

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

**FILED**

APR 10 1991

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

CORDELIA TYNER, also known as Cordelia Tyner )  
Washington, )

Plaintiff, )

and )

THE UNITED KEETOOWAH BAND OF CHEROKEE )  
INDIANS, )

Plaintiff - Appellant, )

v. )

STATE OF OKLAHOMA, EX REL., DAVID MOSS, )  
DISTRICT ATTORNEY, )

Defendant, Counterclaimant - )  
Appellee. )

No. 87-2797  
(D.C. No. 87-C-29-E)

A true copy

Teste

Patricia M. ...  
Clerk of the Court  
U.S. District Court

*Patricia M. ...*

JUDGMENT  
Entered March 14, 1991

Before HOLLOWAY, Chief Judge, McWILLIAMS, and BRORBY, Circuit Judges.

This cause came on to be heard on the record on appeal from the United States District Court for the Northern District of Oklahoma, and was argued by counsel.

Upon consideration whereof, it is ordered that the judgment of that court is affirmed.

Entered for the Court

ROBERT L. HOECKER, Clerk

*Patrick Fisher*  
By Patrick Fisher  
Chief Deputy Clerk

PUBLISH

IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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Tenth Circuit

MAR 14 1991

**ROBERT L. HOECKER**  
Clerk

THE UNITED KEETOOWAH BAND  
OF CHEROKEE INDIANS,

Plaintiff-Appellant,

v.

THE STATE OF OKLAHOMA, ex rel.  
DAVIS MOSS, DISTRICT ATTORNEY  
OF TULSA COUNTY,

Defendants-Appellees.

No. 87-2797

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA  
(D. C. No. 87-C-29-E)

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Martin E. Seneca, Jr., Reston, Virginia, for Plaintiff-Appellant.

M. Denise Graham, Assistant District Attorney, Tulsa, Oklahoma,  
for Defendants-Appellees.

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Before HOLLOWAY, Chief Judge, and MCWILLIAMS and BRORBY, Circuit  
Judges.

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HOLLOWAY, Chief Judge.

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I

Plaintiff-Appellant, United Keetoowah Band of Cherokee Indians ("UKB" or "tribe"), appeals the final judgment, permanent injunction and order entered by the United States District Court for the Northern District of Oklahoma.<sup>1</sup> The district court's order enjoined the tribe from further operation of its Horseshoe Bend Bingo hall, a high stakes bingo enterprise, situated on a restricted Indian allotment.

This action arose in response to efforts by the State of Oklahoma to enforce its gaming laws against Horseshoe Bend Bingo. The hall is located on a leased portion of property owned by the plaintiff, Cordelia Tyner,<sup>2</sup> who at the behest of her son, George Washington, granted permission to construct and operate gaming on her land.

In October of 1986, the District Attorney for Tulsa County obtained a search warrant covering the Horseshoe Bend Bingo hall in order to seize gambling paraphernalia. Under the warrant the Tulsa County sheriff entered the premises and confiscated boxes of "pull tabs" and other gaming material allegedly used in violation of Oklahoma's gambling laws.<sup>3</sup> The State brought suit in state

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The judgment was entered on October 29, 1987; however on motion of both parties, a clarification of this judgment and its accompanying orders was entered by the court on November 20, 1987. Notice of appeal was filed December 1, 1987, by the UKB and is considered timely under Fed.R.App.P. 4.

2

Cordelia Tyner apparently has also been referred to in these proceedings under the names of Cordelia Tyner McKee and Cordelia Tyner Washington. To avoid confusion, this court will follow the lead of the district court and refer to her as "Mrs. Tyner."

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Footnote continued on next page

court seeking to enjoin Washington, and others involved in the management and operation of Horseshoe Bend Bingo, from operation of the enterprise as violative of Okla. Stat. tit. 21, §§ 995.1-995.18 (1981 & Supp. 1986).<sup>4</sup> In response, the UKB and Mrs. Tyner brought the instant action in federal court, seeking a declaratory judgment that the State was without jurisdiction to enforce its laws on the restricted allotment, and an injunction against all pending and future proceedings by the State under its gambling laws. Mrs. Tyner was dismissed from the suit, see Order, dated April 29, 1987, and that decision is not appealed.

