UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 27 1991

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

| | | |
|---|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>vs.<br><br>KENNETH D. FREEMAN; KAREN D. FREEMAN; COUNTY TREASURER, Nowata County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Nowata County, Oklahoma,<br><br>Defendants. | ) | CIVIL ACTION NO. 91-C-092-B |

ORDER

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

Dated this 27th day of Feb, 1991.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney

Phil Pinnell

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

PP/esr

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

| | |
|---|---|
| IN RE:<br><br>REPUBLIC FINANCIAL CORPORATION, an Oklahoma corporation,<br><br>Debtor. | Case No. 84-1460-W<br>(Chapter 11) |
| R. DOBIE LANGENKAMP, Successor Trustee,<br><br>Plaintiff, | Adversary No. 85-304-C |
| vs. | No. 91-C-14-E |
| KENNETH D. MOORE and MARY L. MOORE,<br><br>Defendants. | |

**ORDER**

This matter is before the Court on Defendants' Motion for Withdrawal of Reference. The Court has reviewed the record and the law and finds that the motion should be granted.

IT IS THEREFORE ORDERED that Defendants' Motion for Withdrawal of Reference is granted.

ORDERED this 27th day of February, 1991.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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



| | | |
|---|---|---|
| JAMES E. CLAYTON, et al., Plaintiffs, | ) | |
| vs. | ) | Case No. 79-C-723-BT |
| FRANK THURMAN, Sheriff of Tulsa County, et al. Defendants. | ) | |

**ORDER**

This matter comes on for consideration upon Plaintiff, Peter J. McMahon, Jr.'s, Motion to Enforce a Judgment entered September 10, 1987.

This action was originally filed on December 26, 1979, by James E. Clayton, *pro se*, against the Tulsa County Sheriff *et al* relative to the conditions of the Tulsa County jail. The injunctive portion of the case was tried before a three-judge panel, the Court finding *inter alia* the Tulsa County jail deficient in certain aspects.

As a result Defendant Tulsa County Sheriff was ordered to submit detailed plans for correcting the deficient conditions which was done. This Court, on February 15, 1985, approved a plan and set out specific compliance requirements. On September 10, 1987, this Court found the conditions of the Tulsa City-County jail were not constitutionally impermissible and dismissed the action.

Peter J. McMahon, Jr., *pro se*, a member of the plaintiff class, filed the present motion on June 14, 1990, alleging the Defendant has not complied with this Court's earlier orders. Defendant has

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responded thereto at the direction of the Court.

For the Court to entertain McMahon's Motion proper jurisdiction must exist. Under the federal rules of pleading Movant is required to set forth a short and plain statement of the grounds upon which the court is jurisdictionally vested with power to hear the matter. Rule 8, Fed. R. Civ. P.. McMahon attempts to do this.

McMahon's Petition cites several Supreme Court cases[1] wherein a Court specifically retained jurisdiction, inviting reentry by parties in the event of non-compliance with a Court's Order or for other good cause. In the present matter, the 1987 Judgment was a closure of the issues in this case. The Court did not retain jurisdiction. Inherent jurisdiction would always exist to accomplish the objectives of the Court's Order or Judgment. **United Shoe** and **New York Telephone**, *supra*. But where the Court objectives have been met the matter is at an end. McMahon's reliance on these cases is misplaced.

Likewise, McMahon's putative use of Declaratory Judgment jurisdiction is equally unavailing. 28 U.S.C. § 2201 is not authority for a Court to re-open a final Judgment, years after entry, and re-litigate issues therein.[2]

Rule 60(b), Fed. R. Civ. P. is inappropriate due to the unreasonable lapse of time. The All Writs Act, 28 U.S.C. § 1651(a) is authority for Courts to issue writs necessary in aid of their

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[1] **United States v. United Shoe Machinery Corp**. 391 U.S. 244, 1968; **United States v. New York Telephone Co**., 434 U.S. 159, 1977;

[2] Compare **Suzuki v. Yuen**, 617 F.2d 173, where the Court retained jurisdiction in an earlier related case, the Plaintiff later filing a new action under the Declaratory Judgment Act.

respective jurisdictions, often against non-parties to the action. It does not confer or expand jurisdiction. **Shimola v. Local Board No. 42 for Cuyahoga County**, 40 F.Supp. 808 (D.C.Ohio-1941). Jurisdiction must already exist. **Dodge v. Nakai**, 298 F.Supp. 17 (D.C.Ariz. 1968).

The Court concludes this action should be and the same is hereby dismissed.

IT IS SO ORDERED this 27th day of February, 1991.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

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

FILED
FEB 27 1991
Jack C. Silver, Clerk
U.S. DISTRICT COURT

| | | |
|---|---|---|
| NEIL N. THOMPSON and BONNIE M. THOMPSON, | ) | |
| Plaintiffs, | ) | |
| vs. | ) | No. 88-C-389-B |
| FIBREBOARD CORPORATION, et al | ) | |
| Defendants. | ) | |

ORDER OF DISMISSAL
WITHOUT PREJUDICE

The Court, having reviewed the Plaintiffs' Motion for Dismissal Without Prejudice filed herein, and being duly advised in the premises, now finds that the above-entitled cause of action should be dismissed, without prejudice, each party to pay their own costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above-entitled cause of action be and hereby is dismissed, without prejudice, each party to pay their own costs.

DATED this 27 day of Feb., 1991.

S/ THOMAS R. BRETT

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

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



| | | |
|---|---|---|
| LARRY NELSON, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | 90-C-478-B |
| | ) | |
| GARY MAYNARD, RON CHAMPION, et al, | ) | |
| | ) | |
| Defendants. | ) | |

**ORDER**

This order pertains to Plaintiff's Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 (Docket #2)[1] and Defendants' Motion to Dismiss (#6). A Report of Review of Factual Basis of Claims (#8) ("Special Report") was prepared by the Oklahoma Department of Corrections.

Plaintiff alleges violations of his Fifth and Fourteenth Amendment due process rights and his Eighth Amendment right to be free from cruel and unusual punishment. He alleges he is being punished without due process because he has been assigned to an intensive supervision program, which also curtails his access to the law library. In addition, the intensive program restricts his canteen privileges so he cannot purchase cigarettes and the effects of nicotine withdrawal are claimed to be cruel and unusual punishment.

The Special Report shows that plaintiff was assigned to the Intensive Supervision Program ("ISP") at Dick Conner Correctional Center on March 5, 1990, through a facility classification committee/unit team administrative action (Attachment A, Special Report). The ISP provides housing and management for up to forty (40) inmates who have been

[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.

classified as chronically unemployed, unproductive, or having motivational and/or behavioral problems by their respective unit teams. Placement into the program is based on the respective inmate's behavior, such as lack of program participation, chronic unemployment, poor attitude, rule violations, or behavioral problems.

The Special Report shows that plaintiff was placed on intensive supervision after having received ten (10) misconducts during the period from September 3, 1989 through February 20, 1990. To be transferred out of intensive supervision, plaintiff was to achieve sixty (60) days of clear conduct, attend night school to complete a daily living skills training course, comply with the inmate grooming code, and secure employment by the end of ninety (90) days. Plaintiff was released from the ISP on May 29, 1990 (Attachment F, Special Report).

While in the ISP, plaintiff was allowed to receive certain canteen items, but tobacco products were not on the authorized list of items to be purchased. The prison law library is open on Monday from 1:00 p.m. to 4:00 p.m. and from 5:00 p.m. to 8:00 p.m., and on Tuesday through Thursday from 8:00 a.m. to 11:00 a.m. and 1:00 p.m. to 4:00 p.m. However, movement for inmates in the intensive supervision unit is restricted until after the completion of the 4:15 p.m. count, except for sick call, meals, or other activities where a pass is issued by the unit team. After the 4:15 p.m. count, inmates assigned to intensive supervision are allowed access to the unit yard and can attend approved activities. Plaintiff utilized the law library facilities on May 1, 1990, but there is no further record that plaintiff requested to use the law library at any other time while assigned to intensive supervision.

"[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Qualified immunity is not merely a defense to liability, but also an immunity from suit protecting a defendant from discovery, trial, and the other burdens of litigation.

A defendant claiming qualified immunity can seek dismissal if a plaintiff has not shown facts that establish that the defendant violated clearly established law. Pueblo Neighborhood Health Centers, Inc. v. Losavio, 847 F.2d 642, 646 (10th Cir. 1988); Mitchell v. Forsyth, 472 U.S. 511, 527-30 (1985). Following a defendant's motion to dismiss, plaintiff must show any additional allegations that the defendant violated clearly established law. Pueblo Neighborhood at 646. The court must then decide if defendant has shown facts that would "sustain a conclusion that defendant violated clearly established law". Powell v. Mikulecky, 891 F.2d 1454, 1457 (10th Cir. 1989).

The plaintiff must also demonstrate that the right in question was clearly established at the time of the defendant's conduct. Pueblo Neighborhood at 646. A plaintiff cannot meet this burden merely by identifying a clearly established right and alleging that the defendant violated it. The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. Anderson v. Creighton, 483 U.S. 635, 640 (1987). Unless the plaintiff demonstrates a clearly established right and the necessary factual allegations, the "government official is properly spared the burden and expense of proceeding any further." Powell at 1457.

The prohibition on cruel and unusual treatment prohibits conditions that involve the wanton and unnecessary infliction of pain or are grossly disproportionate to the severity of the crime. Rhodes v. Chapman, 452 U.S. 337, 347 (1981); Battle v. Anderson, 788 F.2d 1421, 1427 (10th Cir. 1986). To the extent that prison conditions are restrictive or even harsh, they are part of the penalty that criminal offenders pay for their offenses. Id.

Placement and classification of an inmate do not involve an interest independently protected by the due process clause; "transfer of an inmate to less amenable and more restrictive quarters ... is well within the terms of confinement ordinarily contemplated by a prison sentence." Hewitt v. Helms, 459 U.S. 460, 468 (1983); Twyman v. Crisp, 584 F.2d 352, 355-357 (10th Cir. 1978).

The Supreme Court in Bounds v. Smith, 430 U.S. 817 (1977), held that the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with an adequate law library or adequate assistance from persons trained in the law. Prison officials may not unreasonably deny inmates access to the courts. Evans v. Moseley, 455 F.2d 1084, 1087 (10th Cir.), cert. den. 409 U.S. 889 (1972). A state may impose reasonable restrictions and restraints on the time and location in which the right of access to courts is exercised by inmates. Seibert v. McCracken, 387 F.Supp. 275, 281 (E.D.Okla. 1974).

In Turner v. Safley, 482 U.S. 78 (1987), the Supreme Court indicated that "a lesser standard of scrutiny is appropriate in determining the constitutionality" of prison rules and that great deference must be accorded to the administrative determinations of prison

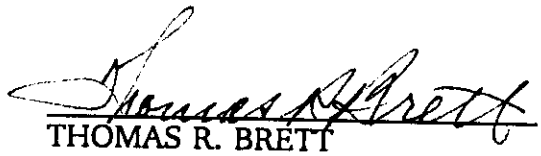
officials. Id. at 81, 85. The Court concluded that "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests". Id. at 89.

To determine whether the prison action is reasonably related to such interests, Turner erected a balancing test and directed lower courts to weigh the following factors. First, the lower court should inquire into whether there is a "valid, rational connection" between the prison action and the "legitimate government interest put forward to justify it". Id. Second, the lower court should determine whether "there are alternative means of exercising the right that remain open to prison inmates". Id. at 90. Third, the court should evaluate "the impact [that] accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally". Id. And finally, the court should look for the presence of "obvious, easy alternatives" to the disputed prison activity. Id. In conducting this analysis, the Supreme Court advises repeatedly that substantial deference be accorded to prison authorities.

The court finds that the Intensive Supervision Program at issue here is reasonably related to the penological interests of protecting inmates and ensuring that rules are followed by prisoners. The program is justified to promote proper inmate behavior. While there are alternative forms of punishment that could be employed if inmates refuse to participate in rehabilitation programs and follow prison rules, many are more restrictive than this program and none are easy alternatives. The program appears to be a proper use of prison resources and effectively separates guards and other inmates from those who would disrupt prison life.

The court finds that plaintiff has not shown that defendants have violated his constitutional rights. There has been no cruel and unusual punishment. While his access to the prison library was somewhat curtailed, he had access after 4:15 p.m. one day a week. Defendants' Motion to Dismiss should be and is granted.

Dated this 27th day of Feb., 1991.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

| | | |
|---|---|---|
| WILEY M. SMITH and EDWARD A. CARSON,<br><br>Plaintiffs,<br><br>vs.<br><br>VINCENT CRADDOCK, KIMBERLY CRADDOCK, FIRST SECURITY MORTGAGE COMPANY, and RESOLUTION TRUST CORPORATION, as Receiver of Cross Roads Savings and Loan, a state banking association, GARY HOBBS, individually, TITLE INSURANCE COMPANY OF MINNESOTA, and MORTGAGE TITLE SERVICES, INC.,<br><br>Defendants,<br><br>CROSS ROADS SAVINGS AND LOAN ASSOCIATION, F.A., by and through its Conservator, Resolution Trust Corporation,<br><br>Cross-Claimants. | ) | Case No. 89-C-665-B |

FILED
FEB 27 1991
Jack C. Silver, Clerk
U.S. DISTRICT COURT

**ORDER DIRECTING DISMISSAL WITHOUT PREJUDICE**

NOW ON THIS 27 day of Feb, 1991, upon Joint-Request by the Plaintiffs, Wiley M. Smith and Edward A. Carson, and the Cross-Claimant, Resolution Trust Corporation, as receiver for Cross Roads Savings and Loan Association, F.A., and for good cause shown, this Court hereby dismisses all claims asserted in this action against the Defendants, Vincent and Kimberly Craddock, First Security Mortgage Company and Gary Hobbs, individually, without prejudice as to the refiling of same.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT COURT JUDGE

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

| | | |
|---|---|---|
| WILEY M. SMITH and EDWARD A. CARSON,<br><br>Plaintiffs,<br><br>vs.<br><br>VINCENT CRADDOCK, KIMBERLY CRADDOCK, FIRST SECURITY MORTGAGE COMPANY, and RESOLUTION TRUST CORPORATION, as Receiver of Cross Roads Savings and Loan, a state banking association, GARY HOBBS, individually, TITLE INSURANCE COMPANY OF MINNESOTA, and MORTGAGE TITLE SERVICES, INC.,<br><br>Defendants,<br><br>CROSS ROADS SAVINGS AND LOAN ASSOCIATION, F.A., by and through its Conservator, Resolution Trust Corporation,<br><br>Cross-Claimants. | ) | Case No. 89-C-665-B |

FILED
FEB 27 1991
Jack C. Silver, Clerk
U.S. DISTRICT COURT

**ORDER DIRECTING DISMISSAL WITH PREJUDICE**

UPON CONSIDERATION OF Plaintiffs' Request for an Order directing dismissal with prejudice, and for good cause shown, this Court hereby dismisses any and all of Plaintiffs' claims asserted in this action as set forth in the Petition, or any amendments thereto, as to the Defendant Resolution Trust Corporation, as receiver for Cross Roads Savings and Loan Association, the Defendant Title Insurance Company of Minnesota and the Defendant Mortgage Title Services, Inc.

C/MGD/02-91624-B/SKS

IT IS FURTHER ORDERED that the parties are to pay their respective costs and attorney's fees associated with this action.

IT IS FURTHER ORDERED that this Order does not affect the right of the above-named parties from pursuing any and all claims arising from the subject of this action which they may have against Vincent and Kimberly Craddock, First Security Mortgage Company, and Gary Hobbs, individually, or any other personal entity.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT COURT JUDGE

entered
already
closed

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

FILED

FEB 27 1991

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

| | | |
|---|---|---|
| MICHAEL J. TORCHIA, | ) | |
| Plaintiff, | ) | |
| vs. | ) | No. 89-C-483-C |
| 66 FEDERAL CREDIT UNION, | ) | |
| Defendant. | ) | |

***ORDER***

Before the Court is plaintiff's application for injunctive relief pursuant to 29 U.S.C. §626. On February 4, 1991, a jury returned a verdict in favor of the defendant regarding plaintiff's claim under the Age Discrimination in Employment Act (ADEA). Despite the verdict, plaintiff asks the Court to order reinstatement and back pay.

Defendant objects, noting that plaintiff did not move for a directed verdict and therefore may not move for judgment notwithstanding the verdict. It appears to the Court, rather, that plaintiff is asking the Court to grant what the ADEA recognizes as equitable relief. However, "the court is bound by the jury's determination of factual issues common to both the legal and equitable claims." Skinner v. Total Petroleum, Inc., 859 F.2d 1439, 1443 (10th Cir. 1988). In the case at bar, the jury expressly found that age was not a determinative factor in the defendant's decision to terminate plaintiff. Thus, the Court may

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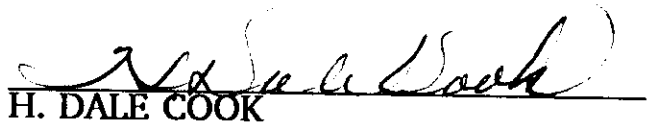
not grant equitable relief. It should be noted that the Court agrees with the jury's verdict and would deny equitable relief in any event.

Defendant has moved for sanctions under Rule 11 F.R.Cv.P. Inasmuch as there is no existing Tenth Circuit authority which addresses this type of request in an ADEA case, the Court does not believe that plaintiff's motion is so objectively unreasonable as to warrant sanctions.

It is the Order of the Court that the plaintiff's application for injunctive relief and the defendant's request for sanctions are hereby DENIED.

***IT IS SO ORDERED*** this 27th day of February, 1991.



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

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



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|---|---|---|
| SUE NUCKOLS,<br><br>Plaintiff,<br><br>vs.<br><br>LOUIS W. SULLIVAN, M.D.,<br>Secretary of Health<br>and Human Services, | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case No. 88-C-1263-B |

**ORDER**

This matter comes before the Court upon Plaintiff's Motion for approval of attorneys fees of $8,058.75 plus expenses incurred of $559.10, a total of $8,617.85. The Court has jurisdiction to approve attorney fees under the provisions of 42 U.S.C. § 406.

Plaintiff recovered past due benefits in at least the amount of $38,468.00[1] out of which the Social Security Administration (SSA) withheld the sum of $9,458.25 for the payment of attorney fees.[2]

On October 19,1990, Plaintiff's attorneys moved for approval of attorneys fees in the amount of $8,058.75 plus expenses of $559.10 based upon 107.45 hours of time expended at an hourly rate of $75.00 per hour and six round-trips to Tulsa from Bartlesville, OK.. The Secretary responded, on November 20, 1990, not objecting

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[1] See attachments to Plaintiff's Reply, filed February 15, 1991.

[2] SSA usually withholds 25 percent of past due benefits in order to pay an approved lawyer's fee. This does not mean a lawyer is automatically entitled to a 25% fee.

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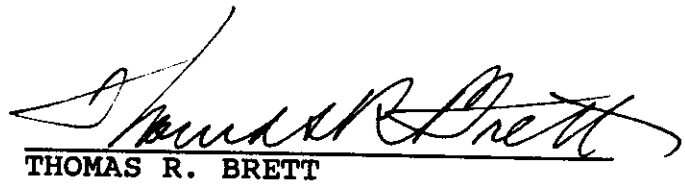
to the fee amount ($8,058.75) nor the expenses ($559.10), but noting however that Plaintiff's past-due benefit information was currently unavailable. Courts are limited to 25% of the total of past due benefits in awarding attorneys fees in SSA judgments and orders. 42 U.S.C. § 406(b)(1).

Plaintiff's attorneys now seek attorneys fees from the fund withheld by SSA ($9,458.25). The Court is not privy to the attorney fee contract Plaintiff's attorneys allege exist between them and Plaintiff's husband.[3] However, in view of SSA's lack of objection to the figures, $8,058.75 and $559.10, the Court is inclined to conclude that attorneys fees and expenses in these amounts are indeed proper and within the SSA's statutory fee scheme.

The Court concludes that Plaintiff's Motion for attorney fees and expenses should be granted but limited to $8,058.75 for fees and $599.10 for expenses.

