

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

THRIFTY RENT-A-CAR SYSTEM, INC.
an Oklahoma corporation,

Plaintiff,

vs.

AEROCAR RENTAL SYSTEMS, INC.,
a foreign corporation; and
JERRE G. SPYRES, formerly known as
Jerre G. Lahti, an individual,

Defendants.

Case No. 90-C-775-B

FILED
JAN 18 1991
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER ENTERING JUDGMENT AND
PERMANENT INJUNCTION BY DEFAULT

On the 17th day of January, 1991, this cause came on for hearing on the Motion For Entry of Default Judgment, Application for Attorney's Fees and Request for Permanent Injunction, filed herein by the Plaintiff Thrifty Rent-A-Car System, Inc. ("Thrifty") on November 30, 1990. Thrifty appeared by its counsel, Nancy G. Gourley of Comfort, Lipe & Green, P.C., and through its corporate representative Thomas M. Bonner, and the Defendants Aerocar Rental Systems, Inc., ("Aerocar") and Jerre G. Spyres ("Spyres") appeared not. The Court heard statements of Thrifty's counsel and the sworn testimony of Mr. Bonner, and reviewed the Court's record of the cause and the Exhibits admitted in evidence. Being thus fully advised, the Court FINDS:

1. Thrifty filed its Complaint on September 7, 1990, and its First Amended Complaint on September 12, 1990.

2. Aerocar and Spyres were each duly personally served with an original Summons and Complaint and an Alias Summons and First

Amended Complaint, by personal service upon Jerre G. Spyres, individually and as Registered Service Agent for Aerocar, at Aerocar's usual place of business on September 18, 1990.

3. The time within which Defendants could have answered or otherwise pled under the Federal Rules of Civil Procedure expired on October 9, 1990, but neither Aerocar nor Spyres Answered or otherwise pled within that time. Nor has any answer or pleading been entered by either Defendant to date.

4. Both Aerocar and Spyres were duly personally served with a copy of the Motion for Entry of Default Judgment, Application for Attorney's Fees and Request for Permanent Injunction and Brief in Support Thereof on December 11, 1990.

5. Both Aerocar and Spyres were duly served by Certified Mail with a Notice of the January 17, 1991, hearing, by counsel for Thrifty.

6. Thrifty is entitled to Judgment by default.

7. Thrifty is entitled to an award of the full amount of damages sought, as follows:

License Agreement and Lease Agreement Accounts Receivable	\$217,464.37
Interest Thereon at the Contract Rate Through January 17, 1991	\$ 35,926.74
Principal and Interest on the Promissory Note Through January 17, 1991	\$ 86,404.82
Total Damages	\$339,795.93

8. By stipulation of Thrifty, the post-judgment rate on the total amount of damages shall be at the federal post-judgment interest rate of 6.62% from the date of judgment.

9. Thrifty has incurred attorney fees in the amount of \$13,644.07 and costs and expenses in the amount of \$1,062.34, and is entitled to judgment for the full amount of its attorney fees and costs.

10. The award of attorney fees and costs shall bear interest at the federal post-judgment interest rate of 6.62%.

11. Aerocar entered into a License Agreement for Vehicle Rental, Leasing & Parking (the "License Agreement") with Thrifty dated August 5, 1987, which granted Aerocar the right to operate a Thrifty Car Rental franchise within a specified territory within the State of Florida.

12. Under the License Agreement, Aerocar was granted the right to use the Thrifty Mark in connection with its Thrifty business during the term of the License Agreement.

13. In or about November, 1989 and continuing through August 3, 1990, Aerocar was in default of its obligations to Thrifty under the License Agreement and other agreements between Thrifty, Aerocar, Spyres, and GSW, Inc. ("GSW"), an entity purchased by Aerocar and, on information and belief, later merged into Aerocar. Pursuant to the terms of the License Agreement, Thrifty therefore issued a notice of termination of the License Agreement effective September 5, 1990 by letter to Spyres and Aerocar dated August 3, 1990.

14. Under the License Agreement Aerocar had the following obligations, among others, upon termination of the License Agreement:

8.6.1 LICENSEE's Obligations. In the event of termination of this License Agreement and License (which for all purposes of this License Agreement shall mean and include termination by either party or by nonrenewal), LICENSEE shall. . . immediately cease and desist from further directly or indirectly identifying itself in any manner as a licensee of the Thrifty Rent-A-Car System; using the Thrifty Business Methods, or any part thereof; using the Thrifty Marks or any variations or colorable imitations thereof, or any of the trade secrets, forms, slogans, signs, symbols, devices, special or national account customer lists or materials constituting or containing elements of the Thrifty Business Methods or the Thrifty Rental Method. . . . LICENSEE further thereupon shall return to THRIFTY all Operating Manuals, signs, Rental Agreements, advertising materials and other materials furnished by THRIFTY. LICENSEE agrees that, upon the termination of this License Agreement, it shall take all steps which may be necessary to transfer to THRIFTY, or to such Person as THRIFTY may direct, the telephone number(s) used by it in the conduct of its Thrifty business and upon THRIFTY's request, to advise the telephone company serving the Licensed Territory that it has no further interest in such telephone number(s) and to approve their transfer to THRIFTY, or to such other Person as THRIFTY may direct. . . .

8.6.2 Liability for Breach of Restriction on Use of Marks. LICENSEE acknowledges that any breach by it of the obligation in Section 8.6.1 to cease and desist use of Thrifty Marks, customer lists or elements of the Thrifty Business Method upon termination, shall cause irreparable injury to THRIFTY, suitable for remedy by temporary, preliminary and permanent injunctive relief and damages and that THRIFTY shall also be entitled to recover an amount equal to the aggregate of THRIFTY's costs of obtaining any such injunctive relief, order of specific performance or damages, including all costs of investigation and proof of facts, court costs and attorney fees.

15. The License Agreement between Aerocar and Thrifty also contained the following covenant-not-to-compete:

3.17.1 Exclusive Operation of Thrifty Business. During the Term of this License Agreement and for one hundred eighty (180) days after termination thereof, neither LICENSEE nor any of the Owners, shareholders (if a corporation) or partners (if a partnership) of LICENSEE shall, for any reason whatsoever, without the prior written consent of THRIFTY, conduct, operate, manage,

become associated with, become employed by, become an agent for, possess a financial interest in, affiliate with, attempt to affiliate with, use the name or identification of, engage in or participate in, directly or indirectly, any other Vehicle Rental and Leasing or Vehicle Parking business, operation, network or system within one hundred (100) miles of Licensed Territory, except under License from THRIFTY. Ownership of shares constituting less than controlling interest in a publicly traded company shall not be a violation of this provision.

In the event that Oklahoma law would invalidate or limit the applicability of Section 3.17.1, then Section 3.17.1 shall be construed in accordance with the laws of the state in which LICENSEE is a resident or in which LICENSEE's Thrifty business is located, if the law of any such state would afford Section 3.17.1 broader applicability.

16. The License Agreement contains the following provision with regard to breach of the covenant not-to-compete:

8.7 Liability for Breach of Restriction against Competition. LICENSEE acknowledges that its failure to adhere to the provisions of Section 3.17.1, 8.6.1 and 8.6.2 of this License Agreement for any reason whatsoever will constitute unfair competition with THRIFTY. LICENSEE further recognizes and acknowledges that THRIFTY shall suffer irreparable injury in the event of any such breach and that it is impossible to accurately determine the tangible and intangible damages which THRIFTY will suffer if LICENSEE fails or refuses so to adhere to the provisions of Section 3.17.1, 8.6.1 and 8.6.2 and accordingly agrees to the entry without prior notice, to the extent that applicable notice requirements may be waived, of such temporary and permanent writs, injunctions, judicial orders, decrees, or other judicial or administrative relief as may be appropriate under the law of any applicable jurisdiction, against LICENSEE's breach of such provisions. LICENSEE further stipulates to the award to THRIFTY. . . .an amount equal to the aggregate of THRIFTY's costs of obtaining any such injunctive relief, order of specific performance or damages, including all costs of investigation and proof of facts, court costs and attorney fees.

17. Aerocar and Spyres have violated §§ 8.6, 8.6.2, 3.17.1 and 8.7 in several ways, including, but not limited to, the following:

A. Operating a competing car rental business within the territory covered by the License Agreement within 180 days of the termination of the License Agreement.

B. Continuing to use, and refusing to transfer to Thrifty or its designee the telephone numbers used in connection with Aerocar's Thrifty business. These telephone numbers are listed in the telephone book under the name Thrifty Car Rental and advertised in conjunction with the Thrifty mark. The current telephone book will not be replaced until July, 1991. In addition, Defendants have on occasion allowed the phones listed under the Thrifty name to ring without being answered, connected the lines to an answering machine capable of accepting recorded messages, and failed to return incoming calls. Further, Defendants have on other occasions answered the phones listed under Thrifty's name and indicated to callers that "Thrifty is out of business." The phone numbers used by Defendants in connection with their Thrifty business and displayed by them in conjunction with the Thrifty mark include, but are not limited to, (all in area code 904) 731-8382, 641-9600, 741-4366 and 641-3778. Thrifty has obtained

assignment of these numbers from the phone company upon payment of past due bills of Aerocar. The Court finds that Thrifty is entitled to exclusive use of each of these numbers.

C. Identifying their current business to the public by using the Thrifty name and/or trade dress through among other things their use of the phone numbers advertised with Thrifty's mark.

18. Thrifty is currently negotiating with a third party for the sale of the right to operate a Thrifty Car Rental franchise in the territory which was licensed to Aerocar prior to the termination of Aerocar's License Agreement. These negotiations have been delayed by the violation by Aerocar and Spyres of the post-termination obligations under the License Agreement set forth above. Continued violations will harm the business of any new licensee. By reason of these circumstances, Thrifty has been, and will continue to be, irreparably injured.

19. The Thrifty system is a nationwide network of car rental outlets. Injury sustained by one location, particularly with regard to loss of goodwill, ultimately inures to the detriment of all.

20. By reason of the foregoing Plaintiff is entitled to the relief sought.

BY REASON OF THE FOREGOING, JUDGMENT IS HEREBY ENTERED in favor of the Plaintiff and against the Defendants and each of them in the amount of \$339,795.93 plus attorney fees in the amount of

\$13,644.07 and costs and expenses of \$1,062.34, for a total judgment of \$354,502.34. Interest shall accrue on this amount at the post-judgment interest rate of 6.62% until paid.

