

FILED

MAR -8 1991

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

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

FEDERAL DEPOSIT INSURANCE)
CORPORATION, a corporation,)
)
Plaintiff,)
)
v.)
)
EDWARD M. BEHNKEN, RALPH L.)
ABERCROMBIE, DONNE W. PITMAN,)
J.R. THOMAS, JACK H. SANTEE,)
MIKE ROBINOWITZ, GLENN E.)
BRUMBAUGH, and LARRY D. SWEET,)
)
Defendants.)

Case No. 88-C-452-C

**STIPULATION PURSUANT TO RULE 41(a)(1) OF DISMISSAL WITH
PREJUDICE OF FDIC'S CLAIMS AGAINST DEFENDANT GLENN E. BRUMBAUGH**

Plaintiff Federal Deposit Insurance Corporation ("FDIC") and defendant Glenn E. Brumbaugh, by and through their respective counsel of record and pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, stipulate to the dismissal of FDIC's claims with prejudice as to said defendant. The dismissal with prejudice is effective only as to said defendant and not in respect to any other defendants in this action.

Dated this 6th day of March, 1994.

Respectfully submitted,



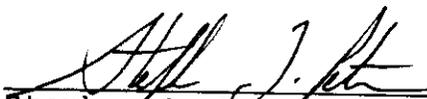
Lance Stockwell, OBA No. 8650
Bradley K. Beasley, OBA No. 628
BOESCHE, McDERMOTT & ESKRIDGE
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100 West Fifth Street
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(918) 583-1777

and



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Patrick M. Westfeldt
Jack M. Englert, Jr.
HOLLAND & HART
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Denver, Colorado 80201
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ATTORNEYS FOR PLAINTIFF, THE
FEDERAL DEPOSIT INSURANCE
CORPORATION



Stephen Q. Peters
SHORT, HARRIS, TURNER, DANIEL
& McMAHAN
Suite 700
1924 South Utica
Tulsa, Oklahoma 74104-6512

ATTORNEYS FOR DEFENDANT
GLENN E. BRUMBAUGH

CERTIFICATE OF SERVICE

I hereby certify that on this 8 day of MARCH, 1991,
I mailed a true and correct copy of the foregoing STIPULATION
PURSUANT TO RULE 41(a)(1) OF DISMISSAL WITH PREJUDICE by placing
a copy thereof in the United States mail, postage prepaid,
addressed to the following:

Andrew S. Hartman, Esq.
Shipley & Schneider
3402 First National Tower
Tulsa, OK 74103

Mike Barkley, Esq.
Barkley, Rodolf, Silva,
McCarthy & Rodolf
410 Oneok Plaza
100 West 5th Street
Tulsa, OK 74103

Scott Savage, Esq.
Moyers, Martin, Santee, Imel &
Tetrick
320 South Boston, Suite 920
Tulsa, Oklahoma 74103



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

VIRGINIA CURNUTT, ET AL
Plaintiff(s),

vs.

No. 90-C-822-C

DEAN WITTER REYNOLDS, ET AL
Defendant(s).

FILED

MAR 8 - 1991

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

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 3rd day of March, 1991.


UNITED STATES DISTRICT JUDGE

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

GENERAL ACCIDENT INSURANCE)
COMPANY OF AMERICA,)

Plaintiff,)

vs.)

Case No. 88-C-255

FIRST NATIONAL BANK AND TRUST)
COMPANY OF TULSA, a national)
banking association, as successor)
personal representative of the)
estate of F. Paul Thieman, deceased;)
GENE MARITAN; EDWIN KRONFELD,)
individually and as surviving general)
partner of Birmingham Properties,)
an Oklahoma limited partnership,)

Defendants.)

FILED
1988
JAN 11 1989
U.S. DISTRICT COURT

DISMISSAL WITH PREJUDICE

Pursuant to the Application of Plaintiff, General Accident Insurance Company, for Dismissal of the above-captioned cause, it is hereby ordered that said cause is dismissed with prejudice.

THE HONORABLE JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

UTICA MUTUAL INSURANCE COMPANY,)
)
Plaintiff,)
)
v.)
)
H.R. EVELAND, individually; H.R. EVELAND)
d/b/a THE IMPERIAL COMPANIES; DANIEL L.)
KESSEL; TAMMY NEARHOOD; and CBS INSURANCE)
AGENCY, INC. d/b/a CBS INSURANCE COMPANY,)
)
Defendants.)

No. 90-C-461-C

FILED

MAR 7 - 1991

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

DEFAULT JUDGMENT

Before the Court is the Plaintiff, Utica Mutual Insurance Company's Motion for Default Judgment against H.R. Eveland, H.R. Eveland d/b/a The Imperial Companies, and CBS Insurance Agency, Inc. d/b/a CBS Insurance Company. This Court finds that H.R. Eveland was served on June 7, 1990, and that CBS Insurance Agency was served on August 9, 1990. This Court further finds that none of these Defendants have entered an appearance or otherwise pled, and are now in default.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, pursuant to Rule 55, Fed.R.Civ.P., that judgment is granted in favor of Utica Mutual Insurance Company, Plaintiff, and against Defendants, H.R. Eveland, H.R. Eveland d/b/a The Imperial Companies and CBS Insurance Agency, Inc. d/b/a CBS Insurance Company.



THE HONORABLE H. DALE COOK

180-12/LAR/mh

RECEIVED
MAR 10 1991
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
UPON RECEIPT.

This finding is based upon evidence that the Defendant's administrator and fiduciary ignored evidence that high dose chemotherapy with autologous bone marrow transplantation sought by the Plaintiff is recognized by a number of doctors who refer patients for treatment and recognize treatment as beneficial to their patients; that Blue Cross ignored the number of treatment programs throughout the United States, including outside a teaching setting, such as Tulsa and Oklahoma City; that the administrator ignored results of such treatment as presented by Dr. Richard Champlin, Dr. Alan Keller, and the medical literature supplied by Blue Cross at trial; and that the administrator's decision finding high-dose chemotherapy coupled with autologous bone marrow transplantation to be investigational in treating metastatic breast cancer was unreasonable.

Accordingly, the Plaintiffs, Erwin and Elke Reiff, are entitled to judgment on their Complaint that denial of benefits by Defendant was arbitrary and capricious and declaration that this treatment is covered by the Blue Cross Blue Shield of Oklahoma Healthshare Gold Plan.

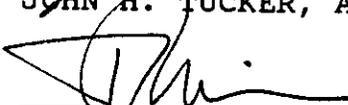


JAMES O. ELLISON, U.S. DISTRICT JUDGE

APPROVED AS TO FORM:



JOHN H. TUCKER, Attorney for Plaintiffs



J. PATRICK CREMIN, Attorney for Defendant

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

FILED

MAR -6 1991

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

IN RE:)
)
PROGRESSIVE ACCEPTANCE CORPORATION,)
)
Debtor,)
)
PROGRESSIVE ACCEPTANCE CORPORATION,)
)
Plaintiff,)
)
v.)
)
WYNBANC SAVINGS, FSB,)
)
Defendant.)