The State counterclaimed, requesting a declaration of its jurisdiction over the restricted allotment, and seeking an injunction pursuant to Title 25, U.S.C. § 81 against further operation of the game until it was brought into compliance with federal law.<sup>5</sup> Bench trial proceedings were conducted in June and

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(Footnote continued):

The investigation of the enterprise was apparently also motivated by complaints of loud noise by the enterprise's electrical generator, and concerns of the local citizenry about the increased traffic, the use of untrained, armed security personnel, and inadequate sewage facilities used by patrons.

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Oklahoma permits bingo gaming, but regulates it through eligibility requirements, licensing, and limitations on hours, sessions per day, and prize amounts. Conducting "pull-tab game[s]" in places where bingo is played is expressly prohibited. See id. at § 995.15.

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Title 25, U.S.C. § 81 (1958), entitled "Contracts with Indian tribes or Indians," requires that all contracts with Indian tribes (or individual Indians not citizens of the U.S.) regarding their land are void unless approved by both the Secretary of the Interior and the Commissioner of Indian Affairs. The statute specifies that:

All contracts or agreements made in violation of this section shall be null and void, and all money or

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September of 1987. On October 29, 1987, the district court issued detailed Findings of Fact ("FF") and Conclusions of Law ("CL"). The following day, the court permanently enjoined the State from exercising criminal jurisdiction over the allotment, and likewise enjoined the UKB from further operation of gaming activities on the Tyner allotment. See Amended Permanent Injunction, dated October 30, 1987. The following additional facts were found by the district court and are not in dispute:

Mrs. Tyner, an enrolled member of the Cherokee Nation of Oklahoma, was allotted a parcel of real property by the Cherokee Nation in 1905. This land is a restricted Indian allotment.<sup>6</sup> Mrs. Tyner has twelve children, among them, George Washington and Rachel Dake. Washington received permission from his mother to construct and operate a bingo enterprise on a portion of her restricted allotment. To that end, Washington invested \$10,000 of his own money, and further obtained partial financing by promissory notes given to family and friends. These notes provided for a 100% return-on-investment with repayment completed within 120 days. Washington also hired Gary Allen, a non-Indian, to serve as accountant for the bingo enterprise.

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(Footnote continued):

other thing of value paid to any person by any Indian or tribe . . . in excess of the amount approved by the Commissioner and Secretary for such services, may be recovered by suit in the name of the United States in any court of the United States[.]

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The district court held that Mrs. Tyner's restricted allotment is Indian country as defined by 18 U.S.C. § 1151, for purposes of both criminal and civil jurisdiction. See CL Nos. 4-9. The State does not question this ruling.

After unsuccessfully approaching the Delaware and Cherokee Nation Tribes, Washington approached plaintiff UKB to obtain its participation in, and assertion of tribal sovereign power over, the bingo venture. In June 1986, the UKB's Tribal Council agreed to lease some of Mrs. Tyner's allotment and participate in the bingo enterprise. Some time later, Washington and some of his siblings joined the UKB.<sup>7</sup> On August 1, 1986, a lease was executed between the UKB and Mrs. Tyner for part of her allotment for the purpose of conducting "commercial businesses, including bingo, food service, giftshop and related recreational businesses[.]" See Brief of Appellee, Addendum D. The lease was submitted to the Bureau of Indian Affairs ("BIA") for approval, but no action by BIA was ever taken.

The bingo enterprise, denominated Horseshoe Bend Bingo, opened to the public on October 23, 1986. Gaming at the hall included bingo, keno, and the sale of pull tabs. Washington was general manager. Keetoowahs comprised the majority of the employees; however, members of the Tyner family were given preferential hiring over all others. One-fourth of the employees were members of the Tyner family, including all twelve of Mrs. Tyner's children. Allen was the only non-Indian employed.

Several months after the bingo hall's opening, Washington was elected to the Tribal Council. He enjoyed substantial power over the bingo venture, including hiring decisions, and shared with

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The UKB asserts that Mrs. Tyner is also a member of the UKB, with enrollment #6178. The court below noted that "Mrs. Tyner testified she was not a Keetoowah." See FF No. 9. For purposes of this decision, it need only be noted that all parties agree that Mrs. Tyner is an enrolled member of the Cherokee Nation of Oklahoma.