IT IS SO ORDERED this 27th day of February, 1991.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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[3] Neither is the Court privy to why the attorney fee contract is with Plaintiff's husband rather than Plaintiff. Perhaps Plaintiff's affliction, optic neuritis and/or multiple sclerosis, explains the spousal representation.

entered already closed

FILED

FEB 27 1991

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

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

| | | |
|---|---|---|
| LILLIAN A. GRAHAM, | ) | |
| Plaintiff, | ) | |
| vs. | ) | No. 86-C-516-C |
| AMERICAN AIRLINES, INC., | ) | |
| Defendant. | ) | |

***ORDER***

Before the Court is the application of the plaintiff for clarification of prior orders of the Court.

Plaintiff contends that in her December 24, 1990 filing, she sought to assert a "new" motion to vacate, which is not addressed by the Court's previous orders denying similar motions. Plaintiff contends that her "new" motion asserts "fraud upon the court", for which there is no time limit. Yet she states that it is based upon newly discovered evidence, which brings the motion under Rule 60(b)(2), having a one-year time limitation. A movant may not avoid 60(b) time limits simply by characterizing its motion as one asserting "fraud upon the court". The motion is untimely.

The application of the plaintiff for clarification is hereby DENIED.

*IT IS SO ORDERED* this 27 day of February, 1991.

H. Dale Cook

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

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

FILED

FEB 27 1991

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

| | | |
|---|---|---|
| THAO DINN LE, individually and as parent and next friend of ALEXANDER RYAN LE, a minor, | ) | |
| Plaintiff, | ) | |
| vs. | ) | Case No. 90-C-735-B |
| FOX PHOTO CORPORATION, INC., | ) | |
| Defendant. | ) | |

## STIPULATION OF DISMISSAL

COME NOW the Plaintiffs, THAO DINN LE and ALEXANDER RYAN LE, and voluntarily dismiss their causes of action against the Defendant, FOX PHOTO CORPORATION, INC., pursuant to Fed. R. Civ. P. 41(a)(1) and show the Court as follows:

1. The Plaintiffs and Defendant through their attorneys have agreed the instant case should be dismissed.

2. The Plaintiffs have agreed to dismiss their case with prejudice.

3. The Plaintiffs and Defendant have agreed to bear their own attorney fees and costs to which either may be entitled to recover from the other, if any.

4. The Defendant will suffer no plain prejudice as a result of the Plaintiffs' voluntary dismissal.

WHEREFORE, premises considered, the Plaintiffs respectfully requests the Court to enter an Order dismissing their case with prejudice against the Defendant.

Respectfully Submitted,

CLIFFORD R. MAGEE
Attorney for Plaintiffs

RANDALL J. SNAPP
Attorney for Defendant

CRM:dh
2/20/91
P58

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 27 1991

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

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | ) | |
| Plaintiff, | ) | |
| vs. | ) | |
| CHRIS BARGAS, | ) | |
| Defendant. | ) | Civil Action No. 90-C-316-B |

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 27th day of February, 1991.

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

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

CERTIFICATE OF SERVICE

This is to certify that on the 27th day of February, 1991, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to Michael Green, Attorney for Debtor, at 707 S. Houston, Suite 301, Tulsa, Oklahoma 74127.

KATHLEEN BLISS ADAMS
Assistant United States Attorney

FILED

FEB 27 1991

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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | ) | |
| Plaintiff, | ) | |
| vs. | ) | |
| ROBERT C. HAWKINS, | ) | |
| Defendant. | ) | Civil Action No. 90-C-0149-B |

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 without prejudice.

Dated this 27th day of February, 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 27th day of February, 1991, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Lester D. Henderson, Attorney for Debtor, 16 N. Park, P. O. Box 205, Sapulpa, OK 74067.

Kathleen Bliss Adams
Assistant United States Attorney

FILED

FEB 27 1991

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

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

| | | |
|---|---|---|
| NEIL N. THOMPSON and BONNIE M. THOMPSON, Plaintiffs, | ) | |
| vs. | ) | No. 88-C-389-B |
| FIBREBOARD CORPORATION, et al Defendants. | ) | |

ORDER OF DISMISSAL
WITHOUT PREJUDICE

The Court, having reviewed the Plaintiffs' Motion for Dismissal Without Prejudice filed herein, and being duly advised in the premises, now finds that the above-entitled cause of action should be dismissed, without prejudice, each party to pay their own costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above-entitled cause of action be and hereby is dismissed, without prejudice, each party to pay their own costs.

DATED this 27 day of Feb, 1991.

S/ THOMAS R. BRETT

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

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



| | | |
|---|---|---|
| LORENA PATTY OLIVER and TOMMIE M. OLIVER, Plaintiffs, | ) | |
| vs. | ) | No. 90-C-187-E |
| SCRIPTO-TOKAI CORPORATION, a Delaware corporation, Defendant. | ) | |

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the Plaintiffs and Defendant in the above-styled cause of action pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure and file a Joint Stipulation of Dismissal With Prejudice in the above-styled cause of action.

James E. Frasier
Attorney for Plaintiffs

Jerry D. Stritzke
Attorney for Defendant

8-57/kjc

FILED

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

FEB 26 1991

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

| | | |
|---|---|---|
| **BRYAN KEITH ROWE,** | ) | |
| Plaintiff, | ) | |
| vs. | ) | Case No. 90-C-827-B |
| **JAMES D. SHARP, et al.,** | ) | |
| Defendants. | ) | |

**STIPULATION FOR DISMISSAL**

BRYAN KEITH ROWE ("PLAINTIFF") and Defendants J. D. SHARP, Oklahoma County Sheriff named in his individual and/or official capacity; Oklahoma County Commissioners, Fred Snyder, "Buck" Buchanan, and Shirley Darrell, named in their official and/or individual capacities; and Oklahoma County, Oklahoma ("SETTLING DEFENDANTS") hereby stipulate that this action shall be dismissed against the named Settling Defendants with Prejudice.

A. CRAIG ABRAHAMSON, OBA #120
201 TWO MAIN PLAZA
616 South Main
Tulsa, Oklahoma 74119
(918) 584-0318

Attorney for the Plaintiff
BRYAN KEITH ROWE

JOHN JACOBSEN, OBA #11879
Assistant Oklahoma County
District Attorney
320 Robert S. Kerr Avenue
Oklahoma City, Oklahoma 73102

Attorney for Settling Defendants

ORDER FOR DISMISSAL

NOW on this 6th day of ~~February~~ March, 1991, this matter comes on pursuant to the above and foregoing Stipulation for Dismissal. The Court being fully informed in the premises finds this action shall be dismissed with prejudice against J.D. Sharp, Oklahoma County Sheriff in his individual and official capacities, Oklahoma County, Oklahoma, and Fred Snyder, "Buck" Buchanan, and Shirley Darrell, Oklahoma County Board of Commissioners in their individual and official capacities.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, A. Craig Abrahamson, hereby certify that on the _____ day of _____, 1991, I mailed a true and correct copy of the above and foregoing instrument, with proper postage thereon fully prepaid, to:

Dick A. Blakely, Esq.
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74013

Gay Abston Tudor
Assistant Attorney General
420 West Main Street, Suite 550
Oklahoma City, Oklahoma 73102

A. CRAIG ABRAHAMSON

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA



| | |
|---|---|
| ATLANTIC RICHFIELD COMPANY,<br>Plaintiff,<br>v.<br>AMERICAN AIRLINES, INC., ET. AL.,<br>Defendants. | CASE NO. 89-C-868-C |
| ATLANTIC RICHFIELD COMPANY,<br>Plaintiff,<br>v.<br>SOLVENTS RECOVERY CORP., ET. AL.,<br>Defendants. | CASE NO. 89-C-869-C |
| ATLANTIC RICHFIELD COMPANY,<br>Plaintiff,<br>v.<br>UNIT RIG & EQUIPMENT CO., ET. AL.,<br>Defendants. | CASE NO. 90-C-859-C<br>(CONSOLIDATED CASES) |

**NOTICE OF DISMISSAL WITHOUT PREJUDICE OF WILLIAMS BROTHERS PIPELINE COMPANY, ONLY**

Now on this 26th day of February, 1991, all parties hereto please take notice that pursuant to Rule 41 (a) of the Federal Rules

of Civil Procedure the Plaintiff hereby dismisses without prejudice this action against Williams Brothers Pipeline Company, only, and expressly reserves its causes of action against all other Defendants.

Gary A. Eaton, OBA #2598
Attorney at Law
1717 East 15th St.
Tulsa, OK 74104
918 743 8717

CERTIFICATE OF MAILING

The undersigned certifies that on February 26, 1991, a true and correct copy of the above instrument / pleading was mailed with postage prepaid to the following persons:

Mr. Larry Gutteridge, Co-Counsel for Plaintiff, 633 West 5th Street, 35th Floor, Los Angeles, California 90071

Mr. William Anderson, Attorney at Law and Liaison Counsel and Co-Lead Counsel for Owners and Non-Operator Lessees Group, 1000 Atlas Life Building, Tulsa, OK 74103

Mr. C. S. Lewis, III, Attorney at Law and Co-Lead Counsel for Owners and Non-Operator Lessees Group, P. O. Box 1046, Tulsa, OK 74101

Mr. John Tucker, Lead Counsel for Non Group Generators and Transporters, 2800 Fourth National Bank Building, Tulsa, OK 74119

Mr. Steven Harris, Attorney at Law and Lead Counsel for Operators Group, Suite 260 Southern Hills Tower, 2431 East 61st Street, Tulsa, OK 74136

Mr. Charles Shipley, Attorney at Law and Settlement Coordinator, 3401 First National Tower, Tulsa, OK 74103

Ms. Claire V. Eagan, Attorney at Law and Lead Counsel for the Sand Springs PRP Group, 4100 Bank of Oklahoma Tower, One Williams Center, Tulsa, OK 74172

Name

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

FILED

FEB 26 1991

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

| | |
|---|---|
| REPUBLIC FINANCIAL CORPORATION, an Oklahoma corporation,<br><br>Debtor,<br><br>P. A. HACKLER and DELORES HACKLER, KENNETH D. and MARY L. MOORE, and KEMAL SAIED and CONSTANCE SAIED,<br><br>Appellants,<br><br>vs.<br><br>R. DOBIE LANGENKAMP, Successor Trustee,<br><br>Appellee. | No. 87-C-616-C<br>No. 87-C-618-C<br>No. 87-C-619-C |
| REPUBLIC TRUST & SAVINGS, d/b/a Western Trust and Savings Company,<br><br>Debtor,<br><br>C. A. CULP, JULIA CULP, and CULP DISTRIBUTING COMPANY; HATTIE LOU GESIN; and LEROY DENNIS and JANET DENNIS,<br><br>Appellants,<br><br>vs.<br><br>R. DOBIE LANGENKAMP, Successor Trustee,<br><br>Appellee. | No. 87-C-617-C<br>No. 87-C-620-C<br>No. 87-C-692-C<br><br>Consolidated Under<br>No. 87-C-616-C |

## ***ORDER***

These cases are hereby remanded to the United States Bankruptcy Court for the Northern District of Oklahoma for further

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C/BK

proceedings in accordance with the opinion of the United States Court of Appeals for the Tenth Circuit.

*IT IS SO ORDERED* this 26th day of February, 1991.

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

FILED

FEB 25 1991

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

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

| | | |
|---|---|---|
| **ORVILLE W. CAVINS,** **Plaintiff,** | ) | |
| **v.** | ) | |
| **UNITED STATES OF AMERICA** **Defendant and Counterclaim Plaintiff,** | ) | **Case No. 90-C-294-B** |
| **v.** | ) | |
| **OAK SENVAR, a/k/a OAKTAY SENVARDARLI** **Additional Defendant on the Counterclaim.** | ) | |

**NOTICE OF VOLUNTARY DISMISSAL**

Plaintiff, the United States of America, by and through its undersigned attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, and James J. Long, Trial Attorney, Tax Division, United States Department of Justice, pursuant Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure hereby serves this Notice that it is voluntarily dismissing, without prejudice, its complaint against Oak Senvar, a/k/a Oaktay Senvardarli.


TONY M. GRAHAM
United States Attorney

PETER BERNHARDT
Assistant U.S. Attorney
3600 United States Courthouse
333 West 4th Street
Tulsa, Oklahoma 74103

JAMES J. LONG
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 7238
Washington, D.C. 20044
Tel. (202) 514-6563
Tel. FTS 368-6563

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 22, 1991, a true and accurate copy of the above and foregoing NOTICE OF VOLUNTARY DISMISSAL was served by mail, postage prepaid, to:

Clifford N. Ribner, Esquire
2121 South Columbia, Suite 500
Tulsa, Oklahoma 74114

JAMES J. LONG
Trial Attorney, Tax Division
Office of Special Litigation
U.S. Department of Justice
P.O. Box 7238
Washington, D.C. 20044
Tel. (202) 514-6563
Tel. FTS 368-6563

FILED

FEB 25 1991

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

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

| | | |
|---|---|---|
| FORREST CHAMBERS and JANICE CHAMBERS, husband and wife, | ) | |
| Plaintiffs, | ) | |
| vs. | ) | Case No.: 90-C-550-B |
| ALLSTATE INSURANCE COMPANY, | ) | |
| Defendant. | ) | |

**ORDER OF DISMISSAL**
**OF PLAINTIFFS' COMPLAINT**

NOW on this 25th day of February, 1991, upon the written stipulation of the Plaintiffs for a Dismissal with Prejudice of the Plaintiffs' complaint, the Court having examined said Stipulation for Dismissal, finds that the parties have entered into a compromise settlement of all of the claims involved herein, and the Court being fully advised in the premises finds that the Plaintiffs' complaint against the Defendant should be dismissed with prejudice.

IT IS THEREFORE ORDERED BY THE COURT that the complaint of the Plaintiffs against the Defendant be and the same is hereby dismissed with prejudice to any further action.

S/ THOMAS R. BRETT
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

| | | |
|---|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>ONE PARCEL OF REAL PROPERTY, WITH BUILDINGS, APPURTENANCES, AND IMPROVEMENTS, KNOWN AS: 1224 EAST 50TH STREET NORTH, TULSA, TULSA COUNTY, OKLAHOMA,<br><br>Defendant. | ) | CIVIL ACTION NO. 90-C-818-E |

FILED

FEB 25 1991

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

**JUDGMENT OF FORFEITURE**

This cause having come before this Court upon Plaintiff's Application filed herein, and being otherwise fully apprised in the premises, the Court finds as follows:

That the verified Complaint for Forfeiture In Rem was filed in this action on the 21st day of September, 1990; that the Complaint alleges that the defendant real property, with buildings, appurtenances, and improvements, is subject to forfeiture pursuant to 21 U.S.C. 881(a)(6) and (a)(7), because it was used, or was intended for use, to commit, or to facilitate the commission of, a violation of Title 21 United States Code.

That a Warrant of Arrest In Rem was issued by the Honorable James O. Ellison, United States Judge for the Northern District of Oklahoma, on the 27th day of September, 1990, as to the defendant real property, buildings, appurtenances, and improvements.

That the United States Marshals Service personally served a copy of the Complaint for Forfeiture In Rem and the Warrant of Arrest In Rem on the defendant real property, its buildings, appurtenances, and improvements, on the 29th day of October, 1990.

That the United States Marshals Service personally served a copy of the Complaint for Forfeiture In Rem and the Warrant of Arrest and Notice In Rem upon Carl Cooper and Carsee Washington, the only persons believed by Plaintiff to have standing as a claimants in this matter, as follows:

| | |
|---|---|
| CARL COOPER | October 29, 1990 |
| CARSIE WASHINGTON | October 29, 1990 |

That USMS Forms 285 reflecting the above services are on file herein.

That all persons and/or entities interested in the defendant property, its buildings, appurtenances, and improvements, hereinafter described were required to file their claim(s) herein within ten (10) days after service upon them of the Warrant of Arrest In Rem, publication of the Notice of Arrest and Seizure, or actual notice of this action, whichever occurred first, and were required to file their answer(s) to the Complaint within twenty (20) days after filing their respective claim(s).

That the defendant property and all persons and/or entities upon whom personal service was effectuated more than twenty (20) days ago have failed to file their respective claims or answers, as directed in the Warrant of Arrest In Rem on file herein.

That the United States Marshals Service gave public notice of this action and arrest to all persons and entities by advertisement in the Tulsa Daily Commerce and Legal News on December 13, 20, and 27, 1990; and that Proof of Publication was filed of record on January 18, 1991.

That no other claims, papers, pleadings, or other defenses have been filed by the defendant property or any person and/or entity having an interest therein.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that Judgment be entered against the following-described defendant real property:

> **Lot Three (3), Block Two (2), Buenos Vista Subdivision of Tulsa County, Oklahoma, according to the Recorded Plat thereof, also known as 1224 East 50th Street North, Tulsa, Oklahoma 74126,**

with buildings, appurtenances, and improvements, and against all persons and/or entities having an interest in such property, and that said defendant real property, its buildings, appurtenances, and improvements, be, and the same is, hereby forfeited to the

United States of America for disposition by the United States Marshal according to law, and that no right, title, or interest shall exist in any other party.

IT IS FURTHER ORDERED by the Court that the proceeds of the sale of the above-described real property, its buildings, appurtenances, and improvements, located at 1224 East 50th Street North, Tulsa, Tulsa County, Oklahoma, shall be distributed in the following priority:

a) First, for the payment to the United States of all expenses of forfeiture of the defendant real property, including, but not limited to, expenses of seizure, custody, advertising, and sale.

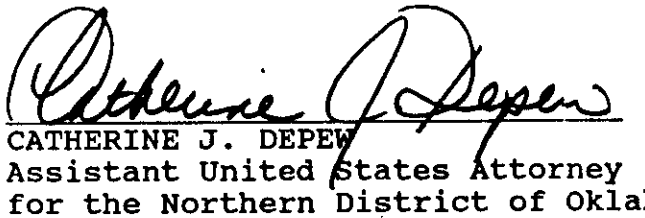
b) Second, for payment of all real estate taxes owed on the property to date of sale, to the extent that the United States of America is responsible for said taxes.

c) Third, for payment to the United States of America of all amounts remaining after the above disbursements.

S/ JAMES O. ELLISON

JAMES O. ELLISON,
UNITED STATES DISTRICT JUDGE

**APPROVED:**



CATHERINE J. DEPEW
Assistant United States Attorney
for the Northern District of Oklahoma

**DEA SEIZURE #87240**

CJD/ch
01034

FILED

FEB 25 1991

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

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

| | | |
|---|---|---|
| **UNITED STATES OF AMERICA,** Plaintiff, | ) | |
| vs. | ) | **CIVIL ACTION NO. 89-C-321-B** |
| **ONE LADIES ROLEX OYSTER PERPETUAL DATE WATCH WITH DIAMONDS,** Defendant. | ) | |

**AGREED JUDGMENT OF FORFEITURE**

IT NOW APPEARS that the forfeiture proceeding herein has been fully compromised and settled, as more fully appears in the written Stipulation For Compromise entered into by and between the Claimant, Alfredo G. Salazar, Jr., a/k/a Freddie Salazar, and executed by him on the 18th day of January, 1991, and plaintiff, United States of America, and executed by Catherine J. Depew, Assistant United States Attorney for the Northern District of Oklahoma, on the 14th day of January, 1991, and filed herein on the 24th day of January, 1991, to which Stipulation for Compromise reference is hereby made and incorporated herein.

It further appearing that Jane Salazar filed a Petition for a Writ of Prohibition, jointly with Claimant Alfredo G. Salazar, Jr., on the 1st day of May, 1989, in the United States District Court for the Northern District of Oklahoma, in a case styled Alfredo G. Salazar, Jr. & Jane Salazar v. Federal Bureau of Investigations, et al., Case No. 89-C-331-E, which is

tantamount to a claim in this forfeiture action, but because of the repeated failure of Claimant Jane Salazar to respond to discovery requests of the plaintiff, all as set forth in Affidavit of Catherine J. Depew, Assistant United States Attorney, filed herein on the 30th day of October, 1990, this Court entered an Order on the 2nd day of November, 1990, granting the plaintiff's motion to dismiss Jane Salazar's claim with prejudice; and that no other persons have any right, title, or interest in the following-described defendant property:

One Ladies Rolex Oyster
Perpetual Date Watch
With Diamonds.