Bky. No. 90-00697-C
(Chapter 11)

Adv. No. 90-0170-C

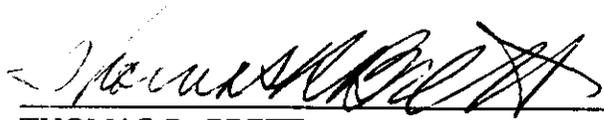
Case No. 90-C-795-B ✓

ORDER

This order pertains to defendant Wynbanc Savings' Withdrawal of Motion for Withdrawal of Reference (Docket #6)¹.

There has been no objection or other response filed to the Withdrawal. Defendant Wynbanc Savings' Withdrawal of Motion for Withdrawal of Reference is approved and this matter is closed.

Dated this 6th day of March, 1991.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

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

FILED

MAR -6 1991

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

MICHAEL E. FRISBEE,
Plaintiff,

v.

CASE NO.: 90-C-653 B

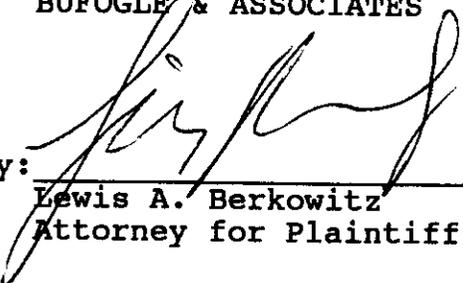
BURLINGTON NORTHERN RAILROAD,
Defendant.

DISMISSAL WITH PREJUDICE

NOW on this 28th day of February, 1991, comes the Plaintiff, Michael E. Frisbee, and dismisses the above styled matter with prejudice.

Respectfully submitted,

BUFOGLE & ASSOCIATES

By: 

Lewis A. Berkowitz
Attorney for Plaintiff

CERTIFICATE OF MAILING

This will certify that on the 28th day of February, 1991, a true and correct copy of the above and foregoing was mailed in the U.S. Mail, with proper postage fully prepaid thereon, to the following:

John A. MacKenzie
301 N.W. 63rd, Suite 505
Oklahoma City, OK 73116

W.T. Womble
2600 Two Houston Center
909 Fannin Street
Houston, TX 77010

Michele Kriegler
2600 Two Houston Center
909 Fannin Street
Houston, TX 77010



Lewis A. Berkowitz

Already closed

FILED

MAR -6 1991

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

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

BARBARA M. BENNETT,
individually, and as
Executrix of the Estate of
Fred W. Bennett, deceased,

Plaintiff,

v.

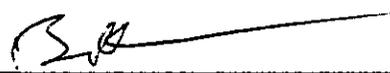
JANE PHILLIPS EPISCOPAL
HOSPITAL, INC., A
corporation,

Defendant.

Case No. 90-C-0128C

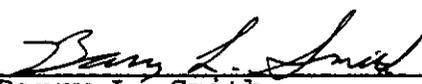
STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the parties in the captioned matter and hereby stipulate that all claims of the Plaintiff, Barbara M. Bennett, individually, and as Executrix of the Estate of Fred W. Bennett, deceased, are dismissed with prejudice against the Defendant, Jane Phillips Hospital, Inc.



Bill V. Wilkinson
WILKINSON & MONAGHAN
7625 E. 51st, Suite 400
Tulsa, Oklahoma 74145

ATTORNEYS FOR PLAINTIFF



Barry L. Smith
BARKLEY, RODOLF & McCARTHY
2700 Mid-Continent Tower
401 South Boston Avenue
Tulsa, Oklahoma 74103

ATTORNEYS FOR DEFENDANT

Dated this 10th day of March, 1991.

S/ THOMAS R. BRETT

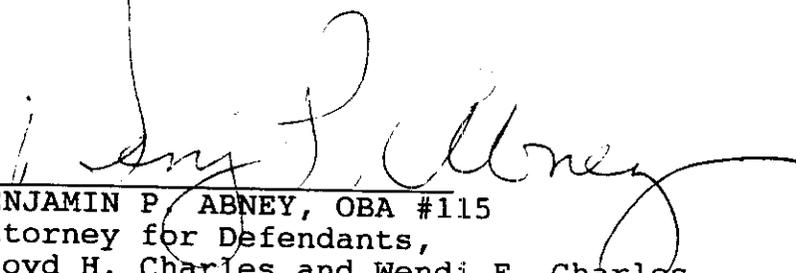
THOMAS R. BRETT
United States District Judge

APPROVED AS TO FORM AND CONTENT:

UNITED STATES OF AMERICA

~~TONY M. GRAHAM
United States Attorney~~

PETER BERNHARDT, OBA #741



BENJAMIN P. ABNEY, OBA #115
Attorney for Defendants,
Lloyd H. Charles and Wendi E. Charles

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

F I L E D

MAR 6 1991 *OA*

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

ZELDA M. TUSING,)
)
 Plaintiff,)
)
 v.)
)
 CENTRAL MORTGAGE CORPORATION,)
)
 Defendant.)

Case No. 90-C-502-B

O R D E R

This matter comes on for consideration upon the Motion of Plaintiff, Zelda M. Tusing, for Default Judgment pursuant to Rule 37(d), Fed. R. Civ. P..

Plaintiff's motion is predicated upon the failure of Defendant to provide a person designated to speak, at deposition, for the defendant corporation as provided by Rule 30(b)(6). The deposition was scheduled for December 28, 1990. No person representing the Defendant appeared at the scheduled deposition.

Prior to the scheduled deposition, Defendant's counsel, Curtis J. Biram, advised counsel for Plaintiff, Richard Shallcross, that he, Biram, was not aware of the availability of any officer, director or managing agent of Central Mortgage Corporation who could appear in response to the deposition notice. Since September 11, 1990, Biram has been seeking to withdraw his representation of Defendant, citing that he has been unable to reach Central Mortgage Corporation personnel either by telephone or office visit. Biram is of the belief that Central Mortgage has ceased doing business as it

is no longer in operation at its last address.

Under Rule 37 the Court may enter default judgment for failure of a party or an officer or managing agent of a party wilfully to appear. The Court notes the lack of communication between Attorney Biram and his client, Central Mortgage Corporation, and Biram's attempt¹ to withdraw at attorney. The Court concludes this is not an appropriate case to enter Default Judgment at this time. Additionally, this matter is set for hearing upon Plaintiff's Motion to Compel before the Magistrate on March 13, 1991, which hearing relates to Plaintiff's discovery efforts.

Plaintiff's Motion for Default Judgment should be and the same is hereby DENIED.

IT IS SO ORDERED this 6th day of March, 1991.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹ This Court, by its Order of January 29, 1991, granted Biram's Application to Withdraw, subject to the entry of new counsel in the case. The Order provides that if new counsel has not entered an appearance on or before January 31, 1991, upon the filing of an affidavit by Biram on that date that he is unable to contact his client, he would be allowed to withdraw without need for substitute counsel. The case file indicates no entry of appearance by new counsel and no affidavit being filed by Biram.

Appeals.

The Sixth Circuit entered its opinion in the Ohio matter on July 13, 1990. Plaintiff moved to reopen on August 13, 1990, well within the 60 day period.