Dake the oversight of all bank accounts which serviced funds by and for the enterprise. Washington, however, is the only member of the UKB Tribal Council with signatory authority on the bank accounts. No tribal representatives supervise the counting procedures at Horseshoe Bend Bingo.

Under a verbal agreement between Mrs. Tyner and the UKB, Mrs. Tyner was to receive 90% of the net profits, the remaining 10% going to the UKB for the first six months of operations or until Mrs. Tyner received \$232,000. Thereafter, under a Joint Venture Agreement ("JVA") between Mrs. Tyner and the UKB, the percentages changed to 75% and 25%, respectively. As defined by the JVA, net profit is any money remaining after the payment of operating expenses, including salaries and debt service on the promissory notes. The JVA was never submitted to the BIA for approval. Prior to the district court's injunction, Mrs. Tyner had received very little money, and the UKB had received only \$10,600 as an "advance" on profits.

## II

As a threshold matter, the State raises a jurisdictional question. The State charges that the district court lacked subject matter jurisdiction over this cause under 28 U.S.C. § 1362, citing Enterprise Electric Co. v. Blackfeet Tribe of Indians, 353 F.Supp. 991 (D. Mont. 1973).<sup>8</sup> There a Montana

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28 U.S.C. § 1362 (1966), entitled "Indian tribes," reads in full:

The district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the

Footnote continued on next page

corporation sued the tribe for money due under a contract for electrical work on a tribal center. The district court dismissed, holding that § 1362 provides limited jurisdiction in actions brought by an Indian tribe. Neither the opinion in Blackfeet Tribe, nor the State's argument based on it explain why § 1362 does not cover this matter other than to assert that the Act's scope is "limited." We are persuaded that an action such as this by a tribe asserting its immunity from the enforcement of state laws is a controversy within § 1362 jurisdiction as a matter arising under the Constitution, treaties or laws of the United States. See Moe v. Confederated Salish & Kootenai Tribes, 425 U.S. 463, 472-73 (1976); Seminole Tribe of Florida v. Butterworth, 491 F.Supp. 1015, 1017-18 (S.D. Fla. 1980), aff'd on other grounds, 658 F.2d 310 (5th Cir. 1981), cert. denied, 455 U.S. 1020; Cheyenne-Arapaho Tribes v. State of Oklahoma, 618 F.2d 665, 666 (10th Cir. 1980).

The State's argument implies that by incorporating, the UKB no longer functions as a "tribe" for purposes of § 1362. See Appellee's Brief at 9-11. True, the UKB is a federally chartered

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(Footnote continued):

Constitution, laws, or treaties of the United States.

Although it is unclear from the record whether the State raised this issue to the court below, the district court affirmatively asserted jurisdiction pursuant to this section. See CL No. 1 (a typographical error, which designates jurisdiction pursuant to "§ 1962" here obviously was intended to read "§ 1362"). Nevertheless, we reach this question because the issue of subject matter jurisdiction may be raised at any time, see Kain v. Winslow Mfg., Inc., 736 F.2d 606, 609 (10th Cir. 1984), cert. denied, 470 U.S. 1005 (1985), even when the defendant has not raised the issue by cross-appeal. Pytlik v. Professional Resources, Ltd., 887 F.2d 1371, 1380 (10th Cir. 1989).

corporation,<sup>9</sup> but as the district court correctly noted, "the formulation [sic] of the corporation does not affect the power of the tribe to act in a governmental capacity." CL No. 14, citing Cohen's Handbook of Federal Indian Law, Ch. 6, Sec. A4c (Strickland, ed. 1982). There is no indication in the pleadings or briefs that the tribe comes before the federal court in any manner other than as a sovereign entity, and the plain language of § 1362 applies to "any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior[.]" The Department of the Interior expressly recognizes the UKB as a governing body. See Department of Interior Notice, Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 53 Fed. Reg. 52829-02 (1988).

In sum, § 1362 serves as an adequate jurisdictional grant for this Indian gaming case where the tribe asserts its claim of immunity from state regulation. See, e.g., Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin, 743 F.Supp. 645, 646 (D.Wis. 1990).

