER CARR & MONROE, EARL E. MEYER and RANDALL K. STAFFORD,

Defendants.

Case No. 88-C-1437B ✓

ORDER

Upon the Motion for Dismissal with Prejudice of plaintiff the Federal Deposit Insurance Corporation, as Manager of the Federal Savings & Loan Insurance Corporation Resolution Trust Fund ("FDIC"), the Court, being fully advised in the premises, hereby

ORDERS that the claims of the FDIC against defendant, Regier Carr & Monroe, are dismissed with prejudice.



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

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c/m

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

FILED

JAN 4 1991

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

COMMODITY FUTURES TRADING COMMISSION,)
)
 Plaintiff,)
)
 v.)
)
 THOMAS N. HALL, individually and d/b/a)
 MARKET EXCHANGE INDEX LTD.,)
)
 THD, INCORPORATED, an Oklahoma)
 corporation,)
)
 and)
)
 NOEL L. WELSH, individually and d/b/a)
 WELSH ENTERPRISES,)
)
 Defendants.)

Civil Action
No. 88-C-318-B

ORDER GRANTING MOTION OF ROBERT NASH

NOW on this 4th day of January, 1991, this matter comes on before the undersigned Judge upon Movant Robert Nash's Motion to allow his claim in the amount of \$10,000 as a participant in the Market Exchange Index, Ltd.

After considering the evidence presented and the pleadings on file, this Court finds there is sufficient evidence to allow Robert Nash his claim in the amount of \$10,000 as a participant in the Market Exchange Index, Ltd.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Robert Nash is allowed a claim in the amount of \$10,000 as a participant in the Market Exchange Index, Ltd. and that he be allowed to recover his proportionate share of monies. The Receiver is hereby ordered to pay to Robert Nash his proportionate share of

185

clm

any past distributions and to further pay Robert Nash his proportionate share of any future distributions as and when they are made.

Dated this 4th day of Jan, 1991.


JUDGE

(MBC#104) (Order2)

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

FILED

COMMONWEALTH FEDERAL SAVINGS)
ASSOCIATION, a federally)
chartered savings association,)
)
Plaintiff,)
)
vs.)
)
OXFORD PLACE, an Oklahoma)
general partnership; VINCENT)
E. BUTLER, JR., an individual,)
)
Defendants.)

JAN 4 1991

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

89-C-1071-B

DISMISSAL WITH PREJUDICE

4th THIS CAUSE coming on before me, the undersigned Judge, this
day of ~~December~~ ^{January}, 1991, on the Stipulation of the parties
herein whereby they have shown to the Court that they have settled
and compromised all of their disputes and differences connected
with this action or arising from any of the transactions described
and set forth herein on condition, among other things, that the
Plaintiff's action and claims against the Defendants, together with
the Defendants' counterclaims against the Plaintiff all be
dismissed with prejudice to the bringing of any other action for
the same;

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED AND DECREED
that the above and foregoing action, together with all of
Plaintiff's claims therein set forth, and all of Defendants'
counterclaims be and the same are hereby dismissed with prejudice
to the bringing of any other action for the same, each party to
bear his own respective costs, expense or attorney's fees connected
herewith.

Approved:
Walter R. [unclear]
ATTY FOR DEFENDANTS
John R. [unclear]
ATTY FOR PLAINTIFF
2602011.p8:02

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

JAN 3 1991

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

CIRCLE T. FOODS COMPANY, INC.,)
d/b/a STATE FAIR FOODS, INC.)
)
Plaintiff,)
)
vs.)
)
THE OKLAHOMA PORK COUNCIL, INC.,)
)
Defendant.)

Case No. 90-C-997B

DISMISSAL WITHOUT PREJUDICE

Plaintiff Circle T. Foods Company, Inc. d/b/a State Fair Foods, Inc. by and through their attorneys Gable & Gotwals, Inc., James M. Sturdivant and Renée DeMoss, hereby dismiss without prejudice the claims brought in this action against Defendant pursuant to Federal Rule of Civil Procedure 41(a)(i).


James M. Sturdivant, OBA #8723
Renée DeMoss, OBA #10779
GABLE & GOTWALS, INC.
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119-5447
(918) 582-9201

Of Counsel:

Michael A. O'Neil, Texas Bar #15285000
Herbert J. Hammon, Texas Bar #08858500
Kay Lyn Schwartz, Texas Bar #17865700
1601 Elm Street, Suite 3000
Dallas, Texas 75201
(214) 999-4500

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 BILLY G. WILLIS; PEGGY J. WILLIS;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

JAN 3 1991

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

CIVIL ACTION NO. 90-C-920-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 3rd day
of January, 1991. 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, Billy G.
Willis and Peggy J. Willis, appear pro se.

The Court being fully advised and having examined the
court file finds that Defendants, Billy G. Willis and Peggy J.
Willis, acknowledged receipt of Summons and Complaint on or about
November 14, 1990; that Defendant, County Treasurer, Tulsa
County, Oklahoma, acknowledged receipt of Summons and Complaint
on November 1, 1990; and that Defendant, Board of County
Commissioners, Tulsa County, Oklahoma, acknowledged receipt of
Summons and Complaint on November 1, 1990.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on November 26, 1990.

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

Lot Sixteen (16), Block Four (4), WEDGEWOOD VI, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on February 28, 1985, the Defendants, Billy G. Willis and Peggy J. Willis, 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 \$78,750.00, payable in monthly installments, with interest thereon at the rate of 12.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Billy G. Willis and Peggy J. Willis, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated February 28, 1985, covering the above-described property. Said mortgage was recorded on March 1, 1985, in Book 4847, Page 1625, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Billy G. Willis and Peggy J. Willis, 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, Billy G. Willis and Peggy J. Willis, are indebted to the Plaintiff in the principal sum of \$77,368.26, plus interest at the rate of 12.5 percent per annum from August 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$1,190.00, plus penalties and interest, for the year 1990. 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 Defendants, Billy G. Willis and Peggy J. Willis, in the principal sum of \$77,368.26, plus interest at the rate of 12.5 percent per annum from August 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 accrued and accruing, plus any additional sums advanced or to be advanced or expended during

this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$1,190.00, plus penalties and interest, for ad valorem taxes for the year 1990, 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 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 Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$1,190.00, 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/ JAMES C. OLSON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

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

Billy G. Willis
BILLY G. WILLIS

Peggy J. Willis
PEGGY J. WILLIS


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-920-E

PB/css

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 -vs-)
)
 KELLI D. DAVIS NORRIS,)
 CSS 515 44 1279)
)
 Defendant,)

CIVIL NUMBER 90-C-801 E

FILED

JAN - 3 1991

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

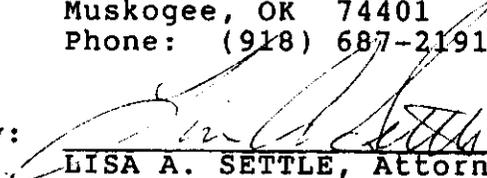
NOTICE OF DISMISSAL

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

Respectfully submitted,

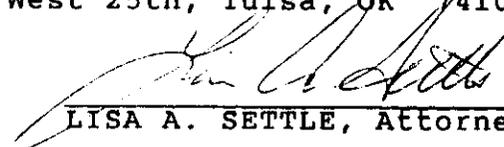
UNITED STATES OF AMERICA

Clifton R. Byrd
District Counsel
Department of Veterans Affairs
125 South Main Street
Muskogee, OK 74401
Phone: (918) 687-2191

By: 
LISA A. SETTLE, Attorney

CERTIFICATE OF MAILING

This is to certify that on the _____ day of _____, 1991, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: KELLI D. DAVIS NORRIS, at 6736 West 25th, Tulsa, OK 74107.