The district court proceedings in Ohio narrowed the defendants to Michael McGee (McGee) and the City of Faith Medical and Research Center (Center). The Sixth Circuit determined the Ohio district court's assertion of personal jurisdiction over McGee was improper and that the claim against him must be dismissed. The Circuit further ruled personal jurisdiction did exist as to the Center³but determined the damages issue required retrial because the hospital bills and records of Plaintiff at City of Faith were excluded from the jury. The Court further ruled the Center was entitled to an off-set of the amount of the settlement (unknown) Plaintiff effected with Oral Roberts, Richard Roberts and the Oral Roberts Evangelical Association.

To this Court's knowledge, the damages matter has not been retried in Ohio. Since the possibility exists any award upon retrial may be less than the amount of the settlement, thereby negating any further action in either state, this Court, by order entered December 3, 1990, declined to reopen this case. Defendant McGee then moved to reopen the case, citing his dismissal as a Defendant in the Ohio case and further alleging that the pendency of the present suit affects his credit rating and standing in the

³ The Circuit Court determined the Center's knowing acceptance of the benefits of Oral Roberts Evangelical Association's "Expect a Miracle" telecasts in Ohio created an agency by estoppel and that Plaintiff's cause of action arose from the Center's activities in the forum state.

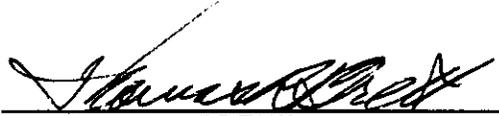
community.

Plaintiff responds to McGee's Motion, averring the real reason for the Motion was McGee's hope to obtain a ruling in this Court contrary to the Ohio Court's ruling relative to the liability of City of Faith which was founded upon the principles of *respondeat superior*. Plaintiff further alleges City of Faith has made demand upon Defendant McGee to indemnify City of Faith and pay the full amount of the Ohio verdict.

Irrespective of the above, this Court has no desire to try this case piecemeal, one Defendant at a time. The Court concludes Defendant's Motion is indeed premature. The ultimate decision of the Ohio Court may well impact the present litigation by reason of collateral estoppel or similar doctrine.

Again the Court states if, within sixty (60) days of a final adjudication of the Ohio proceedings now pending before the district court for the Southern District of Ohio, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this ^{17th}~~15th~~ day of March, 1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

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

MAR -6 1991

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

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

Case No. 90-C-220-B

JUDGMENT

The Plaintiff's Motion for Attorney Fees and Costs having come on before the Court, and the Court, having reviewed the file, and pursuant to the parties' agreement, the Court finds that Plaintiff's Motion for Attorney Fees should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff, The F&M Bank & Trust Company, have and recover judgment against Defendant, Jack Wilder, for \$4,850.00 in attorney fees and \$375.29 in costs.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

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

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& DICKMAN
500 ONEOK Plaza
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ATTORNEYS FOR PLAINTIFF, THE
F&M BANK & TRUST COMPANY

By: Terry M. Thomas
Terry M. Thomas - OBA #8951

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- and -

Randall L. Mitchell
SCHUYLER, ROCHE & ZWIRNER
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Chicago, Illinois 60601
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ATTORNEYS FOR DEFENDANT,
JACK WILDER

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

LILLIAN A. GRAHAM,)
)
 Plaintiff,)
 v.) No. 89-C-820-P
)
 AMERICAN AIRLINES, INC., et al.,)
)
 Defendants.)

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

MAR - 6 1991

FILED

ORDER CLARIFYING THIS CASE WAS RESOLVED FEBRUARY 21, 1991

On April 5, 1990, this case was consolidated with Lillian A. Graham v. American Airlines, Inc., et al., No. 89-C-815-P. Thereafter, the pleadings for the consolidated cases reflected case number 89-C-815-P only, and the pleadings were entered on the docket sheet for case number 89-C-815-P only.¹

On February 21, 1991, the Court entered summary judgment in favor of defendants and against plaintiff in the consolidated cases. The judgment resolved both cases, but the style of the order granting summary judgment and of the judgment reflected case number 89-C-815-P only.

Accordingly, this order is entered for the purpose of clarifying that this case was resolved in its entirety on February 21, 1991, upon the entry of the above-described summary judgment.

ENTERED THIS 6 DAY OF MARCH 1991.


LAYN R. PHILLIPS
UNITED STATES DISTRICT JUDGE

¹ The docket sheet for case number 89-C-820-P contains the following entry immediately after the entry for the April 5, 1990, order of consolidation: "ALL FURTHER ENTRIES ARE TO BE ENTERED ON #89-C-815-B".

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

FILED

FEB 21 1991

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

LILLIAN A. GRAHAM,)
)
 Plaintiff,)
 v.)
)
 AMERICAN AIRLINES, INC., et al.,)
)
 Defendants.)

No. 89-C-815-P ✓

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

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

FILED

FEB 21 1991

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

LILLIAN A. GRAHAM,)
)
 Plaintiff,)
 v.)
)
 AMERICAN AIRLINES, INC., et al.,)
)
 Defendants.)

No. 89-C-815-P ✓

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 VII¹ 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

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 Discovery³ (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 Circuit⁴ 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

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

termination. In Count II, plaintiff asserts an implied private right of action for handicap discrimination under the Oklahoma Anti-Discrimination Act.

In Count I, plaintiff alleges a violation of the public policy exception to the employment-at-will rule recognized in Burt v. K-Mart Corp., 770 P.2d 24 (Okla. 1989). Plaintiff asserts that he was discharged due to multiple sclerosis, in violation of a public policy against handicap discrimination as set forth in 25 O.S. §1302. This Court has previously ruled that the Burt exception does not apply where administrative remedies already exist. See Shaughnessy v. Hillcrest Medical Center, Inc., No. 89-C-344-C (N.D.Okla. Aug. 15, 1989) and Carlis v. Sears Roebuck & Co., No. 89-C-184-C. (N.D.Okla. July 7, 1989).

Plaintiff's second claim is for intentional infliction of emotional distress. Plaintiff asserts that defendant's conduct surrounding his termination was outrageous and caused him severe emotional distress. Specifically, plaintiff claims:

- (1) He was discharged fifteen minutes prior to his scheduled vacation without any prior notice.
- (2) Defendant misled plaintiff for several months into believing his job was secure.
- (3) Defendant's agent telephoned plaintiff's wife and told her that plaintiff should be saved the embarrassment of looking for another job since no one would hire a cripple.

The Court has independently reviewed plaintiff's deposition testimony. Under the tort of intentional infliction of emotional distress, plaintiff must show that defendant's conduct was extreme and outrageous and not merely unreasonable. See Floyd v. Dodson, 692 P.2d 77 (Okla.App. 1984). Mere insults or inconsiderate behavior will not permit recovery. "There is simply no room in the framework of our society for permitting one party to sue on the event of every intrusion into the psychic tranquility of an individual." 692 P.2d at 80. The plaintiff has not brought forth evidence of outrageous conduct sufficient to avoid summary judgment.