## II

### A

Our remaining analysis is shaped significantly by the State's election not to appeal any substantive aspect of the decision below. Adversely to the State, the district court ruled that

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The Keetoowahs are a federally recognized band of Indians pursuant to Act of Congress, 60 Stat. 979 (1946), and thus, are permitted to organize as a corporate entity under the Oklahoma Indian Welfare Act, 49 Stat. 1967 (1936). Also, the United Keetoowah is recognized by the BIA as possessing sovereign powers. See CL No. 17.

"Oklahoma has no criminal jurisdiction over the [Tyner] restricted allotment," CL No. 16, and that the State's counterclaim is without merit because "[a] lease of third party lands is insufficient to state a claim under 25 U.S.C. § 81." CL No. 18 (citation omitted). Since the State has not cross-appealed, these decisions restrict the scope of this appeal so that the State and the district attorney of Tulsa County now come before this Court purporting only to enforce federal, and not Oklahoma, laws.<sup>10</sup> Furthermore, the State's election not to appeal necessarily limits the State's arguments to supporting application of the Assimilative Crimes Act, 18 U.S.C. § 13 -- the only other federal law expressly at issue in the record below. See, e.g., Swarb v. Lennox, 405 U.S. 191, 201 (1972) ("In the absence of a cross appeal, the opposition is in no position to attack those portions of the District Court's judgment that are favorable to the plaintiff-appellants"); compare, Dandridge v. Williams, 397 U.S. 471, 475-76 n.6 (1970) ("Appellee may, without taking a cross-appeal, urge in support of a decree any matter appearing in the record") (emphasis added).

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See, e.g., Snell v. Tunnell, 920 F.2d 673 (10th Cir. 1990) (An appellate court, hearing only an appeal of some of the issues decided below, lacks jurisdiction "to decide an issue when the party adversely affected ha[s] not [cross] appealed the adverse order"); First Nat'l Bank of Denver v. Denver United States Bank, 409 F.2d 108, 110 (10th Cir. 1969) (Where appellants appeal only part of the judgment below, appellees who "did not cross-appeal . . . cannot now expand the narrow issue presented by appellants").

Indeed, as noted in the State's brief, Oklahoma is "not appealing that portion of the Court's order. Rather, the District Attorney is responding to Appellant's Brief solely for the purpose of providing this Court with sufficient information to enable this Court to make a well-informed decision in this appeal." Appellee's Brief at 8, n.1.

By contrast, however, the UKB here takes issue with the following district court Conclusions of Law:

CL No. 10 holds that although the Tyner allotment is Indian Country for purposes of civil and criminal matters, the UKB may not exercise tribal sovereignty over the land because the tribe's ability to exercise tribal sovereignty is preconditioned on the existence of tribal lands.

CL No. 13 holds that Horseshoe Bend Bingo is not a "tribal enterprise" because the factors enumerated in Indian Country, U.S.A., Inc. v. Oklahoma, 829 F.2d 967, 982-83 (10th Cir. 1987), cert. denied sub nom. Oklahoma Tax Comm'n v. Muskogee (Creek) Nation, 487 U.S. 1218 (1988), have not been satisfied. Specifically, the court noted that the tribe receives only minimal benefits from the enterprise, and neither the lease nor the JVA were approved by the BIA as required under Indian Country U.S.A.

CL Nos. 16 and 17 hold that the failure of the UKB to establish: (1) entitlement to assert sovereign power over the Tyner allotment; (2) that the venture is a tribal enterprise, and; (3) that federal rules governing operation of Indian bingo establishments have been complied with, permits the assertion of federal jurisdiction pursuant to the Assimilative Crimes Act, 18 U.S.C. § 13. Under the incorporated terms of this federal law, the operation of bingo, pull tab sales, and keno at Horseshoe Bend Bingo is illegal. Accordingly, the court permanently enjoined UKB "and all persons connected with the gaming activities of Horseshoe Bend Bingo . . . from conducting, operating, managing or participating in any further gaming activities" at the facility on

the Tyner restricted allotment. Amended Permanent Injunction of Oct. 30, 1987, at 2.