Now, therefore, on motion of Catherine J. Depew, Assistant United States Attorney, and with the consent of Claimant, Alfredo G. Salazar, Jr., it is

ORDERED that the claim of Alfredo G. Salazar, Jr. to the defendant property be, and the same hereby is, dismissed with prejudice and without costs, and it is

FURTHER ORDERED, ADJUDGED, AND DECREED that the defendant property be, and it is hereby, condemned as forfeited to the United States of America and shall remain in the custody of the United States Marshal for disposition according to law, and it is

FURTHER ORDERED that the United States Marshal shall pay to the Claimant Alfredo G. Salazar, Jr. the sum of Seven

Hundred Fifty Dollars ($750.00) from the proceeds of the sale of the defendant property.

DATED this 25th day of Feb., 1991.

S/ THOMAS R. BRETT

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

CJD/ch
01195

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



| | | |
|---|---|---|
| BRYAN KEITH ROWE, | ) | |
| Plaintiff, | ) | |
| vs. | ) | Case No. 90-C-827-B |
| JAMES D. SHARP, et al., | ) | |
| Defendants. | ) | |



**JOURNAL ENTRY ON CONFESSION OF JUDGMENT**

This cause comes on for hearing on the 25th day of February, 1990, the Plaintiff Bryan Keith Rowe, appearing by counsel, A. Craig Abrahamson, and Settling Defendats, Stanely Glanz, Sheriff of Tulsa County, Oklahoma, Dave Roberts, Deputy Sheriff of Tulsa County, Oklahoma and the Board of County Commissioners of Tulsa County, one of several defendants in the case, appearing by, Fred J. Morgan, Assistant District Attorney. The Settling Defendants, having waived a jury trial and tried this cause to the Court, the Court finds that on January 28, 1991, the Board of County Commissioners of Tulsa County, meeting in executive session, approved the recommendation of the District Attorney of Tulsa County, Oklahoma, to confess judgment in the case herein in the amount of Five Thousand Dollars ($5000.00); the Court further finds the Plaintiff has sustained his allegations and is entitled to recover damages against the Defendant Board of County Commissioners of Tulsa County in the sum of Five Thousand Dollars ($5000.00), which satisfies all of the Plaintiff's claims including attorney fees. The Court further finds that Plaintiff has waived any claim for any other form of legal or equitable relief against this

Defendant.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED**, that the Plaintiff recover judgment against the Defendant Board of County Commissioners of Tulsa County, Oklahoma, in the total sum of Five Thousand Dollars ($5000.00), with interest from the date of this Judgment at a rate not to exceed ten (10%) percent per year.

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

Bryan K Rowe
BRYAN KEITH ROWE, *Plaintiff*

A. CRAIG ABRAHAMSON, OBA #120
*Attorney for Plaintiff*
*201 Two Main Plaza*
*616 So. Main*
*Tulsa, Ok 74119*
*(918) 584-0318*

Fred J. Morgan
FRED J. MORGAN OBA #6386
*ATTORNEY FOR DEFENDANT*
*BOARD OF COUNTY COMMISSIONERS*
*OF TULSA COUNTY*
406 Tulsa County Courthouse
Tulsa, Ok 74103

FILED

FEB 25 1991

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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | Civil Action No. 90-C-950-B |
| v. | ) | |
| | ) | |
| WESLEY D. NAMES | ) | |
| | ) | |
| Defendant. | ) | |

DEFAULT JUDGMENT

This matter comes on for consideration this 13th day of February, 1991, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, and the Defendant, Wesley D. Names, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Wesley D. Names, was served with Summons and Complaint on January 10, 1991. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Wesley D. Names, for the principal amount of $27,550.00, plus accrued interest of $1,187.68 as of August 31, 1990, plus interest thereafter at the rate of 4% percent per annum until judgment, plus

interest thereafter at the current legal rate of 6.21 percent per annum until paid, plus costs of this action.

S/ THOMAS R. BRETT
United States District Judge

Submitted By:

KATHLEEN BLISS ADAMS, OBA# 13625
Assistant United States Attorney
333 West 4th Street
Tulsa, Oklahoma 74103
(918)581-7463

FILED
FEB 25 1991
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

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

| | | |
|---|---|---|
| SHANNA HARNESS, | ) | |
| Plaintiff, | ) | |
| vs. | ) | Case No. 90-C-972-B |
| KEN MOORE, an individual d/b/a PRINTMORE, INC., an Oklahoma corporation, | ) | |
| Defendant. | ) | |

NOTICE OF
DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Shanna Harness, an individual, by and through her attorney of record, Charles Bryan Alred, and dismisses with prejudice her causes of action herein against the Defendants, Kenneth D. Moore and Printmore, Inc.

Charles Bryan Alred, OBA #12070

3242 East 30th Place
Tulsa, Oklahoma 74114
(918) 749-8523

Attorney for Plaintiff
Shanna Harness

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 25 day of Feb, 1991.

Charles Bryan Alred By

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

| | | |
|---|---|---|
| WILL ROGERS JOCKEY & POLO CLUB, INC., | ) | |
| | ) | |
| Appellant, | ) | |
| | ) | |
| v. | ) | 90-C-267-C |
| | ) | |
| OKLAHOMA HORSE RACING COMMISSION, | ) | |
| | ) | |
| Appellee. | ) | |

ORDER

This is an appeal of the Bankruptcy Court Memorandum Decision and Order in Bankruptcy Case No. 89-70-C, Adversary Proceeding No. 89-290-C, filed March 13, 1990. (Rec. 36)[1] Debtor/Appellant Will Rogers Jockey & Polo Club, Inc. ("Jockey Club") filed for bankruptcy protection and submitted a plan of reorganization under Chapter 11. The success of the plan depends heavily upon obtaining a license to conduct pari-mutual horse racing from the Appellee Oklahoma Horse Racing Commission ("OHRC"). When OHRC denied the license, Jockey Club initiated an adversary proceeding seeking declaratory and injunctive relief. Title 11 U.S.C. §525 is the central focus of the appeal. Section 525 prohibits a government agency from discriminating against a debtor by denying a license solely because bankruptcy protection has been sought. Jockey Club now appeals the findings of the Bankruptcy Court arguing that OHRC did discriminate against it because of its bankrupt status. After reviewing the record and the briefs of the parties this Court finds the decision of the Bankruptcy Court must be affirmed.

[1] *Appellee's Motion to Strike Appellant's Reply Brief is overruled. Appellant's Reply Brief is considered herein.*

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Section 525 states in part,

> ... a government unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

(Emphasis added.)

Against the backdrop of §525, the Bankruptcy Court made the following findings of fact,

> The Court finds that the Racing Commission denied Will Roger's racing application on two principal grounds: (1) Will Rogers lacked financial integrity and apparent hope of financial success because it would not be able to consummate its proposed plan of reorganization, and (2) the Oklahoma horse racing market was "saturated". While the Racing Commission mentioned additional grounds for its decision, the Court finds that but for the two grounds stated above the Racing Commission would have granted the racing application. The Court further finds that the Racing Commission would have denied the racing application on either of the two grounds stated above, notwithstanding the existence of any other ground.

(Rec. 36, at p. 7-8) (footnotes omitted). Further, the Bankruptcy Court found,

> ... that the Racing Commission applied the same financial integrity and hope of financial success tests in considering Will Roger's racing application as it does in considering other racing applications.

(Id., at p. 9-10.)

The standard of review for findings of fact of the Bankruptcy Court is, of course, the "clearly erroneous" standard:

> **It is well established that neither this court nor the district court can disturb a bankruptcy court's findings of fact unless they are clearly erroneous. A factual finding is clearly erroneous "'when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" This court, however, may exercise de novo review over the bankruptcy court's conclusions of law.**

*In re Hart*, ___ F.2d ___ (10th Cir. Jan. 17, 1991) (quoting *Hall v. Vance*, 887 F.2d 1041 (10th Cir. 1989).

Distilled to its essence, the Bankruptcy Court found that in protecting existing Oklahoma racetracks (Remington Park and Blue Ribbon Downs) the OHRC Rules discriminate against all license applicants equally, but that such discrimination applies "**regardless of whether the applicant is a bankruptcy debtor, has been insolvent, or has not paid a dischargeable debt.**" (Rec. 336, at p. 11) (emphasis added). Therefore, the Bankruptcy court concluded that OHRC did not discriminate against Jockey Club as a bankrupt as opposed to non-debtor non-bankrupt license applicant's and that the OHRC Denial Order (Rec. 229, Tab 2) did not violate §525.

In its attack on the Bankruptcy Court's decision, Jockey Club asserts that OHRC Rule 204.2 (the "**oversaturation**" presumption) discriminates against Jockey Club in violation of §525. (Issue II). The OHRC, in its Denial Order (Rec. 29, Tab 2), considered the problem of potential oversaturation of the racing market in Oklahoma; however it did so without regard for Rule 204.2. (Id., at ¶¶ 25-33, 37.) OHRC concluded that a third race track would be detrimental regardless of the track's financial condition. (Id., at ¶¶ 29, 32, 38). As for Rule 204.2, OHRC specifically noted that the Rule 204.2 "**presumption**" was not used against Jockey Club in its deliberations. (Id., at ¶28.) Thus, Jockey Club's Rule 204.2

argument is irrelevant based as it is, on an incorrect assumption.

Jockey Club also attacks the Bankruptcy Court's determination that OHRC's examination of Jockey Club's financial status was appropriate. (Issue III.) Jockey Club attempts to support its argument citing the OHRC hearing transcript from August 17, 1989 (rather than its written decision) and blaming any present financial instability on OHRC because of its earlier denial of race days during the year 1988. The argument is misdirected. Whether the OHRC by its earlier actions has negatively impacted Jockey Club's present status, has little to do with whether §525 was violated by OHRC's present license review of Jockey Club's ability to meet future financial obligations. The Bankruptcy Court held that the OHRC review was conducted in a manner not violating §525. Jockey Club's argument completely misses that mark.

Jockey Club finally asserts that the OHRC acted with an aim to obtaining a pecuniary advantage for itself or Oklahoma citizens. (Issue I.) If so, then OHRC should have been stayed from denying a license because of §362(a)(1) (the automatic stay provision). See, *In re Thomasson*, 15 B.R. 907 (Bankr. 9th Cir. 1981).[2] Yet, Jockey Club identifies no evidence in the record which supports the **"pecuniary advantage"** supposition, nor does this Court's own review reveal any such evidence. The process of OHRC's ruling on a horse racing license application is more appropriately characterized as an exercise of legitimate state police and regulatory power. Section 362(a)(4) specifically exempts from the automatic stay, **"an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power"**.

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[2] *The Thomasson court writes, "The 'pecuniary purpose' test ... seems to be aimed at preventing the circumvention of the relief available to both debtors and general creditors under the Bankruptcy Code." 15 B.R. at 909.*

The Bankruptcy Court made specific findings in this area:

> **The Court finds that the purposes of Oklahoma's horse racing regulations, including the regulations allowing the Racing Commission to examine an applicant's future financial ability, are to (1) encourage agriculture and horse breeding in Oklahoma; (2) maintain horse racing in Oklahoma of the highest quality and free of corrupt, incompetent, dishonest, or unprincipled practices; (3) maintain the fact and appearance of complete honesty and integrity of horse racing in Oklahoma; and (4) generate public revenues. 3A O.S. §203.7. There is no question that the State of Oklahoma has the right under its police power to enact such regulations governing horse racing within the state. In re Alessi, 12 B.R. 96, 98 (Bankr. N.D. Ill. 1981).**

(Rec. 36, at 14.)

The cases Jockey Club cites in support of its argument are readily distinguishable from the case at bar. In *In re Aegean Fare, Inc.*, 35 B.R. 923 (Bankr. D. Mass. 1983), *In re William Tell, II, Inc.*, 38 B.R. 327 (Bankr. N.D. Ill. 1983), and *In re Elsinore Shore Associates*, 66 B.R. 723 (Bankr. D.N.J. 11986) the debtor held an existing license which was revoked because back-taxes had not been paid. In each case the state would have gained preferential treatment over other creditors by using the license revocation as a lever, to force preferential payments of back taxes, thus granting the state an advantage over debtor's pecuniary interests. *In re King Memorial Hospital, Inc.*, 4 B.R. 704 (Bankr. S.D. Fla. 1980) is a pre-Bankruptcy Code case that saw the revocation of a hospital certificate-of-need turn on the debtor's failure to respond to the state agency's inquiries. Finally, in *In re State of Missouri*, 647 F.2d 768 (8th Cir. 1981) state regulations provided for appointment of a receiver to liquidate or operate a bankrupt. The Eighth Circuit held that the state regulations collided with federal law granting a Bankruptcy trustee the same powers. Beyond that, the Eighth Circuit merely agreed that the Bankruptcy trustee "**should, to the extent possible**" obtain the requisite state licenses. Id., at 777-78. None of these

authorities require the OHRC, under §362 to grant Jockey Club a license for which it has never qualified. The automatic stay of §362 does not create a duty to grant a license to a debtor, although it may prevent the revocation of a debtor's existing license, where the motivation is to gain preferential treatment over other creditors. That is not the case presented here. Jockey Club's argument is thus unpersuasive.

The decision of the Bankruptcy Court is supported by the record and the law. Appellant's arguments are insufficient for reversal. Therefore, it is the Order of the Court that the decision of the Bankruptcy Court be AFFIRMED.

SO ORDERED THIS 25th day of February, 1991.

H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

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

FILED
FEB 25 1991
Jack C. Silver, Clerk
U.S. DISTRICT COURT

| | | |
|---|---|---|
| BRYAN KEITH ROWE, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | Case No. 90-C-827-B |
| | ) | |
| JAMES D. SHARP, et al., | ) | |
| | ) | |
| Defendants. | ) | |

**ORDER APPROVING SETTLEMENT AND ORDER FOR JUDGMENT**

NOW this 25th day of February, 1991, the above styled matter comes on before me on the Motion of Bryan Keith Rowe and Settling Defendants, Stanley Glanz, Sheriff of Tulsa County, Oklahoma, David Roberts, Deputy Sheriff of Tulsa County, Oklahoma and the Board of County Commissioners of Tulsa County for Approval of Settlement. The Court having reviewed the Motion to Approve Settlement and its attachments, which this Court hereby adopts and incorporates by reference, along with all the files and records herein, and being fully advised in the premises, finds the Motion should be granted, the Settlement approved and judgment should be entered in favor of Plaintiff against Settling Defendants in the sum of Five Thousand Dollars.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the Settlement of the moving parties as stated in the Motion for Approval of Settlement is hereby approved.

**IT IS THEREFORE ORDERED**, that the sum of such settlement, Five Thousand Dollars, ($5000.00) shall be paid to Plaintiff from the sinking fund of Tulsa County pursuant

to the provisions of 51 O.S.A. § 159 (C).

**IT IS FURTHER ORDERED,** that the clerk is expressly directed to enter such judgment forthwith, it having been expressly determined that there is not just reason for delay in the entry of this judgment until the final determination of all the issues involved in the above entitled and captioned action, and that payment of such judgment shall constitute full accord and satisfaction of all disputed claims Plaintiff and or his heirs, personal representatives, successors and assignees, has, had, or may in the future have against Settling Defendants.

S/ THOMAS R. BRETT

DATED February 25, 1991

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM

A. CRAIG ABRAHAMSON, OBA #120
*Attorney for Plaintiff*
*201 Two Main Plaza*
*616 So. Main*
*Tulsa, Ok 74119*
*(918) 584-0318*

Fred J. Morgan

FRED J. MORGAN OBA #6386
*ATTORNEY FOR DEFENDANT*
*BOARD OF COUNTY COMMISSIONERS*
*OF TULSA COUNTY*
406 Tulsa County Courthouse
Tulsa, Ok 74103

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

FILED

FEB 25 1991

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

| | | |
|---|---|---|
| BENJAMIN FRANKLIN FEDERAL SAVINGS ASSOCIATION, et al., | ) | |
| Plaintiffs, | ) | |
| vs. | ) | No. 89-C-618-E |
| JAMES W. DUNHAM, et al., | ) | |
| Defendants. | ) | |

**JUDGMENT**

This action having been duly considered and a decision having been duly rendered,

IT IS THEREFORE ORDERED that the Plaintiff's Motion for Summary Judgment is granted in its entirety and that the action be dismissed on the merits.

ORDERED this 25th day of February, 1991.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED

FEB 25 1991

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

| | | |
|---|---|---|
| ROBBINS & MYERS, INC., | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | Case No. 90-C-611-B |
| | ) | |
| TARBY, INC., | ) | |
| | ) | |
| Defendant. | ) | |

**DISMISSAL ORDER GRANTING REQUEST FOR**
**DISMISSAL OF REMAINING CLAIMS WITH PREJUDICE**

There came on for consideration the Joint Stipulations, Request for Entry of Judgment for Permanent Injunction and Request for Dismissal of Remaining Claims With Prejudice ("Joint Application") filed in this case, by the Plaintiff, Robbins & Myers, Inc. ("R&M"), and the Defendant, Tarby, Inc. ("TARBY"). Upon consideration of the Joint Application, the Court finds that the Joint Application should be granted, and that all remaining claims for relief asserted in the Complaint, Amended Complaint and the Counterclaims should be dismissed with prejudice, as requested in the Joint Application.

IT IS THEREFORE ORDERED that:

1. All remaining claims for relief asserted in the Complaint, Amended Complaint and the Counterclaims are dismissed with prejudice.

2. Plaintiff and the Defendant shall each bear their own costs and attorney fees with respect to the prosecution of the Complaint, Amended Complaint and the Counterclaims.

DATED this 25 day of Feb, 1991.

S/ THOMAS R. BRETT
Thomas R. Brett
U.S. District Judge

APPROVED:

MOYERS, MARTIN, SANTEE,
IMEL & TETRICK

By _____
J. Randall Miller, OBA #6214
Patrick O'Connor, OBA #6743
320 South Boston, Suite 920
Tulsa, Oklahoma 74103
(918) 582-5281

ATTORNEYS FOR PLAINTIFF and COUNTER-DEFENDANT, ROBBINS & MYERS, INC.

CONNER & WINTERS

By _____
J. David Jorgenson, OBA #4839
G.W. Turner, III, OBA #11182
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

ATTORNEYS FOR DEFENDANT AND COUNTER-CLAIMANT, TARBY, INC.

14913105.01

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

FILED

FEB 25 1991

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

| | | |
|---|---|---|
| ROBBINS & MYERS, INC., | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | Case No. 90-C-611-B |
| | ) | |
| TARBY, INC., | ) | |
| | ) | |
| Defendant. | ) | |

JUDGMENT FOR PERMANENT INJUNCTION

Upon the stipulation of the parties hereto,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Robbins and Myers, Inc. ("R&M"), its officers, agents, servants, employees and any and all persons in active concert or participation with them, who receive actual notice of this permanent injunction by personal service or otherwise, shall be permanently enjoined and restrained from directly or indirectly making any adverse comments to customers or potential customers of either R&M or Tarby concerning Tarby's financial viability, ability or intent to remain in the business of supplying progressing cavity pumps and progressing cavity pump parts, or ability to remain in business as an independent entity. Nothing contained in the foregoing shall be construed as restricting the right of R&M to make lawful comparisons of its products or services with the products or services of Tarby.