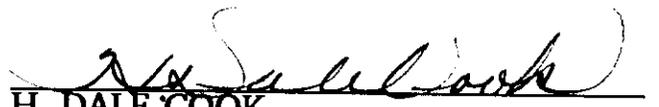
Plaintiff's third claim alleges a right of action under Oklahoma's Anti-Discrimination Act, 25 O.S. §§1101 et seq. Under this Act, handicap discrimination is prohibited by §1302. In his complaint filed on August 28, 1989 plaintiff asserted that he had an implied-private right of action under the Act. However, at that time, §1502.1 provided that only the Oklahoma Human Rights Commission had the right to file suit in court. Effective September 1, 1990, the Oklahoma legislature passed a new amendment to the Act which permits a private right of action for handicap discrimination. Plaintiff now seeks to modify his original allegation, requesting retroactive effect of the new Act to permit a claim under §1901.

The rule in Oklahoma is that all statutes are construed as having prospective operation unless the legislature clearly indicates otherwise. If there is any doubt, the issue must be

resolved against retroactive effect. McNeely v. Delmar, 734 P.2d 1294, 1296 (f.n.7) (Okla. 9187). Section 1901 does not address the retroactivity question.

Accordingly, defendant's motion for summary judgment is hereby granted.

IT IS SO ORDERED this 5th day of March, 1991.


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

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

LARRY W. KATZER,
Plaintiff,
vs.
BALDOR ELECTRIC COMPANY,
Defendant.

}
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No. 89-C-703-C

FILED

MAR 6 - 1991

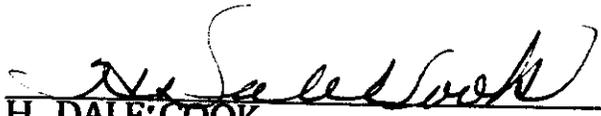
Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT

This matter came before the Court for consideration of defendant's motion for summary judgment. The issues having been duly considered and a decision having been rendered in accordance with the Order filed contemporaneously herewith,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered for defendant Baldor Electric Company, and against plaintiff Larry W. Katzer on plaintiff's complaint for wrongful discriminatory discharge.

IT IS SO ORDERED this 5th day of March, 1991.


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

MAR 6 1991

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

TERRY KEIZOR, as Personal)
Representative of the Estate)
of Billie Lee Keizor,)
)
Plaintiff,)
)
vs.)
)
SHEFFIELD STEEL CO.,)
)
Defendant.)

No. 90-C-391-E

JUDGMENT OF DISMISSAL

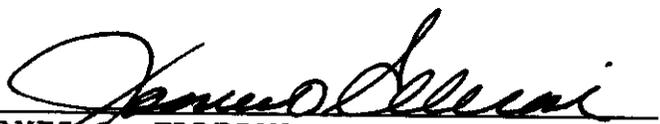
NOW on this 6th day of March, 1991, this matter comes before the Court, and the Court being fully advised in the premises finds:

Summary judgment was entered by this Court on February 26, 1991 and the issues herein now appear to be moot.

IT IS THEREFORE ORDERED that the action be dismissed. The Court retains jurisdiction to vacate this order and to reopen the action upon cause shown within twenty (20) days should further litigation be necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

ORDERED this 6th day of March, 1991.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

PROFESSIONAL INVESTORS
INSURANCE GROUP, INC.,
a Delaware Corporation,

Plaintiff,

vs.

Case No. 88-C-1663-B

SANDIA FEDERAL SAVINGS &
LOAN ASSOCIATION, a New
Mexico Federal Savings & Loan
Association; CHARLES J.
WILSON, an individual; and
DELWIN W. MORTON, an
individual,

Defendants,

and

RESOLUTION TRUST CORPORATION,
as Conservator for Sandia
Federal Savings Association,

Intervenor Defendant,
Counterclaimant and
Cross-claimant,

vs.

ALEXANDER J. STONE, an
individual,

Additional Party
Defendant.

FILED

MAR 6 1991

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

FILED

MAR 6 1991

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

ORDER

Upon the Joint Motion of Plaintiff, Professional Investors Insurance Group, Inc. ("Professional Investors"), to dismiss with prejudice its claims against Sandia Federal Savings & Loan Association, Charles J. Wilson, Delwin W. Morton, individually and collectively, and the Intervenor Defendant, Counterclaimant and Cross-claimant, Resolution Trust Corporation, as Conservator for

Sandia Federal Savings Association ("RTC"), to dismiss with prejudice its claims against Professional Investors and Alexander J. Stone, individually and collectively, and for the reasons therefore contained in such Motion it is hereby;

ORDERED that the respective claims of Professional Investors and RTC be, and are hereby dismissed with prejudice.

IT IS SO ORDERED this 6th day of March, 1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

BD0214B.AJB

CERTIFICATE OF MAILING

I hereby certify that on the date set out below, I mailed by proper first class mail, a true and correct copy of the above document, with all exhibits attached, (if any), to the following:

James A. Hogue Sr.
Attorney at Law
111 W. 5th Street - 4th Floor
Tulsa, OK 75103

March 5, 1991



KENNETH V. TODD

Upon proper proof of the payment of said sum, the Trustees complaint in this proceeding shall be dismissed as compromised with prejudice and the Debtor shall own any and all remaining right, title and interest in and to the aforementioned retirement benefit plan.

AND IT IS SO ORDERED.

Dated this 27 day of February, 1991.

Wickey D. Wilson

~~The Honorable Stephen J. Covey~~
Judge of the Bankruptcy Court

Approved as to Form:

James A. Hogue, Sr.

James A. Hogue, Sr.
James A. Hogue, Sr. and Associates, Inc.
P. O. Box 2904
Tulsa, OK 74101-2904
(918) 583-9700

Kenneth V. Todd

Kenneth V. Todd
2727 E. 21st, Suite 101
Tulsa, OK 74114
(918) 747-8282

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

FILED

MAR 5 1991 dt

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

HERBERT L. FOSTER,
Plaintiff,

vs.

METROPOLITAN TULSA TRANSIT
AUTHORITY,

Defendant.

No. 90-C-285-E ✓

JUDGMENT OF DISMISSAL

NOW on this 5th day of March, 1991, this matter comes before the Court, and the Court being fully advised in the premises finds:

Summary judgment was entered by this Court on March 4, 1991 and the issues herein now appear to be moot.

IT IS THEREFORE ORDERED that the action be dismissed. The Court retains jurisdiction to vacate this order and to reopen the action upon cause shown within twenty (20) days should further litigation be necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

ORDERED this 5th day of March, 1991.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED
MAR -5 1991
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

JOHN L. HARDIN, an individual,)
)
Plaintiff)
)
vs.)
)
FIRST SECURITY MORTGAGE CO. and;)
MERRILL LYNCH REALTY OPERATING)
PARTNERSHIP, a Delaware Limited)
Partnership,)
)
Defendants.)

Case No. 89-C-1033-B ✓

O R D E R

This matter comes on for consideration upon the Motion To Remand filed by Plaintiff, John L. Hardin.

This matter was removed from state court by Resolution Trust Corporation (RTC) on December 12, 1989, predicated upon federal jurisdiction pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).¹ RTC is now out of the case, prompting the Remand Motion. Defendant, Merrill Lynch Realty Operating Partnership, one of the two remaining Defendants,² opposes Plaintiff's Motion. The other remaining Defendant, First Security Mortgage Co., is presently in Bankruptcy.