Although the UKB takes issue with all of these conclusions, claiming a misapplication of federal policy by the district court and the unfairness and inadequacy of the Indian Country, U.S.A. test as applied to unlanded Indian tribes, we believe that the UKB is entitled to relief based only on its last claim. There the UKB asserts that the district court erred by enjoining the tribe, enforcing state law as federal law through application of the Assimilative Crimes Act, 102 Stat. 4381, codified at 18 U.S.C. § 13 (as amended 1988) ("ACA" or "§ 13").<sup>11</sup> Due to subsequent intercession by Congress, noted below, the UKB is entitled to the lifting of this injunction.

Where it applies, the ACA incorporates state criminal law as the substantive content of federal law. Thus, the district court's ruling incorporated the limitations prescribed on state-approved bingo contained in Okla. Stat. tit. 21, §§ 995.1-995.18 (1981 & Supp. 1986), as the governing federal law. Although the State was without authority to enforce these laws of their own

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In relevant part, § 13 reads:

(a) Whoever within or upon any [federal enclave] . . . , is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State . . . in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(emphasis added). The ACA is applicable to Indian country through, and as limited by, the General Crimes Act, 18 U.S.C. § 1152 (1982). See Iowa Tribe of Indians v. Kansas, 787 F.2d 1434, 1437 (10th Cir. 1986); Cheyenne-Arapaho Tribes of Oklahoma v. Oklahoma, 618 F.2d 665, 668 (10th Cir. 1980).

weight, see CL Nos. 15 and 16, the district court implicitly accepted the State's application for the injunction as one on behalf of the United States and enjoined the Bingo enterprise under federal law.<sup>12</sup>

Had the status quo remained intact, following the decision below, this court would have been required to decide whether the ACA did, in fact, incorporate Oklahoma's bingo laws.<sup>13</sup> But

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As required by § 81, the State's counterclaim sought an injunction "on behalf of the United States[.]" See 25 U.S.C § 81, reproduced in part at footnote 5. The district court, however, elected to enjoin the tribe pursuant to the ACA. See CL No. 17. In its answer brief, the State raises as an issue of error the district court's decision not to assert jurisdiction pursuant to § 81. Yet there is no claim that the amended permanent injunction's provisions should be other, or different, than those actually imposed by the district court. Since the contours of the equitable relief granted is in no manner different under either statute, and since the State has not contested the district court's rejection of its § 81 monetary claim, we find it unnecessary to reach the merits of this argument.

13

This issue is not without controversy, regarding both the ultimate decision and the manner of resolution. At least one district and one appellate court have applied the civil-regulatory/criminal-prohibitory test to the ACA. See, e.g., Pueblo of Santa Ana v. Hodel, 663 F.Supp. 1300 (D.D.C. 1987)(holding that New Mexico's gambling laws on horse racing were regulatory and thus inapplicable to the reservation; however, state laws on greyhound racing were deemed prohibitory and were incorporated into federal law by the ACA); United States v. Marcyes, 557 F.2d 1361, 1364 (9th Cir. 1977)(deciding that Washington's fireworks laws were prohibitory and therefore applied to Indian reservations through the ACA). Such analyses assume that only those state laws deemed "prohibitory" in nature are incorporated. See generally Bryan v. Itasca County, 426 U.S. 373 (1976)(holding that Public Law 280, a jurisdictional statute, permits application of criminal, but not non-private civil, state laws to Indian lands in the subject states); Marcy, 557 F.2d at 1364 (noting "a strong argument exists that Congress did not intend to include the penal provisions of a state regulatory system within the ACA").

The circuits, however, have divided on the question whether this test should apply outside the context of Public Law 280 cases. See, e.g., Iowa Tribe of Indians v. Kansas, 787 F.2d 1434, 1435-36 n.1 (10th Cir. 1986)(implicitly approving the test's

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significantly, there has been a dispositive change in the exact law governing this case since the decision below was rendered. As a result, the incorporation issue, and others raised on this appeal have become moot.<sup>14</sup>

B

It appears that a new day has dawned with respect to the regulation of Indian bingo, heralded by congressional enactment of the Indian Gaming Regulatory Act, 102 Stat. 2467 (1988)(codified at 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§ 1166-1168 (1988))("IGRA"). A fair reading of IGRA leads inexorably to the conclusion that this Act now bars federal courts from enjoining