LISA A. SETTLE, Attorney

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

FILED

JAN -3 1991

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

BRUCE A BOETTCHER and)
MARY C. BOETTCHER,)

Plaintiffs,)

vs.)

Case No. 90-C-706-C

HOME OWNERS WARRANTY)
CORPORATION and CIGNA)
PROPERTY AND CASUALTY)
COMPANIES,)

Defendants.)

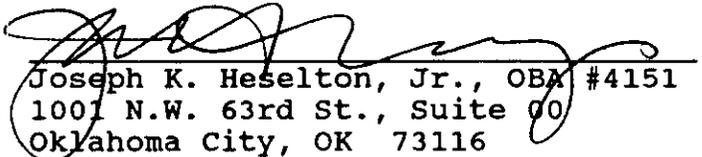
OF
STIPULATION FOR DISMISSAL

It is hereby stipulated that the above-entitled action may be dismissed with prejudice as to Home Owners Warranty Corporation, with said defendant to bear its own costs.

Dated 11th day of December, 1990.

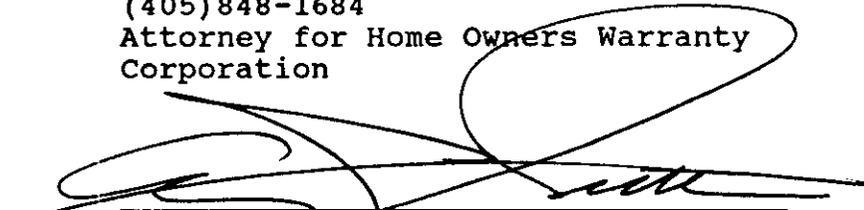


Douglas L. Boyd, OBA #1021
320 S. Boston, Suite 1504
Tulsa, OK 74103
(918)587-9186
Attorney for Plaintiffs



Joseph K. Heselton, Jr., OBA #4151
1001 N.W. 63rd St., Suite 00
Oklahoma City, OK 73116
(405)848-1684

Attorney for Home Owners Warranty Corporation



Anthony P. Sutton, OBA #8791
Park Centre, Suite 1400
525 S. Main
Tulsa, OK 74103
(918)583-7129

Attorney for Cigna Insurance Company

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

FILED

JAN 3 1991

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

RAY G. HENDERSON AND GINA)
HENDERSON, Husband and Wife,)

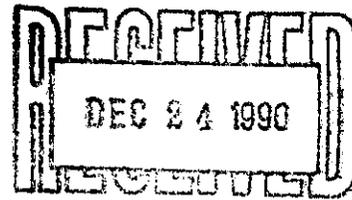
Plaintiffs,)

v.)

No. 89-C-561-E

SURVIVAIR, a division of)
COMASEC, INC., a Connecticut)
corporation; SURVIVAIR, a)
division of U.S.D. CORP., a)
California corporation; and)
MID-CONTINENT FIRE & SAFETY,)
INC., a Kansas corporation,)

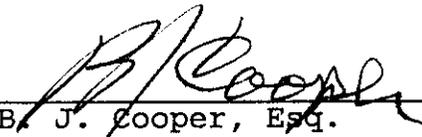
Defendants.)



^{OF}
STIPULATION ~~FOR~~ DISMISSAL WITH PREJUDICE

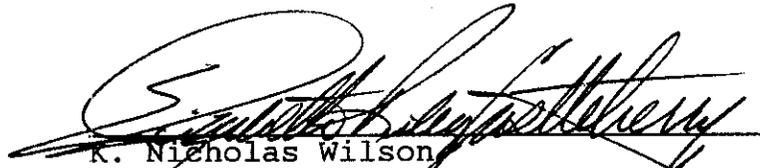
Plaintiffs, Ray G. Henderson and Gina Henderson, Husband and Wife, pursuant to Rule 41(a)(ii), dismiss the above-captioned and numbered cause with prejudice.

Defendant, Survivair, a Division of Comasec, Inc., dismisses, with prejudice, its cross-claim against Defendant Survivair, a division of U.S.D. Corporation.



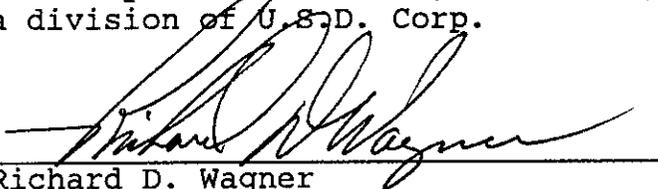
B. J. Cooper, Esq.
Cooper, Walsh & Zorn
124 N. W. 10th - P. O. Box 1336
Oklahoma City, OK 73101
(405) 232-0355

Attorneys for Plaintiffs



K. Nicholas Wilson
Elizabeth Riley Castleberry
Fellers, Snider, Blankenship,
Bailey & Tippens
2400 First National Center
Oklahoma City, Oklahoma 73102
(405) 232-0621

Attorneys for Defendant, Survivair,
a division of U.S.D. Corp.



Richard D. Wagner
Wagner, Stuart & Cannon
902 S. Boulder
Tulsa, Oklahoma 74119
(918) 582-4483

Attorneys for Defendant,
Survivair, a Division of
Comasec, Inc.

GDR:bls
12-11-90

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

IN RE: ASBESTOS LITIGATION) MASTER #1417
) ASB-TW- 5283 ✓

HAROLD CURLEE and KATHRYN LOUISE CURLEE, Plaintiff's Spouse,	)	No. 890-C-386-C
)	
JAMES E. WESTERVELT and AUDREY WESTERVELT, Plaintiff's Spouse,	)	No. 88-C-1008-C
)	
JOHNNIE J. ENGLAND and KATHRYN JANIE ENGLAND, Plaintiff's Spouse,	)	No. 88-C-709-C
)	
Plaintiffs,)	
)	
vs.)	
)	
ANCHOR PACKING COMPANY, et al.,)	
)	
Defendants.)	

FILED
 JAN 2 1991
 Jack C. Silver, Clerk
 U.S. DISTRICT COURT

ORDER OF DISMISSAL

Now on this 22 day of January, 1990, this matter comes on for hearing by virtue of the Stipulation for Dismissal With Prejudice (specifically reserving certain claims, against the defendant, The Milwhite Co., 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 with prejudice against Defendant, The Milwhite Co., only, reserving Plaintiffs rights to any other parties to this action. Each party to bear their own costs.

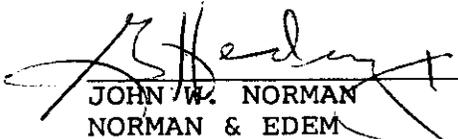
5283


UNITED STATES DISTRICT JUDGE

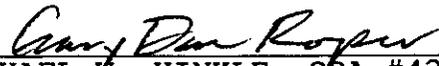
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:


JOHN W. NORMAN
NORMAN & EDEM
127 N.W. 10th Street
Renaissance Centre East
Oklahoma City, Oklahoma 73103
(405) 272-0200

ATTORNEYS FOR PLAINTIFFS


MICHAEL W. HINKLE, OBA #4227
MILLS, WHITTEN, MILLS,
MILLS & HINKLE
Suite 500, One Leadership Square
211 North Robinson
Oklahoma City, Oklahoma 73102
(405) 239-2500

ATTORNEYS FOR DEFENDANT,
THE MILWHITE CO.