Subject matter jurisdiction exists herein by reason of RTC

¹ Public Law 101-73, 103 Stat. 183.

² Plaintiff has requested, and the Court has granted, dismissal as to Defendants Citicorp Mortgage, Inc., formerly Citicorp Homeowners, Inc., Radargroup, Inc. and Resolution Trust Corporation, as Receiver of Cross Roads Savings and Loan Association.

invoking FIRREA. The absence of RTC does not, *ipso facto*, preempt the Court of subject matter jurisdiction.. In re Carter, 618 F.2d 1093, (5th Cir. 1980). This is true even if the only claims remaining in the action are state law claims. Carnegie-Mellon University v. Cohill, 484 U.S. 343, 108 S.Ct. 614, 98 L.Ed.2d 720 (1988).

The Court has the power to retain the case or to remand it to state court. Carnegie-Mellon University, supra. It is within the discretion of the Court to retain or remand pendent state claims when the federal jurisdiction parties and issues are no longer in the case. United Mine Workers v. Gibbs, 383 U.S. 715 (1966), and its progeny.

This case was first filed in state court on October 10, 1989, removed here in December of that year. It is scheduled to be tried by this Court in approximately 90 days. As it now stands, the state court has had little contact with this case. Plaintiff has failed to demonstrate how beginning anew in state court would enhance judicial economy.

The matter lies within the sound discretion of this Court. The Court concludes the best exercise of that discretion would be to retain this case and proceed on the present schedule.

The Court concludes Plaintiff's Motion to Remand should be and the same is hereby DENIED.

IT IS SO ORDERED this 28 day of February, 1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

MAR -5 1991

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

R. B. POTASHNICK,
Plaintiff,
v.
ALL AMERICAN PIPELINE COMPANY,
et al
Defendant.

Civil Action No. M-31

ORDER ALLOWING DISMISSAL WITH PREJUDICE

This matter having come before the Court on this 5th day
of March, 1991, upon the Stipulation By and Between
Plaintiff, R. B. Potashnick and Non-Parties, Willbros Energy
Services Company and Gary L. Bracken, and for good cause shown,

IT IS HEREBY ORDER, ADJUDGED AND DECREED that this Cause is
hereby dismissed with prejudice to the filing of a future action
and that each party bear its own attorney fees.


UNITED STATES DISTRICT JUDGE

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

IN RE:)
)
SPECTRUM GAS SYSTEMS,)
INC.; PACIFIC-MIDWEST)
GAS COMPANY; SPECTRUM)
NATURAL GAS COMPANY,)
)
Debtors.)

Consolidated Under
Case No. 89-03539-C
(Chapter 11)

ARKLA EXPLORATION COMPANY;)
RAMCO NYL 1987 LIMITED)
PARTNERSHIP; R B OPERATING)
COMPANY; LEE & AGEE, INC.;)
XAE CORPORATION; VINTAGE)
PETROLEUM, INC.; VINTAGE)
PIPELINE, INC.; MGAS, INC.;)
STARGAS CORP.; and)
BUTTONWOOD PETROLEUM, INC.,)

Adversary No. 90-0065-C

FILED
MAR 5 - 1991
Jack C. Silver, Clerk
U.S. DISTRICT COURT

Plaintiffs/Appellants,)

Case No. 90-C-593-C

v.)
)
NORWEST BANK OF MINNEAPOLIS,)
NATIONAL ASSOCIATION;)
SPECTRUM GAS SYSTEMS, INC.;)
PACIFIC-MIDWEST GAS COMPANY;)
SPECTRUM NATURAL GAS COMPANY.)

Defendants/Appellees.)

ORDER

Now before the court is the appeal of plaintiffs from the final Order of the Bankruptcy Court for the Northern District of Oklahoma entered on June 27, 1990, finding that Norwest Bank of Minneapolis, National Association ("Norwest") had a valid perfected security interest in gas sold by plaintiffs and that the security interest was superior to any

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of the liens filed by the plaintiffs under the Oklahoma Oil and Gas Owners' Lien Act ("Lien Act"), 52 O.S. § 548 et seq.

On September 1, 1987, Norwest entered into a Security Agreement with Spectrum Natural Gas Company ("SNGC") for the purpose of securing a loan. The Security Agreement granted Norwest a security interest in certain property of SNGC then owned and after-acquired, including all inventory, rights to payment of money, cash, certificates of deposit, bank accounts, investments, general intangibles and contract rights. It did not specifically refer to gas or gas proceeds. On September 28, 1987, Norwest filed a UCC-1 Financing Statement with respect to its security interest in the SNGC Collateral with the Clerk of Oklahoma County, Oklahoma.

On November 4, 1987, Norwest entered into a Security Agreement with Spectrum Gas Systems, Inc. ("SGS") for the purpose of securing a loan. The Security Agreement granted Norwest a security interest in certain property of SGS then owned and after-acquired, including all inventory, all equipment, rights to the payment of money, cash, certificates of deposit, bank accounts, investments, general intangibles and contract rights (the "SGS Collateral"). On November 30, 1987, Norwest filed a UCC-1 Financing Statement with respect to its security interest in the SGS Collateral with the Clerk of Oklahoma County, Oklahoma. This statement was amended on November 23, 1988.

Plaintiffs, who are interest owners in certain Oklahoma gas wells, sold gas to SNGC and SGS, pursuant to gas purchase contracts, during June through September, 1989. SGS and SNGC resold the gas and received payment, but did not pay the sale proceeds to

plaintiffs. On November 15, 1989, and various dates thereafter, plaintiffs filed liens under § 548.4 of the Lien Act to secure payment for the gas sold to SNGC and SGS.

On November 20, 1989, SNGC and SGS filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code. On February 1, 1990, the Bankruptcy Court entered its Second Amended Order Authorizing Debtors' Use of Cash Collateral in the Chapter 11 proceedings. On February 28, 1990, plaintiffs filed a Complaint to Determine Lien Priority and Conversion. On June 19, 1990, plaintiffs filed their Objection to Norwest's Motion for Summary Judgment in which plaintiffs challenged the validity of Norwest's security interest.

Plaintiffs claim that Norwest does not have a valid perfected security interest in the gas for three reasons: 1) the written security agreements do not specifically mention "gas" or "gas proceeds," 2) SGS and SNGC never acquired an equitable ownership interest in the gas, but only acted as trustees owing a duty to the interest owners under the Lien Act, and 3) perfection of the security interest did not occur in the correct local county. Plaintiffs also allege that their interest in the gas was perfected prior to Norwest's attempted perfection under the Lien Act, which occurred between the time plaintiffs' lien attached when the gas was severed and the time plaintiffs filed their lien notices.

Norwest points out that plaintiffs' objection to its security interest was not timely, because it was not filed within 120 days of the court's order. Norwest also argues that there is no merit to plaintiffs' claims that it has no valid perfected security interest in the gas. This court agrees with Norwest's contentions.