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(Footnote continued):

application in an ACA context); Barona Group of Capitan Grande Band of Mission Indians v. Duffy, 694 F.2d 1185 (9th Cir. 1982)(applying the test to OCCA cases), cert. denied, 461 U.S. 929 (1983); Marcy, 557 F.2d 1361 (9th Cir. 1977)(applying the test to the ACA); but see United States v. Dakota, 796 F.2d 186 (6th Cir. 1986)(limiting application of the test to Public Law 280 cases). We need not reach these questions, however, to resolve this case as indicated in the remainder of this opinion.

14

Recently, in Ross v. Neff, 905 F.2d 1349, 1353 (10th Cir. 1990), plaintiff Ross brought an action pursuant to 42 U.S.C. §1983, inter alia, against Adair County, Oklahoma, for gunshot injuries he sustained during his arrest for public intoxication by a county sheriff at a ballpark on Indian land. The district court, ruling for the county, removed Ross' claim of alleged extra-jurisdictional arrest from the jury's consideration. Id. at 1351. On appeal, this court reversed, holding that "[t]he 'borrowing' provision of [the ACA] . . . does not grant states independent authority to enforce their own laws over Indians on Indian land." Similarly, in Indian Country, U.S.A., 829 F.2d 967 (10th Cir. 1987), this court determined that Oklahoma's bingo laws were preempted from application in Indian country within Oklahoma. Id. at 981-82. However, the Indian Country, U.S.A. case, unlike Neff, did not discuss state assertions of jurisdiction by way of "incorporated" federal law.

Although coming in the context of a civil case, this court is mindful that the Neff holding explicitly addressed only the application of Oklahoma's criminal law in Indian country, and not the quasi-criminal regulation invoked as to bingo. In tandem with Indian Country, U.S.A., the extension of Neff to cover this case might arguably be justifiable.

Indian bingo by application of state law through the ACA. Accordingly, the injunction against the UKB must be lifted.

The few cases that have construed IGRA describe it as "establish[ing] a comprehensive scheme for the regulation of gaming on Indian lands." Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin, 743 F.Supp. 645, 648 (D.Wis. 1990); United States v. Sisseton-Wahpeton Sioux Tribe, 718 F.Supp. 755, 758 (D.S.D. 1989), rev'd on other grounds, 897 F.2d 358 (8th Cir. 1990) ("IGRA is a comprehensive and pervasive piece of legislation that in many respects preempts other federal laws that might apply to gaming"). Of particular relevance is the congressional finding that:

Indian tribes have the exclusive right to regulate gaming activity on Indian lands [defined to include restricted Indian allotments] if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.

IGRA, § 2701(5). Gaming over which the federal government holds jurisdiction (primarily "class II" gaming discussed below) is subject to the supervision of a newly created, independent regulatory authority -- the National Indian Gaming Commission -- established to "meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue." IGRA, § 2702(3); § 2704.

The Act divides Indian gaming into three categories which differ as to the extent of federal, tribal and state oversight. Class I gaming covers the traditional Indian social games played in connection with "tribal ceremonies or celebrations." IGRA § 2703(6). Under the Act, such gaming falls "within the exclusive

jurisdiction of the Indian tribes[.]" Id. at § 2710(a)(1). Class II gaming covers bingo, "including (if played in the same location) pull-tabs, . . . and other games similar to bingo[.]"<sup>15</sup> Id. at § 2703(7)(A)(i). Such gaming falls "within the jurisdiction of the Indian tribes," but also remains subject to federal oversight as established by the chapter. Id. at § 2710(2). Class III gaming encompasses "all forms of gaming that are not class I gaming or class II gaming[.]" id. at § 2703(8), and requires that such games be: (1) authorized by tribal ordinance; (2) located in a State which permits such gaming to some extent, and; (3) "conducted in conformance with a Tribal-State compact[.]" Id. at 2710(d)(1). This compact is the mechanism whereby a State, by agreement with the tribe, might assume either civil and/or criminal jurisdiction, and apply its laws or regulations over Indian country. See id. at § 2710(3)(C).