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

PHILLIPS PETROLEUM COMPANY,)
)
 Plaintiff,)

vs.)

MANUEL LUJAN, Secretary of)
Interior; ROBERT KALLMAN,)
Director, or Acting Director,)
Minerals Management Service,)
Department of the Interior;)
KENNETH M. MOYERS, Chief,)
Royalty Compliance Division;)
NICK L. KELLY, Area Manager,)
Dallas Regional Compliance)
Office, Minerals Management)
Service; THE UNITED STATES)
DEPARTMENT OF THE INTERIOR; and)
the MINERALS MANAGEMENT SERVICE;)

Defendants.)

ATLANTIC RICHFIELD COMPANY,)
)
 Plaintiff,)

vs.)

MANUEL LUJAN, Secretary of)
Interior; ROBERT KALLMAN,)
Director, or Acting Director,)
Minerals Management Service,)
Department of the Interior;)
KENNETH M. MOYERS, Chief,)
Royalty Compliance Division;)
NICK L. KELLY, Area Manager,)
Dallas Regional Compliance)
Office, Minerals Management)
Service; THE UNITED STATES)
DEPARTMENT OF THE INTERIOR; and)
the MINERALS MANAGEMENT SERVICE;)

Defendants.)

No. 89-C-887-B ✓

FILED

JAN 2 1991

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

(Consolidated with)

No. 89-C-1052-E

J U D G M E N T

In keeping with the Order sustaining Defendants' Motion for
Summary Judgment entered this date, Plaintiffs are directed to

maintain and provide the subject records as required by law.

Both Plaintiffs' summary judgment motions are hereby DENIED. Costs are assessed against Plaintiffs and the parties are to pay their own respective attorney fees.

DATED this 2 day of Jan, 1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

PHILLIPS PETROLEUM COMPANY,
Plaintiff,

vs.

MANUEL LUJAN, Secretary of
Interior; ROBERT KALLMAN,
Director, or Acting Director,
Minerals Management Service,
Department of the Interior;
KENNETH M. MOYERS, Chief,
Royalty Compliance Division;
NICK L. KELLY, Area Manager,
Dallas Regional Compliance
Office, Minerals Management
Service; THE UNITED STATES
DEPARTMENT OF THE INTERIOR; and
the MINERALS MANAGEMENT SERVICE;

Defendants.

ATLANTIC RICHFIELD COMPANY,
Plaintiff,

vs.

MANUEL LUJAN, Secretary of
Interior; ROBERT KALLMAN,
Director, or Acting Director,
Minerals Management Service,
Department of the Interior;
KENNETH M. MOYERS, Chief,
Royalty Compliance Division;
NICK L. KELLY, Area Manager,
Dallas Regional Compliance
Office, Minerals Management
Service; THE UNITED STATES
DEPARTMENT OF THE INTERIOR; and
the MINERALS MANAGEMENT SERVICE;

Defendants.

No. 89-C-887-B ✓

FILED

JAN 2 1991

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

(Consolidated with)

No. 89-C-1052-E

ORDER

The Court has for decision the parties' Motions for Summary Judgment in these consolidated cases. The undisputed facts reveal

that Plaintiffs, Phillips Petroleum Company ("Phillips") and Atlantic Richfield Company ("Atlantic Richfield"), are mineral lessees of Federal and Indian lands. The undisputed facts also establish that on September 19, 1989 Defendant advised Plaintiffs in writing it was initiating an audit regarding Federal and Indian leases covering a period from October 1, 1983 through September 30, 1989, and directed Plaintiffs to maintain all such relevant records. (Exhibit A to Complaints). Plaintiff followed with information/document form requests in early October and November 1989 relative to specific documents about specific leases to be produced. (Exhibits B, C and D to Complaints).

Phillips and Atlantic Richfield, though conceding they possessed the documentary information requested, commenced this declaratory judgment action (28 U.S.C. § 2201) in essence seeking a declaration that as a matter of law they need not comply with the September 1989 notice because no audit of a particular mineral lease was commenced within the six-year period provided in 28 U.S.C. § 2415, nor payment claim commenced within said period.

Plaintiffs assert that the earlier case of Phillips Petroleum Company v. Lujan, No. 88-C-1487-E ("Phillips I"), is dispositive of this case. The Court concludes Phillips I is not dispositive herein because the records notice or order in Phillips I pertain to records beyond the six-year limitation period, while herein the notice to maintain records is within the six-year period of 28

U.S.C. § 2415 and 30 U.S.C. § 1713(b).¹

30 U.S.C. §1713(b) provides:

"Records required by the Secretary with respect to oil and gas leases from Federal or Indian lands or the Outer Continental Shelf shall be maintained for 6 years after the records are generated unless the Secretary notifies the record holder that he has initiated an audit or investigation involving such records and that such records must be maintained for a longer period. In any case when an audit or investigation is underway, records shall be maintained until the Secretary releases the record holder of the obligation to maintain such records."

The Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1701 *et seq.*, contains many sections concerning oil and gas lease royalty management and collections on Federal lands, Indian lands, and the Outer Continental Shelf, i.e., 30 U.S.C. §§ 1701(b), 1711(c)(1), 1713(a), 1713(b), and 1751(a) empowers the Secretary to prescribe regulations for the maintenance of lease records and the conduct of an audit or investigation such as in 30 C.F.R. 212.51. The individual leases provide for the right of lessor document review. (Defendant Exhibit 1).

¹ Phillips I concluded: "Phillips is, therefore, entitled to declaratory relief that the DOI and the MMS must audit and file claims within six years after royalty payments are made or due, and that the MMS order requesting records that are more than six years old is unenforceable." Phillips I also stated: "Tolling of the six-year period would be applicable in two situations. First, if the audit had begun during the six-year period, the limitations period would be tolled partially under § 2415(a). Second, the six-year period could be tolled if, during the six-year period facts material to the right of action were not known or could not have been known to the responsible official. 28 U.S.C. § 2416; § 2415(c)."

30 U.S.C. § 1713(b) does not state a particular described lease or leases must be the subject of the directive to extend the six-year maintenance of records. The decision to initiate the audit of the general class of leases was made previous to the drafting of the September 19, 1989 letter request. To conduct sample lease audits within the broad lease class would be sound audit practice. (Affidavit of Donald T. Sant - Plaintiffs' Exhibit 4).

The Supreme Court of the United States has previously recognized that the statute of limitations does not abolish the Government's rights provided by law to investigate and review documents. United States v. Powell, 379 U.S. 48 (1964). *See also*, Pacific Maritime Association v. Quinn, 491 F.2d 1294 (9th Cir. 1974) and E.E.O.C. v. Tempel Steel Co., 814 F.2d 482 (7th Cir. 1987).

The Plaintiffs' contention that the Minerals Management Service (MMS) document requests herein violate the Paperwork Reduction Act (PRA), 44 U.S.C. § 3501 *et seq.* is without merit. The PRA specifically exempts the audit or investigation activity of the MMS herein. 44 U.S.C. § 3518(c)(1) and 5 C.F.R. 1320.3(c).

The Court concludes that it has jurisdiction herein because a question of law exists regarding the statute of limitations issue, a recognized exception to the exhaustion doctrine. McKart v. United States, 395 U.S. 185, 89 S.Ct. 1657 (1969); Frontier Airlines, Inc. v. Civil Aeronautics Board, 621 F.2d 369 (10th Cir. 1980). The doctrine is discretionary rather than jurisdictional.