JUDGMENT IS FURTHER HEREBY ENTERED in favor of the Plaintiff and against the Defendants and each of them, permanently:

(1) enjoining Defendants and their agents, servants and employees from directly or indirectly using, displaying or otherwise presenting the Thrifty Mark or any mark, word, or name similar to the Thrifty Mark which is likely to cause confusion or mistake or to deceive, on letters, literature, advertisements or other graphic materials in a manner, style or form which imitates or is confusingly similar to Thrifty's letterhead or otherwise indicates or tends to represent that the Defendants are authorized, associated, affiliated, sponsored or approved by Thrifty and ordering Defendants to remove all such indicia, including Thrifty's trade dress;

(2) prohibiting the Defendants from using any telephone numbers which are now or have been displayed in conjunction with the Thrifty Mark or used in connection with the Thrifty business and ordering Defendants to assign to Thrifty all phone numbers used in connection with the Thrifty Mark, including but not limited to, (all in area code 904) 731-8382, 641-9600, 741-4366 and 641-3778;

(3) ordering Defendants to return all labels, signs, advertisements, catalogs, brochures and other printed materials in the possession or control of the Defendants bearing the Thrifty

Mark that Defendants are obligated to return to Thrifty pursuant to the License Agreement;

(4) prohibiting the Defendants from engaging directly or indirectly in the vehicle rental, leasing or parking business within one hundred (100) miles of the Counties of Duval, Clay and Nassau, in the State of Florida, for one hundred eighty (180) days from September 5, 1990.

IT IS SO ORDERED THIS 18th 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 18 1991

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

ROBERT E. ANTHONY,
CLIFTON L. COLEMAN,
MICHAEL L. ADAMS, and
GEORGE H. GLASBY,

Plaintiffs,

vs.

TEXACO, INC.,
SYNERGY GROUP, INC.,
SKELGAS GROUP, INC., and
NEW SKELGAS, INC.,

Defendants.

No. 85-C-67-E

ORDER AND JUDGMENT

The Court enters this Order and Judgment, to clarify and amend its Findings of Fact and Conclusions of Law entered on March 2, 1990 (the Court's "Findings and Conclusions"), and to reduce its rulings in this matter to judgment.

The Court first addresses certain of the arguments raised by Defendants, Synergy Group, Inc., Skelgas Group, Inc., and New Skelgas, Inc. (hereinafter "Skelgas") in their Motion for Rehearing. In the motion, Skelgas argued that the Court's award of front pay in favor of Plaintiff Michael Adams (hereinafter "Adams") cannot be sustained on the facts of this case and in light of the teachings of the Tenth Circuit Court of Appeals, particularly the very recent case of Marshall v. TRW, Inc., Reda Pump Division, 900 F.2d 1517 (10th Cir. 1990).

The Court originally awarded front pay to Adams because the Court believed hostility in the workplace would not allow reinstatement. However, since the Court's ruling, the stock of

Skelgas Group, Inc. was sold to an entity having no connection with the events giving rise to Adams' claims. It is undisputed that this change in ownership and senior management has removed any impediment to reinstatement. The Court therefore finds that reinstatement is the appropriate remedy and hereby amends its Findings and Conclusions to rescind its award of front pay to Adams. The Court directs that Adams be reinstated to a position with Skelgas which is comparable to the position he held on April 16, 1985, the date of his constructive discharge.

The parties also seek clarification as to the Court's ruling that Adams is entitled to "receive full benefits as though he remained an employee of New Skelgas." (Court's Findings and Conclusions, pp. 27-28). Adams urges that he is entitled to an award of damages representing a monetary "value" of such benefits, while Skelgas argues that "reinstatement" of benefits, and actual computation of the value of any claims thereunder, is necessary. The Court finds that Adams is not entitled to an award of damages based upon the value of such benefits (except for the matching contributions to be made by Skelgas pursuant to the Skelgas Thrift Plan - which is addressed later in this Court's Order). Vacation, Sick and Holiday pay are already encompassed in Adams backpay award (also addressed later in this Order) and therefore no further award relating to those benefits will be made.

With respect to insurance benefits, Adams is entitled to be treated as if he remained an insured under the Skelgas insurance plans from the date of his resignation to the present. He is

entitled to reinstatement of these benefits so that if he has sustained any unreimbursed covered claims under such benefit plans from the time of his resignation to the present, he is to submit such claims to the plan administrator and they shall be treated as if otherwise governed by the provisions of such plans.

Skelgas also seeks clarification of that portion of the Court's Findings and Conclusions which held that Plaintiff George Glasby (hereinafter "Glasby"), "is entitled to damages of \$35,424.00 representing his monthly salary . . . between February, 1985 and August, 1987, when he obtained another job." (Court's Findings and Conclusions, p. 28). It is undisputed that Glasby was paid his monthly salary by Skelgas from February, 1985 through August, 1987, when he found another job. Therefore, the award to Glasby is hereby reduced by the amount of salary paid to him by Skelgas during the period from February 1985 through August 1987. Because the salary paid to Glasby by Skelgas during that period exceeds the damages set forth above, Glasby's award is extinguished.

Based upon the foregoing, and upon the Court's Findings and Conclusions of March 2, 1990, the Court hereby enters Judgment as follows:

1. Against Plaintiffs, Robert Anthony (hereinafter "Anthony"), Clifton Coleman (hereinafter "Coleman") and Adams and in favor of Texaco Inc., and Synergy Group, Inc., Skelgas Group, Inc. and Skelgas on Plaintiffs' claims for severance pay;

2. In favor of Plaintiffs, Anthony, Coleman and Adams and against Skelgas on Plaintiffs' claims for unused vacation in 1984, as follows: Anthony, \$4,154.40, together with pre-judgment interest at a rate of 9.08% (the applicable rate on January 11, 1985) of \$2,228.39, for a total of \$6,383.19; Coleman, \$3,206.56, together with pre-judgment interest at a rate of 9.08% (the applicable rate on January 11, 1985) of \$1,719.81, for a total of \$4,926.37; and Adams, \$1,967.68, together with pre-judgment interest at a rate of 9.15% (the applicable rate on April 11, 1985) of \$1,016.62, for a total of \$2,984.30.

3. In favor of Plaintiff Anthony and against Skelgas for Thrift Plan contributions of \$173.26 and unreimbursed business expenses of \$314.52, together with pre-judgment interest at a rate of 9.08% (the applicable rate on January 11, 1985) of 261.34, for a total of \$748.60.

4. In favor of Adams and against Skelgas on Adams' claim of retaliation under 29 U.S.C. §1140, as follows:

(a) Back pay from April 16, 1985 to December 7, 1990, \$263,291.99, less amounts received by Adams in mitigation, \$40,792.53, and less the cost of insurance contributions which would have been made by Adams under the Skelgas plans, \$10,889.75, for a total of \$211,609.71, plus pre-judgment interest at a rate of 9.15% per annum (the applicable rate on April 16, 1985) of \$55,584.71 (calculated on net back pay after deducting periodic interim earnings and insurance contributions), for a total of \$267,194.42 in net back pay;

(b) Thrift Plan contributions that would have been made by Skelgas under the plan's matching provisions for the relevant time frame, plus earnings, totalling \$9,805.33; and

(c) Reinstatement of Adams to a position with Skelgas that is comparable to the position Adams held on April 16, 1985.

5. The money judgments rendered herein shall bear post-judgment interest at a rate of 7.28% per annum, the applicable rate on December 7, 1990.

6. In favor of Coleman and against Texaco on Coleman's claim for early retiree medical and life insurance coverage under the July 31, 1984 Moody Covey letter.

7. Coleman is entitled to reasonable attorneys' fees and costs of this action against Texaco to the extent he prevailed on his claims against Texaco.

8. Plaintiffs Anthony, Coleman and Adams are entitled to reasonable attorneys' fees and costs of this action against Skelgas to the extent that they prevailed on their claims against Skelgas.

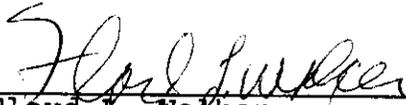
9. The Court retains jurisdiction over this matter to oversee the implementation of its Order directing Skelgas to reinstate Adams to a position comparable to the one he held on April 16, 1985.

IT IS SO ORDERED, JUDGED AND DECREED this _____ day of
December, 1990.

S/ JAMES O. ELLISON

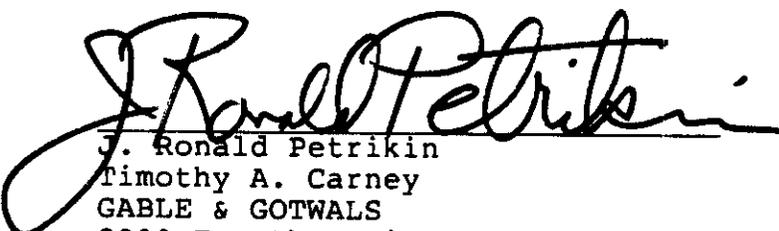
James O. Ellison
United States District Judge

APPROVED AS TO FORM:



Floyd L. Walker
PRAY, WALKER, JACKMAN,
WILLIAMSON & MARLAR
900 Oneok Plaza
Tulsa, Oklahoma 74103

ATTORNEYS FOR PLAINTIFFS



J. Ronald Petrikin
Timothy A. Carney
GABLE & GOTWALS
2000 Fourth National Bank Bldg.
15 West 6th Street
Tulsa, Oklahoma 74103-5447

ATTORNEYS FOR DEFENDANTS, SYNERGY
GROUP, INC., SKELGAS GROUP, INC.,
AND NEW SKELGAS, INC.

J. Patrick Cremin
HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON
4100 Bank of Oklahoma Tower
Tulsa, Oklahoma 74172-0154

ATTORNEYS FOR TEXACO, INC.

FILED

JAN 17 1991

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

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

JACKIE GLISPIE,
Plaintiff,
v.
MARION F. BROWN,
Defendant.

)
)
)
)
)
)
)
)
)
)

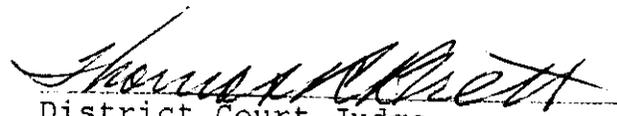
Case No. 90-C 519 B ✓

AGREED ORDER

NOW on this ¹⁴~~29~~th day of ^{JAN 1991}~~November~~, 1990 Defendant's Motion to Dismiss came on for hearing before the undersigned District Court. Upon review of the Motion and Brief in Support and after hearing testimony from counsel this Honorable Court determines that the appropriate venue for this particular matter lies in the Southern District of Illinois. The parties therefore have entered into an agreement whereupon the above captioned matter should be transferred to the Southern District of Illinois.