2. Tarby, Inc. ("Tarby"), its officers, agents, servants, employees and any and all persons in active concert or Participation with them, who receive actual notice of this Order by

personal service or otherwise, shall be permanently enjoined and restrained from directly or indirectly engaging in any or all of the following acts:

(a) representing in any manner that Tarby, Inc. is an authorized O.E.M. (Original Equipment Manufacturer) for MOYNO® brand pumps or MOYNO® brand pump parts;

(b) representing in any manner that Tarby, Inc. is an authorized O.E.M. (Original Equipment Manufacturer) for Robbins & Myers, Inc. ("R&M");

(c) representing that Tarby, Inc. manufactures parts for R&M for use in MOYNO® brand pumps;

(d) representing that Tarby, Inc. is authorized or licensed by R&M to manufacture parts to R&M's specifications;

(e) infringing the rights of R&M in and to its trademarks: MOYNO, Reg. No. 427,446, issued February 11, 1947; MOYNO - R&M Logo, Reg. No. 564,456, issued September 23, 1952; MOYNO, Reg. No. 574,672, issued May 19, 1953; R&M Circle Logo, Reg. No. 607,658, issued June 21, 1955; MOYNO, Reg. No. 1,019,246, issued September 2, 1975; and R&M block Logo, Reg. No. 1,203,392, issued August 3, 1982; and from using any of these trademarks or any simulation thereof in connection with the sale, offering for sale, advertisement or display of merchandise not emanating from R&M, unless Tarby includes the symbol "®" and unless it also states that "[The R&M trademark] is a registered trademark of Robbins & Myers, Inc. There is no affiliation between Robbins & Myers, Inc. and Tarby, Inc."; provided that Tarby may inform the public that it makes parts that fit R&M or MOYNO® pumps and may make otherwise lawful comparisons of its products to R&M's products, so long as it complies with the foregoing notice requirements;

(f) infringing any of R&M's rights in the following copyrights:

TX 55-724: "Operation-Assembly Instructions and Parts List for E-S1 Drive End,"

TX 55-725: "Operation-Assembly Instructions and Parts List for SWG 10 Drive End,"

TX 55-727: "Operation-Assembly Instructions and Parts List for SWG 14 Drive End";

(g) continuing to use or distribute any copies of the drawings attached hereto as Exhibits A through I;

(h) using, copying, reproducing or incorporating any illustrations or materials or copies of illustrations or materials prepared by R&M, as a representation of any Tarby product or as a source from which any representation of any Tarby product is prepared; and

(i) distributing or offering for sale any MOYNO® and/or R&M pumps or pump parts which are repaired or refurbished by Tarby, without prominently and permanently marking or labeling such pumps or pump parts to indicate that the pump or pump part has been refurbished by Tarby.

(j) Using R&M or MOYNO® brand parts numbers in connection with the sale or offering for sale or distribution of Tarby parts except that Tarby may use R&M or MOYNO® brand parts numbers for the sole purpose of indicating that Tarby offers its parts with specified Tarby parts numbers as a substitute for particular R&M or MOYNO® brand parts designated by particular R&M or MOYNO® brand part numbers; provided, however, that whenever any reference is made to any R&M trademark in connection with parts numbers, Tarby will state in

connection with such use that "There is no affiliation between Robbins & Myers, Inc. and Tarby, Inc."; and further provided that whenever Tarby uses any R&M parts numbers without the use of any R&M trademark, Tarby will include on the first page of any document where R&M's part numbers first appear, a statement that "There is no affiliation between Robbins & Myers, Inc. and Tarby, Inc."

Nothing contained in the foregoing shall be construed to enjoin Tarby's use of drawings in the form of Exhibits J through N attached hereto, which the Court finds to be noninfringing.

3. Except as otherwise specifically stated herein, nothing in this Judgment shall be deemed to constitute a finding or adjudication respecting any of the allegations of wrongdoing by either party against the other or respecting either of the parties' past conduct.

4. This Judgment for Permanent Injunction supersedes the Partial Preliminary Injunction entered by the Court on August 24, 1990 in all respects.

5. In the event that any part of this Judgment for Permanent Injunction is violated, the aggrieved party may by motion with notice to the other party's attorneys apply for a contempt citation or such other relief as may be appropriate.

DATED this 25th day of Feb., 1991.

S/ THOMAS R. BRETT
Thomas R. Brett
United States District Judge

APPROVED:

MOYERS, MARTIN, SANTEE,
IMEL & TETRICK

By _____
J. Randall Miller, OBA #6214
Patrick O'Connor, OBA #6743
320 South Boston, Suite 920
Tulsa, Oklahoma 74103
(918) 582-5281

ATTORNEYS FOR PLAINTIFF and COUNTER-DEFENDANT, ROBBINS & MYERS, INC.

CONNER & WINTERS

By _____
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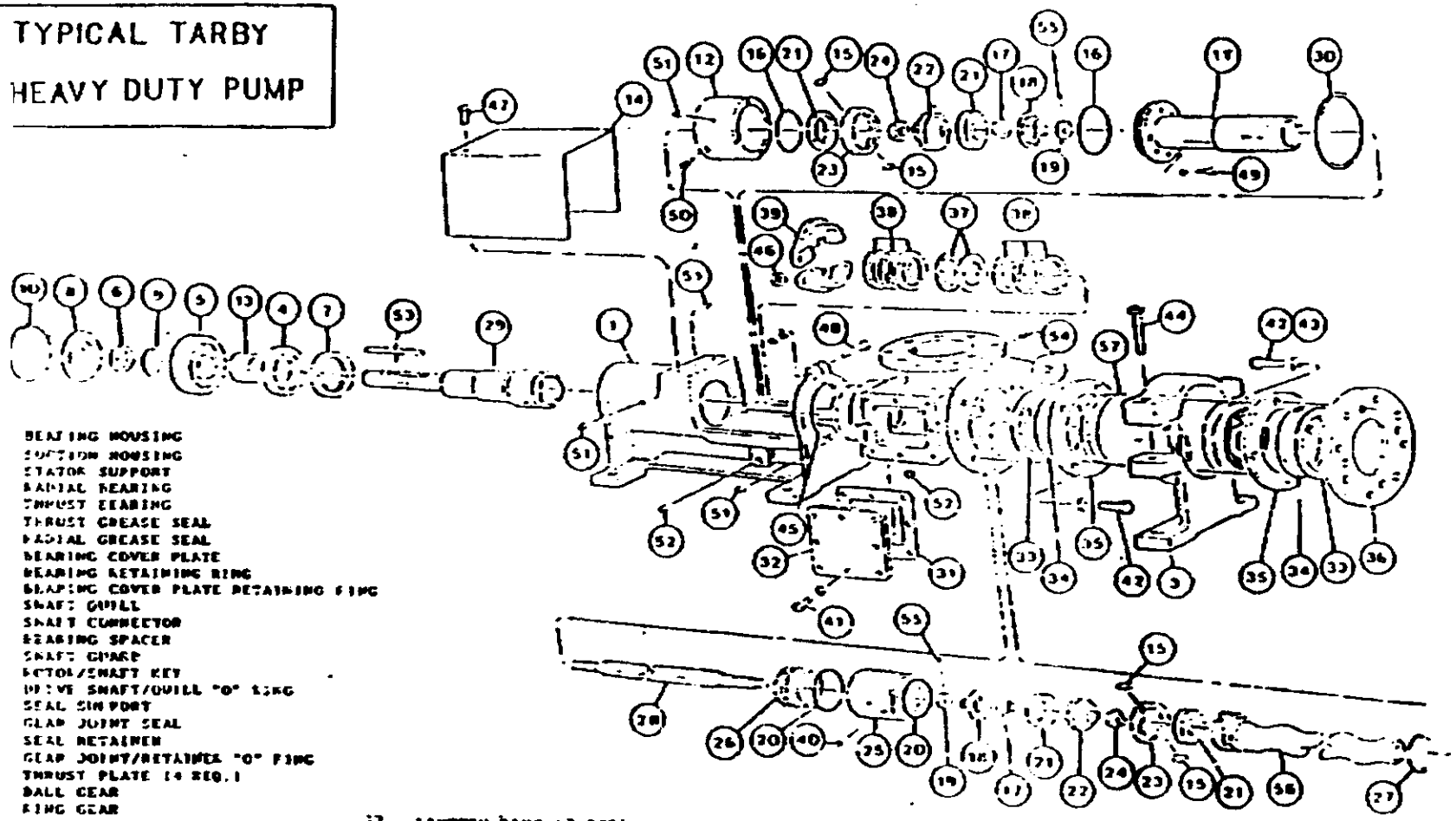
G.W. Turner, III, OBA #11182
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

ATTORNEYS FOR DEFENDANT AND COUNTER-CLAIMANT, TARBY, INC.

14913105.02

# TYPICAL TARBY HEAVY DUTY PUMP



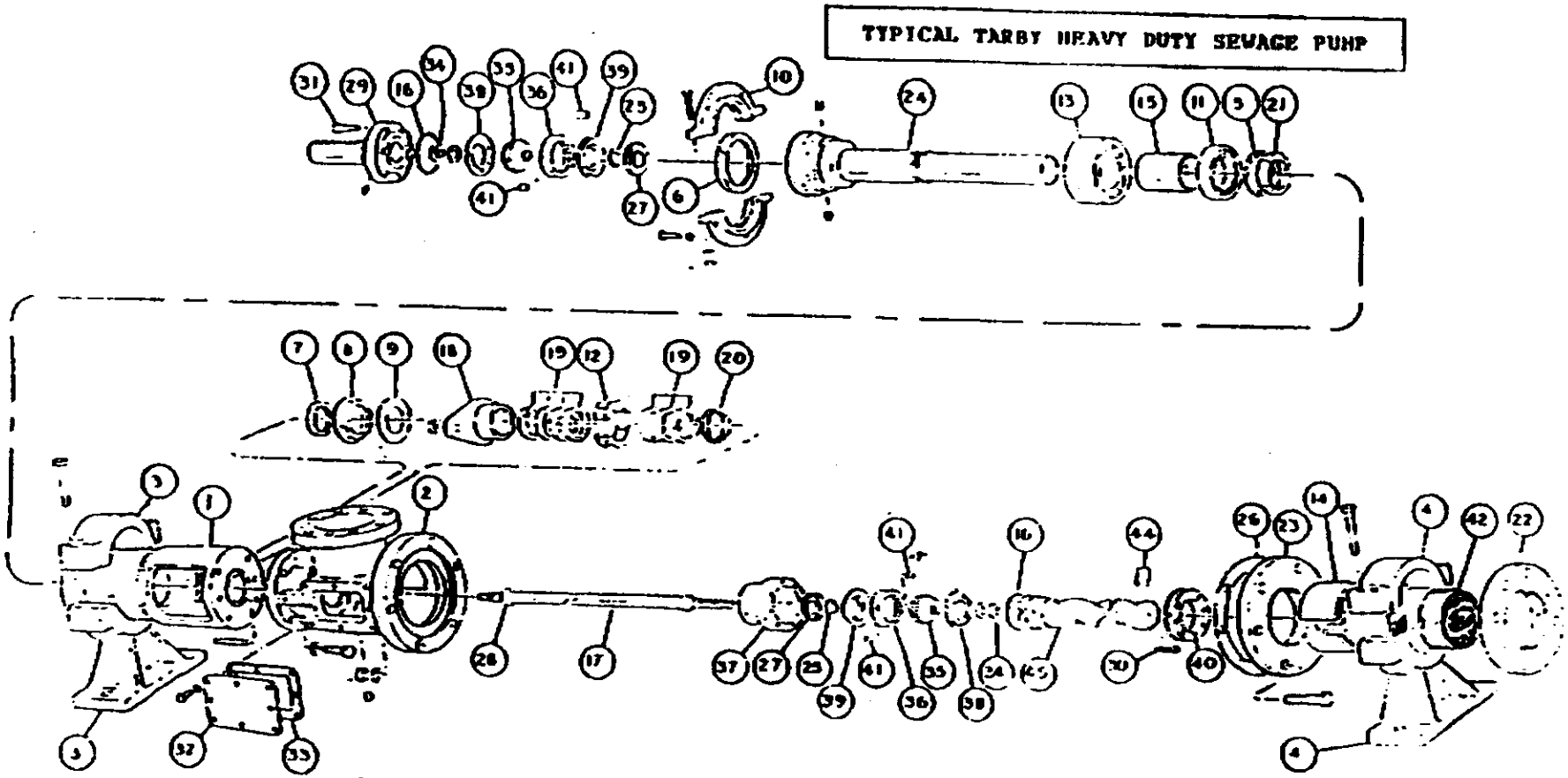
1. BEARING HOUSING
2. SUCTION HOUSING
3. STATOR SUPPORT
4. RADIAL BEARING
5. THRUST BEARING
6. THRUST GREASE SEAL
7. RADIAL GREASE SEAL
8. BEARING COVER PLATE
9. BEARING RETAINING RING
10. BEARING COVER PLATE RETAINING RING
11. SHAFT QUILL
12. SHAFT CONNECTOR
13. BEARING SPACER
14. SHAFT GUARD
15. ROTOR/SHAFT KEY
16. DRIVE SHAFT/QUILL "O" RING
17. SEAL SUPPORT
18. GEAR JOINT SEAL
19. SEAL RETAINER
20. GEAR JOINT/RETAINER "O" RING
21. THRUST PLATE (4 REQ.)
22. BALL GEAR
23. RING GEAR
24. LOCK NUT
25. GEAR JOINT SHELL
26. GEAR JOINT RETAINER
27. SHELL RETAINING RING
28. CONNECTING ROD
29. DRIVE SHAFT
30. SUCTION HOUSING RETAINING RING
31. INSPECTION PLATE GASKET
32. INSPECTION PLATE
33. STATOR GASKET
34. STATOR RETAINING RING
35. STATOR CLAMP RING
36. STATOR DISCHARGE CLAMP RING
37. DISCHARGE FLANGE
37. LANTERN RING (2 PCS)
38. PACKING
39. PACKING GLAND HALF
40. SHELL/ROTOR SET SCREW
41. INSPECTION PLATE SCREWS & LOCK WASHERS
42. STATOR CLAMP RING SCREWS & LOCK WASHERS
43. STATOR DISCHARGE CLAMP RING SCREWS & LOCK WASHERS
44. STATOR SUPPORT SCREWS
45. PACKING GLAND STUD
46. PACKING GLAND NUT
47. SHAFT GUARD SCREW
48. BRG. HSG. SPLIT BARR SCREW & LOCK WASHERS & NUT
49. SHAFT QUILL SCREWS & LOCK WASHER
50. SHAFT CONNECTOR SHOULDER SCREW
51. PIPE PLUG
52. PIPE PLUG
53. DRIVE SHAFT KEY
54. GREASE FITTING
55. SET SCREW
56. [illegible]
57. STATOR

TARBY
Progressing Cavity Pump

T0012

EXHIBIT A 00444 6.2

# TYPICAL TARBY HEAVY DUTY SEWAGE PUMP



1. Bearing Housing
2. Suction Housing
3. Body Support
4. Stator Support
5. Bearing Lock Washer
6. Thrust Grease Seal
7. Radial Grease Seal
8. Grease Seal Retainer
9. Slinger
10. Bearing Cover Plate
11. Radial Bearing
12. Lantern Ring (Half)
13. Thrust Bearing
14. Stator Support Bushing
15. Bearing Spacer
16. "O" Ring
17. Connecting Rod
18. Packing Gland
19. Packing
20. Packing Washer
21. Bearing Lock Nut
22. Flange Reducer
23. Adapter Flange
24. Drive Shaft
25. Spacer
26. Adapter Gasket
27. Connecting Rod Cover
28. Connecting Rod Ring
29. Drive Shaft Head
30. Rotor Head Seal Ret. Screw
31. Shaft Head Screw
32. Inspection Plate
33. Inspection Plate Gasket
34. Connecting Rod Nut
35. Ball Gear
36. Ring Gear
37. Gear Joint Shell
38. Grooved Thrust Plate
39. Thrust Plate
40. Head Ring
41. Gear Joint Key
42. Stator
43. Rotor
44. Head Ring Brass Plug & Retaining Screw

TARBY
Programming Cooley Pumps

T0004

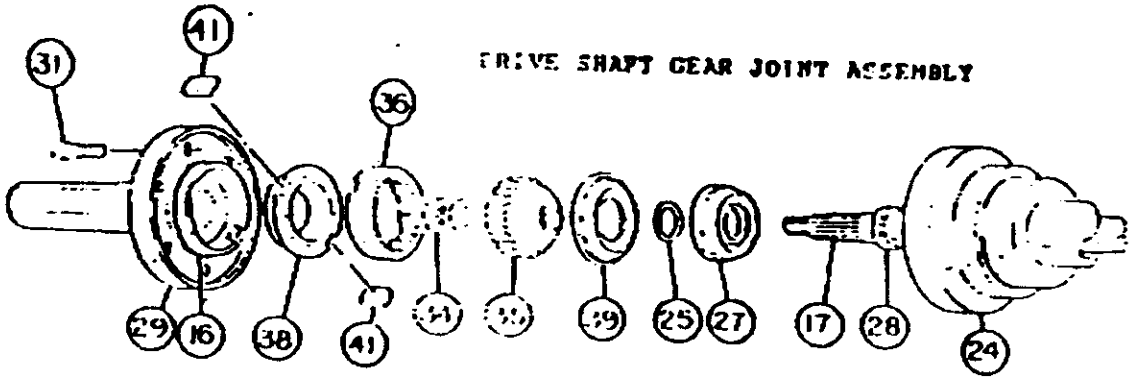
EXHIBIT B

5.3

00423

# TYPICAL GEAR JOINT ASSEMBLY FOR TARBY HEAVY DUTY SEWAGE PUMPS

DRIVE SHAFT GEAR JOINT ASSEMBLY




16. "O" Ring
17. Connecting Rod
24. Drive Shaft
25. Spacer
27. Connecting Rod Cover
28. Connecting Rod Ring
29. Drive Shaft Head
30. Rotor Head Seal Ret. Screw
31. Shaft Head Screw
34. Connecting Rod Nut
35. Ball Gear
36. Ring Gear
37. Gear Joint Shell
38. Grooved Thrust Plate
39. Thrust Plate
40. Head Ring
41. Gear Joint Key
44. Head Ring Hinge Plug