Rocky Mountain Oil and Gas Ass'n Watt, 696 F.2d 734 (10th Cir. 1982).

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

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

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

Therefore, the Court concludes the Motions for Summary Judgment of the Defendant as to the claims of Phillips and Atlantic Richfield are hereby SUSTAINED. Phillips and Atlantic Richfield are to maintain and provide the documents and records referred to in the Defendant's September 19, 1989 letter request (Exhibit A to Plaintiffs' Complaints) in keeping with the spirit and intent of 30

U.S.C. § 1713(a) and (b).² The cross motions for summary judgment of the Plaintiffs are hereby OVERRULED.

A separate Judgment shall be filed contemporaneous herewith.

DATED this 2nd day of Jan.,
1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

² The Court is not deciding herein whether the six-year period of limitation began or ran regarding a particular lease. Such may be impacted by payment adjustments reflected in the records. Neither is the Court deciding the issue of due diligence beyond six years in the timely conduct of an audit or filing of a claim.

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

PHILLIPS PETROLEUM COMPANY,
Plaintiff,

vs.

MANUEL LUJAN, Secretary of
Interior; ROBERT KALLMAN,
Director, or Acting Director,
Minerals Management Service,
Department of the Interior;
KENNETH M. MOYERS, Chief,
Royalty Compliance Division;
NICK L. KELLY, Area Manager,
Dallas Regional Compliance
Office, Minerals Management
Service; THE UNITED STATES
DEPARTMENT OF THE INTERIOR; and
the MINERALS MANAGEMENT SERVICE;

Defendants.

ATLANTIC RICHFIELD COMPANY,
Plaintiff,

vs.

MANUEL LUJAN, Secretary of
Interior; ROBERT KALLMAN,
Director, or Acting Director,
Minerals Management Service,
Department of the Interior;
KENNETH M. MOYERS, Chief,
Royalty Compliance Division;
NICK L. KELLY, Area Manager,
Dallas Regional Compliance
Office, Minerals Management
Service; THE UNITED STATES
DEPARTMENT OF THE INTERIOR; and
the MINERALS MANAGEMENT SERVICE;

Defendants.

No. 89-C-887-B ✓

FILED

JAN 2 1991

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

(Consolidated with)

No. 89-C-1052-E

O R D E R

The Court has for decision the parties' Motions for Summary Judgment in these consolidated cases. The undisputed facts reveal

that Plaintiffs, Phillips Petroleum Company ("Phillips") and Atlantic Richfield Company ("Atlantic Richfield"), are mineral lessees of Federal and Indian lands. The undisputed facts also establish that on September 19, 1989 Defendant advised Plaintiffs in writing it was initiating an audit regarding Federal and Indian leases covering a period from October 1, 1983 through September 30, 1989, and directed Plaintiffs to maintain all such relevant records. (Exhibit A to Complaints). Plaintiff followed with information/document form requests in early October and November 1989 relative to specific documents about specific leases to be produced. (Exhibits B, C and D to Complaints).

Phillips and Atlantic Richfield, though conceding they possessed the documentary information requested, commenced this declaratory judgment action (28 U.S.C. § 2201) in essence seeking a declaration that as a matter of law they need not comply with the September 1989 notice because no audit of a particular mineral lease was commenced within the six-year period provided in 28 U.S.C. § 2415, nor payment claim commenced within said period.

Plaintiffs assert that the earlier case of Phillips Petroleum Company v. Lujan, No. 88-C-1487-E ("Phillips I"), is dispositive of this case. The Court concludes Phillips I is not dispositive herein because the records notice or order in Phillips I pertain to records beyond the six-year limitation period, while herein the notice to maintain records is within the six-year period of 28

U.S.C. § 2415 and 30 U.S.C. § 1713(b).¹

30 U.S.C. §1713(b) provides:

"Records required by the Secretary with respect to oil and gas leases from Federal or Indian lands or the Outer Continental Shelf shall be maintained for 6 years after the records are generated unless the Secretary notifies the record holder that he has initiated an audit or investigation involving such records and that such records must be maintained for a longer period. In any case when an audit or investigation is underway, records shall be maintained until the Secretary releases the record holder of the obligation to maintain such records."

The Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1701 *et seq.*, contains many sections concerning oil and gas lease royalty management and collections on Federal lands, Indian lands, and the Outer Continental Shelf, i.e., 30 U.S.C. §§ 1701(b), 1711(c)(1), 1713(a), 1713(b), and 1751(a) empowers the Secretary to prescribe regulations for the maintenance of lease records and the conduct of an audit or investigation such as in 30 C.F.R. 212.51. The individual leases provide for the right of lessor document review. (Defendant Exhibit 1).

¹ Phillips I concluded: "Phillips is, therefore, entitled to declaratory relief that the DOI and the MMS must audit and file claims within six years after royalty payments are made or due, and that the MMS order requesting records that are more than six years old is unenforceable." Phillips I also stated: "Tolling of the six-year period would be applicable in two situations. First, if the audit had begun during the six-year period, the limitations period would be tolled partially under § 2415(a). Second, the six-year period could be tolled if, during the six-year period facts material to the right of action were not known or could not have been known to the responsible official. 28 U.S.C. § 2416; § 2415(c)."

30 U.S.C. § 1713(b) does not state a particular described lease or leases must be the subject of the directive to extend the six-year maintenance of records. The decision to initiate the audit of the general class of leases was made previous to the drafting of the September 19, 1989 letter request. To conduct sample lease audits within the broad lease class would be sound audit practice. (Affidavit of Donald T. Sant - Plaintiffs' Exhibit 4).

The Supreme Court of the United States has previously recognized that the statute of limitations does not abolish the Government's rights provided by law to investigate and review documents. United States v. Powell, 379 U.S. 48 (1964). *See also*, Pacific Maritime Association v. Quinn, 491 F.2d 1294 (9th Cir. 1974) and E.E.O.C. v. Tempel Steel Co., 814 F.2d 482 (7th Cir. 1987).

The Plaintiffs' contention that the Minerals Management Service (MMS) document requests herein violate the Paperwork Reduction Act (PRA), 44 U.S.C. § 3501 *et seq.* is without merit. The PRA specifically exempts the audit or investigation activity of the MMS herein. 44 U.S.C. § 3518(c)(1) and 5 C.F.R. 1320.3(c).

The Court concludes that it has jurisdiction herein because a question of law exists regarding the statute of limitations issue, a recognized exception to the exhaustion doctrine. McKart v. United States, 395 U.S. 185, 89 S.Ct. 1657 (1969); Frontier Airlines, Inc. v. Civil Aeronautics Board, 621 F.2d 369 (10th Cir. 1980). The doctrine is discretionary rather than jurisdictional.

Rocky Mountain Oil and Gas Ass'n Watt, 696 F.2d 734 (10th Cir. 1982).

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

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

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

Therefore, the Court concludes the Motions for Summary Judgment of the Defendant as to the claims of Phillips and Atlantic Richfield are hereby SUSTAINED. Phillips and Atlantic Richfield are to maintain and provide the documents and records referred to in the Defendant's September 19, 1989 letter request (Exhibit A to Plaintiffs' Complaints) in keeping with the spirit and intent of 30

U.S.C. § 1713(a) and (b).² The cross motions for summary judgment of the Plaintiffs are hereby OVERRULED.