Transfer in this case is appropriate due to the fact that at the time of the accident of December 25, 1989, the Defendant was a resident of the State of Illinois. Further, that the accident occurred in St. Claire County, State of Illinois. Therefore, the Southern District of Illinois would have jurisdiction and venue over this particular matter.

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


District Court Judge
Northern District of Oklahoma

AGREED TO:


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


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

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

JAN 17 1991

DIANA IRENE TALBOTT and)
DANNY TALBOTT,)
)
Plaintiffs,)
)
vs.)
GERALD PRETTYMAN,)
)
Defendant.)

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

Case No. 90-C-575-E

DISMISSAL BY STIPULATION WITHOUT PREJUDICE

COME NOW the Plaintiffs, Diana Irene Talbott and Danny Talbott, by and through their attorney, Everett R. Bennett, Jr., and the Defendant, Gerald Prettyman, by and through his attorney, David Brown, pursuant to Rule 41A(ii), and hereby stipulate and dismiss the above-styled action without prejudice to the refileing of this case at a later date. Any outstanding costs which are due and owing to the Court Clerk of the United States District Court for the Northern District of Oklahoma shall be born by the Plaintiff. Any and all other costs at this time shall be born by each of the respective parties.

Respectfully submitted,

FRASIER & FRASIER

By:



Everett R. Bennett, Jr. OBA#11224
1700 Southwest Boulevard
P.O. Box 799
Tulsa, OK 74101
(918) 584-4724

and

By: David Brown
David A. Brown
Assistant General Counsel
Department of Human Services
P.O. Box 53025
Oklahoma City, OK 73152-3025

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

FILED

JAN 17 1991

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

FLORENCE FISHER, JR.,)
)
 Petitioner,)
)
 v.)
)
 RON CHAMPION, Warden,)
)
 Respondent.)

90-C-303-B

ORDER

This order pertains to petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Docket #1)¹ and respondent's response (Docket #3). The facts of the case set out in the Magistrate's Order dated April 18, 1990 are incorporated herein by reference.

Petitioner's Ground One

On October 3, 1984, petitioner shot and killed Ford Byrd. The testimony at trial included the conflicting stories of petitioner and his ex-wife, Stella Fisher. Petitioner admitted shooting Byrd, but claimed he did it in self-defense. He stated that on the night of the shooting, he went to his ex-wife's home to resolve child visitation problems. When he arrived, Byrd and his ex-wife were talking on the front porch and he took his ex-wife into the house to talk. Petitioner claims Byrd then burst into the house and charged him, and petitioner shot in self-defense. However, Stella Fisher testified that the pair were not having any child visitation problems and that petitioner seldom saw his son and had not visited him for months. She claimed that petitioner arrived at her home immediately

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.

following Ford Byrd and shot Byrd for no reason as he approached her house.

Petitioner was convicted of first degree murder in Case No. CRF-84-3763, in the District Court of Tulsa County. He was sentenced to life imprisonment.

Petitioner's first ground for relief is that the court violated his constitutional rights by excluding the testimony of Carol Townsend ("Townsend") to impeach Stella Fisher's story. At trial, petitioner offered Townsend's testimony to rebut Stella Fisher's claim that he had not been in contact with their son for several months. Townsend testified she had been with petitioner in late August when he went to his ex-wife's home to visit his son. Before the testimony could continue, the state objected, contending that such testimony concerned collateral issues and impeachment on such issues was improper. The trial court sustained the objection. Petitioner argues that had Townsend's testimony been admitted, Stella Fisher would have been discredited for lack of truthfulness. Petitioner contends the failed marital relationship with Stella Fisher motivated Ms. Fisher's lack of truthfulness. Such motivation, petitioner believes, destroys Stella Fisher's credibility as a witness and should have been brought to the jury's attention.

The admission of evidence, for the purpose of impeaching a witness as to her reputation for truth and veracity, is a question of state law. Matters of state law are not within this court's scope of habeas corpus review. Engle v. Issac, 456 U.S. 107, 121 (1982) (citing Gryger v. Burke, 334 U.S. 728, 731 (1948)). This is true unless the prisoner demonstrates that the state court errors deprived him of fundamental rights guaranteed by the United States Constitution. Brinlee v. Crisp, 608 F.2d 839 (10th Cir. 1979), cert. den. 444 U.S. 1047 (1980).

During a trial proceeding, the court is always caught in a balancing act between the quest for justice and the efficient use of the court's time. Due to the latter, collateral, cumulative and irrelevant evidence can be found inadmissible by a court and this does not constitute fundamental error. Wauqua v. State, 694 P.2d 523, 535 (Okla. Crim. App. 1985). Townsend's testimony as to how many times the petitioner visited his son is a collateral matter to whether he shot the victim in self defense. As such, this court finds that the trial court's ruling that it was inadmissible was not fundamentally unfair.

Petitioner's Ground Two

Petitioner's second ground alleges that there was insufficient evidence to sustain the conviction. Such a challenge to the sufficiency of the evidence raises no federal constitutional question and cannot be considered in federal habeas corpus proceedings. Sinclair v. Turner, 447 F.2d 1158, 1161 (10th Cir. 1971), cert. den., 405 U.S. 1048 (1972)

The court notes that petitioner claims malice aforethought was not proven and such was necessary for a conviction of first degree murder. Malice aforethought, the intent to unlawfully take the life of another human being, may be proven circumstantially. Henderson v. State, 661 P.2d 68 (Okla. Crim. App. 1983). Furthermore, malice is implied when murder is occasioned by the use of a dangerous weapon in such a manner as naturally and probably would cause death. Gatewood v. State, 157 P.2d 473, 475 (Okla. Crim. App. 1945). The Gatewood court also held that in cases involving the use of a dangerous weapon, and not a deadly weapon, it was for the jury to determine, as a question of fact, whether petitioner's intent, manner of use of the instrument, and conduct would establish malice. If a killing is occasioned by the use of a deadly weapon, then the

design to effect death may be inferred from the fact of the killing. Id. See also McFarland v. State, 648 P.2d 1248, 1250 (Okla. Crim. App. 1982). Petitioner shot the unarmed deceased at close range with a .38 caliber handgun. The jury could properly infer malice from these circumstances.

Petitioner's Ground Three

Petitioner argues that the court's jury instruction number seven improperly stated the law.² Again this is an issue outside the scope of habeas corpus relief. Ortiz v. Baker, 411 F.2d 263, 264 (10th Cir. 1969).

The weapon involved, the manner of use of the instrument, and the petitioner's conduct were all circumstantial evidence used to establish intent and malice. In instructing the jury, the court fairly and accurately stated the applicable law. The trial court's instruction was proper and within the court's discretion.

Petitioner's Grounds Four and Five

Petitioner alleges that he received ineffective assistance of counsel at trial and on appeal. The Supreme Court set forth standards by which to judge ineffective assistance of counsel claims in Strickland v. Washington, 466 U.S. 668 (1984). To establish a claim that counsel's assistance was so defective as to require a reversal of conviction, a petitioner must show that counsel's performance was deficient and that the deficient performance

² Jury Instruction No. 7 was as follows:

You are instructed that an intent to commit the crime charged in the information is an essential element of the offense with which the defendant is charge[d].

In this connection, you are instructed that the intent with which an act is done is a mental state of mind of the accused. Direct and positive proof of intent is not necessary, but the same may be, and usually is, proved by circumstantial evidence. If you find that an act was done, the intent with which it was done is to be determined by you from all the facts and circumstances as shown by the evidence presented in this case.

prejudiced the defense. The petitioner must establish that counsel's errors were so serious as to deprive the defendant of a fair trial. It must be established that counsel's assistance was unreasonable considering all the circumstances. The Supreme Court in Strickland stated that the bottom line for judging any claim of ineffectiveness must be "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id. at 686. The Court recognized that "counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. at 690. The Strickland standards have consistently been followed by the Tenth Circuit. Hannon v. Maschner, 845 F.2d 1553 (10th Cir. 1988); United States v. Espinosa, 771 F.2d 1382, 1411 (10th Cir. 1985).

Petitioner's main contention is that his counsel did not argue the case of Washington v. Texas, 388 U.S. 14 (1967), in support of allowing Townsend's testimony and he was therefore denied effective assistance of counsel. However, counsel correctly did not argue Washington, which held that a defendant had "the right to put on the stand a witness who was physically and mentally capable of testifying to events that [s]he had personally observed, and whose testimony would have been relevant and material to the defense." Id. at 23. The events Townsend personally observed were not relevant and material to the case at hand.

The court concludes that counsel for petitioner acted within the scope of assistance envisioned by the 6th Amendment in cross-examining Stella Fisher to reveal any prejudices she might harbor against petitioner. He further argued to the court that Townsend's

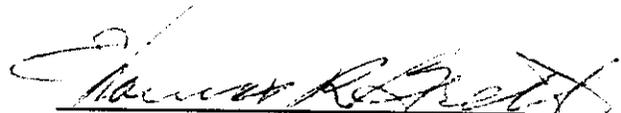
testimony be allowed to contradict Ms. Fisher. Citing Washington v. Texas would not have supported his argument. Counsel is not required to argue and cite every case on the issue, but only to render legal assistance within the norm of the professional legal community.

Petitioner also argues that he received ineffective assistance of counsel on appeal when his trial attorney did not argue on appeal that petitioner received ineffective assistance of counsel at trial. For the reasons set forth above, which are incorporated herein, petitioner has failed to meet the elements of Strickland or Evitts v. Lucey, 469 U.S. 387, reh. den. 105 S.Ct. 1783 (1985), in proving a denial of the 6th Amendment right to effective assistance of counsel. In Evitts, the court found that an attorney "need not advance every argument, regardless of merit, urged by an appellant on appeal". Id. at 394.

Conclusion

Petitioner has failed to state valid claims for habeas corpus relief pursuant to 28 U.S.C. § 2254. His petition is dismissed.

Dated this 17th day of June, 1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

JAN 17 1981

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

VICTOR SAVINGS AND LOAN
ASSOCIATION,
a Federally Chartered Savings and
Loan Association,

Plaintiff,

VS.

CASE NO. 88-C-1068-B

SHERIDAN CHASE, LTD., an Oklahoma
Limited Partnership, RICHARD W.
RIDDLE, THOMAS C. HERRMANN,
RONALD L. SIEGENTHALER, WILLIAM B.
EMMER, SEDCO INVESTMENTS, JOHN F.
CANTRELL, COUNTY TREASURER, TULSA
COUNTY and BOARD OF COUNTY
COMMISSIONERS OF TULSA COUNTY,
OKLAHOMA,

Defendants,

MARY ANNE CROOK, Trustee of the
JAMES M. WALKER TRUST and SOONER
FEDERAL SAVINGS & LOAN
ASSOCIATION, a Corporation

Additional Party
Defendants.