Plaintiffs first allege that Norwest had no security interest because the written security agreements did not mention "gas" or "gas proceeds." However, those agreements expressly stated that Norwest had a security interest in the inventory of Spectrum Gas Systems, Inc. ("Spectrum"). Spectrum was engaged in the purchase and resale of natural gas as a "middleman" in the distribution chain which purchased gas from producers and resold it to various entities. Under 12A O.S. § 9-105(h) "goods" are "all things which are movable at the time the security interest attaches . . . but does not include . . . minerals or the like, including oil and gas, before extraction." Thus gas in the chain of distribution after production constitutes "goods." Goods may be "consumer goods," "equipment," "farm products," or "inventory" under 12A O.S. § 9-109 and can fall into different classes at different times, based on the use to which the owner puts them. Goods are classified as "inventory" if held for sale. 12A O.S. § 9-109(4).

When Spectrum acquired title to the gas from plaintiffs, it was in the business of purchasing and selling gas, and inventory is the only classification applicable to the gas. It bought the gas from plaintiffs with the intent to resell and used the gas for this purpose. Norwest's security agreement covering the inventory of Spectrum included gas held by Spectrum as inventory. Plaintiffs' argument that the security agreement covering inventory did not include gas has no merit.

Plaintiffs next contend that perfection of the security interest did not occur in the proper county. Plaintiffs claim that Norwest had an interest in minerals, rather than inventory, and thus should have filed the financing statements in the office where a mortgage on real estate would be filed, as stated in 12A O.S. § 9-401(1)(b). While the

Oklahoma statute does not define "minerals," the definition of "goods" in 12A O.S. § 9-105(h) and the language of § 9-103.1(5) suggest "minerals" are oil and gas, or the like, before extraction.

Norwest's security interest was not in gas before extraction, as it purchased gas already extracted by Spectrum, which constituted "goods." The gas it received was inventory held for sale. The perfection statute does not require that a creditor perfect in every way in which a type of collateral may be characterized. Section 9-401(1)(c), rather than § 9-401(1)(b), thus determined Norwest's mode of perfection and Norwest properly perfected its security interest in Spectrum's inventory by filing its financing statements in the office of the County Clerk of Oklahoma County.

There is no merit to plaintiffs' contention that the provision on wellhead financing in 12A O.S. § 9-401(1)(b) applies to the purchase and sale of goods moving in interstate commerce, thus requiring local filing. This section clarified the place of filing for wellhead security interests, but Norwest's security interest does not involve wellhead financing. Spectrum bought gas that was already extracted and available for sale and had no rights to, or interest in, minerals in the ground or as they were extracted. Spectrum's purchases did not even necessarily occur at the wellhead, but at a central delivery point away from the wells.

Plaintiffs' contention that all gas moving in commerce should be perfected by local filing would be impractical in its application. Filing of a financing statement in the local real estate records would be reasonable in a situation where a lender had a security interest in minerals produced from real estate, but not reasonable when gas is sold as

"goods". A party perfecting a security interest in the inventory of a pipeline would have to identify the specific real estate where any gas moving through the pipeline was extracted and then make real estate filings in each of the relevant counties, perhaps requiring hundreds of filings.

There is also no merit to plaintiffs' claim that SGS and SNGC never acquired an equitable ownership interest in the gas, but only acted as trustees owing a duty to the interest owners under the Lien Act, under Reserve Oil Inc. v. Dixon, 711 F.2d 951 (10th Cir. 1983). The contract at issue in Reserve Oil was an operating agreement. Id. at 952. A working interest owner sued the operator, alleging that the operator had sold the production from the well in which the owner had an interest and failed to turn over to the owner its share of the proceeds from the sale. Id. The owner alleged that the operator had used the proceeds to pay operating expenses and the ownership shares of the other interest owners in the well. Id.

The court in Reserve Oil held that an operating agreement created a "trustee type relationship imposing a duty of fair dealing between the operator and the non-operator owners in the matter of distribution of shares among the owners." Id. at 953. The court based this "trust relationship" on provisions of the operating agreement which vested ownership of production in the parties in the same percentage that they owned interests in the well, granted interest owners the right to dispose of their oil and gas, gave the operator the right to dispose of the owners' oil and gas only if the owner had not done so, gave the operator a limited right in the oil and gas or the proceeds therefrom only to the

extent of the owner's unpaid proportionate share of the costs, and established a joint account to keep track of the costs. Id. at 952-53.

In this case, plaintiffs and Spectrum were parties to gas purchase contracts bearing no resemblance to an operating agreement, and imposing none of the relationships discussed in Reserve Oil. Pursuant to the contracts, Spectrum purchased gas from plaintiffs and took legal title and possession of 100% of the gas delivered. Plaintiffs retained no ownership interest in or control over the gas sold, as did the interest owners in Reserve Oil. The Spectrum contracts created a simple debtor-creditor relationship, like the sale of any goods between seller and buyer, and no fiduciary relationship was created. Strey v. Hunt Int'l. Resources Corp., 749 F.2d 1437, 1440 (10th Cir.) cert. den. 479 U.S. 870 (1984).

The Lien Act expressly provides that "[n]either the provisions of this act nor the filing of any instrument permitted under it shall affect the time at which legal title to the oil and gas may pass from an interest owner or operator to a first purchaser . . .". 52 O.S. § 548.5. Plaintiffs' assertion that Spectrum did not have rights in the gas, based on a case explaining the fiduciary relationship arising under an operating agreement between interest owners in a well and their operator, is meritless.

Plaintiffs' final claim is that their interest in the gas was perfected prior to Norwest's attempted perfection under the Lien Act. This assertion is not supported by the language of that Act.

The Lien Act provides interest owners in oil and gas with a security interest and lien which, upon perfection, as specified therein, and subject to the other provisions of the Act, relates back to the date on which the minerals were severed. Such a properly perfected

lien takes priority over rights or claims which attach to the oil or gas, or proceeds thereof, including any rights or claims that attach between the time of severance and the time of filing the lien. 52 O.S. § 548.4. However, § 548.6(C) of the Act specifically limits the relation back and protects the rights of persons under the provisions of the UCC:

Nothing in this act shall be construed to impair or affect the rights and remedies of any person under the provisions of the Uniform Commercial Code, Section 1-101 et seq. of Title 12A of the Oklahoma Statutes, and the provisions of this act shall be deemed cumulative to and not a limitation on or a substitution for any rights or remedies otherwise provided by law to a creditor against his debtor.

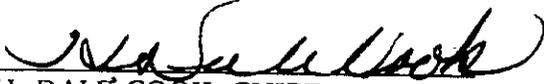
Specific provisions in a statute govern over more general provisions. City of Tulsa v. Southwestern Bell Telephone Co., 75 F.2d 343, 351 (10th Cir.), cert. den. 295 U.S. 744 (1935). In a conflict, the provision last in order prevails over another provision. Earnest, Inc. v. LeGrand, 621 P.2d 1148, 1151 (Okla. 1982). Specific provisions are given greater emphasis over more general ones because specific provisions convey a clearer expression of legislative intent. Western Auto Supply Co. v. Oklahoma Tax Com'n., 328 P.2d 414, 418 (Okla. 1958). Provisions in the same statutory scheme should be construed so as to harmonize the provisions and give each effect without doing violence to the other. Roach v. Atlas Life Ins. Co., 769 P.2d 158, 163 (Okla. 1989).