A separate Judgment shall be filed contemporaneous herewith.

DATED this 2nd day of Jan,
199 1.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

² The Court is not deciding herein whether the six-year period of limitation began or ran regarding a particular lease. Such may be impacted by payment adjustments reflected in the records. Neither is the Court deciding the issue of due diligence beyond six years in the timely conduct of an audit or filing of a claim.

that Plaintiffs, Phillips Petroleum Company ("Phillips") and Atlantic Richfield Company ("Atlantic Richfield"), are mineral lessees of Federal and Indian lands. The undisputed facts also establish that on September 19, 1989 Defendant advised Plaintiffs in writing it was initiating an audit regarding Federal and Indian leases covering a period from October 1, 1983 through September 30, 1989, and directed Plaintiffs to maintain all such relevant records. (Exhibit A to Complaints). Plaintiff followed with information/document form requests in early October and November 1989 relative to specific documents about specific leases to be produced. (Exhibits B, C and D to Complaints).

Phillips and Atlantic Richfield, though conceding they possessed the documentary information requested, commenced this declaratory judgment action (28 U.S.C. § 2201) in essence seeking a declaration that as a matter of law they need not comply with the September 1989 notice because no audit of a particular mineral lease was commenced within the six-year period provided in 28 U.S.C. § 2415, nor payment claim commenced within said period.

Plaintiffs assert that the earlier case of Phillips Petroleum Company v. Lujan, No. 88-C-1487-E ("Phillips I"), is dispositive of this case. The Court concludes Phillips I is not dispositive herein because the records notice or order in Phillips I pertain to records beyond the six-year limitation period, while herein the notice to maintain records is within the six-year period of 28

U.S.C. § 2415 and 30 U.S.C. § 1713(b).¹

30 U.S.C. §1713(b) provides:

"Records required by the Secretary with respect to oil and gas leases from Federal or Indian lands or the Outer Continental Shelf shall be maintained for 6 years after the records are generated unless the Secretary notifies the record holder that he has initiated an audit or investigation involving such records and that such records must be maintained for a longer period. In any case when an audit or investigation is underway, records shall be maintained until the Secretary releases the record holder of the obligation to maintain such records."

The Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1701 *et seq.*, contains many sections concerning oil and gas lease royalty management and collections on Federal lands, Indian lands, and the Outer Continental Shelf, i.e., 30 U.S.C. §§ 1701(b), 1711(c)(1), 1713(a), 1713(b), and 1751(a) empowers the Secretary to prescribe regulations for the maintenance of lease records and the conduct of an audit or investigation such as in 30 C.F.R. 212.51. The individual leases provide for the right of lessor document review. (Defendant Exhibit 1).

¹ Phillips I concluded: "Phillips is, therefore, entitled to declaratory relief that the DOI and the MMS must audit and file claims within six years after royalty payments are made or due, and that the MMS order requesting records that are more than six years old is unenforceable." Phillips I also stated: "Tolling of the six-year period would be applicable in two situations. First, if the audit had begun during the six-year period, the limitations period would be tolled partially under § 2415(a). Second, the six-year period could be tolled if, during the six-year period facts material to the right of action were not known or could not have been known to the responsible official. 28 U.S.C. § 2416; § 2415(c)."

30 U.S.C. § 1713(b) does not state a particular described lease or leases must be the subject of the directive to extend the six-year maintenance of records. The decision to initiate the audit of the general class of leases was made previous to the drafting of the September 19, 1989 letter request. To conduct sample lease audits within the broad lease class would be sound audit practice. (Affidavit of Donald T. Sant - Plaintiffs' Exhibit 4).

The Supreme Court of the United States has previously recognized that the statute of limitations does not abolish the Government's rights provided by law to investigate and review documents. United States v. Powell, 379 U.S. 48 (1964). See also, Pacific Maritime Association v. Quinn, 491 F.2d 1294 (9th Cir. 1974) and E.E.O.C. v. Tempel Steel Co., 814 F.2d 482 (7th Cir. 1987).

The Plaintiffs' contention that the Minerals Management Service (MMS) document requests herein violate the Paperwork Reduction Act (PRA), 44 U.S.C. § 3501 *et seq.* is without merit. The PRA specifically exempts the audit or investigation activity of the MMS herein. 44 U.S.C. § 3518(c)(1) and 5 C.F.R. 1320.3(c).

The Court concludes that it has jurisdiction herein because a question of law exists regarding the statute of limitations issue, a recognized exception to the exhaustion doctrine. McKart v. United States, 395 U.S. 185, 89 S.Ct. 1657 (1969); Frontier Airlines, Inc. v. Civil Aeronautics Board, 621 F.2d 369 (10th Cir. 1980). The doctrine is discretionary rather than jurisdictional.

Rocky Mountain Oil and Gas Ass'n Watt, 696 F.2d 734 (10th Cir. 1982).

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

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

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

Therefore, the Court concludes the Motions for Summary Judgment of the Defendant as to the claims of Phillips and Atlantic Richfield are hereby SUSTAINED. Phillips and Atlantic Richfield are to maintain and provide the documents and records referred to in the Defendant's September 19, 1989 letter request (Exhibit A to Plaintiffs' Complaints) in keeping with the spirit and intent of 30

U.S.C. § 1713(a) and (b).² The cross motions for summary judgment of the Plaintiffs are hereby OVERRULED.

A separate Judgment shall be filed contemporaneous herewith.

DATED this 2nd day of Jan.,
199 1.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

² The Court is not deciding herein whether the six-year period of limitation began or ran regarding a particular lease. Such may be impacted by payment adjustments reflected in the records. Neither is the Court deciding the issue of due diligence beyond six years in the timely conduct of an audit or filing of a claim.

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

JAN 2 1991

THE STATE INSURANCE FUND OF)
THE STATE OF OKLAHOMA,)
)
Plaintiff,)
)
vs.)
)
ASARCO INCORPORATED, d/b/a)
FEDERATED METALS CORPORATION,)
)
Defendant.)

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

Case No. 85-C-1133E

ORDER OF DISMISSAL WITH PREJUDICE

Upon the Joint Stipulation For Dismissal With Prejudice filed herein by Plaintiff The State Insurance Fund Of Oklahoma and Defendant Asarco Incorporated, d/b/a Federated Metals Corporation, it is hereby

ORDERED that the above-entitled cause and all claims asserted therein are dismissed with prejudice, upon the stipulations and agreements set forth in the Joint Stipulation filed by the parties.

DATED: 12-21-90.

S/ JAMES O. ELLISON

THE HONORABLE JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

JAN 21 1991

STATE FEDERAL SAVINGS ASSOCIATION)
BY AND THROUGH ITS CONSERVATOR,)
RESOLUTION TRUST,)
)
Plaintiff,)
)
v.)
)
ROBERT L. SCHULTZ, et al,)
)
Defendants.)

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

90-C-666-E

ORDER ENTERING DEFAULT JUDGMENT

The Court has for consideration the Report and Recommendation of the United States Magistrate filed November 8, 1990 in which the Magistrate recommended that default judgment be granted in favor of Plaintiff State Federal Savings Association and against Defendants Robert L. Schultz and Marie Susan Schultz as set forth in the Complaint, and in the amounts as set forth in the Affidavit of Janice Wyatt (Exhibit "A", Motion and Brief for Default Judgment), pursuant to Rule 55(b) Fed.R.Civ.P.