ROTOR GEAR JOINT ASSEMBLY

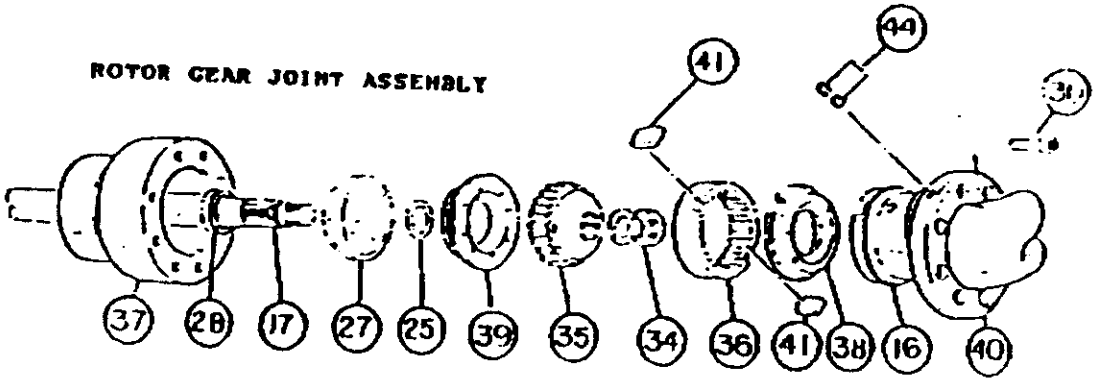



EXHIBIT C

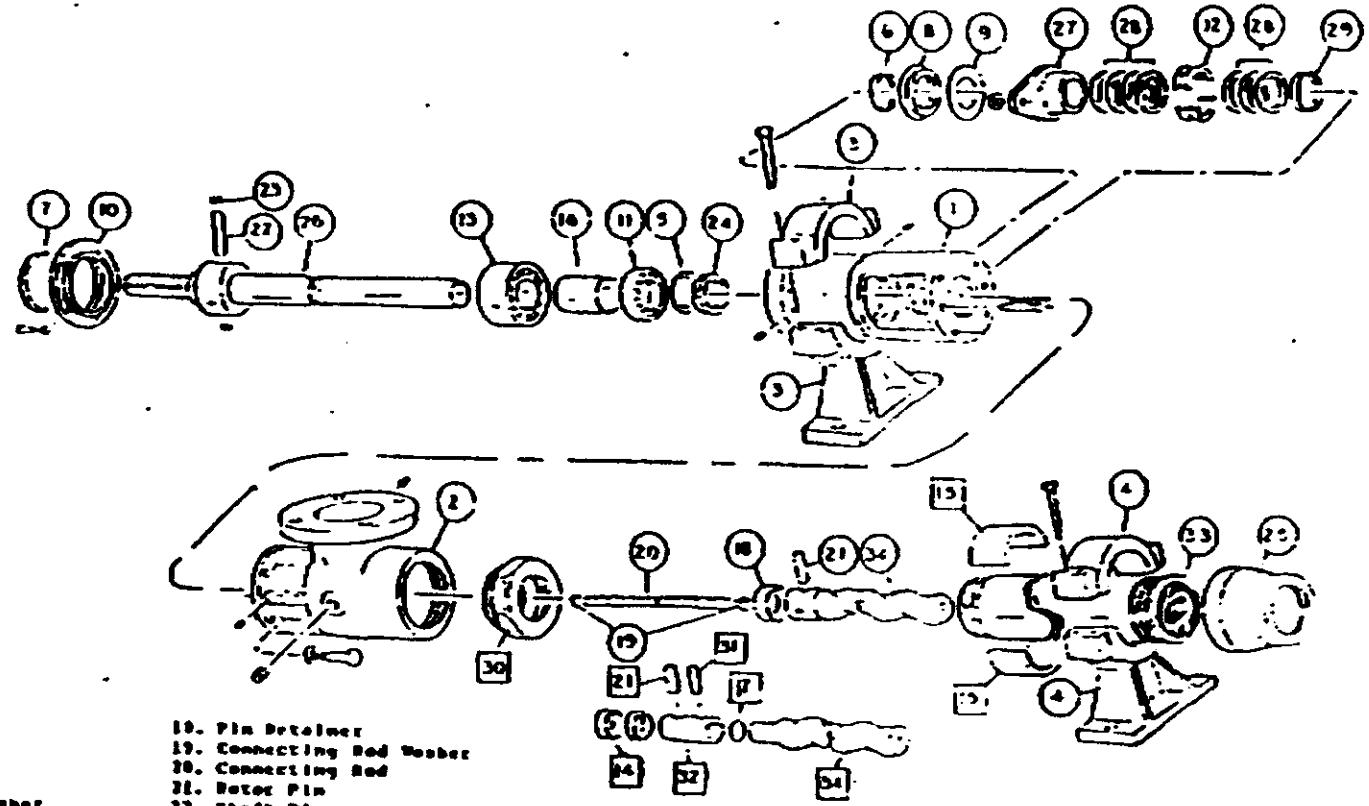
5.4

001214

TARBY
Progressing Cavity Pumps

T0005

# T L INDUSTRIAL PUMP



1. Bearing Housing
2. Section Housing
3. Pump Support
4. Stator Support
5. Bearing Lock Washer
6. Radial Grease Seal
7. Thrust Grease Seal
8. Grease Seal Retainer
9. Slinger Ring
10. Bearing Cover Plate
11. Radial Bearing
12. Lantern Ring
13. Thrust Bearing
14. Pin Retainer
15. Support Bushing
16. Bearing Spacer
17. "O" Ring
18. Pin Retainer
19. Connecting Rod Washer
20. Connecting Rod
21. Rotor Pin
22. Shaft Pin
23. Drive Pin Ret. Screw
24. Bearing Lock Nut
25. Reducer
26. Drive Shaft
27. Packing Gland
28. Packing
29. Packing Washer
30. Adapter Bushing
31. Rotor Head Pin
32. Rotor Head Adapter
33. Stator
34. Rotor

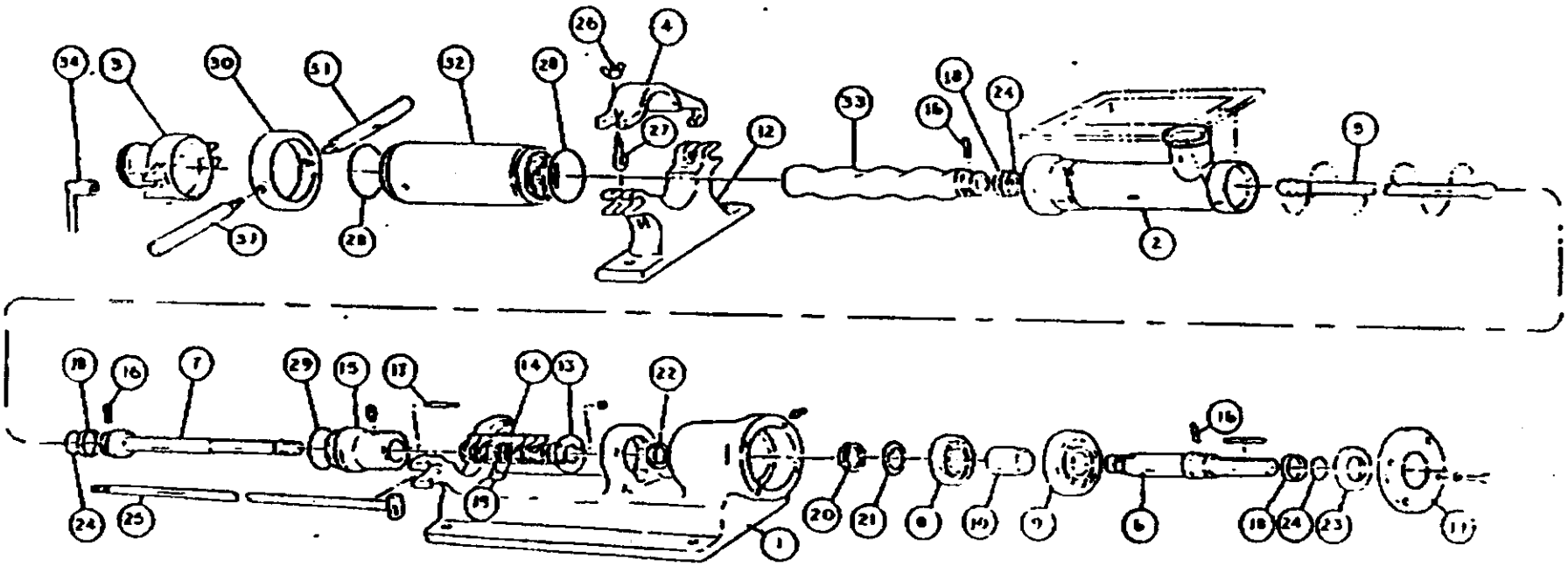
☐ Used On " M " & " P " Pumps Only

TARBY
Progressing Cavity Pump

T0003

EXHIBIT D

# TYPICAL FOOD GRADE PUMP



1. Bearing Housing
2. Suction Housing
3. Reducer
4. Stator Clamp
5. Connecting Rod
6. Drive Shaft
7. Intermediate Drive Shaft
8. Radial Bearing
9. Thrust Bearing
10. Bearing Spacer
11. Bearing Cover Plate
12. Stator Support
13. Packing Gland
14. Packing
15. Packing Retainer
16. Rotor Pin
17. Gland Stud
18. Pin Retainer
19. Lantern Ring
20. Bearing Lock Nut
21. Bearing Lock Washer
22. Radial Grease Seal
23. Thrust Grease Seal
24. Snap Ring
25. Clamp Stud
26. Wing Nut
27. Eye Bolt
28. Stator "O" Ring
29. "O" Ring
30. Pull-Out Sleeve
31. Pull-Out Rod
32. Stator
33. Rotor
34. Clamp Nut Assembly

TARBY
Progressing Cavity Pumps

T0001

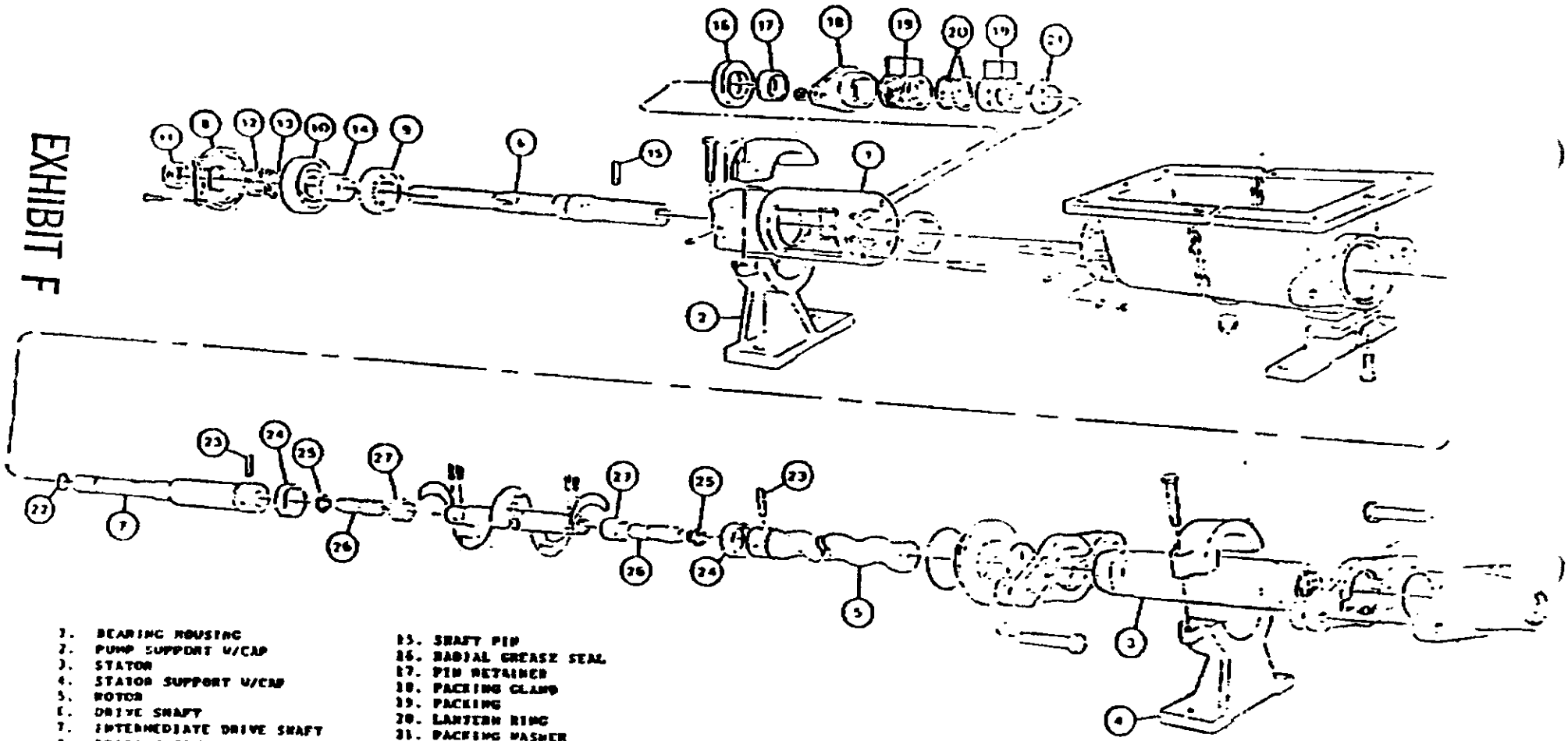
EXHIBIT E

00488

7.1

# TJ FRAME PUMP

EXHIBIT F

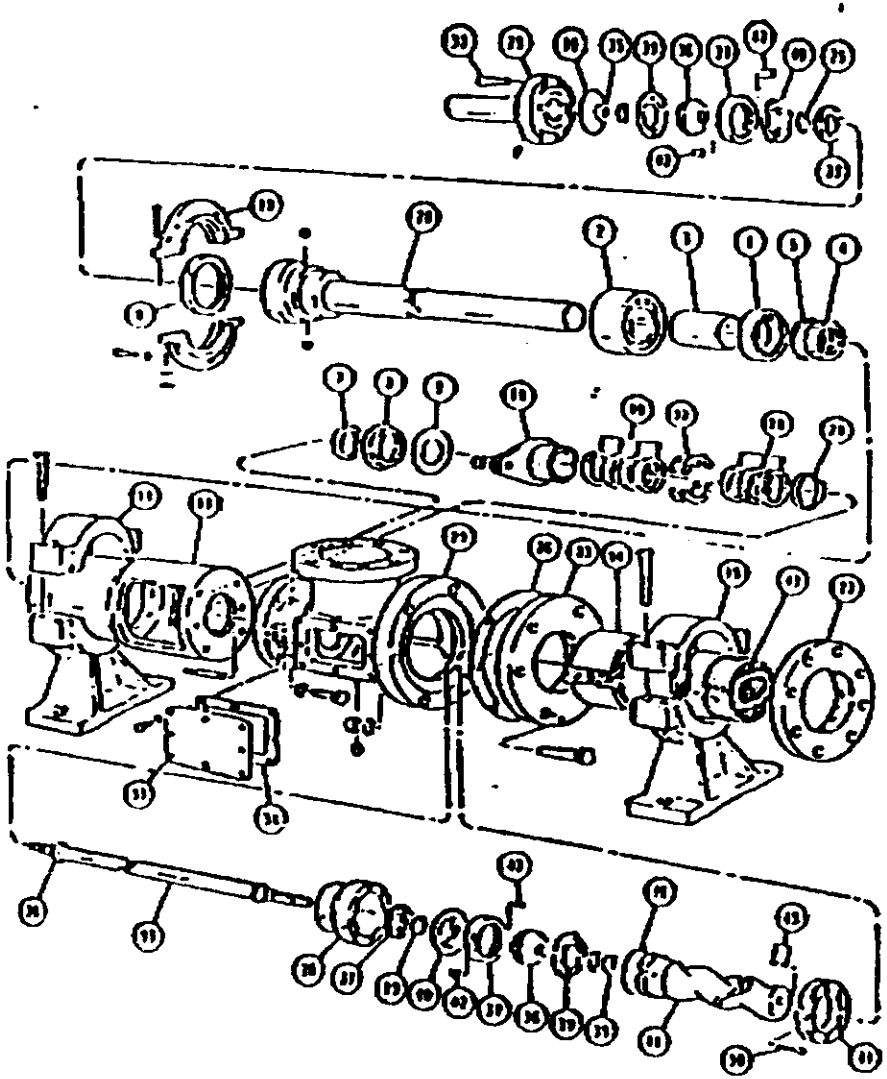


1. BEARING HOUSING
2. PUMP SUPPORT W/CAP
3. STATOR
4. STATOR SUPPORT W/CAP
5. ROTOR
6. DRIVE SHAFT
7. INTERMEDIATE DRIVE SHAFT
8. BEARING COVER PLATE
9. RADIAL BALL BEARING
10. THRUST BALL BEARING
11. THRUST GREASE SEAL
12. BEARING LOCKNUT
13. BEARING LOCKWASHER
14. BEARING SPACER
15. SHAFT PIN
16. RADIAL GREASE SEAL
17. PIN RETAINER
18. PACKING GLAND
19. PACKING
20. LANTERN RING
21. PACKING WASHER
22. "O" RING
23. ROTOR PIN
24. PIN RETAINER
25. CONNECTING ROD WASHER
26. CONNECTING ROD END
27. PIN RETAINER

TARBY
Progressing Cavity Pumps

T0013

## TYPICAL TARBY HEAVY DUTY SEWAGE PUMPS



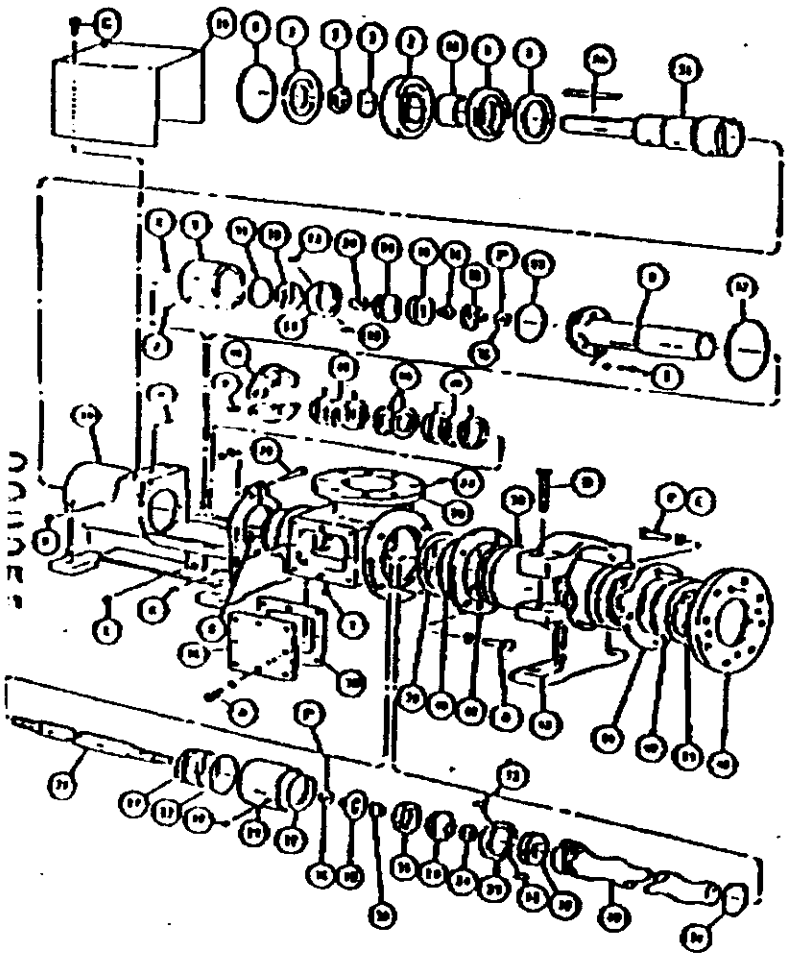
1. Radial Bearing
2. Thrust Bearing
3. Bearing Spacer
4. Bearing Lock Nut
5. Bearing Lock Washer
6. Thrust Grease Seal
7. Radial Grease Seal
8. Grease Seal Retainer
9. Slinger
10. Bearing Cover Plate
11. Body Support
12. Lantern Ring (Shaft)
13. Bearing Housing
14. Stator Support Bushing
15. Stator Support
16. "O" Ring
17. Connecting Rod
18. Packing Gland
19. Packing
20. Packing Washer
21. Suction Housing
22. Flange Reducer
23. Adapter Flange
24. Drive Shaft
25. Spacer
26. Adapter Bracket
27. Connecting Rod Cover
28. Connecting Rod Ring
29. Drive Shaft Head
30. Rotor Head Seal Retainer Screw
31. Shaft Head Screw
32. Inspection Plate
33. Inspection Plate Gasket
34. Connecting Rod Nut
35. Bell Cover
36. Ring Cover
37. Gear Joint Shell
38. Grooved Thrust Plate
39. Thrust Plate
40. Head Ring
41. Gear Joint Key
42. Stator
43. Rotor
44. Head Ring Brass Plug & Retaining Screw

| | | |
|---|---|---|
| TARBY INC | | |
| DRAWN MOORE | | SCALE FULL |
| DATE 8 5 86 | | |
| HEAVY DUTY SEWAGE BLOW UP | | |
| | | 9D1 |

EXHIBIT G

100556

# TYPICAL TARBY HEAVY DUTY PUMPS



1. Radial Bearing
2. Thrust Bearing
3. Bearing Retaining Ring
4. Bearing Cover Plate Retaining Ring
5. Thrust Grease Seal
6. Radial Grease Seal
   Bearing Kit (See Note A)
7. Bearing Cover Plate
8. Shaft Bolt
9. Shaft Connector
10. Bearing Spacer
11. Shaft Guard
12. Rotor/Shaft Key
13. Drive Shaft/Shaft "O" Ring
14. Seal Support
15. Gear Joint Seal
16. Seal Retainer
17. Gear Joint/Retainer "O" Ring
    "O" Ring Kit (See Note B)
18. Thrust Plate (4 req.)
19. Ball Gear
20. Ring Gear
    Gear Joint Kit (See Note C)
21. Lock Nut
22. Gear Joint Shaft
23. Gear Joint Retainer
24. Shaft Retaining Ring
25. Connecting Rod
26. Drive Shaft
27. Suction Housing Retaining Ring
28. Housing Housing
29. Suction Housing
30. Inspection Plate Gasket
31. Inspection Plate
32. Stator Gasket
33. Stator Retaining Ring
34. Stator Clamp Ring
35A. Stator Discharge Clamp Ring
37. Discharge Flange
38. Stator Support
39. Retaining Ring (2 req)
40. Packing
41. Packing Gland Bolt
42. Shaft/Rotor Set Screw
43. Rotor
50. Stator