Plaintiffs assert that the Bankruptcy Court erred in relying on § 548.6(C) for the conclusion that the Lien Act cannot impair or affect the priority of a security interest. This claim has no merit. Plaintiffs say that § 548.6(C) only states that rights and remedies under the UCC cannot be impaired or affected, not that the priority of the rights and remedies cannot be impaired. However, if a security interest under the UCC was found to be inferior to a lien filed later in time, it would clearly be impaired and affected. The

Bankruptcy Court correctly relied on the express, specific, and last order provision of the Lien Act, § 548.6(C). The statute must be interpreted in accordance with its unambiguous language. Glenpool Utility Services Authority v. Creek County Rural Water Dist., 861 F.2d 1211, 1214 (10th Cir. 1988), cert. den. 109 S.Ct. 2068 (1989). The Lien Act was not intended to impair or affect UCC rights. The Bankruptcy Court's construction does not destroy the purpose of the Lien Act, as plaintiffs argue. The Act can still have effect against other, non-UCC rights or claims which might arise or attach. The Bankruptcy Court properly gave the Act a limited application, finding it was not the legislature's intent to defeat prior perfected liens in inventory and proceeds.

Therefore, the Court finds that the Bankruptcy Court properly found that Norwest had a valid perfected security interest in gas sold by plaintiffs and that the security interest was superior to any of the liens filed by the plaintiffs under Oklahoma's Lien Act. It is ordered that the Bankruptcy Court's decision of June 27, 1990, be and hereby is affirmed.

Dated this 5th day of March, 1991.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 5 1991

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 FIFTEEN THOUSAND DOLLARS)
 (\$15,000.00))
 IN UNITED STATES CURRENCY,)
)
 Defendant.)

CIVIL ACTION NO.

91 C 119 C

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, William L. Schwandt, and plaintiff, United States of America.

And it further appearing that no other claims to said property have been filed since such property was seized, and that no other person(s) has any right, title, or interest in the following-described defendant property:

Fifteen Thousand Dollars
(\$15,000.00) In United States
Currency.

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

ORDERED that the claim of William L. Schwandt 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 currency, in the sum of Fifteen Thousand Dollars (\$15,000.00), 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.

DATED this 5th day of March, 1991.

~~(Signed)~~ H. Dale Cook

United States District Judge
Court for the Northern District of
Oklahoma

APPROVED:



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

CJD/ch
01302

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

FILED

MAR -4 1991

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

HENRY McCRERY, SUSIE McCRERY)
individually, and SUSIE McCRERY)
as mother and guardian of CARLA)
WILLIAMS, a minor and HENRY)
McCRERY as father and guardian)
of MALINDA McCRERY, a minor,)
Plaintiffs)

VS.)

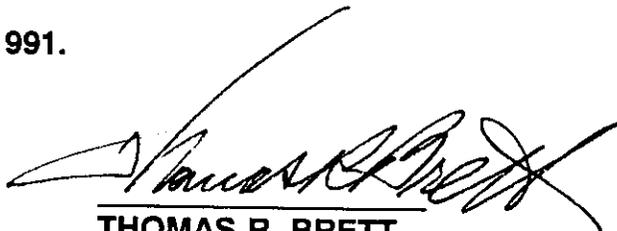
CASE NO. 90-C-92-B

THE BOARD OF COUNTY)
COMMISSIONERS OF MAYES)
COUNTY, STATE OF OKLAHOMA)
Defendant.)

J U D G M E N T

In accordance with the jury verdict rendered on March 4, 1991, Judgment is hereby entered in favor of Defendant, Board of County Commissioners of Mayes County, and against Plaintiffs Henry McCrery and Susie McCrery, individually, and Henry McCrery as father and Guardian of Malinda McCrery, and Susie McCrery as mother and Guardian of Carla Williams. Costs are assessed against Plaintiffs, if timely applied for under Local Rule 6.

DATED this 4th day of March, 1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

BRUMBAUGH & FULTON COMPANY,
an Oklahoma corporation,

Plaintiff,

vs.

INVESTORS MORTGAGE INSURANCE
COMPANY,

Defendant.

Case No. 90-C-229-B

JACK C. SILVER, CLERK
U.S. DISTRICT COURT
MAR - 4 1991

FILED

STIPULATION OF FOR DISMISSAL

Plaintiff, BRUMBAUGH & FULTON COMPANY, and Defendant,
INVESTORS MORTGAGE INSURANCE COMPANY, by and through their
attorneys, pursuant to FRCP 41(a) (1) (ii), hereby stipulate
that the above-entitled action be dismissed with prejudice,
with each party bearing their respective costs.

DATED this 4th day of March, 1991.

By Ronald Main
Ronald Main, OBA#5634
MAIN & DOWNIE, P.C.
520 Galleria Tower I
7130 South Lewis Avenue
Tulsa, Oklahoma 74136
(918) 494-4050

ATTORNEYS FOR PLAINTIFF,
BRUMBAUGH & FULTON COMPANY

By Gregory F. Pilcher
Eric S. Gray
Gregory F. Pilcher
ROBERTS, GRAY, GORESEN & MORIARTY
Suite 1340 American First Tower
101 North Robinson
Oklahoma City, Oklahoma 73102
(405)

ATTORNEYS FOR DEFENDANT,
INVESTORS MORTGAGE INSURANCE COMPANY

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

FILED
MAR -4 1991

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

JOHN MOSIER,

Plaintiff,

vs.

OKLAHOMA DEPARTMENT OF
CORRECTIONS,

Defendant.

}
}
}
}
}
}
}
}
}
}

No. 88-C-357-C

JUDGMENT

This matter came before the Court for consideration of defendant's motion for summary judgment. The issues having been duly considered and a decision having been rendered in accordance with the Order filed contemporaneously herewith,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered for defendant and against plaintiff on plaintiff's Petition for Writ of Habeas Corpus.

IT IS SO ORDERED this 4 day of March, 1991.


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

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

FILED

MAR 1, 1991

JOHN G. SUTTER, Clerk
U. S. DISTRICT COURT

JAY D. MILLER, AN INDIVIDUAL,)

PLAINTIFF,)

VS.)

L.K. COMSTOCK AND COMPANY,)
INC., A NEW YORK CORPORATION)

DEFENDANT AND)
THIRD-PARTY PLAINTIFF)

VS.)

RAY ALLEN,)
GARY GREGORY AND)
THE ESTATE OF LOWELL STEWART)
DECEASED.)

THIRD-PARTY DEFENDANTS.)

CASE NO. 88-C-1484-B

J U D G M E N T

In accordance with the jury verdict rendered on February 28, 1991, Judgment is hereby entered in favor of Plaintiff, Jay D. Miller, and against the Defendant L.K. Comstock and Company, Inc., on the issue of severance pay in the amount of \$2,801.88, and on the issue of vacation pay in the amount of \$2,830.40, plus pre-judgment interest on both sums at the rate of 11.71% per annum (12 O.S. §727) from October 13, 1988, to February 28, 1991, and post-judgment interest at the rate of 6.21% (28 U.S.C. §1961) from February 28, 1991, on the total of said principal sums and pre-judgment interest, until paid. On all other issues between Plaintiff, Jay D. Miller, and Defendant, L.K. Comstock and Company, Inc., Judgment is hereby

entered in favor of Defendant, L.K. Comstock and Company, Inc., and against Plaintiff, Jay D. Miller.