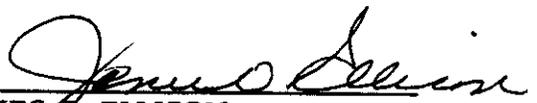
No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is, therefore, Ordered that default judgment is granted in favor of Plaintiff State Federal Savings Association and against Defendants Robert L. Schultz and Marie Susan Schultz in the amount of \$1,530.86, with interest accruing from and after May 10, 1990,

until paid in full at the default rate of \$.43 per diem (21% annually); plus a reasonable attorney's fee. The amount of the fee is to be determined following filing of a proper Application for same, setting forth the amounts claimed, the services rendered and rates charged, all by affidavit. Plaintiff is to file any such application on or before January 11, 1991.

Dated this 27th day of December, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

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

JAN 2 1991

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

GEIR BJORNSON and DORSIE BJORNSON,)
)
Plaintiffs,)
)
vs.)
)
WAYNE W. THOMAS, SR. d/b/a CLUB)
ST. THOMAS,)
)
Defendant.)

Case No. 90-C-370-E

JUDGMENT

Upon the Order Granting Request for Entry of Judgment Entered in this Case,

IT IS HEREBY ORDERED AND ADJUDGED that Plaintiffs, Geir Bjornson and Dorsie Bjornson, have and recover of the Defendant, Wayne W. Thomas, Sr., on their Claims for Relief, the sum of \$68,200.00, with pre-judgment interest from April 24, 1988 at the rate of \$11.21 per day until judgment, attorneys fees in the sum of \$4,500.00, plus court costs, with interest thereon from and after the date of entry of this judgment on the appropriate sums at the statutory rate of 7.02 percent per annum, until paid.

DATED this 21 day of April, 1990.

S/ JAMES O. ELLISON

James O. Ellison
United States District Judge

FILED

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

JAN 2 1991

PETER J. McMAHON,)
)
 Plaintiff,)
)
 v.)
)
 SGT. KEITH DATSON, et al,)
)
 Defendants.)

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

90-C-533-E

ORDER

The court has for consideration plaintiff's Motion to Dismiss (Docket #8)¹ and finds that it should be granted.

It is therefore ordered that plaintiff's Motion to Dismiss is granted and his Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 (#2) is dismissed.

Dated this 21st day of December, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

CJE/kgh

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

FILED

JAN 2 1991

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

GAYLE CAPSTICK,)	
)	
Plaintiff,)	
)	
vs.)	
)	
ALLSTATE INSURANCE COMPANY,	)	Northern Dist. No.
a foreign corporation,	)	90C-918E
	)	Eastern Dist. No.
Defendants.	)	CIV 90-284-S

**ORDER APPROVING EXPERT WITNESS
COSTS AND EXPENSES**

Now on this 21st day of Dec., 1990, the Court hereby approves the amount of One Thousand Two Hundred Sixty-Nine Dollars and 90/100 (\$1,269.90) to compensate Jack Yates for his time and payment of expenses with respect to plaintiff's deposition, and time spent in preparing and complying with plaintiff's subpoena duces tecum. Mr. Yates would show this Honorable Court that there has been no objection to awarding of these costs and expenses.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the amount of One Thousand Two Hundred Sixty-Nine Dollars and 90/100 (\$1,269.90) be awarded to Jack Yates for his costs and expenses in the above-entitled matter.

S/ JAMES O. ELLISON

JUDGE OF THE UNITED STATES
DISTRICT COURT

CJE/kgH

FILED

NOV 2 1990

Jack C. Silver, Clerk

U.S. DISTRICT COURT

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

GAYLE CAPSTICK,)
)
 Plaintiff,)
)
 vs.)
)
 ALLSTATE INSURANCE COMPANY,)
 a foreign corporation,)
)
 Defendants.)

Northern Dist. No.
90C-918E
Eastern Dist. No.
CIV 90-284-S

M-31

**APPLICATION FOR EXPERT WITNESS'
COSTS AND EXPENSES**

Comes now Jack Yates pursuant to Fed. R. Civ. P. 26(b)(4)(C)(i), which governs payment of fees to expert witnesses, and moves this Court to award him the fees with respect to his time and expenses incurred in complying with plaintiff's subpoena duces tecum which are attached hereto as Exhibit "A".

WHEREFORE, premises considered, Jack Yates would respectfully request this Honorable Court to grant him a reasonable fee for his time, and payment of expenses with respect to complying with plaintiff's subpoena duces tecum.

Respectfully Submitted,

By: _____

S
JOSEPH H. PAULK
Oklahoma Bar No. 10110
CARY J. EDWARDS
Oklahoma Bar No. 13471
2021 South Lewis, Suite 250
Tulsa, Oklahoma 74104
Telephone: (918) 749-5749

Attorney for Jack Yates

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the foregoing was deposited in the U. S. Mail, with proper postage thereon fully prepaid, on this 2nd day of November, 1990, addressed to:

RICHARD D GIBBON
ATTORNEY AT LAW
1611 S HARVARD
TULSA OK 74112

AARON C PETERSON
ATTORNEY AT LAW
STE 601
5200 S YALE
TULSA OK 74135

GREGORY D NELLIS
ATTORNEY AT LAW
STE 1500
525 S MAIN
TULSA OK 74103

S/

EXPENSES OF JACK YATES

10-29-90	Meeting w/Joe	2.00
	Preparation for	
	deposition	3.00
10-30-90	Preparation for	
	deposition	3.50
	Deposition	1.00
10-31-90	Preparation	3.00
11-1-90	Preparation	1.00
	Deposition	<u>4.50</u>

17.50 hrs. @ \$65 = \$1,137.50

Secretarial time:

8.00 hrs @ \$12 = \$ 96.00

Mileage expense:

36 miles x 3 trips

108 miles @ \$.30 = \$ 32.40

Copying expense:

40 pgs. @ \$.10 = \$ 4.00

Total: \$1,269.90



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

ROBERT BRIAN BOECKMAN,)
)
 Plaintiff,)
)
 v.)
)
 ENERGY AUCTION SYSTEMS,)
 INC., et al, and JACK MYERS,)
)
 Defendants.)

90-C-883-E

F I L E D

JAN 2 1991

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

ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed November 14, 1990, in which the Magistrate recommended that plaintiff's civil rights complaint be dismissed. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that plaintiff's claim cannot be brought pursuant to 42 U.S.C. § 1985 and his Civil Rights Complaint is dismissed as without merit under 28 U.S.C. § 1915(d).

Dated this 21st day of December, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

F I L E D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA JAN 2 1990

LEON P. RUFF,)
)
 Plaintiff,)
)
 v.)
)
 RENBERG'S INC., an Oklahoma)
 corporation)
)
 Defendant.)

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

No. 90-C-643-B

O R D E R

Before the Court is the Motion filed by the defendant, Renberg's Inc. (Renberg's), to Strike Plaintiff's Claim for Compensatory Damages in the First Cause of Action and to Dismiss the Second, Third, and Fourth Causes of Action of Plaintiff's Complaint. The Court overrules the motion as to the First, Second and Third Causes of Action and sustains the motion as to the Fourth.