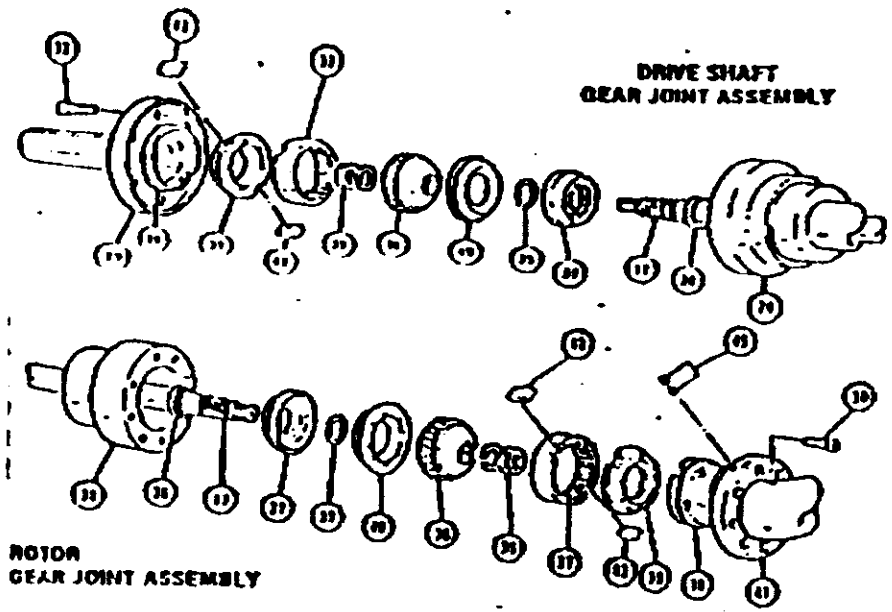
A. Inspection Plate Screws
   Lock Washers
B. Stator Clamp Ring Screws
   Lock Washers
C. Stator Discharge Clamp
   Ring Screws
   Lock Washers
D. Stator Support Screws
E. Packing Gland Stud
F. Packing Gland Nut
G. Shaft Guard Screw
H. Reg. Hex. Split Hand Screw
   Lock Washers
   Nut
I. Shaft Bolt Screws
   Lock Washers
J. Shaft Connector Shoulder
   Screw
K. Pipe Plug
L. Pipe Plug
M. Drive Shaft Key
N. Lock Washer
P. Set Screw

| | | |
|---|---|---|
| TARBY INC | | |
| DRAWN DONE | APPROVED BY | PUGLISI |
| DATE 8 3 86 | | |
| HEAVY DUTY BLOW UP | | |
| | | CBI |

EXHIBIT H

1,000355

TYPICAL GEAR JOINT ASSEMBLY FOR TARBY
HEAVY DUTY SEWAGE PUMPS



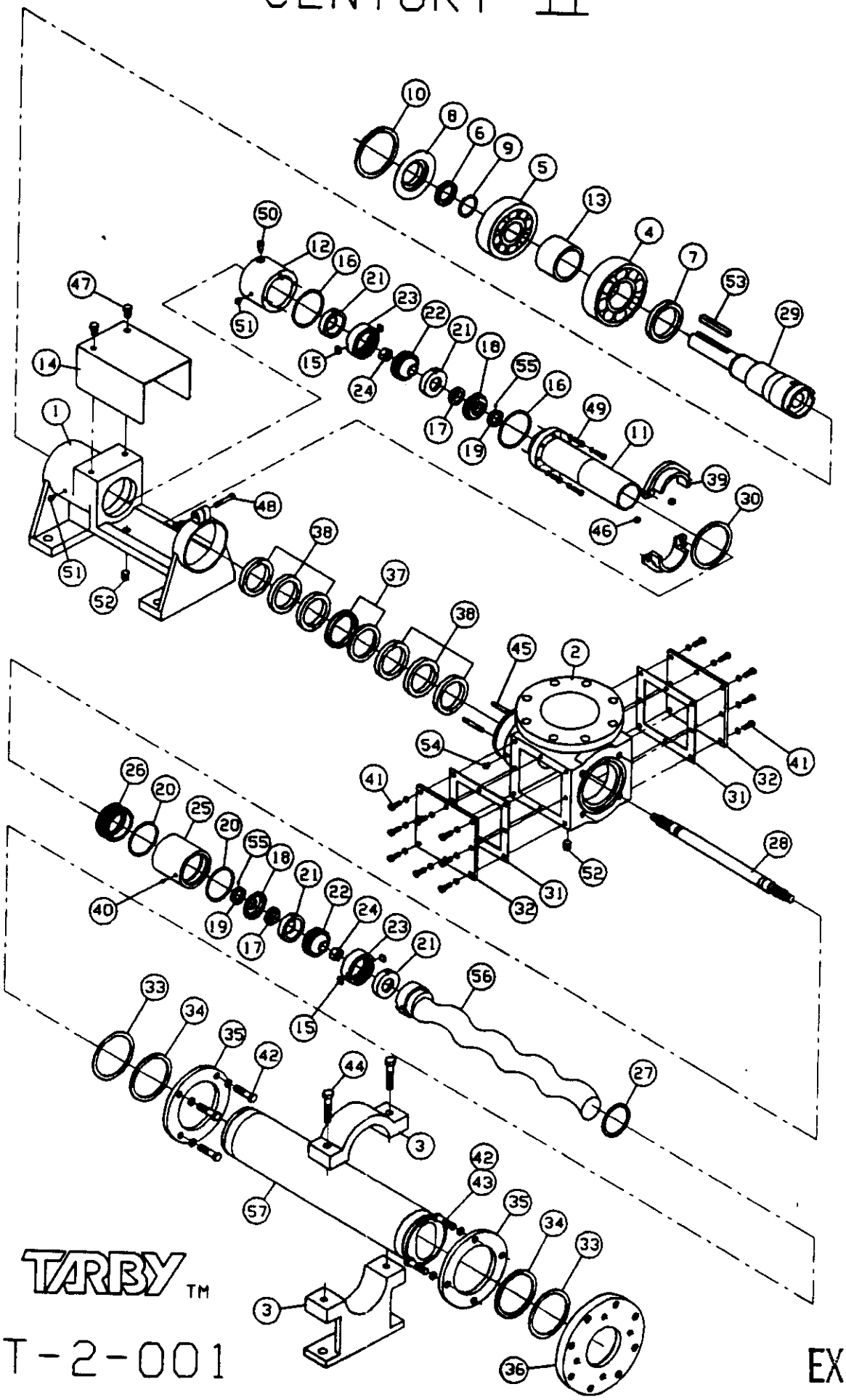

16. O-Ring
17. Connecting Rod
24. Drive Shaft
25. Spacer
27. Connecting Rod Cover
28. Connecting Rod Ring
29. Drive Shaft Head
30. Motor Head Seal Retaining Screw
32. Shaft Head Screw
35. Connecting Rod Nut
36. Ball Gear
37. Ring Gear
38. Gear Joint Shell
39. Grooved Thrust Plate
40. Thrust Plate
41. Head Ring
43. Head Ring Brass Plug

| | | |
|---|---|---|
| TARBY INC | | |
| SCALE: NONE | | PUGL151 |
| DATE: 8 5 86 | | |
| HEAVY DUTY SEWAGE GEAR JOINT ASSEMBLY | | |
| | | 9B2 |