In accordance with the jury verdict rendered on February 28, 1991, Judgment is hereby entered in favor of Defendant, L.K. Comstock and Company, Inc., and against Third-Party Defendants Ray Allen and the Estate of Lowell Stewart, Deceased.

In accordance with the jury verdict rendered on February 28, 1991, Judgment is hereby entered in favor of Defendant, L.K. Comstock and Company, Inc., and against Third-Party Defendant, Gary Gregory, on the conversion claim in the amount of \$6,000.00, plus pre-judgment interest at the rate of 11.71% (12 O.S. §727) from August 23, 1989, to February 28, 1991, and post-judgment interest at the rate of 6.21% (28 U.S.C. §1961) from February 28, 1991, on the total of said principal sum and pre-judgment interest, until paid. On all other issues between Third-Party Defendant, Gary Gregory, and Defendant L.K. Comstock and Company, Inc., Judgment is hereby entered in favor of Defendant, L.K. Comstock and Company, Inc., and against Third-Party Defendant, Gary Gregory.

Costs and attorneys fees may be timely applied for under Local Rule 6.

DATED this 1st day of March, 1991.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

MAR 1 1991

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

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

FRANK B. ANDREWS, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 THOMAS N. HALL, et al.,)
)
 Defendants.)

Civil Case No.
88-C-422-B

ORDER

This Court has considered the Motion of Saul Stone & Co. for Dismissal, Removal of Stay, and Order to File Status Reports, and finds that it should be granted. Therefore, the Court orders as follows:

(1) All claims asserted by Defendant Saul Stone & Co. against Defendants Charles Andrews and Andrews & Associates, Inc. are hereby dismissed with prejudice, with each party to bear its own costs and expenses;

(2) The stay of this case pending the outcome of the arbitration between Saul Stone & Co. and Charles Andrews and Andrews & Associates, Inc. is hereby lifted; and

(3) Each remaining party is hereby ordered to submit a short written report to the Court detailing the status of that party's case and proposing a new schedule by March 31, 1991.

Dated: Mar 1, 1991

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

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

F I L E D

MAR 1 1991

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

JAMES R. PLASTER, As
Administrator of the Estate
of David Michael Plaster,
Deceased, and JAMES R.
PLASTER and PATRICIA LYNN
PLASTER, individually,

Plaintiffs,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, INC.,

Defendant.

No. 87-C-463-E

JUDGMENT

In accordance with the Orders of this Court filed on November 19, 1990 and January 28, 1991, Judgment is hereby entered in favor of the Plaintiffs, James R. Plaster, Administrator of the Estate of David Michael Plaster, deceased, and James R. Plaster and Patricia Lynn Plaster, Individually, Plaintiffs against Defendant, State Farm Mutual Automobile Insurance Company, Inc. Each party is to bear their respective attorney fees and costs.

Dated this 28th day of February, 1991.

S/ JAMES O. ELLISON

JAMES O. ELLISON
United States District Judge

APPROVED AS TO FORM AND CONTENT:



GEORGE M. MILES, OBA# 11433
P.O. Box 691
Jenks, Oklahoma 74037
918-299-4454
Attorney for the Plaintiffs



WILLIAM SMITH
7134 South Yale
Suite 900
Tulsa, Oklahoma 74136
Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

RONNIE D. POLLARD; BARBARA
POLLARD; LARRY E. POLLARD;
TERESA POLLARD; COUNTY
TREASURER, Tulsa County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma; and JACK MASTIN d/b/a
NEIGHBORHOOD PERIODICAL CLUB,

Defendants.

FILED

MAR 1 - 1991

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

CIVIL ACTION NO. 88-C-0045-C

DEFICIENCY JUDGMENT

This matter comes on for consideration this 27^m day
of February, 1991, upon the Motion of the Plaintiff, United
States of America, acting on behalf of the Secretary of Veterans
Affairs, for leave to enter a Deficiency Judgment. The Plaintiff
appears by Tony M. Graham, United States Attorney for the
Northern District of Oklahoma, through Kathleen Bliss Adams,
Assistant United States Attorney, and the Defendants, Ronnie D.
Pollard and Barbara Pollard, appear neither in person nor by
counsel.

The Court being fully advised and having examined the
court file finds that a copy of Plaintiff's Motion was mailed to
Ronnie D. Pollard and Barbara Pollard, 11381 East Independence,
Tulsa, Oklahoma 74116, and all counsel and parties of record.

The Court further finds that the amount of the Judgment
rendered on November 16, 1988, in favor of the Plaintiff United
States of America, and against the Defendants, Ronnie D. Pollard

FILED
MAR 1 1991
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
UPON RECEIPT.

and Barbara Pollard, with interest and costs to date of sale is \$61,589.02.

The Court further finds that the appraised value of the real property at the time of sale was \$28,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered November 16, 1988 and the Order filed on October 17, 1989 amending the judgment, for the sum of \$24,794.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on the 11th day of February, 1991.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Ronnie D. Pollard and Barbara Pollard, as follows:

| | |
|--|--------------------|
| Principal Balance as of 11-16-88 | \$62,591.48 |
| Interest | 22,034.09 |
| Late Charges to Date of Judgment | 1,244.88 |
| Appraisal by Agency | 675.00 |
| Management Broker Fees to Date of Sale | 552.17 |
| Abstracting | 429.01 |
| Taxes | 1,896.00 |
| Publication Fees of Notice of Sale | <u>166.39</u> |
| TOTAL | \$89,589.02 |
| Less Credit of Appraised Value | - <u>28,000.00</u> |
| DEFICIENCY | \$61,589.02 |

plus interest on said deficiency judgment at the legal rate of _____ percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, Ronnie D. Pollard and Barbara Pollard, a deficiency judgment in the amount of \$61,589.02, plus interest at the legal rate of 6.21 percent per annum on said deficiency judgment from date of judgment until paid.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney


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

KBA/css

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

FILED

fw

MAR - 1 1991

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

CARL DEMETRIUS MITCHELL, }
 }
 Petitioner, }
 }
 vs. }
 }
 TED WALLMAN, et al., }
 }
 Defendants. }

No. 88-C-433-C

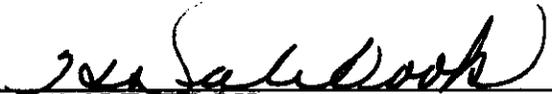
ORDER

The Court has received notice from the Attorney General for the State of Oklahoma that the State has fully complied with the Court's order of March 22, 1990 by providing petitioner with a trial by jury in cases CRF-87-36 and CRF-87-876.

Following entry of judgments of conviction from the trial of those cases, petitioner filed a pleading raising issues regarding his court-appointed attorney, the trial judge and the proceedings. These issues are not matters raised in the petition for habeas relief filed herein on May 16, 1988 and are not properly before the Court. Such issues can only be addressed in a separate action after exhaustion of state remedies.

Accordingly, in that the State of Oklahoma has fully complied with the directives of this Court, this case is hereby DISMISSED.

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



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