The plaintiff, Leon D. Ruff, was sixty-two (62) years old and employed by Renberg's for thirty-four (34) years when he was demoted from the position of men's shoe buyer to that of shoe salesperson with a commensurate reduction in salary on September 14, 1989. Due to his demotion, the plaintiff quit his job. The plaintiff alleges that the demotion and his resulting humiliation constituted a constructive discharge which was motivated by Renberg's intent to replace him with a younger employee. The plaintiff brings this suit alleging four causes of action arising from Renberg's constructive discharge of the plaintiff: (1) violation of the Age Discrimination in Employment Act (ADEA), 29

U.S.C. §621, et seq.; (2) violation of the public policy of the State of Oklahoma as set out in OKLA. STAT. tit. 25, §1302 which prohibits employment discrimination based on age; (3) breach of an implied contract that the plaintiff would not be discharged except for good cause; and (4) breach of the status-based duty arising from the long-term employment relationship between Renberg's and the plaintiff.

Renberg's argues that the plaintiff's request for compensatory damages in his first cause of action should be struck because compensatory damages are not recoverable under the ADEA.¹ However, the plaintiff states that the only "compensatory damages" he seeks consist of back pay and front pay, which are recoverable under the ADEA in lieu of reinstatement.² As the Court recognizes that back and front pay are recoverable under the ADEA in lieu of reinstatement, *Anderson v. Phillips Petroleum Co.*, 861 F.2d 631, 635 (10th Cir. 1988), *Cooper v. Asplundh Tree Expert Co.*, 836 F.2d 1544, 1556-57 (10th Cir. 1988), the Court denies Renberg's motion to strike.

Renberg also moves to dismiss the plaintiff's second cause of action, a *Burk v. K-Mart*³ public policy common law tort exception to

¹ See *Bruno v. Western Electric Co.*, 829 F.2d 957, 967 (10th Cir. 1987); *Perrell v. Financeamerica Corp.*, 726 F.2d 654 (10th Cir. 1984).

² Plaintiff also seeks "liquidated damages" should he prevail in showing that Renberg's willfully violated the ADEA. In *Anderson v. Phillips Petroleum Co.*, 861 F.2d 631 (10th Cir. 1988), the Tenth Circuit Court of Appeals stated that "Congress intended to create a two-tiered liability scheme in which liquidated damages are 'punitive in nature.'" *Id.* at 635.

³ 770 P.2d 24 (Okla. 1989).

the terminable-at-will employment doctrine. Renberg's seeks to dismiss on the premise that a *Burk* tort cannot be maintained because there is an available remedy under the ADEA or the analagous Oklahoma statute, OKLA. STAT. tit. 25, §1302.

The Court has addressed this issue before. In the namesake case, *Burk v. K-Mart Corp.*, No. 86-C-440-B, this Court entered an order on October 23, 1989 denying a motion to dismiss on the very ground now asserted by Renberg's. As stated then, this Court is not unmindful of the different views expressed by other courts in this district and in the Western District of Oklahoma. See *Carlis v. Sears, Roebuck & Co.*, No. 89-C-184-C (N.D. Okla.); *Patterson v. Hudson Farms, Inc.*, No. 88-C-273-E (N.D. Okla.); *Ugochuckwo v. KFC National Management Co.*, No. CIV-87-2231-A (W.D. Okla.). But see *Paynter v. American Legion Children's Home Corp.*, Nos. CIV-88-166-W and CIV-88-2053-W (W.D. Okla.).⁴ The Court again concludes that nothing in the "Certified Questions Answered" in *Burk* precludes a public policy common law tort claim when other

⁴ Judge Ralph Thompson has certified this question to the Oklahoma Supreme Court. See *Tate v. Browning-Ferris Inc.*, No. CIV-89-806-T (W.D. Okla. Jan. 24, 1990). The question was certified as follows: where an at-will employee terminated by a private employer files suit alleging facts that, if true, violated State and Federal Statutes providing remedies for employment discrimination, can the employee-plaintiff state a tort cause of action based on the same facts, pursuant to the public policy exception to the at-will termination rule, recently recognized by the Oklahoma Supreme Court in *Burk v. K-Mart*, 770 P.2d 24 (Okla. 1989)?

state and/or federal statutory remedies exist.⁵

Renberg's also argues that the plaintiff's third cause of action is a breach of an implied covenant of good faith and fair dealing, which, as the Supreme Court of Oklahoma held in *Burk*, is not a recognized cause of action in Oklahoma.⁶ The claim set forth in the complaint, however, is not a breach of an implied covenant of good faith and fair dealing, but a breach of an implied contract "of *permanent employment* or one of tenured job security."⁷ Breach of an implied contract is a separate legal theory, recognized in *Hinson v. Cameron*, 742 P.2d 549 (Okla. 1987):

Factors which have been isolated as critical to evaluate whether an implied contract right to job security exists are: (a) evidence of some "separate consideration" beyond the employee's services to support the implied term, (b) longevity of employment, (c) employer handbooks and policy manuals, (d) detrimental reliance on oral assurances, preemployment interviews, company policy and past practices, and (e) promotions and commendations.⁸

In the complaint, the plaintiff arguably alleges facts sufficient to support a claim of an implied contract right to job security: his thirty-four (34) years of employment with Renberg's,

⁵ See also *Webster v. Avis Rent-a-Car Systems, Inc.*, No. 87-C-718-B (N.D. Okla. 1989).

⁶ *Burk*, *supra* note 3, at 26.

⁷ *Hinson v. Cameron*, 742 P.2d 549, 555 (Okla. 1987).

⁸ *Id.* at 555.

his excellent performance reviews and commendations, and his reliance on Renberg's employee handbook, policies and past practices. (Paragraph 17, Complaint). Renberg's motion to dismiss the third cause of action is therefore denied.

Renberg's finally asserts that plaintiff's fourth cause of action, breach of Renberg's "status-based duty," should be dismissed because it is not a recognized cause of action in Oklahoma regarding the discharge of at-will employees. In *Hinson*, the Supreme Court of Oklahoma *in dicta* suggested that "breach of a status-based duty might also be invoked as a theory of recovery for an actionable dismissal."⁹ The Oklahoma cases cited by the Supreme Court in the accompanying footnote ¹⁰ recognize that a status-based duty arising from the facts and circumstances of employment rather than solely from contract can allow recovery by an injured claimant under worker's compensation law.

While the Court acknowledges that the status of employer/employee can be established from surrounding facts and circumstances rather than from contract, this is not the issue here. The parties have acknowledged that the plaintiff was an employee of Renberg's; the "status," therefore, under which he brings suit is as employee of his former employer, Renberg's. If the plaintiff means to state in his fourth cause of action that a

⁹ *Hinson*, *supra* note 7, at 537, 538.

¹⁰ *Id.* at 538 n. 32 (citing *Brewer v. Bama Pie, Inc.*, 390 P.2d 500, 502 (Okla. 1964) and *Hogan v. State Industrial Comm.*, 86 Okla. 161, 207 P. 303, 304 (1922)).

duty arises from his status as an at-will employee not to be discharged except for good cause, then his claim must be dismissed. *Burk* clearly recognizes terminable-at-will employment contracts.¹¹ While the employer's duty to provide for worker's compensation can arise solely from the status of employer/employee, *Burk* plainly rejects the imposition of any duty on the employer not to terminate an at-will employee except for good cause. Whatever duty may arise from the status of an at-will employee adduced from surrounding facts and circumstances certainly can be no more than that arising from terminable-at-will employment contracts. If the plaintiff, however, means to state that a duty arises from his status as a "permanent" employee, then he has already stated this claim in his third cause of action for breach of implied contract of permanent employment. In other words, the Court does not understand under what circumstances a "breach of status-based duty might also be invoked as a theory of recovery for an actionable dismissal," but the Court is confident that it cannot be invoked here. The plaintiff's fourth cause of action is, therefore, dismissed.