EXHIBIT I

10055

# CENTURY II

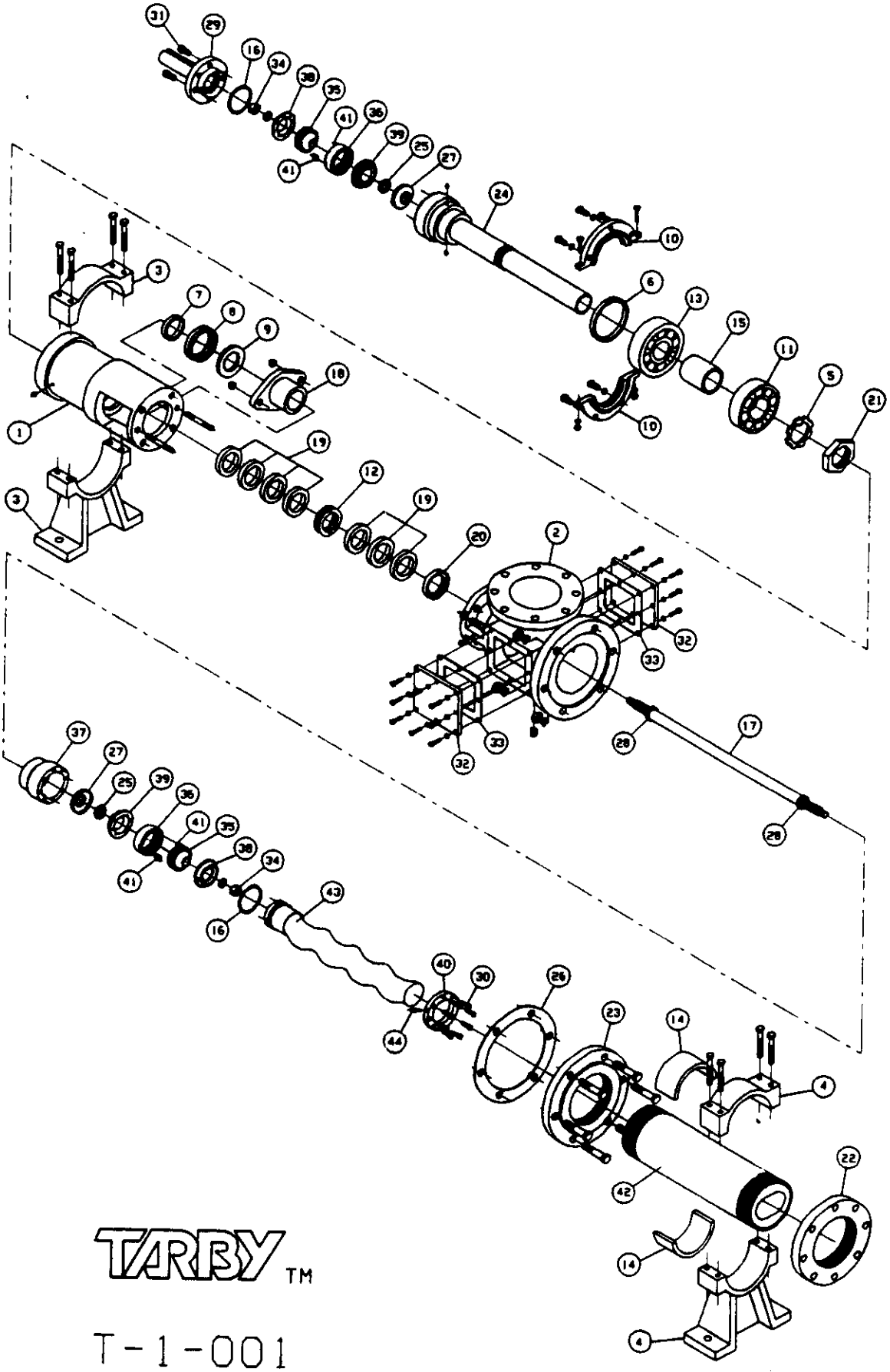



TARBY™

T-2-001

EXHIBIT J

# CENTURY I

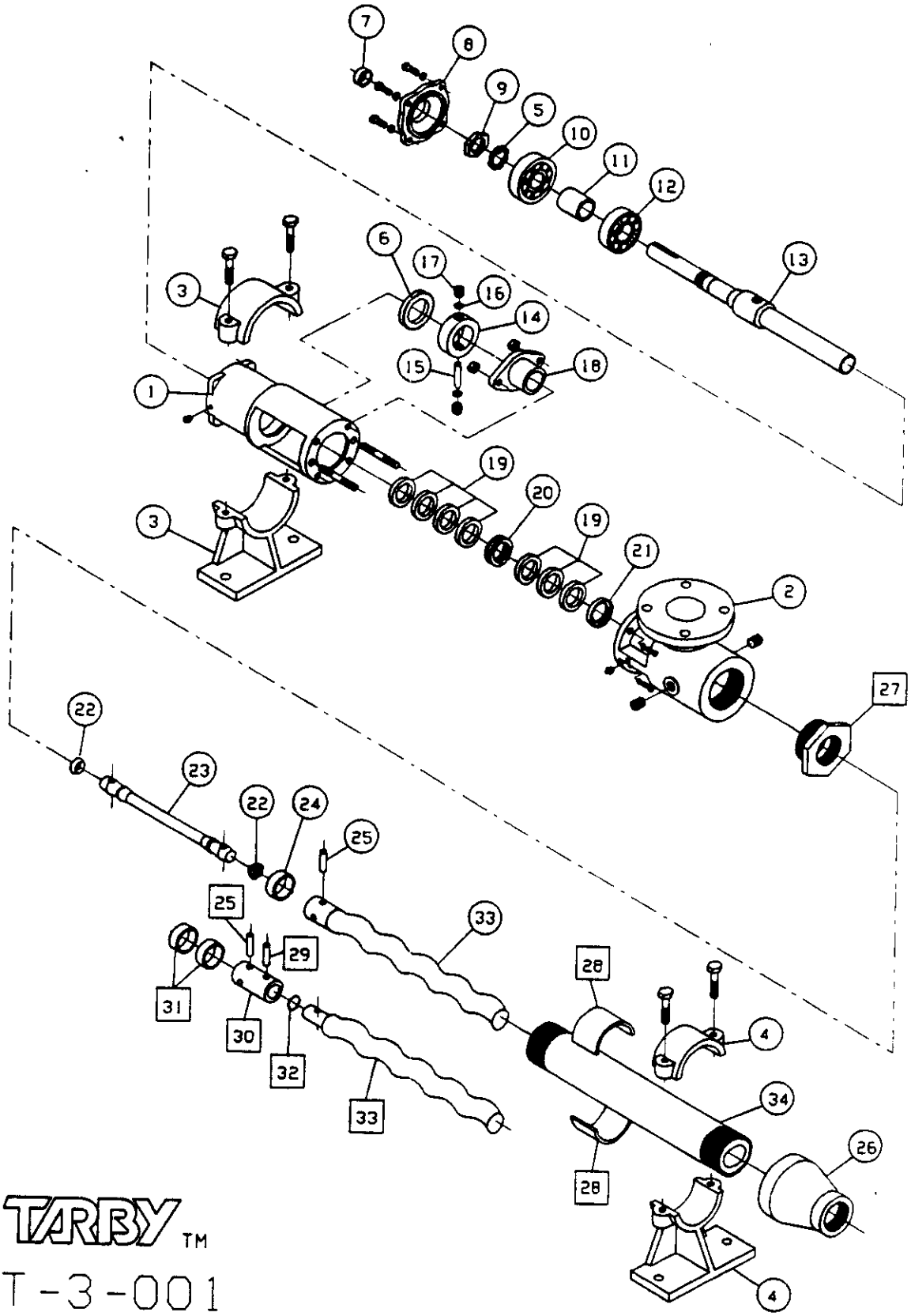



TARBY™

T-1-001

EXHIBIT K

# CENTURY III



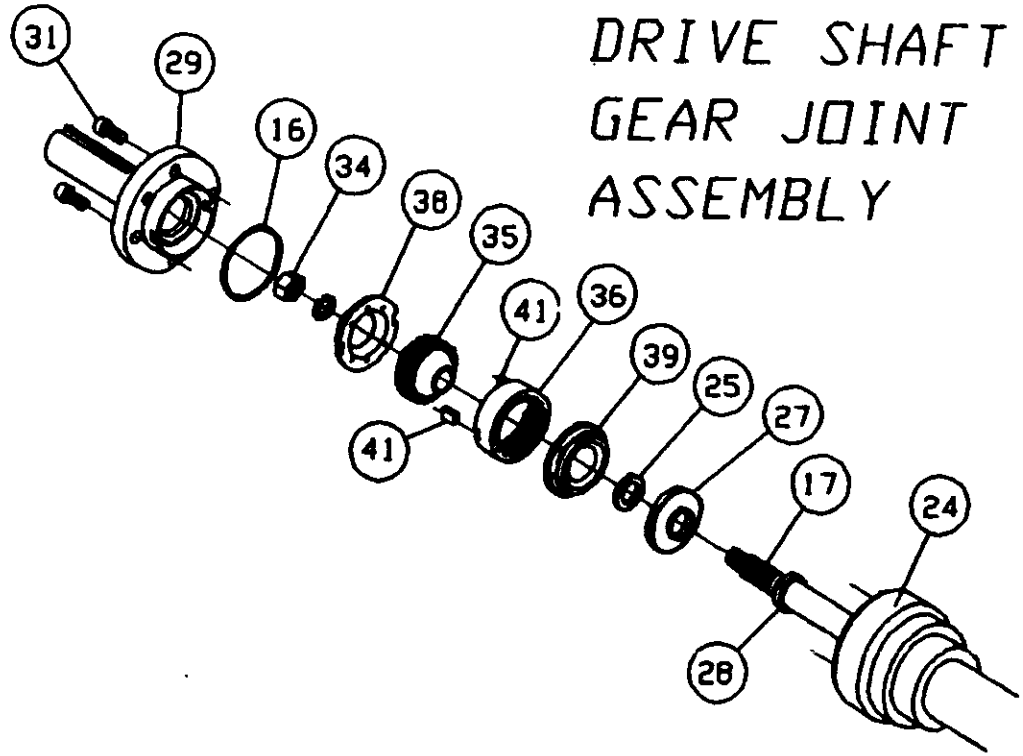

TARBY™

T-3-001

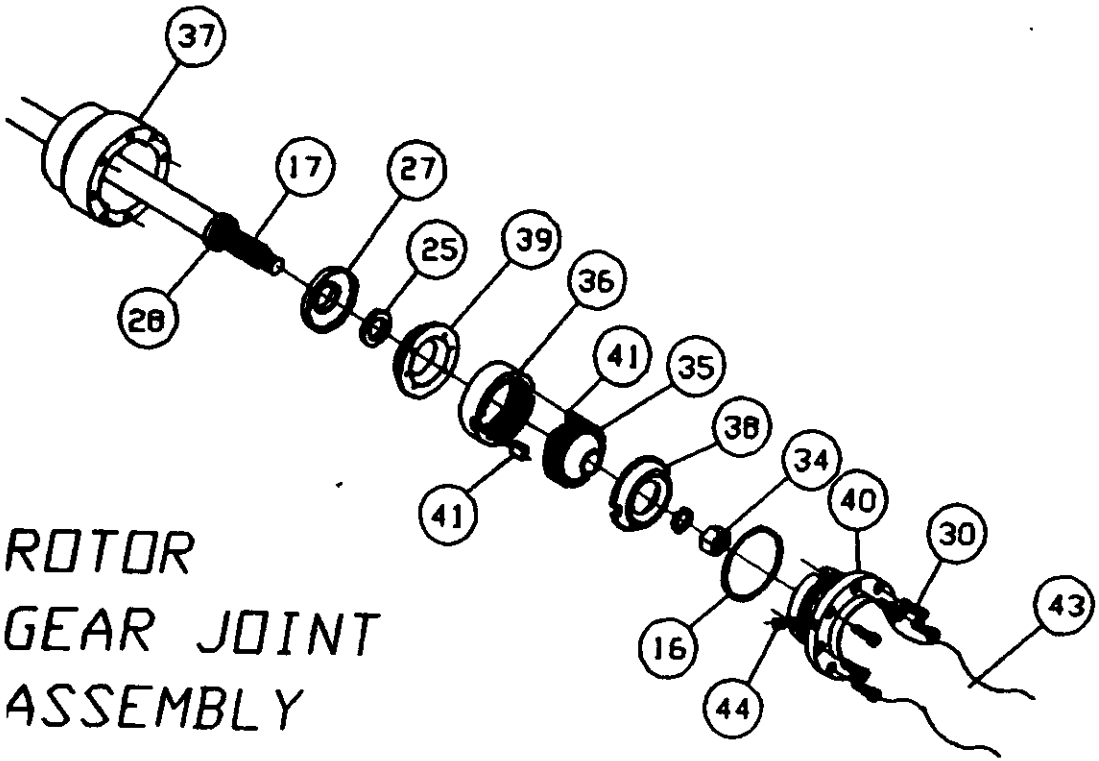
EXHIBIT L

# CENTURY I

## GEAR JOINT ASSEMBLIES




DRIVE SHAFT GEAR JOINT ASSEMBLY



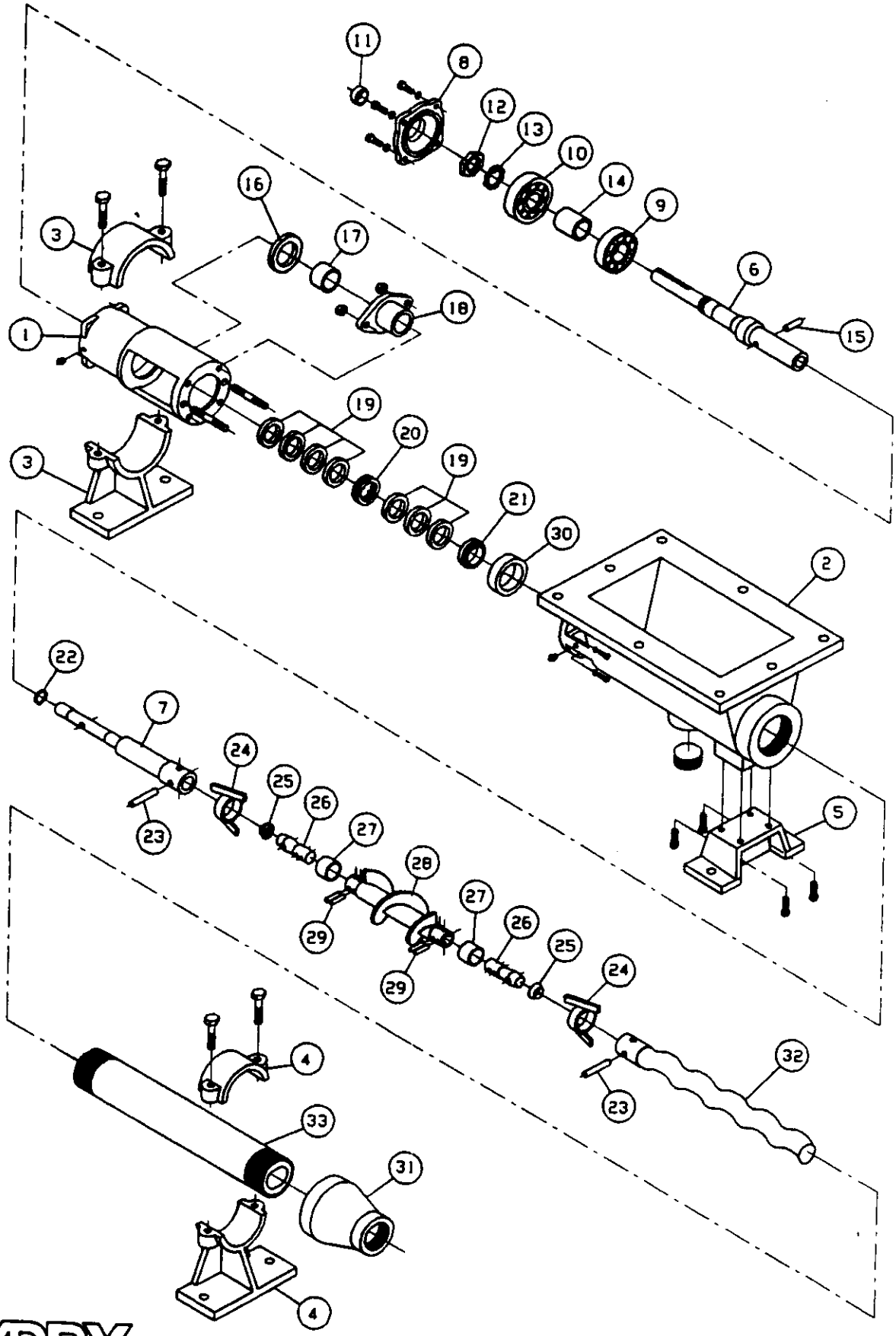

ROTOR GEAR JOINT ASSEMBLY

EXHIBIT M

TARBY™

T-1-901

# CENTURY IV




TARBY™

T-4-001

EXHIBIT A

FILED

FEB 25 1991

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

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

| | | |
|---|---|---|
| TEXACO, INC., Plaintiff, | ) | |
| vs. | ) | No. 90-C-1040B |
| MESA GRANDE RESOURCES, INC., Defendant. | ) | |

JUDGMENT

This action came on for hearing before the Court, Honorable Thomas R. Brett, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiff Texaco, Inc. recover of the Defendant Mesa Grande Resources, Inc. the sum of $253,398.00, with interest thereafter at the rate of 6.62 per cent per annum, its costs of action, plus an attorney's fee in the amount of $1,500.00.

DATED at Tulsa, Oklahoma this 25th day of February, 1991.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Approved As To Form:

R. Scott Savage, OBA #7926
ATTORNEY FOR PLAINTIFF

Kurt M. Kennedy
ATTORNEY FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

| | | |
|---|---|---|
| JERALD M. SCHUMAN, Plaintiff | ) | |
| v. | ) | |
| UNITED STATES OF AMERICA, Defendant | ) | CIVIL NO. 86-C-744-C |
| v. | ) | |
| RALPH W. JACKSON and ARTHUR POOL, Additional Defendants on Counterclaim | ) | |

FILED

FEB 25 1991

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

DEFAULT JUDGMENT

Defendant, United States of America, has moved this Court to enter judgment by default due to counterclaim defendant Arthur Pool's failure to defend in this action. Based on the United States' Motion for Judgment by Default and its attached Declarations and Supporting Memorandum, this Court is of the opinion that the said Motion for Judgment by Default should be granted and the United States recover judgment against counterclaim defendant Arthur Pool for the assessment against him pursuant to § 6672 of the Internal Revenue Code (100% penalty) in connection with the payroll tax liabilities of Chase Oil Field Service, Inc., in the amount of $41,559.58, plus interest and all statutory additions as provided by law, from June 9, 1986, for the third and fourth quarters of 1981; Chase Drilling Corp., in the amount of $19,021.83, plus interest and all statutory additions as provided by law, from June 9, 1986, for the third quarter of 1981; Chase Exploration Corp., in the amount of $201,171.40, plus interest and

all statutory additions as provided by law, from June 9, 1986, for the third and fourth quarters of 1981 and the first and second quarters of 1982; and CEC Supply Co., Inc., in the amount of $4,255.85, plus interest and all statutory additions as provided by law, from June 9, 1986, for the third and fourth quarters of 1981. It is therefore

ORDERED, ADJUDGED, and DECREED that Defendant, United States of America, recover judgment in the amount of $266,008.66, plus interest and statutory interest as provided by law from June 9, 1986.

It is FURTHER ORDERED, ADJUDGED AND DECREED that costs are to be taxed against counterclaim defendant Arthur Pool.

DONE this 25th day of February, 1991.

UNITED STATES DISTRICT JUDGE

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

FILED

FEB 25 1991

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

| | | |
|---|---|---|
| JAMES R. COLPITT, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | 89-C-852-E |
| | ) | |
| LOUIS W. SULLIVAN, M.D. | ) | |
| | ) | |
| Defendant. | ) | |

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed January 30, 1991 in which the Magistrate recommended that the decision of the Secretary be vacated and the case be remanded for taking additional evidence and a determination made in accordance with 20 CFR §404.1575 and §404.1082.

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

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

It is, therefore, Ordered that the decision of the Secretary is vacated and the case is remanded for taking additional evidence and a determination made in accordance with 20 CFR §404.1575 and §404.1082.

Dated this 22d day of Feb, 1991.

JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

| | | |
|---|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>vs.<br><br>EDDIE L. KING a/k/a LAWRENCE E. KING; PATSY R. KING; FINANCE AMERICA CORPORATION; COUNTY TREASURER, Tulsa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma,<br><br>Defendants. | ) | FILED<br><br>FEB 25 1991<br><br>Jack C. Silver, Clerk<br>U.S. DISTRICT COURT<br><br>CIVIL ACTION NO. 90-C-793-E |

**JUDGMENT OF FORECLOSURE**

This matter comes on for consideration this 22nd day of February, 1991. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by J. Dennis Semler, Assistant District Attorney, Tulsa County, Oklahoma; the Defendant, Finance America Corporation n/k/a Chrysler First Financial Services Corporation, appears not, having previously filed its Disclaimer; and the Defendants, Eddie L. King a/k/a Lawrence E. King and Patsy R. King, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, Eddie L. King a/k/a Lawrence E. King, acknowledged receipt of Summons and Complaint on or about October 10, 1990; that the Defendant, Patsy R. King,

was served with Summons and Complaint on January 10, 1991; that the Defendant, Finance America Corporation n/k/a Chrysler First Financial Services Corporation, acknowledged receipt of Summons and Complaint on November 26, 1990; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on September 19, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on September 19, 1990.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on October 4, 1990; that the Defendant, Finance America Corporation n/k/a Chrysler First Financial Services Corporation, filed its Disclaimer on December 3, 1990; and that the Defendants, Eddie L. King a/k/a Lawrence E. King and Patsy R. King, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, Finance America Corporation is now known as Chrysler First Financial Services Corporation.

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 Four (4), Block Seven (7), VALLEY VIEW ACRES ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on August 3, 1973, Eddie L. King and Patsy R. King 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 $9,000.00, payable in monthly installments, with interest thereon at the rate of four and one-half percent (4.5%) per annum.

The Court further finds that as security for the payment of the above-described note, Eddie L. King and Patsy R. King executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated August 3, 1973, covering the above-described property. Said mortgage was recorded on August 20, 1973, in Book 4084, Page 369, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Eddie L. King a/k/a Lawrence E. King and Patsy R. King, 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, Eddie L. King a/k/a Lawrence E. King and Patsy R. King, are indebted to the Plaintiff in the principal sum of $5,700.95, plus interest at the rate of 4.5 percent per annum from August 1, 1989 until judgment, plus interest thereafter at the legal rate until

fully paid, and the costs of this action in the amount of $24.44 ($20.00 docket fees, $4.44 fees for service of Summons and Complaint).

The Court further finds that the Defendant, Finance America Corporation n/k/a Chrysler First Financial Services Corporation, disclaims any right, title or interest in the subject real property.

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

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the Plaintiff have and recover judgment against Defendants, Eddie L. King a/k/a Lawrence E. King and Patsy R. King, in the principal sum of $5,700.95, plus interest at the rate of 4.5 percent per annum from August 1, 1989 until judgment, plus interest thereafter at the current legal rate of 6.21 percent per annum until paid, plus the costs of this action in the amount of $24.44 ($20.00 docket fees, $4.44 fees for service of Summons and Complaint), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendants, Finance America Corporation n/k/a Chrysler First Financial Services Corporation and County Treasurer and Board of

County Commissioners, Tulsa County, Oklahoma, have no right, title or interest in the subject real property.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that upon the failure of said Defendants, Eddie L. King a/k/a Lawrence E. King and Patsy R. King, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

**First:**

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

**Second:**

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

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

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

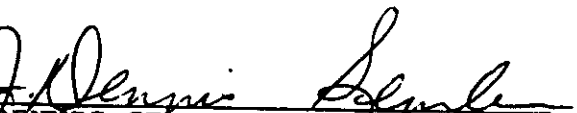
S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

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



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

Judgment of Foreclosure
Civil Action No. 90-C-793-E

KBA/css

FILED

FEB 25 1991

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

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

| | | |
|---|---|---|
| JEFFREY LEE MUSICK and SHERRI DEE MUSICK MAYO, | ) | |
| Plaintiffs, | ) | |
| v. | ) | No. 90-C-602-E |
| LESLIE JOHN ROCK, LEAD UNDERWRITER, ON BEHALF OF HIMSELF AND THOSE UNDERWRITERS AT LLOYD'S, LONDON, SUBSCRIBING POLICY NO. BWH 17157, | ) | |
| Defendant. | ) | |

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 25th day of Feb, 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.

United States District Judge

101-7/WDH/ch

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



| | | |
|---|---|---|
| LARRY TYNER, Plaintiff, | ) | |
| vs. | ) | No. 90-C-999-C |
| E. I. DU PONT DeNEMOURS & COMPANY, et al., Defendants. | ) | |

***ORDER***

Before the Court is the motion of the defendants to change venue. Plaintiff has confessed the motion, and it shall be granted.

It is the Order of the Court that the motion of the defendants to change venue is hereby granted, and this action is hereby transferred to the United States District Court for the Western District of Oklahoma pursuant to 28 U.S.C. §1406(a).

*IT IS SO ORDERED* this 25th day of February, 1991.

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

1

FILED

FEB 25 1991

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

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

| | | |
|---|---|---|
| **JIMMIE ELSKEN, Administrator of the Estate of PATRICIA ANN ELSKEN,** | ) | |
| **Plaintiff,** | ) | |
| **vs.** | ) | **No. 89-C-263-E** |
| **BRENTWOOD PROPERTIES, LTD., an Oklahoma corporation; JOHNSTOWN PROPERTIES, INC., a foreign corporation; and NETWORK MULTI-FAMILY SECURITY CORPORATION, a foreign corporation,** | ) | |
| **Defendants.** | ) | |

**STIPULATION OF DISMISSAL**

**COMES NOW** the Plaintiff, Jimmie Elsken, through her attorney of record, James E. Frasier, and Defendant, Brentwood Properties, Ltd., through its attorney of record, Richard M. Eldridge, and submit the following Stipulation of Dismissal with Prejudice to the Court.

It is stipulated and agreed by and among the above parties that the above-captioned cause brought by Jimmie Elsken, Administrator of the Estate of Patricia Ann Elsken, against the Defendant Brentwood Properties, Ltd. is dismissed with prejudice as to the refiling of any future actions against Brentwood Properties, Ltd. for the reason that these parties have entered into a compromise settlement of any and all claims

of the Plaintiff against the Defendant Brentwood Properties, Ltd.

JAMES E. FRASIER
P. O. Box 799
Tulsa, OK 74101

ATTORNEY FOR PLAINTIFF
JIMMIE ELSKEN, as
Administrator of the
Estate of Patricia Ann Elsken

RICHARD M. ELDRIDGE
2800 Fourth National Bldg.
Tulsa, OK 74119

ATTORNEY FOR DEFENDANT
BRENTWOOD PROPERTIES, LTD.

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

| | | |
|---|---|---|
| FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity, | ) | |
| Plaintiff, | ) | |
| vs. | ) | Case No. 90-C-335-C |
| ROLLAN G. MURROW, JR. and SHERRY JO MURROW, husband and wife; and JEFF GRAUER and JEANNINE GRAUER, husband and wife; STAN STEVENS, Washington County Treasurer, and BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, OKLAHOMA, | ) | |
| Defendants. | ) | |

FILED
FEB 22 1991
Jack C. Silver, Clerk
U.S. DISTRICT COURT

JOURNAL ENTRY OF JUDGMENT

This matter comes on before the Court this 20th day of Feb, 1991, Plaintiff Federal Deposit Insurance Corporation, in its corporate capacity, ("FDIC"), appears by and through its attorney of record, R. Kevin Layton of Boesche, McDermott & Eskridge, Defendants Rollan G. Murrow, Jr. and Sherry Jo Murrow ("Murrows") appear by and through their attorney, Frederick E. Walker, Defendants Jeff Grauer, Jeannine Grauer, Stan Stevens, Washington County Treasurer and Board of County Commissioners of Washington, County Oklahoma, (collectively the "Defaulting Defendants") appear not. And it appearing to the Court that this is a suit upon a promissory note and for foreclosure of a Mortgage upon real estate, securing the same which said real estate is located in the County of Washington, State of Oklahoma.

6

The Court thereupon examined the pleadings, process and files in this cause, and being fully advised in the premises finds that due and regular service of the Summons and Complaint has been made upon all the defendants in this action. The Court further finds that the Defaulting Defendants, although duly served with summons and complaint in this cause more than 20 days prior to this date, have failed to plead or otherwise defend as required by the Federal Rules of Civil Procedure, and are thereby adjudged in default. The Court further finds that the Murrows have entered their appearance in this matter and have agreed to the terms of this Journal Entry of Judgment.

WHEREFORE, the Court finds that:

1. On July 21, 1988, the Oklahoma State Banking Commissioner (the "Commissioner") issued Order No. 88-R-27 and closed Union Bank & Trust, Bartlesville Oklahoma (the "Bank") and assumed exclusive custody and control of the property and affairs of the Bank pursuant to Okla. Stat. Tit. 6, § 1205(b). The Commissioner then tendered to the Federal Deposit Insurance Corporation appointment as the Liquidating Agent of the Bank pursuant to Okla. Stat. tit. 6, 1205(b). Pursuant to 12 U.S.C. 1821(e), The Federal Deposit Insurance Corporation accepted appointment as liquidating agent for the Bank and became possessed of all the assets, business and property of the Bank pursuant to Okla. Stat. 6, 1205(C).

2. Subsequently, certain assets of the Bank were sold and transfered from FDIC as liquidating agent to FDIC in its corporate

capacity pursuant to Okla. Stat. tit. 6, 1204(A) and pursuant to agreements approved by the District Court of Washington County, Oklahoma, in Case No. C-88-428.

3. FDIC, in its corporate capacity, pursuant to 12 U.S.C. 1823(c)(2)(A), purchased those certain assets that are involved in this cause of action, including but not limited to the Note, Mortgage and any related documentation.

4. On March 10, 1983, Murrows made, executed and delivered to the Bank a Promissory Note in the principal sum of $47,500.00, with initial interest thereon at 12.5% per annum, variable annually based on the six month Treasury Bill rate, with an interest ceiling of 21%. Thereafter, on November 20, 1987, and May 20,1988 respectively, Murrows executed and delivered to the Bank Two Deferral Agreements covering the Note.

5. At the same time and as part of the same transaction, Murrows made executed and delivered to the Bank a certain Real Estate Mortgage ("Mortgage") as security for repayment of the Note, covering certain real estate situated in Washington County, Oklahoma, more particularly described as follows to wit:

> A part of Lot Six (6) in Block One (1) of Suburban Addition to Bartlesville, Washington County, Oklahoma, described as follows: Beginning at a point 30 feet West of the Southeast Corner of said Lot 6; thence North parallel to the East line of said Lot 60 feet; thence West parallel to the South line of said lot 120 feet; thence South parallel to the East line of said lot 60 feet; thence East 120 feet to the point of beginning (the "Mortgaged Property").

Said Mortgage was recorded in Book 793 at Pages 771 et seq., in the office of the County Clerk of Washington County, Oklahoma on March 10, 1983, after the required mortgage tax was paid.

6. Despite demand by the Plaintiff, default has been made under the terms of the Note in that the payments required under the Note have not been made as required. There is currently due and owing to the Plaintiff the sum of $34,172.46, together with accrued interest of $3,810.80, plus interest continuing to accrue from and after September 20, 1989 at the rate of 4.329% above the six month Treasury Bill rate with a ceiling of 21% per annum until paid, plus the costs of the action.

7. Pursuant to the terms of the Note and Mortgage and the Murrows default under the terms of the Note and Mortgage, Plaintiff is entitled to foreclose its mortgage and to have the Mortgaged Property sold to satisfy the Murrows indebtedness.

8. The Mortgage constitutes a first, valid, prior and superior mortgage lien and security interest in and to the Mortgaged Property in favor of FDIC. The interests of the defendants herein are junior, subordinate and inferior to the right, title and interest of FDIC in and to the Mortgaged Property.