DISMISSAL BY STIPULATION

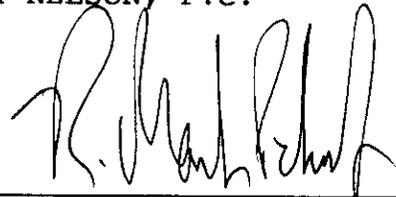
Plaintiff, the Federal Deposit Insurance Corporation, Manager for the FSLIC Resolution Fund as receiver for Victor Savings and Loan Association ("FDIC") and the Defendants, Sheridan Chase, Ltd., Richard W. Riddle, Thomas C. Herrmann, Ronald L. Siegenthaler, William B. Emmer and Sedco Investments (the "Defendants") hereby dismiss all claims pending in the above-referenced matter pursuant to Fed. R. Civ. Pro. 41. All claims are hereby dismissed with prejudice except that the claims of the FDIC against Richard W.

Riddle and any defenses or claims of Richard W. Riddle are hereby dismissed without prejudice. This dismissal by stipulation has been voluntarily entered into by all parties pursuant to the settlement reached in this action.

WHEREFORE, the FDIC and Defendants request that this Court enter this Dismissal in its records and dismiss this case in its entirety.

Respectfully submitted,

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

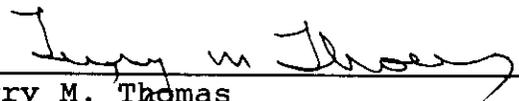


By:

R. Mark Petrich, OBA #11956
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR THE FEDERAL DEPOSIT
INSURANCE CORPORATION, MANAGER FOR
THE FSLIC RESOLUTION FUND AS
RECEIVER FOR VICTOR SAVINGS & LOAN
ASSOCIATION

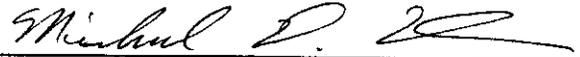
NORMAN & WOHLGEMUTH



Terry M. Thomas
John E. Dowdell
2900 Mid-Continent Tower
Tulsa, Oklahoma 74103

ATTORNEYS FOR DEFENDANTS RONALD L.
SIEGENTHALER, WILLIAM B. EMMER AND
SEDCO INVESTMENTS

DOYLE & HARRIS



For Steven M. Harris
Mark A. Edmiston
P.O. Box 1679
Tulsa, Oklahoma 74101

ATTORNEYS FOR DEFENDANT SHERIDAN
CHASE LTD. AND THOMAS C.
HERRMANN



Richard W. Riddle
5414 South Yale, Suite 200
Tulsa, Oklahoma 74135

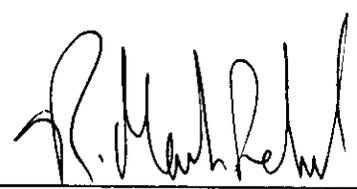
PRO SE

CERTIFICATE OF MAILING

I the undersigned do hereby certify that on the 17th day of January, 1991, a true and correct copy of the above and foregoing was forwarded by U.S. Mail, with proper postage thereon fully prepaid, to the following counsel of record:

G. Lawrence Fox
Baker, Hoster, McSpadden
Clark, Rasure & Slicker
800 Kennedy Building
Tulsa, Oklahoma 74103

Doris L. Fransein
Assistant District Attorney
District Attorney's Office
County Administration Building
500 South Denver Avenue
Tulsa, Oklahoma 74103



challenge on the ground that it violates the Constitution or laws of the United States. The court now grants his motion to reconsider and treats his petition as one seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

District courts have jurisdiction under 28 U.S.C. § 2241 to grant writs of habeas corpus to petitioners in state custody who have not yet been tried. Braden v. 30th Judicial Circuit Court, 410 U.S. 484, 488-93 (1973). The exercise of this jurisdiction, however, is subject to restraints, as comity and federalism prevent the federal court from asserting jurisdiction when a petitioner has not exhausted his state remedies. Id. See also, United States Ex Rel. Parish v. Elrod, 589 F.2d 327 (7th Cir. 1979); Moore v. DeYoung, 515 F.2d 437 (3rd Cir. 1975).

Petitioner has not offered the courts of Oklahoma an opportunity to consider the merits of the claims presented here. Petitioner claims that the Oklahoma Court of Criminal Appeal's order of October 4, 1990 declining to consider the district court's denial of his demurrer to the information should have included findings of fact and conclusions of law and that the district court lacks subject matter and personal jurisdiction to consider his case. The only issue that he has submitted to the state court of appeals is the denial of his demurrer to the information.

It is clear that petitioner has not exhausted all his available state court remedies for consideration of his claims, so the fundamental interests underlying the exhaustion doctrine have not been satisfied.

The court therefore finds that petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, now treated by the court as pursuant to § 2241, should be and is dismissed.

Dated this 16th day of January, 1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Richard E. White,

Defendant.

FILED

JAN 10 1991

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

Civil Action No. 90-C-1022E

NOTICE OF DISMISSAL

COMES NOW the United States of America by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Kathleen Bliss Adams, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action with prejudice.

Dated this 15th day of January, 1991.

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney


KATHLEEN BLISS ADAMS
Assistant United States Attorney
3600 United States Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 15th day of January, 1991, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

Richard E. White
1143 South 76th E. Avenue
Tulsa, OK 74112


Assistant United States Attorney

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

F I L E D

JAN 16 1991

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

MAYME B. GRAY,)
)
 Plaintiff,)
)
 vs.)
)
 BOARD OF COUNTY COMMISSIONERS)
 OF TULSA COUNTY, OKLAHOMA,)
)
 Defendants.)

Case No. 90-C-530-C ✓

JOURNAL ENTRY OF CONFESSION OF JUDGMENT

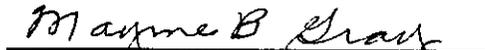
This cause comes on for hearing on the 15th day of January, 1991, the Plaintiff, Mayme B. Gray, appearing by counsel, D. Gregory Bledsoe, and the Defendant, Board of County Commissioners of Tulsa County, Oklahoma, appearing by Fred J. Morgan, Assistant District Attorney for Tulsa County, Oklahoma; attorney for Defendant Board of County Commissioners of Tulsa County, Oklahoma, having waived a jury and tried this cause to the Court, the Court finds that on October 15, 1990, the Board of County Commissioners of Tulsa County, Oklahoma, approved the recommendation of the District Attorney of Tulsa County, Oklahoma, to confess judgment in the case herein in the amount of Thirty-seven Thousand Three Hundred Seventy-five Dollars (\$37,375.00); the Court further finds the Plaintiff has sustained her allegations and is entitled to recover damages against the Defendant in the sum of Thirty-seven Thousand Three Hundred Seventy-five Dollars (\$37,375.00), which satisfies all of the Plaintiff's claims including attorney fees. The Court further finds that Plaintiff has waived any claim for back wages, front pay, reinstatement or any other form of equitable relief against this Defendant.

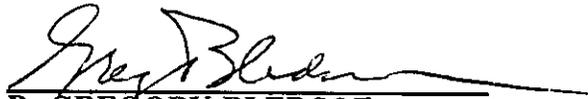
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the Plaintiff

7

recover judgment against the Defendant Board of County Commissioners of Tulsa County, Oklahoma, in the total sum of Thirty-seven Thousand Three Hundred Seventy-five Dollars (\$37,375.00), with interest from the date at ten percent (10%) per annum.


UNITED STATES DISTRICT JUDGE


MAYME B. GRAY, Plaintiff


D. GREGORY BLEDSOE,
Attorney for Plaintiff

**THE BOARD OF COUNTY COMMISSIONERS
OF TULSA COUNTY, OKLAHOMA**

BY: 
FRED J. MORGAN
Attorney for Defendant

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

COMMUNITY FEDERAL SAVINGS AND
LOAN ASSOCIATION,

Plaintiff,

vs.

M. MAYERS & COMPANY, an
Oklahoma corporation, a general
partner of KENSINGTON TOWER
PARTNERSHIP, an Oklahoma
general partnership; and
NATIONAL ROYALTY CORPORATION,
an Oklahoma corporation,

Defendants,

FEDERAL SAVINGS AND LOAN
INSURANCE CORPORATION, as
Receiver for First Oklahoma
Bank,

Intervenor.

COMMUNITY FEDERAL SAVINGS
AND LOAN ASSOCIATION,

Plaintiff,

vs.

NATIONAL ROYALTY CORPORATION,
an Oklahoma corporation,

Defendant,

FEDERAL SAVINGS AND LOAN
INSURANCE CORPORATION, as
Receiver for First Oklahoma
Savings Bank,

Intervenor.

NO. 89-C-354-B

F I L E D

JAN 16 1991

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

TIME STUDY CASE
Records Time spent by Judge or Magistrate

NO. 89-C-355-B

O R D E R

NOW on this 16th day of January, 1991, the above-
referenced cause comes on before this Court on the Motion of the
Plaintiff Local America Bank of Tulsa to dismiss its claims in

Case No. 89-C-355-B. The Court finds that good cause has been shown and the relief prayed for should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the claims of the Plaintiff in Case No. 89-C-355-B are dismissed.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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

LEROY TUCK, Administrator
of the Estate of Johnny L.
Tuck, Deceased, LEROY TUCK,
individually, and DOROTHY
TUCK, individually,

Plaintiffs,

vs.

UNITED SERVICES AUTOMOBILE
ASSOCIATION,

Defendant.

}
}
}
}
}
}
}
}
}
}
}
}
}
}
}
}

No. 83-C-175-C

FILED

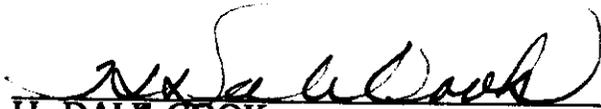
JAN 16 1991

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

ORDER

Pursuant to the directives of the Tenth Circuit Court of Appeals in its order dated December 31, 1990, all pending motions are hereby dismissed as moot and the Court Clerk is directed to close the case.

IT IS SO ORDERED this 15th day of January, 1991.


H. DALE COOK
Chief United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 GLORIA JEAN HOLT a/k/a GLORIA J.)
 HOLT; TOWN OF GLENPOOL; COUNTY)
 TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

F I L E D

JAN 16 1991

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

CIVIL ACTION NO. 90-C-287-B

O R D E R

Upon the Motion of the United States of America, acting on behalf of the Secretary of Veterans Affairs, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, and for good cause shown it is hereby **ORDERED** that this action shall be dismissed without prejudice.