IT IS SO ORDERED, this 2nd day of January, 1991.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹¹ *Burk*, *supra* note 3, at 26.

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

FILED

JAN -2 1991 *mm*

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

ROENA M. EASTOM,
Plaintiff,
vs.
LOUIS W. SULLIVAN, M.D.,
Secretary of Health and
Human Services
Defendant.

No. 89-C-656-C ✓

ORDER

Now before the Court for its consideration is the objection of the defendant to the Report and Recommendation of the United States Magistrate filed on July 11, 1990. The Magistrate recommended that plaintiff be granted disability benefits.

The Secretary must follow a five-step process in evaluating a claim for disability benefits. 20 C.F.R. §416.920 (1988). If a person is found to be disabled or not disabled at any point, the review ends. §416.920(a). The five steps are as follows:

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

Reyes v. Bowen, 845 F.2d 242, 243 (10th Cir. 1988).

In the case at bar, the Administrative Law Judge found that plaintiff was not able to perform past relevant work, but that she

could perform other work under step (5).¹ The Magistrate determined this conclusion to be erroneous.

The scope of review as to the Secretary's evaluation of disability is limited to determining whether the finding as to disability is supported by substantial evidence. Tillery v. Schweiker, 713 F.2d 601, 603 (10th Cir. 1983). Substantial evidence is

defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." ... [T]he determination is not merely a quantitative exercise. Evidence is not substantial "if it is overwhelmed by other evidence -- particularly certain types of evidence (e.g., that offered by treating physicians) or if it really constitutes not evidence but mere conclusion."

Knipe v. Heckler, 755 F.2d 141, 145 (10th Cir. 1985) (citations omitted).

The claimant bears the burden of proving his disability. Channel v. Heckler, 747 F.2d 577, 579 (10th Cir. 1984).

In order to meet her burden of proof at step four, the plaintiff must show that she is unable to perform her past relevant work. "Past relevant work is defined as work that (1) occurred within the past fifteen years (the so-called recency requirement), (2) was of sufficient duration to enable the worker to learn to do the job (the so-called duration requirement), and (3) was substantial gainful employment. 20 C.F.R. §416.965(a)(1986)." Jozefowicz v. Heckler, 811 F.2d 1352, 1355 (10th Cir. 1987).

Once a determination is made that plaintiff has performed past relevant work, the ALJ must evaluate whether plaintiff is able to

¹The body of the ALJ's decision concluded that plaintiff could not return to her past relevant work, (TR.21), but Finding No.8 erroneously stated she could return. The Appeals Council noted the error, and adopted the conclusion of the body of the decision. (Tr.5). In his Report and Recommendation, the Magistrate relied in part upon the erroneous Finding No.8. (Report and Recommendation at 2-3).

perform this work in light of her residual function capacity (RFC). RFC is a medical assessment of what plaintiff is able to do and encompasses an evaluation of plaintiff's physical, mental, and any other impairments. See 20 C.F.R. §404.1545. The ALJ must also consider other evidence of limitations including plaintiff's own testimony. Martin v. Sullivan, 901 F.2d 650, 652 (8th Cir. 1990).

After a determination of RFC is made, the ALJ must then evaluate the demands of plaintiff's former work and compare those demands with his present abilities. See Marcia v. Sullivan, 900 F.2d 172, 177 n.6 (9th Cir. 1990). "The ALJ has a duty to fully investigate and make explicit findings as to the physical and mental demands of a claimant's past relevant work and to compare that with what the claimant herself is capable of doing before he determines that she is able to perform her past relevant work." Nimick v. Secretary of Health & Human Servs., 887 F.2d 864, 866 (8th Cir. 1989) (emphasis in original) (footnote omitted); See also Orlando v. Heckler, 776 F.2d 209, 213 (7th Cir. 1985) ("[T]o determine that a claimant is unable to return to his former work, the administrative law judge must compare the demands of that work with the claimant's existing physical abilities"), citing to Strittmatter v. Schweiker, 729 F.2d 507, 509 (7th Cir. 1984).

This determination encompasses not only whether plaintiff has the RFC to perform the actual functional demands and job duties of her particular past relevant job, but also whether she can perform the functional demands and job duties of the occupation as generally required by employers throughout the national economy. Arbogast v. Bowen, 860 F.2d 1400, 1403 (7th Cir. 1988).

If plaintiff establishes a prima facie case, the burden then shifts to the Secretary at step five, Williams v. Bowen, 844 F.2d 748, 751 (10th Cir. 1988) to show that there is work in the economy which plaintiff can perform based on her current physical condition, including consideration of plaintiff's complaints of pain and the effectiveness of her medication and therapy. Id. at 753-77.

For purposes of this case, the critical finding of the ALJ reads as follows:

The claimant's complaints of pain are credible to the extent that the medical records support a conclusion that there is a physiological basis for pain and the pain is being treated by very mild medication.

(Tr.22). (emphasis added).

The Magistrate concluded, and the Court agrees, that this finding establishes the "loose nexus" between proven impairment and pain alleged required by Luna v. Bowen, 834 F.2d 161, 164 (10th Cir. 1987). However, the Magistrate went on to conclude that the ALJ did not consider all relevant evidence as required by 42 U.S.C. §423(d)(5)(B). Specifically, "objective corroboration of the pain's severity, the plaintiff's persistent attempts to find relief, and her regular contact with a doctor." (Report and Recommendation at 5). See also Luna, 834 F.2d at 165-66. Further, the Magistrate concluded that the ALJ had improperly failed to give substantial weight to a treating physician's opinion.

Credibility determinations made by an ALJ are generally treated as binding upon review. Talley v. Sullivan, 908 F.2d 585, 587 (10th Cir. 1990). Upon review, the Court finds that the ALJ did consider all relevant evidence as required once the "loose

nexus" is established. The medical evidence was almost unanimous that, while plaintiff suffered pain and was precluded from performing her past relevant work, she could perform other work. The Magistrate placed great emphasis upon a letter written by Dr. Nunley (Tr.171-72), which opines that plaintiff will not be able to return to her formal employment and is not a candidate for retraining. The Magistrate stated that Dr. Nunley had been plaintiff's treating physician from June 27, 1986 through the date of the report (May 25, 1988) excluding a 6-month period. (Report and Recommendation at 6). However, the records indicate that Dr. Nunley last treated plaintiff on September 16, 1987 (Tr.152-58). Dr. Nunley's record of July 9, 1987, when he was still treating plaintiff, opines that she is probably still capable of light duty work (Tr.154). Since Dr. Nunley had not seen plaintiff for several months prior to the second report, the Magistrate's inference of deterioration is unfounded.

It is true that the ALJ ordinarily must give "specific, legitimate reasons" for rejecting the treating physician's opinion. See Byron v. Heckler, 742 F.2d 1232, 1235 (10th Cir. 1984). However, in Eggleston v. Bowen, 851 F.2d 1244, 1247 (10th Cir. 1988) the court upheld an ALJ's failure to give substantial weight to such an opinion when it was rendered after treatment, was inconsistent with earlier records made during treatment, and was inconsistent with other examining physicians. As best the Court can determine, the ALJ in that case did not set forth "specific, legitimate reasons", but the appellate court found them obvious from the record. This also is such a case.

It is the Order of the Court that the Report and Recommendation of the Magistrate is hereby REVERSED. The plaintiff Roena M. Eastom's claim for benefits is hereby DENIED.

IT IS SO ORDERED this 29th day of January, 1991.



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