9. The Murrows have filed Bankruptcy in the United States Bankruptcy Court for the Northern District of Texas Case No. 90-C-335-C. The Mortgaged Property has been abandoned from Murrows' Estate and the stay modified to allow an <u>in rem</u> judgment to be taken against the Murrows.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that Plaintiff Federal Deposit Insurance Corporation, in its corporate capacity have and recover judgment in rem against defendants Rollan G. Murrow Jr. and Sherry Jo Murrow in the principal amount of $34,172.46, plus accrued interest in the amount of $3,810.80, plus interest continuing to accrue from and after September 20, 1989 at the rate of 4.329% above the six month Treasury Bill rate with a ceiling of 21% per annum, plus the costs of the action and reasonable attorneys fees.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Mortgage covering the Mortgaged Property created a first, prior and superior lien in and to said Mortgaged Property in favor of FDIC, and that the interests of the Defendants herein are subsequent, junior and inferior to the Mortgage lien and interest of FDIC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that a Special Execution and Order of Sale shall issue out of the office of the District Court Clerk in this cause, directed to the Sheriff of Washington County to levy upon, advertise and sell with appraisement after due and legal notice the Mortgaged Property and and to pay the proceeds of said sale to the Clerk of this Court as provided for by law for application as follows: First, in reduction of all indebtedness due and owing the Plaintiff by the Murrows under the terms of the Note, including the payment of all lawful costs, attorneys fees, charges, general taxes, special assessments, costs of preserving the property, and insurance

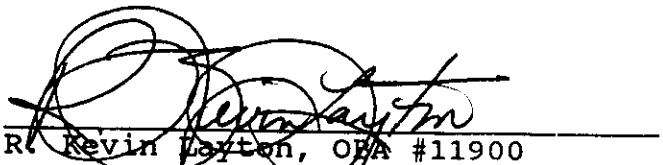
premiums, with the balance, if any, to be paid to the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that from and after the date of sale of the Mortgaged Property as herein directed and the confirmation of such sale by the Court, the parties to this action shall be forever barred and foreclosed of and from any lien upon or claim adverse to the right, title and interest of the purchaser at said sale, and the Defendants hereto and all persons claiming by, through or under them since the commencement of this action are hereby perpetually enjoined and restrained from ever setting upon, setting up or asserting any lien upon or right, title, interest or equity of redemption in or to the property adverse to the right, title and interest of the purchaser at such sale, if same be had and confirmed, and that upon proper application by the purchaser, the said court clerk shall issue a Writ of Assistance to the sheriff of said county who shall thereupon and forthwith place said purchaser in full and complete enjoyment of the premises.

IT IS SO ORDERED.

Judge of the District Court

APPROVED AS TO FORM:



R. Kevin Layton, OBA #11900
BOESCHE, McDERMOTT & ESKRIDGE
800 ONEOK Plaza
100 West Fifth Street
Tulsa, OK. 74103
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IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 22 1991

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

| | | |
|---|---|---|
| FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity,<br><br>Plaintiff,<br><br>vs.<br><br>J. RAYMOND WRIGHT, a/k/a J.R. WRIGHT, a/k/a J.R. WRIGHT, d/b/a WRIGHT ANGUS VALLEY RANCH; THE UNKNOWN HEIRS, EXECUTORS, ADMINISTRATORS, DEVISEES, TRUSTEES, AND ASSIGNS OF BESSIE J. WRIGHT, deceased; E. JANE BELLAMY; MARTHA C. KEYS; ANTHONY D. KEYS; BOARD OF COUNTY COMMISSIONERS OF CREEK COUNTY, State of Oklahoma; and DEESA HAMNONTREE, Treasurer of Creek County, State of Oklahoma,<br><br>Defendants. | ) | Case No. 90-C-908-E |

Stipulation of DISMISSAL

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii), Plaintiff hereby dismisses Defendant Indian Electric Cooperative, Inc. from this action.

Respectfully submitted,

Leslie Zieren

Leslie Zieren, OBA No. 9999
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021991vl-LZ8/RTC/Wright:Ind-Elec.Dis

FDIC v. J. R. WRIGHT, et al.
Case No. 90-C-908-E
USDC ND of Oklahoma

APPROVED AS TO FORM AND CONTENT:

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021991vl-LZ8/RTC/Wright:Ind-Elec.Dis

FDIC v. J. R. WRIGHT, et al.
Case No. 90-C-908-E
USDC ND of Oklahoma

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021991vl-LZ8/RTC/Wright:Ind-Elec.Dis

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22 day of Feb, 1991, a true and correct copy of the foregoing was mailed to the following by depositing the same in the United States mail in Tulsa, Oklahoma, with first class postage fully prepaid thereon:

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021991vl-LZB/RTC/Wright:Ind-Elec.Dis

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

| | | |
|---|---|---|
| GLENPOOL UTILITY SERVICE AUTHORITY, INC., A Utility Trust,<br><br>Plaintiff,<br><br>vs.<br><br>CREEK COUNTY RURAL WATER DISTRICT NO. 2, and JODY SWEETIN, an individual,<br><br>Defendants,<br><br>and<br><br>CREEK COUNTY RURAL WATER DSTRICT NO. 2,<br><br>Third-Party Plaintiff,<br><br>vs.<br><br>FARMERS HOME ADMINISTRATION, UNITED STATES DEPARTMENT OF AGRICULTURE, UNITED STATES OF AMERICA,<br><br>Third-Party Defendants. | ) | Case No. 84-C-415-C<br><br>FILED<br>FEB 21 1991<br>Jack C. Silver, Clerk<br>U.S. DISTRICT COURT |

JUDGMENT

This matter originally came before this Court for non-jury trial resulting in Judgment entered July 15, 1986. That Judgment was reversed by the United States Court of Appeals for the Tenth Circuit. Pursuant to the mandate of the Tenth Circuit,

IT IS HEREBY ORDERED AND ADJUDGED that Creek County Rural Water District No. 2 has the right, to the exclusion of Glenpool

B

Utility Services Authority, to provide water service to real property known as Eden South, legally described as:

> The Southwest Quarter (SW/4), Section 35, T17N, R12E, I.B.M., Tulsa County, State of Oklahoma.

IT IS FURTHER ORDERED AND ADJUDGED that Glenpool Utility Services Authority be enjoined, pursuant to 7 U.S.C. §1926(B), from curtailing the service area of Creek County Rural Water District No. 2 by including the District's territory within the boundaries of the City of Glenpool.

IT IS FURTHER ORDERED AND ADJUDGED that Glenpool Utility Services Authority remain the owner, as opposed to Creek County Rural Water District No. 2, of all water lines and water line easements which were constructed or obtained by Defendant Jody Sweetin for the purpose of obtaining water service for Eden South from Glenpool Utility Services Authority.

SO ORDERED this 20th day of Feb, 1991.

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

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



| | | |
|---|---|---|
| LILLIAN A. GRAHAM, | ) | |
| | ) | |
| Plaintiff, | ) | |
| v. | ) | No. 89-C-815-P |
| | ) | |
| AMERICAN AIRLINES, INC., et al., | ) | |
| | ) | |
| Defendants. | ) | |

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

## I. Introduction

At issue is a motion for summary judgment filed on behalf of defendants American Airlines, Inc. ("American"), George Barton and Dennis Quish. The motion for summary judgment filed by defendant Transport Workers Union of America, Local 514 (the "Union"), which incorporated the arguments, authorities and exhibits submitted by American, is at issue as well.

Defendants seek summary judgment in their favor and against plaintiff on four alternative grounds:

A. This action (hereinafter "Graham #2") is an impermissible collateral attack on the August 11, 1989, final judgment entered in Lillian A. Graham v. American Airlines, Inc., No. 86-C-516-C (N.D.Okla.) (hereinafter "Graham #1");

B. This action is barred by the doctrines of res judicata and collateral estoppel;

C. Each of plaintiff's four claims in this action is legally insufficient; and

D. Plaintiff's claim(s) for breach of contract/breach of duty of fair representation are barred by the six-month limitations period.

On September 20, 1990, the court entered a minute order striking the trial of this matter and stating that the court would grant summary judgment via a subsequent written order. This is the subsequent written order.

## II. Standard for summary judgment

The facts presented to the court upon a motion for summary judgment must be construed in a light most favorable to the nonmoving party. Board of Educ. v. Pico, 457 U.S. 853, 864 (1982); United States v. Diebold, Inc., 369 U.S. 654 (1962). If there can be but one reasonable conclusion as to the material facts, summary judgment is appropriate. Only genuine disputes over facts which might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). Finally, the movant must show entitlement to judgment as a matter of law. Ellis v. El Paso Natural Gas Co., 754 F.2d 884, 885 (10th Cir. 1985); Fed. R. Civ. P. 56(c).

Although the court must view the facts and inferences to be drawn from the record in the light most favorable to the nonmoving party, "even under this standard there are cases where the evidence is so weak that the case does not raise a genuine issue of fact." Burnette v. Dow Chem. Co., 849 F.2d 1269, 1273 (10th Cir. 1988). As stated by the Supreme Court, "[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which

are designed 'to secure the just, speedy and inexpensive determination of every action.'" Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986) (quoting Fed. R. Civ. P. 1).

The Supreme Court articulated the standard to be used in summary judgment cases, emphasizing the "requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) (emphasis in original). A dispute is "genuine" "if a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248. The Court stated that the question is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Id. at 251-52. "The mere existence of a scintilla of evidence in support of the [party's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [party]." Id. at 252.

Finally, the court determines whether the nonmovant has submitted evidence of the essential elements of the claim by viewing "the evidence presented through the prism of the substantive evidentiary burden" so that a reasonable factfinder could find for the nonmovant. Id. at 254.

## III. Discussion

### A. Background

Plaintiff originally filed this action on September 8, 1989, and filed an amended complaint on May 9, 1990. The gist of this

action is that the defendants lied, cheated and defrauded her during her litigation in Graham #1 and thereby wrongfully deprived her of a favorable outcome in Graham #1.

**B. Graham #1**

Plaintiff originally sued American on May 23, 1986, asserting a Title VII[1] claim for alleged gender-based harassment and gender-based discrimination, and a pendent state claim for alleged intentional infliction of emotional distress. On March 18, 1987, the court dismissed the pendent state claim, finding the claim was preempted by federal labor law,[2] and on May 4, 1988, the court denied plaintiff's motion to reconsider the dismissal.

The Title VII claim was tried to the court in May of 1988 and March of 1989. The court entered extensive findings of fact and conclusions of law and entered judgment in favor of American and against plaintiff on August 11, 1989.

Plaintiff timely appealed from the adverse judgment. However, she later withdrew her appeal and filed, instead, a motion to vacate the judgment. Plaintiff's motion to vacate, filed August 8, 1990, was denied on December 13, 1990. Her motion to reconsider the denial was denied on January 15, 1991.

During the course of litigation in Graham #1 plaintiff repeatedly raised the same allegations of fraud, altered or concealed evidence and perjury which she now asserts as the basis

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[1] Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.

[2] The Railway Labor Act, 45 U.S.C. § 151 et seq.

of her claims in Graham #2. See Defendants' Statement of Uncontroverted Facts (Jul. 6, 1990) at Exhibit "1" (tabulation of "facts" asserted in Graham #2 and where those "facts" were previously raised by plaintiff and disposed of by the court in Graham #1); see also Defendants' Appendix (Jul. 6, 1990) at Exhibits 4, 6, 7, 9, 10, 11, 13, 14 and 15 (plaintiff's papers filed in Graham #1 that repeatedly raised allegations of fraud, altered or concealed evidence and perjury); see also Defendants' Appendix (Jul. 6, 1990) at Exhibits 3, 8, 17 and 18 (orders in Graham #1 considering and disposing of the same allegations that plaintiff now asserts as the basis of her claims in Graham #2).

**C. Graham #2**

In Graham #2 plaintiff asserts four claims: (1) conspiracy to injure, cheat and defraud plaintiff of her employment and her litigation rights in Graham #1; (2) violation of 42 U.S.C. § 1985(3) by conspiring to injure, corrupt and defeat her grievance, arbitration, employment and litigation rights in Graham #1; (3) violation of her due process rights by fraudulently and oppressively defeating her grievance, arbitration and employment rights in Graham #1; and (4) violation of the public policy of the State of Oklahoma against gender-based harassment and discrimination.

Defendants have submitted to the court, in support of their motion for summary judgment, a tabulation of all the factual allegations that plaintiff asserts to support her four claims in Graham #2. See Defendants' Appendix (Jul. 6, 1990) at Exhibit 1.

The tabulation identifies, item by item, each factual allegation made in Graham #2 and identifies where the item was either ruled on by the court in Graham #1 or was previously raised in Graham #1 even if not specifically disposed of by the court. The tabulation is organized into five categories: (1) allegations of false testimony given in Graham #1; (2) allegations of acts of conspiracy between American and the Union to commit perjury in Graham #1; (3) allegations of alteration or forgery of evidence introduced in Graham #1; (4) allegations of missing evidence or concealed evidence relating to the disk discipline; and (5) a table of plaintiff's present objections to findings of fact entered in Graham #1 on August 11, 1989.

While on the one hand plaintiff freely made allegations of fraudulent conduct on the part of defendants, on the other hand she repeatedly failed to cooperate in discovery when defendants attempted to obtain specific information. See Order Compelling Discovery (Apr. 18,1990); Order Compelling Discovery (Sept. 18, 1990); see also Defendants' Motion for Sanctions for Failure to Cooperate in Discovery[3] (Aug. 29, 1990) and Plaintiff's Response (Sept. 14, 1990).

Viewing the evidence through the prism of the substantive evidentiary standard, even with the light shining most favorably on plaintiff, the court concludes plaintiff has failed to put forth sufficient facts from which a reasonable jury could find clear and

[3] The motion for sanctions in the form of claim preclusion is rendered MOOT by this order.

convincing evidence of fraud. Anderson, 477 U.S. at 254.

**D. Synopsis of ruling**

The court believes summary judgment is warranted in this case on all of the alternative grounds set forth in defendants' motion and brief. However, for the purposes of this order the court concludes it is unnecessary to base its decision on each of the alternative grounds because this action is an impermissible collateral attack on the prior judgment in Graham #1, and further because the claims raised in this action either were, or could have been, raised in Graham #1 and therefore are barred by the doctrines of res judicata (claim preclusion) and collateral estoppel (issue preclusion).

Plaintiff's two response briefs, although replete with allegations of lying, cheating and concealing evidence, are woefully inadequate in responding to defendants' legal arguments.

**E. Impermissible collateral attack**

Clearly, plaintiff is dissatisfied with the Graham #1 judgment entered against her on August 11, 1989. Her remedy, however, is not to file an independent action but rather to directly appeal to the United States Court of Appeals for the Tenth Circuit[4] or to file a motion for relief pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.[5] As was stated earlier, and as is clearly manifest from defendants' tabulation of plaintiff's

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[4] The court notes plaintiff initially did lodge an appeal with the Tenth Circuit but later voluntarily withdrew it.

[5] The court notes plaintiff did file a Rule 60(b) motion in Graham #1 on August 8, 1990. The motion was subsequently denied.

"factual" allegations, in Graham #2 plaintiff alleges defendants committed perjury in Graham #1, conspired to deprive her of her employment and litigation rights in Graham #1, altered or forged documents in Graham #1, and concealed evidence in Graham #1. In sum, in Graham #2 plaintiff alleges the Graham #1 judgment against her was obtained by intrinsic fraud, perjury, and by forging or altering evidence. Plaintiff cannot relitigate those issues in an independent action. Travelers Indem. Co. v. Gore, 761 F.2d 1549, 1552 (11th Cir. 1985). Relief from intrinsic fraud must be made by direct attack in the same case in which the fraud was allegedly committed, and a party cannot use an independent action as a vehicle to relitigate issues. Id. Plaintiff's allegations of perjury, forged and altered documents, and concealed evidence raise an issue of intrinsic fraud, and do not provide a substantive ground for relief. Wood v. McEwen, 644 F.2d 797, 801 (9th Cir. 1981). "[F]or fraud to lay a foundation for an independent action, it must be such that it was not an issue in the former action nor could it have been put in issue by the reasonable diligence of the opposing party." Travelers, 761 F.2d at 1552. Perjury by a party does not meet this standard. Id.

**F. Res judicata and collateral estoppel**

The doctrines of res judicata (claim preclusion) and collateral estoppel (issue preclusion) also bar this action. These doctrines are similar to each other in that they both seek to bar unnecessary relitigation of issues. They seek to add certainty and finality to the judicial system, to conserve judicial time and

resources, to avoid unnecessary litigation expense, and to protect parties from the harassment of never-ending litigation. The doctrines differ, however, in the circumstances under which they may be applied and in their scope. Ten Mile Industrial Part v. Western Plains Service Corp., 810 F.2d 1518 (10th Cir. 1987).

Under the doctrine of res judicata (claim preclusion) "a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action." Id. at 1522 (quoting Parklane Hosiery Co., Inc. v. Shore, 439 U.S. 322, 326 n.5 (1979)). The doctrine "bars the relitigation of issues that were or could have been raised in the first action." Id. at 1522-23 (citing Allen v. McCurry, 449 U.S. 90, 94 (1980) (emphasis added)).

The four elements that are a prerequisite to the use of the doctrine of res judicata (claim preclusion) to bar a subsequent suit are:

> (1) there must have been a final judgment on the merits;
>
> (2) the decision must have been rendered by a court of competent jurisdiction;
>
> (3) the parties, or those in privity with them, must be identical in both suits; and
>
> (4) the issues in the subsequent suit must be the same issues which were, or could have been, raised in the prior suit.

Id.; I.A. Durbin, Inc. v. Jefferson National Bank, 793 F.2d 1541, 1549 (11th Cir. 1986); Johnson v. United States, 576 F.2d 606, 611 (5th Cir. 1978), cert. denied, 451 U.S. 1018 (1981). Applying the above-cited law to the facts of this case, the court finds that extensive findings of fact and conclusions of law, together with a

final judgment on the merits, were entered on August 11, 1989, in Graham #1, in the United States District Court for the Northern District of Oklahoma, a court of competent jurisdiction. The plaintiff was the same in Graham #1 and Graham #2. All the defendants in Graham #2 were also defendants in Graham #1. The issues raised in Graham #2 either were, or could have been, raised in Graham #1. Accordingly, the court finds that the doctrine of res judicata (claim preclusion) bars this subsequent action.

Under the doctrine of collateral estoppel (issue preclusion), "once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." Ten Mile Industrial Park, 810 F.2d at 1523 (quoting Allen, 449 U.S. at 94)). The elements of the doctrine of collateral estoppel (issue preclusion) are:

> (1) the issue sought to be precluded in the second suit must be identical to the issue decided in the first suit;
>
> (2) the issue must actually have been litigated in the first suit;
>
> (3) there must have been a valid and final judgment in the first suit;
>
> (4) the determination of the issue must have been material to the prior judgment; and
>
> (5) the party against whom the prior decision is being asserted must have had a full and fair opportunity to litigate the issue in the first suit.

Goss v. Goss, 722 F.2d 599, 604 (10th Cir. 1983); I.A. Durbin, 793 F.2d at 1549; Precision Air Parts, Inc. v. Avco Corp., 736 F.2d 1499 (11th Cir. 1984), cert. denied, 469 U.S. 1191 (1985).

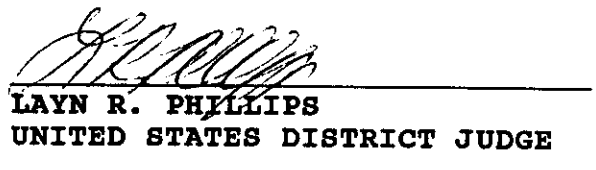
Applying these elements to the facts of the instant case, the court finds that to the extent Graham #2 raises issues relating to gender-based harassment or discrimination in plaintiff's employment, all the elements of the doctrine of collateral estoppel (issue preclusion) are met and, accordingly, plaintiff is barred from relitigating those issues.

## IV. Conclusion

For the reasons set forth above, defendants American, Barton and Quish's motion for summary judgment, filed July 6, 1990, is **GRANTED**, and defendant Union's motion for summary judgment, filed July 18, 1990, is **GRANTED**. This resolves the lawsuit.

A judgment will be separately filed.

**IT IS SO ORDERED THIS 21st DAY OF FEBRUARY 1991.**



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

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

FILED
FEB 21 1991
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

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| LILLIAN A. GRAHAM, Plaintiff, | ) | |
| v. | ) | No. 89-C-815-P |
| AMERICAN AIRLINES, INC., et al., Defendants. | ) | |

**JUDGMENT**

In accordance with the Court's order granting defendants' motions for summary judgment, entered this same date, it is ORDERED, ADJUDGED and DECREED that **JUDGMENT** be entered in favor of defendants and against plaintiff.

**ENTERED THIS 21st DAY OF FEBRUARY 1991.**

LAYN R. PHILLIPS
UNITED STATES DISTRICT JUDGE