Dated this 16th day of January, 1991.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

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

KBA/esr

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

JOHN W. SMITH, natural father and next)
of kin of Naomi Smith, Deceased, and)
EILEEN JOHNSTON, natural mother and next)
of kin of Naomi Smith, Deceased,)

Plaintiffs,)

and)

ALLEN M. HEAL and BRENDA K. HEAL,)
Co-Personal Representatives of the Estate)
of JENNIFER MICHELLE HEAL, Deceased,)

Plaintiffs,)

v.)

ACME BRICK COMPANY, INC.,)

Defendant.)

FILED

JAN 16 1991

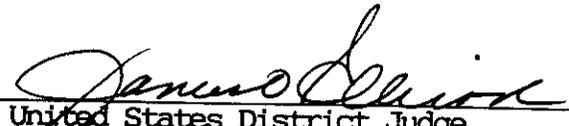
Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 90-C-84-E ✓
90-C-719-E
Consol.

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 16th day of June, 1990, it appearing to the Court
that this matter has been compromised and settled, this case is herewith dismissed
with prejudice to the refiling of a future action.

IT IS FURTHER ORDERED that pursuant to the agreement among the settling parties
and their counsel, that the amount of the settlement is to be kept confidential.


United States District Judge

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

COMMUNITY FEDERAL SAVINGS AND
LOAN ASSOCIATION,

Plaintiff,

vs.

M. MAYERS & COMPANY, an
Oklahoma corporation, a general
partner of KENSINGTON TOWER
PARTNERSHIP, an Oklahoma
general partnership; and
NATIONAL ROYALTY CORPORATION,
an Oklahoma corporation,

Defendants,

FEDERAL SAVINGS AND LOAN
INSURANCE CORPORATION, as
Receiver for First Oklahoma
Bank,

Intervenor.

COMMUNITY FEDERAL SAVINGS
AND LOAN ASSOCIATION,

Plaintiff,

vs.

NATIONAL ROYALTY CORPORATION,
an Oklahoma corporation,

Defendant,

FEDERAL SAVINGS AND LOAN
INSURANCE CORPORATION, as
Receiver for First Oklahoma
Savings Bank,

Intervenor.

NO. 89-C-354-B

FILED

JAN 16 1991

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

TIME STUDY CASE
Records Time Spent by Judge or Magistrate

NO. 89-C-355-B

ORDER

NOW on this 16th day of January, 1991, the above-
referenced cause comes on before this Court on the Motion of the
Plaintiff Local America Bank of Tulsa to dismiss its claims in

Case No. 89-C-355-B. The Court finds that good cause has been shown and the relief prayed for should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the claims of the Plaintiff in Case No. 89-C-355-B are dismissed.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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

JOHN W. SMITH, natural father and next)
of kin of Naomi Smith, Deceased, and)
EILEEN JOHNSTON, natural mother and next)
of kin of Naomi Smith, Deceased,)
Plaintiffs,)

and)

ALLEN M. HEAL and BRENDA K. HEAL,)
Co-Personal Representatives of the Estate)
of JENNIFER MICHELLE HEAL, Deceased,)
Plaintiffs,)

v.)

ACME BRICK COMPANY, INC.,)
Defendant.)

FILED

JAN 16 1991

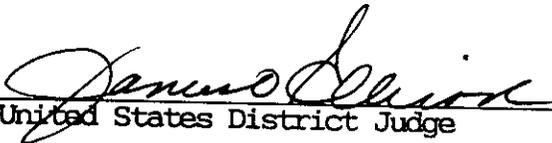
Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 90-C-84-E ✓
90 C 719-F
Counsel

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 16th day of June, 1990, it appearing to the Court
that this matter has been compromised and settled, this case is herewith dismissed
with prejudice to the refiling of a future action.

IT IS FURTHER ORDERED that pursuant to the agreement among the settling parties
and their counsel, that the amount of the settlement is to be kept confidential.


United States District Judge

F I L E D

JAN 16 1991

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

STEVEN ROWLAND and GEORGIA ROWLAND)
)
 Plaintiffs,)
)
 v.)
)
 ALLSTATE INSURANCE COMPANY,)
)
 Defendant.)

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

Case No. 90-C-339-B
(No. C-90-22)
District Court of Mayes
County, Oklahoma

ORDER OF DISMISSAL WITH PREJUDICE

NOW on this 16th day of January, 1991, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.

S/ THOMAS R. BRETT
JUDGE OF THE DISTRICT COURT

361-152/LAR/mh

18

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JUDY J. DENNIS,
COUNTY TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

JAN 15 1991

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

CIVIL ACTION NO. 90-C-909-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 14 day
of Jan, 1991. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; and the Defendant, Judy J. Dennis, appears not, but
makes default.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Judy J. Dennis,
acknowledged receipt of Summons and Complaint on or about
November 16, 1990; that Defendant, County Treasurer, Tulsa
County, Oklahoma, acknowledged receipt of Summons and Complaint
on October 29, 1990; and that Defendant, Board of County
Commissioners, Tulsa County, Oklahoma, acknowledged receipt of
Summons and Complaint on October 31, 1990.

FILED AND
RECORDED IMMEDIATELY
BY CLERK
JAN 15 1991

It appears that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed his Answer on November 14, 1990; Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on November 14, 1990; and that the Defendant, Judy J. Dennis, has failed to answer and her default has therefore been entered by the Clerk of this Court.

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

Lot One (1), Block (1), ROLLING MEADOWS, an Addition to the Town of Glenpool, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on January 28, 1981, the Defendant, Judy J. Dennis, executed and delivered to the United States of America, acting through the Farmers Home Administration, her mortgage note in the amount of \$36,000.00, payable in monthly installments, with interest thereon at the rate of 12 percent (12%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Judy J. Dennis, executed and delivered to the United States of America, acting through Farmers Home Administration, a mortgage dated January 28, 1990, covering the above-described property. Said mortgage was recorded on January 28, 1981, in Book 4523, Page 1150, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Judy J. Dennis, executed and delivered to the United States of America, acting through Farmers Home Administration, an Interest Credit Agreement dated March 14, 1981, pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Judy J. Dennis, executed and delivered to the United States of America, acting through Farmers Home Administration, an Interest Credit Agreement dated February 26, 1983, pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Judy J. Dennis, executed and delivered to the United States of America, acting through Farmers Home Administration, an Interest Credit Agreement dated March 6, 1984, pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Judy J. Dennis, executed and delivered to the United States of America, acting through Farmers Home Administration, an Interest Credit Agreement dated February 19, 1985, pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Judy J. Dennis, executed and delivered to the United States of America, acting through Farmers Home Administration, an Interest Credit Agreement dated February 10, 1986, pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Judy J. Dennis, executed and delivered to the United States of America,

acting through Farmers Home Administration, an Interest Credit Agreement dated February 19, 1987, pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Judy J. Dennis, executed and delivered to the United States of America, acting through Farmers Home Administration, an Interest Credit Agreement dated February 18, 1988, pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, Judy J. Dennis, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Judy J. Dennis, is indebted to the Plaintiff in the principal sum of \$32,573.59, plus accrued interest in the amount of \$3,222.49 as of January 19, 1990, plus interest accruing thereafter at the rate of \$10.7092 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of \$27,249.88, and the costs of this action.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$389.00, plus penalties and interest, for the year of 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 against the Defendant, Judy J. Dennis, in the principal sum of \$32,573.59, plus accrued interest in the amount of \$3,222.49 as of January 19, 1990, plus interest accruing thereafter at the rate of \$10.7092 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of \$27,249.88, plus interest thereafter at the current legal rate of 6.62 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums 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 \$389.00, 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 upon the failure of said Defendant, Judy J. Dennis, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be

issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$389.00, 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.

(Signed) H. Dale Cook

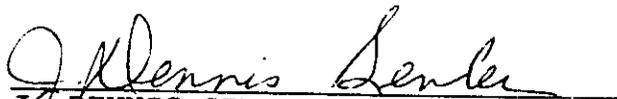
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



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



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

Judgment of Foreclosure
Civil Action No. 90-C-909-C

PP/esr

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

FILED

JAN 15 1991

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

VERNON O. HOLLAND,)
)
) Plaintiff,)
)
vs.)
)
CITY OF BROKEN ARROW;)
DANNY CLYMER, in his capacity)
as a Police Officer for the)
City of Broken Arrow;)
ROBERT PERUGINO, in his capacity)
as Ass't City Attorney for the)
City of Broken Arrow;)
NICK HOOD, JR., in his capacity)
as Mayor of the City of Broken)
Arrow; CHARLES WILLIAMS, d/b/a)
WILLIAMS WRECKER SERVICE, as agent)
for the City of Broken Arrow,)
)
) Defendants.)

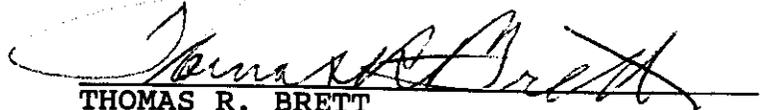
No. 89-C-145-B ✓

J U D G M E N T

In keeping with the directed verdict of the Court regarding the procedural due process issue, and the verdict of the jury filed herein on January 14, 1991 regarding the other issues, Judgment is hereby entered in favor of Plaintiff, Vernon O. Holland, and against the Defendant, City of Broken Arrow, for the nominal damage sum of One Dollar (\$1.00). Judgment is hereby entered in favor of the Defendants, City of Broken Arrow, Oklahoma and Charles Williams, d/b/a Williams Wrecker Service, regarding the issues of impoundment, sale of the personal property and/or waiver, and Plaintiff, Vernon O. Holland, is entitled to no actual damages against Defendants, City of Broken Arrow, Oklahoma or Charles Williams, d/b/a Williams Wrecker Service regarding same. Any claim for costs or attorney fees herein shall be made in compliance with

Local Rule 6.

DATED this 15th day of January, 1991.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

IN RE: ASBESTOS LITIGATION

) MASTER #1417
) ASB-TW- 5241

SANFORD MARION BOWEN, JR., and
GEORGIA BOWEN, Plaintiff's Spouse,

) CASE NO. 88-C-772-C
)

RESSIE MAE WALL, Individually and
as Surviving Wife of JOSEPH PAUL
WALL, Deceased,

) CASE NO. 88-C-1410-C
)

) Plaintiffs,
)

F I L E D

vs.

) ANCHOR PACKING COMPANY, et al.,
)

JAN 15 1991

) Defendants.
)

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

ORDER OF DISMISSAL

NOW on this 15 day of January, 1991, this matter comes on for hearing on the Stipulated Motion for Dismissal Without Prejudice as to Defendant, The Manville Corporation Asbestos Disease Compensation Fund ("Manville"). For good cause shown, the Court finds that said Stipulation shall be granted and that Plaintiffs' claims be dismissed without prejudice against Defendant, Manville, only, reserving Plaintiffs' rights to any other parties to this action.



JUDGE H. DALE COOK

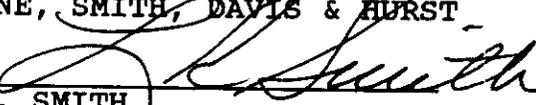
~~_____
JUDGE JAMES G. ELLISON~~

~~_____
JUDGE THOMAS R. BRETT~~

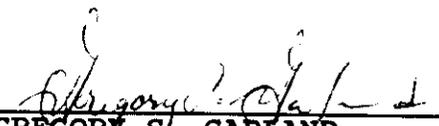
Approved for entry:

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

BOONE, SMITH, DAVIS & HURST

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


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

ATTORNEY FOR THE UNITED STATES

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

MARIE L. MOODY

Plaintiff

vs.

MEDICAL CARE ASSOCIATES OF
TULSA, INC.

Defendant.

Case No. 90-C-214-C ✓

FILED

JAN 15 1991

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

ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to Stipulation between the parties, this Court hereby dismisses the above-captioned matter with prejudice.

IT IS SO ORDERED this 14th day of January,
1991.


United States District Judge

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

FILED

JAN 14 1991

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

ROBERT LESLIE JOHNSON)

Plaintiff,)

v.)

SERGEANT RICHARD ALLMAN)

Defendant.)

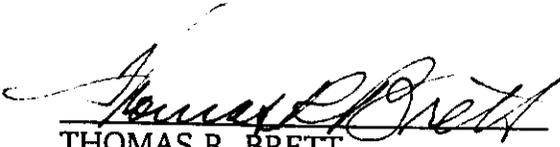
90-C-425-B

ORDER

On September 12, 1990 Defendant Allman filed a Motion to Dismiss. Plaintiff did not file a response to the motion. On November 21, 1990 the Magistrate granted Plaintiff an additional 20 days to respond, but warned that a second failure to respond would be considered a confession of the motion pursuant to Local Rule 15(A) of the Northern District of Oklahoma. Plaintiff has still not responded to the motion.

Therefore, it is hereby Ordered that Defendant Allman's Motion to Dismiss be granted and the case dismissed.

Dated this 14 day of Jan., 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 16 1991

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

ROYCE LATIMER d/b/a
GEOPHYSICAL EXPLORATION
AND RESEARCH CO.,

Plaintiffs,

vs.

COPPERHEAD ENTERPRISES,
INC., et al.,

Defendants.

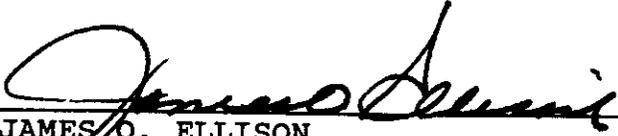
No. 88-C-308-E

JUDGMENT

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

IT IS THEREFORE ORDERED that the Plaintiff recover of the Defendants Copperhead Enterprises, Inc. and John Hardin the sum of \$70,625.31, with interest thereon at the legal rate as provided by law.

ORDERED this 14th day of January, 1991.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

JAN 14 1991

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

In re:	:	Bankruptcy Case No.
	:	85-01616-W
JOHN DALE NELSON	:	
	:	
Debtor.	:	
	:	Adversary No. 89-0284-W
JOHN DALE NELSON,	:	
	:	
Plaintiff,	:	
vs.	:	
	:	
MERL A. WHITEBOOK and	:	
PATRICK J. MALLOY III,	:	
	:	
Defendants.	:	

M-1665-B ✓

ORDER APPROVING REPORT AND RECOMMENDATION
OF THE UNITED STATES BANKRUPTCY COURT

On December 20, 1990, the United States Bankruptcy Court for the Northern District of Oklahoma entered its Report and Recommendations for the United States District Court for the Northern District of Oklahoma, which said Report and Recommendations was served upon the parties in this action and no objection thereto having been filed, the Report and Recommendation is approved. The action against defendant, Patrick J. Malloy III, is dismissed, each party to bear his own costs and attorneys fees; and the Plaintiff's case against defendant Merl A. Whitebook is remanded to Tulsa County District Court under the provisions of 28 U.S.C. §1452(b) and Bankruptcy Rule 9027.

And IT IS SO ORDERED.

Donald J. [Signature]
UNITED STATES DISTRICT JUDGE

JAN 14 1991

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

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

FLEET FINANCE, INC., a)
corporation,)
)
Plaintiff,)
)
vs.)
)
JAMES WAYNE PARKER, et al.)
)
Defendants.)

Case No. 90-C-553-E

JOURNAL ENTRY OF DEFAULT JUDGMENT

NOW on this 14 day of ^{Jan}~~November~~, 1990, the above-entitled cause comes on for hearing before the undersigned Judge of the United States District Court. The Plaintiff, Fleet Finance, Inc. ("Fleet"), appearing by and through its attorneys, Doerner, Stuart, Saunders, Daniel & Anderson, by James P. McCann and Scott R. Rowland; the Defendants, James Wayne Parker and Sandra Kay Parker, husband and wife ("Parker"), appearing not and this Court having previously noted the default of said Defendants by Orders dated November 16, 1990.

The Court FINDS that the debt which is the subject of this action was contracted in Tulsa County, Oklahoma within the Northern District of Oklahoma, thereby vesting this Court with jurisdiction over the action and making venue proper.

The Court FURTHER FINDS that Defendants Parker duly executed and delivered a promissory note to Fleet Mortgage Corporation ("FMC") which was subsequently sold, transferred, assigned and conveyed to Fleet as more particularly described in the Complaint filed herein and that as a result of Parker's default in the performance of the terms and condition of said

promissory note, there is due to the Plaintiff Fleet from the Defendants Parker the sum of \$3,644.94 as of January 30, 1990, and interest accruing thereafter at the rate of \$1.29 per diem until paid in full, plus the costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff Fleet have and recover judgment in personam against the Defendants Parker, jointly and severally, in the amount of \$3,644.94 as of January 30, 1990 and interest accruing thereafter at the rate of \$1.29 per diem until paid in full, plus the costs of this action.

An attorney's fee will be considered upon proper application under Local Rule 6(G).

57 JAMES O. ELLISON

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

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By 

James P. McCann, OBA NO. 5864
Scott R. Rowland, OBA NO. 11498
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211

Attorneys for Plaintiff,
Fleet Finance, Inc.

TONY M. GRAHAM
UNITED STATES ATTORNEY

By 

Peter Bernhardt, OBA No. 741
Assistant United States Attorney
3600 United States Courthouse
Tulsa, Oklahoma 74103

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

FILED

JAN 14 1991 *OR*

TERRY G. CAREY,)
)
 Plaintiff,)
)
 v.)
)
 JIM EARP,)
)
 Defendant.)

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

90-C-652-B

ORDER

On October 26, 1990 Defendant Earp filed a Motion to Dismiss. Plaintiff did not file a response to the motion. On December 5, 1990 the Magistrate granted Plaintiff an additional 20 days to respond, but warned that a second failure to respond would be considered a confession of the motion pursuant to Local Rule 15(A) of the Northern District of Oklahoma. Plaintiff has still not responded to the motion.

Therefore, it is hereby Ordered that Defendant Earp's Motion to Dismiss be granted and the case dismissed.

Dated this 14 day of Jan., 1991.

Thomas R. Brett
THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

F I L E D

IN RE:)
ASBESTOS CASES)
SUSAN ROHRBAUGH, ET AL.)
Plaintiffs,)
vs.)
FIBREBOARD CORP., ET AL.,)
Defendants.)

M-1417
ASB (I) - 5239

JAN 14 1991

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

No. 88-C-90-B

ORDER GRANTING DISMISSAL OF DEFENDANT
OWENS ILLINOIS, INC. WITH PREJUDICE

The Court being in receipt of the Application of Plaintiffs and the Defendant Owens Illinois, Inc., requesting of the Court an approval of the dismissal of Defendant Owens Illinois, Inc., with prejudice from the above-captioned matter.

And being fully advised in the premises,

IT IS HEREBY ORDERED:

That the joint application of Plaintiffs and Defendant Owens Illinois, Inc. only is granted. The Court finds that Defendant Owens Illinois, Inc. only should be dismissed with prejudice to filing future suit and it is ordered by the Court that Defendant Owens Illinois, Inc. only is hereby dismissed as party Defendant from the case set forth above with prejudice to refile suit.

It is further ordered by the Court that each party will be responsible for its own costs, attorney fees, and any other expenses incurred by the parties that pertain to this litigation.

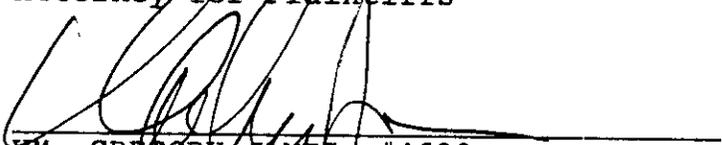
S/ THOMAS R. BRETT

THOMAS BRETT, U.S. DISTRICT
JUDGE

APPROVED AS TO FORM:



MARK IOLA, OBA #4553
Ungerma n & Iola
Attorney for Plaintiffs



WM. GREGORY JAMES, #4620
Pray, Walker, Jackman, Williamson
& Marlar
Attorney for Defendant Owens Illinois

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

IN RE:)
ASBESTOS CASES) M-1417 5240
) ASB (I) - _____
GERALD NICKS, ET AL.)
)
Plaintiffs,)
)
vs.) No. 88-C-304-B
)
FIBREBOARD CORP., ET AL.,)
)
Defendants.)

FILED
JAN 14 1991
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER GRANTING DISMISSAL OF DEFENDANT
OWENS ILLINOIS, INC. WITH PREJUDICE

The Court being in receipt of the Application of Plaintiffs and the Defendant Owens Illinois, Inc., requesting of the Court an approval of the dismissal of Defendant Owens Illinois, Inc., with prejudice from the above-captioned matter.

And being fully advised in the premises,

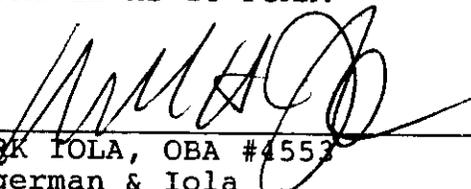
IT IS HEREBY ORDERED:

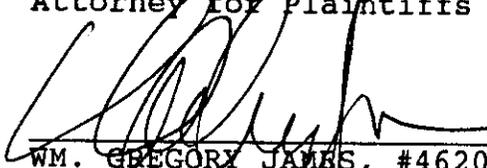
That the joint application of Plaintiffs and Defendant Owens Illinois, Inc. only is granted. The Court finds that Defendant Owens Illinois, Inc. only should be dismissed with prejudice to filing future suit and it is ordered by the Court that Defendant Owens Illinois, Inc. only is hereby dismissed as party Defendant from the case set forth above with prejudice to refile suit.

It is further ordered by the Court that each party will be responsible for its own costs, attorney fees, and any other expenses incurred by the parties that pertain to this litigation.

S/ THOMAS R. BRETT
THOMAS BRETT, U.S. DISTRICT
JUDGE

APPROVED AS TO FORM:


MARK IOLA, OBA #4553
Ungerma & Iola
Attorney for Plaintiffs


WM. GREGORY JAMES, #4620
Pray, Walker, Jackman, Williamson
& Marlar
Attorney for Defendant Owens Illinois

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

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

FILED

JAN 14 1991

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

CIVIL ACTION NO. 90-C-564-E

AMENDED JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 14 day
of Jan, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Kathleen Bliss Adams, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; the Defendant, State of
Oklahoma ex rel. Oklahoma Tax Commission appears by its attorney,
Lisa Haws; and the Defendants, Craig A. Freincle and Lee
Freincle, appear by Marcus S. Wright.

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

MAILED
BY DEPARTMENT OF REVENUE AND
PROPERTY TAXATION
UPON RECEIPT.

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

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, filed its Answer on July 18, 1990; that the Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on July 18, 1990; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer on July 30, 1990; and that the Defendants, Craig A. Freincle and Lee Freincle, filed their Answer on August 10, 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 Eleven (11), Block Five (5),
RESUBDIVISION OF AMENDED PLAT OF MEADOW
HEIGHTS ADDITION, Tulsa County, State of
Oklahoma, according to the recorded plat
thereof.

The Court further finds that on September 29, 1986, the Defendants, Craig A. Freincle and Lee Freincle, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of

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

The Court further finds that as security for the payment of the above-described note, the Defendants, Craig A. Freincle and Lee Freincle, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated September 29, 1986, covering the above-described property. Said mortgage was recorded on September 30, 1986, in Book 4973, Page 78, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Craig A. Freincle and Lee Freincle, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Craig A. Freincle and Lee Freincle, are indebted to the Plaintiff in the principal sum of \$41,663.45, plus interest at the rate of 10 percent per annum from January 1, 1990 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$30.92 (\$20.00 docket fees, \$10.92 fees for service of Summons and Complaint).

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

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action by virtue of Income Tax Warrant No. ITI 90 001120 00 in the amount of \$560.62; Income Tax Warrant No. ITI 90 002381 00 in the amount of \$332.11; and Income Tax Warrant No. ITI 90 003452 00 in the amount of \$283.74 together with interest and penalties. Said liens are inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Craig A. Freincle and Lee Freincle, in the principal sum of \$41,663.45, plus interest at the rate of 10 percent per annum from January 1, 1990 until judgment, plus interest thereafter at the current legal rate of 6.62 percent per annum until paid, plus the costs of this action in the amount of \$30.92 (\$20.00 docket fees, \$10.92 fees for service of Summons and Complaint), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums of the preservation of the subject property.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Craig A. Freincle and Lee

Freinckle, 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 the Defendant, State of Oklahoma, ex rel. Oklahoma Tax Commission, in the amount of \$1,176.47, plus penalties and interest for Income Tax Warrant No.

ITI 90 001120 00; Income Tax Warrant No.

ITI 90 002381 00; and Income Tax Warrant No.

ITI 90 003452 00.

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

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

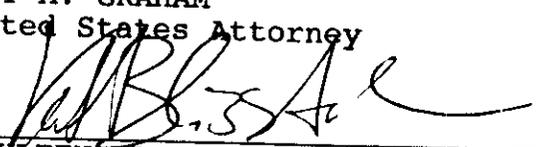
and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

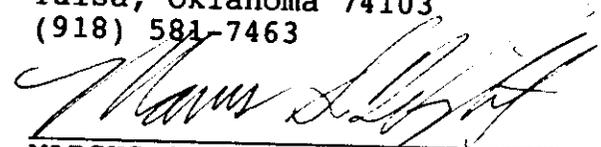
S/ JAMES O. ELLISON

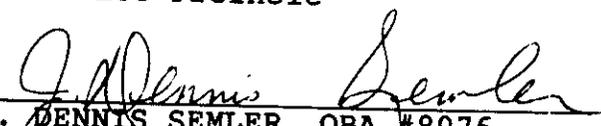
UNITED STATES DISTRICT JUDGE

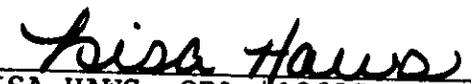
APPROVED:

TONY M. GRAHAM
United States Attorney


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


MARCUS S. WRIGHT, OBA #12179
Attorney for Craig A. Freinckle
and Lee Freinckle


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


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

Amended Judgment of Foreclosure
Civil Action No. 90-C-564-E
KBA/esr

FILED

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

JAN 14 1991

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

AMERICAN FOUNDRY GROUP, INC.)
)
 Plaintiff,)
)
 vs.)
)
 MARMON INDUSTRIES, INC.,)
)
 Defendant.)

No. 89-C-937-B

ORDER SUSTAINING MOTION FOR SUMMARY JUDGMENT
OF DEFENDANT, MARMON INDUSTRIES, INC.

The Court has for decision the Motions for Summary Judgment of Plaintiff, American Foundry Group, Inc. ("American"), and Defendant, Marmon Industries, Inc. ("Marmon"). The parties agree the following are the undisputed facts from which the Court should decide this contract interpretation dispute:

1. On August 19, 1982, Marmon sold Oklahoma Steel Castings Company of Oklahoma to American. Closing took place on or about August 31, 1982. (See Contract for Sale - Exhibit "A" to Defendant's Brief in Support of Motion for Summary Judgment).

2. Pursuant to the Contract for Sale, Marmon transferred the exclusive right to use the name "Oklahoma Steel Castings Company" to American. American continued operating the foundry under the name of "Oklahoma Steel Castings Company." (See Exhibit "A", Paragraph 7.6: Plaintiff's Amended Complaint, Exhibit "B" to Defendant's Brief in Support of Motion for Summary Judgment).

3. All employees were terminated by Marmon. American was then given the option of rehiring foundry employees, which it exercised as to each of the underlying claimants. (See Exhibit "A", Paragraphs 7.8 and 10.1, to Defendant's Brief in Support of

Motion for Summary Judgment).

4. The Oklahoma Steel plant closed in late 1986 or early 1987. (See Plaintiff's Response to Defendant's Interrogatories, Interrogatory No. 9, Exhibit "C" to Defendant's Brief in Support of Motion for Summary Judgment).

5. In 1987 and 1988, employees of Oklahoma Steel filed at least eighty-seven (87) Workers' Compensation claims. Plaintiff contends that each of these claims involved occupational diseases or cumulative trauma injuries which resulted from exposure both before and after the August 19, 1982 sale. (See Plaintiff's Amended Complaint, Paragraph 13, Exhibit "B" and Plaintiff's Revised Response to Defendant's Second Supplemental Discovery Request, Revised Answer to Interrogatory No. 1, Exhibit "D" to Defendant's Brief in Support of Motion for Summary Judgment).

6. Each claimant suffered his last injurious exposure to the injury-producing hazard while in the employment of Plaintiff, American. (See Plaintiff's Response to Defendant's Second Supplemental Discovery Request, Interrogatory No. 2, Exhibit "E" to Defendant's Brief in Support of Motion for Summary Judgment).

7. The claims referred to above were the legal obligation of Plaintiff, American. (See Plaintiff's Revised Response to Defendant's Second Supplemental Discovery Request, Revised Answer to Interrogatory No. 1, Exhibit "F" to Defendant's Brief in Support of Motion for Summary Judgment).

8. In 1989, American made its first demand for indemnity upon Marmon. (See Plaintiff's Response to Defendant's Second

Supplemental Discovery Request, Revised Answer to Interrogatory No. 4, Exhibit "E" to Defendant's Brief in Support of Motion for Summary Judgment).

Paragraph 10.1 of the subject Contract for Sale provides (Defendant's Exhibit A):

"Oklahoma Steel will discharge all employees and does hereby agree to satisfy its obligations to such employees for all wages, salaries, vacation and employee benefit obligations due to said employees at closing and Marmon will indemnify American against all wage, salary, vacation and employee benefit obligations due to said employees at closing or thereafter becoming due as a result of or relating to their employment by Oklahoma Steel prior to closing or their termination of employment by Oklahoma Steel. American may offer employment to any one or more employees employed by Oklahoma Steel as of the opening of business after closing, upon such terms and conditions as may be agreed upon by American and such employees."

Title 85 O.S. § 11(4) states:

"Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease and the insurance carrier, if any, on the risk when such employee was last so exposed under such employers, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier..."

The issue presented, therefore, is whether the parties intended that Marmon, the predecessor employer, would indemnify American for pre-closing but cumulative trauma and occupational disease awards.¹ The parties concede that Oklahoma law is

¹ The parties agree that for the purposes of the pending Motions for Summary Judgment it may be assumed the employee-claimants' injuries were cumulative, occurring over a period both

applicable in determining the dispute.

Title 85 O.S. § 11(4) states the law of Oklahoma regarding such injuries which is that the last employer "... shall alone be liable therefor." "The last employment that bears a causal connection to the disability ... is deemed to have caused the disease." Parks v. Flint Steel Corp., 755 P.2d 680 (Okla. 1988). Oklahoma law is thus clear that the subject obligations for cumulative trauma and occupational disease claims did not "result from or relate to" employment of claimants prior to closing.

Hixon v. Snug Harbor Water and Gas Company., 381 P.2d 308, 313, (Okla. 1963) states the fundamental premise:

"It is too well settled to require citation of authority that 'the [applicable] law is a part of every contract.'"

Buckles v. WIL-MC Oil Corp., 585 P.2d 1360 (Okla. 1978); East Central Oklahoma Elec. Coop. v. Public Serv. Co., 469 P.2d 662 (Okla. 1970); Tom P. McDermott, Inc. v. Bennett, 395 P.2d 566 (Okla. 1964); Nichols v. Callaway, 193 P.2d 294 (Okla. 1948), *rev'd on other grounds*, Simmons v. Fariss, 289 P.2d 372 (Okla. 1955); and Baker v. Tulsa Building & Loan Ass'n, 66 P.2d 45 (Okla. 1937). The contracting parties are presumed to have contracted consistent with the law in force at the time the agreement is made. McKinley v. Prudential Property & Cas. Ins., 619 P.2d 1269 (Okla.App. 1980), and

pre- and post-closing. Although the issue is in dispute, for the purpose of the Court's analysis herein it is assumed the term "employee benefit" would include workers' compensation benefits under Oklahoma law.

Sinclair Oil & Gas Company v. Bishop, 441 P.2d 436 (Okla. 1968).

The rule of construction of contracts of indemnity is to effect the intention of the parties as long as it is consistent with accepted legal principles. Clifford v. United States Fidelity & Guaranty Co., 249 P. 938, 119 Okla. 133 (1926).

The legal principle that cannot be ignored herein is the dictates of 85 O.S. § 11(4) providing that the last employer shall alone be liable for such cumulative workers' compensation injuries.

The case of Allied Hotels Company, Ltd. v. H. & J. Construction Co., Inc., 376 F.2d 1 (10th Cir. 1967), concerning the interpretation of an indemnity provision, states:

"The language employed must clearly and definitely show an intention to indemnify against the loss or liability involved."

If the parties intend by their contract to modify existing law, such intention must be clearly expressed. The Supreme Court of the State of Oklahoma in Dickason v. Dickason, 607 P.2d 674 (Okla. 1980) stated:

"... An intent to modify applicable law by contract is not effective unless the power is expressly exercised ... To escape the incidence of general law, the agreement ... must not be silent as to the parties' intent *vis-à-vis* the law that applies to them." 607 P.2d at 677.

The Court concludes that while the parties would be free to contract contrary to existing law for indemnity of such pre-closing cumulative injuries, such intent is not specifically expressed in

the language of Paragraph 10.1 (Defendant's Exhibit A). Therefore, Plaintiff's Motion for Summary Judgment is OVERRULED and Defendant's Motion for Summary Judgment is SUSTAINED.

A separate Judgment in keeping with this Order is filed contemporaneous herewith.

DATED this 14th day of January, 1991.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

F I L E D

JAN 14 1991 §

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

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

AMERICAN FOUNDRY GROUP, INC.)

Plaintiff,)

vs.)

MARMON INDUSTRIES, INC.,)

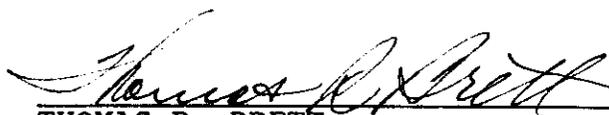
Defendant.)

No. 89-C-937-B ✓

J U D G M E N T

In keeping with the Order Sustaining the Defendant Marmon Industries, Inc.'s Motion for Summary Judgment entered this date, Judgment is hereby entered in favor of Marmon Industries, Inc. and against the Plaintiff, American Foundry Group, Inc., relative to American Foundry Group, Inc.'s claim of indemnity. The Plaintiff's Complaint is hereby dismissed with costs assessed against the Plaintiff, if timely applied for pursuant to Local Rule 6. The parties are to pay their own respective attorney fees.

DATED this 14th day of January, 1991.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

JAN 14 1991

IN RE:)
ASBESTOS CASES)
TROY WILLIAMS, ET AL.)
Plaintiffs,)
vs.)
FIBREBOARD CORP., ET AL.,)
Defendants.)

M-1417
ASB (I) - 5282

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

No. 88-C-103-B

ORDER GRANTING DISMISSAL OF DEFENDANT
OWENS ILLINOIS, INC. WITH PREJUDICE

The Court being in receipt of the Application of Plaintiffs and the Defendant Owens Illinois, Inc., requesting of the Court an approval of the dismissal of Defendant Owens Illinois, Inc., with prejudice from the above-captioned matter.

And being fully advised in the premises,

IT IS HEREBY ORDERED:

That the joint application of Plaintiffs and Defendant Owens Illinois, Inc. only is granted. The Court finds that Defendant Owens Illinois, Inc. only should be dismissed with prejudice to filing future suit and it is ordered by the Court that Defendant Owens Illinois, Inc. only is hereby dismissed as party Defendant from the case set forth above with prejudice to refiling suit.

It is further ordered by the Court that each party will be responsible for its own costs, attorney fees, and any other expenses incurred by the parties that pertain to this litigation.

5282

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

FILED

JAN 14 1991

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

IN RE:)
ASBESTOS CASES)
WEYBURN WILSON, ET AL.)
Plaintiffs,)
vs.)
FIBREBOARD CORP., ET AL.,)
Defendants.)

M-1417
ASB (I) - 5281

No. 88-C-104-B

ORDER GRANTING DISMISSAL OF DEFENDANT
OWENS ILLINOIS, INC. WITH PREJUDICE

The Court being in receipt of the Application of Plaintiffs and the Defendant Owens Illinois, Inc., requesting of the Court an approval of the dismissal of Defendant Owens Illinois, Inc., with prejudice from the above-captioned matter.

And being fully advised in the premises,

IT IS HEREBY ORDERED:

That the joint application of Plaintiffs and Defendant Owens Illinois, Inc. only is granted. The Court finds that Defendant Owens Illinois, Inc. only should be dismissed with prejudice to filing future suit and it is ordered by the Court that Defendant Owens Illinois, Inc. only is hereby dismissed as party Defendant from the case set forth above with prejudice to refile suit.

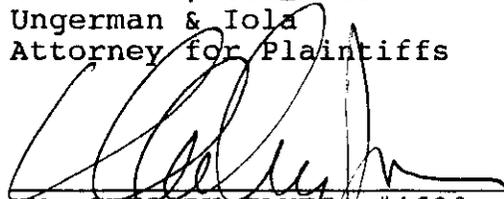
It is further ordered by the Court that each party will be responsible for its own costs, attorney fees, and any other expenses incurred by the parties that pertain to this litigation.

5281


THOMAS BRETT, U.S. DISTRICT
JUDGE

APPROVED AS TO FORM:


MARK IOLA, OBA #4553
Ungerma n & Iola
Attorney for Plaintiffs


WM. GREGORY JAMES #4620
Pray, Walker, Jackman, Williamson
& Marl ar
Attorney for Defendant Owens Illinois

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

FILED

JAN 14 1991

AUTHOR FOUT,

Plaintiff,

vs.

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

Defendant.

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

No. 90-C-15-B

ORDER

This matter comes before the Court upon Defendant's objection to the Findings and Recommendations of the United States Magistrate dated July 11, 1990.

Plaintiff filed the instant action pursuant to 42 U.S.C. § 405(g) seeking a review of the final decision of the Secretary of Health and Human Services (Secretary) denying Plaintiff's application for disability insurance benefits under § 216(i) and 223 and for supplemental security income benefits under § 1602 and § 1614(a)(3)(A) of the Social Security Act, as amended. The matter was referred to the United States Magistrate who entered his Findings and Recommendations on July 12, 1990, finding that the Secretary's decision was not supported by substantial evidence and should be remanded for consideration by a vocational expert.

The only issue before the Magistrate was whether there was substantial evidence in the record to support the final decision of the Secretary that Plaintiff is not disabled within the meaning of the Social Security Act. The Court agrees with the Magistrate that the decision of the Administrative Law Judge (ALJ) was not

supported by substantial evidence and should be remanded.

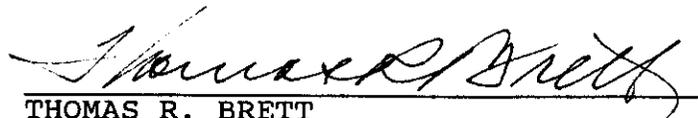
Defendant objects to the Magistrate's finding that the ALJ erred in relying on the Dictionary of Occupational Titles. The Court agrees that the Secretary can rely on the general job categories of the dictionary as a presumption of previous duties; however, a plaintiff may overcome the presumption upon sufficient demonstration that his duties were in excess of those envisioned by the drafters of categories in the dictionary. See, DeLoathe v. Heckler, 715 F.2d 148 (4th Cir.1983); Gray v. Heckler, 760 F.2d 369 (1st Cir.1985); Villa v. Heckler, 797 F.2d 794 (9th Cir. 1986). The facts of the case at bar suggest the Plaintiff did overcome the presumption. Plaintiff offered substantial evidence that his duties exceeded the dictionary's description of light work. The walking, standing, bending, reaching and lifting required of the Plaintiff in his prior work is in excess of that contemplated by the dictionary. Therefore, the Court agrees with the Magistrate that exclusive reliance on the dictionary would, in this case, be inappropriate and the Secretary should give this evidence proper weight on remand.

The Secretary further objects to the Magistrate's recommendation that the case be remanded for vocational expert testimony, an objection based on his contention the burden of proof has not properly shifted to the Secretary. However, the well-established rule in the Tenth Circuit is once the plaintiff makes a *prima facie* showing of disability, that prevents his engaging in his prior work activity, the burden shifts to the Secretary who must

demonstrate the plaintiff has the capacity to perform alternative work activity, and that this type of job exists in the national economy. Channel v. Heckler, 747 F.2d 577 (10th Cir. 1984). The Court agrees with the Magistrate's determination and recommendation¹ that the testimony of a vocational expert is required to determine whether an individual with this type of pain, and training and work experience, can perform and maintain employment in jobs that exist in the national economy.

The Findings and Recommendations of the Magistrate are approved. The Court concludes this matter should be and the same is hereby REMANDED to the Secretary of Health and Human Services for proceedings not inconsistent with this order.

IT IS SO ORDERED this 14th day of January, 1991.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹ Implicit in the Magistrate's recommendation is a finding that the Plaintiff made a sufficient *prima facie* showing of disability.

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

F I L E D

JAN 14 1991

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

WESTSTAR BANK,
a National Banking
Association, formerly known
as First National Bank
in Bartlesville,

Plaintiff,

vs.

No. 88-C-1602-E

DIVERSIFIED RESOURCES
CORPORATION, et al.,

Defendants.

ADMINISTRATIVE CLOSING ORDER

The Court has reviewed the record and finds that no action has been taken in this matter since July 26, 1989. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within ninety (90) days if it appears that further litigation is necessary.

ORDERED this 14th day of January, 1991.


JAMES C. ELLISON
UNITED STATES DISTRICT JUDGE