Like the ACA, IGRA's penal provision, 18 U.S.C. § 1166, incorporates state laws as the federal law governing all non-conforming gambling in Indian Country. See § 1166(a). Wider in scope than the ACA, § 1166(a) makes "all State laws pertaining to the licensing, regulation, or prohibition of gambling, including but not limited to the criminal sanctions applicable thereto" enforceable in Indian country. Id.

Where IGRA most differs from ACA, however, is that the power to enforce these newly incorporated laws rests solely with the United States: "The United States shall have exclusive

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Presumably also keno, a bingo variant, which was played at Horseshoe Bend Bingo hall.

jurisdiction over criminal prosecutions of violations of State gambling laws that are made applicable under this section to Indian country . . . ." Id. at § 1166(d)(emphasis added). Nowhere does the statute indicate that the State may, on its own or on behalf of the federal government, seek to impose criminal or other sanctions against an allegedly unlawful tribal bingo game.

Indeed, the very structure of the IGRA permits assertion of state civil or criminal jurisdiction over Indian gaming only when a tribal-state compact has been reached to regulate class III gaming. See Lac du Flambeau Band, 743 F.Supp. at 646 ("Unless and until the state negotiates a tribal-state compact in which [the tribe] consents to the exercise of such jurisdiction, the United States has the exclusive authority to enforce violations of state gambling laws on plaintiff's reservations"). The statute appears to leave no other direct role for such State gaming enforcement.<sup>16</sup> The few cases that have construed the IGRA to date are not to the contrary.

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16

This court does not, and need not, decide, whether a state may seek an injunction against a tribal bingo operation under other federal laws, such as § 81. In passing, however, it is clear that Congress intends that the newly created Commission fill the paramount role in overseeing Indian contracts governed by § 81. See IGRA, § 2711(h)(transferring the oversight of Indian gaming management contracts covered by § 81 from the Secretary of the Interior to the Commission). The use of § 81 as a sword against the tribes is a questionable practice, as it plainly was intended to shield them. See, e.g., Potawatomi Indian Tribe of Oklahoma v. Enterprise Management Consultants, Inc., 734 F.Supp. 455, 456-57 (D. Okla. 1990)("Section 81 is designed to protect Indians from entering into improvident and unconscionable contracts with non-Indians")(quotation omitted). Moreover, the application of § 81 to an Indian-to-Indian contract may itself be doubtful. As indicated, though, there is no § 81 issue before this court.

In Lac du Flambeau Band, a tribe operating a casino on its reservation sued the State of Wisconsin and several state officers, pursuant to IGRA, to enjoin any future state prosecutions. The federal district court concluded that Wisconsin was without authority to prosecute violations of its gambling laws on the plaintiff tribe's reservation, either through Public Law 280,<sup>17</sup> or through IGRA, because the state had not negotiated such jurisdiction with the tribe through a tribal-state compact. See id., 743 F.Supp. at 646. Although the court declined to issue the injunction because the tribe was unable to satisfy the irreparable injury requirement, see id. at 654-55, it found any state criminal jurisdiction preempted:

Even if the state had not lost its Pub.L. 280 jurisdiction to prosecute violations of state gambling laws in Indian country, the passage of the Indian Gaming Regulatory Act has preempted it from exercising criminal jurisdiction over gambling activities on the reservations in the absence of a tribal-state compact

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Act of Aug. 15, 1953, ch. 505, 67 Stat. 588 (Public Law 280) (codified as amended at 18 U.S.C. § 1162; 25 U.S.C. §§ 1321-1326; 28 U.S.C. § 1360 (1982 & Supp. 1985)). Public Law 280 originally permitted states to assume civil and criminal jurisdiction within Indian country by amending or deleting state constitutional or statutory barriers to such assumption, and then passing affirmative legislation to so assume jurisdiction. See generally, Note, Indian Sovereignty versus Oklahoma's Gambling Laws, 20 Tulsa L.J. 605, 612-21 (1985) (discussing the problems of Oklahoma's use of Public Law 280 to regulate Indian bingo). At the time of Public Law 280's passage in 1953, Oklahoma was listed among those States having barriers to assertion of jurisdiction. See S.Rep. No. 699, 1953 U.S. Code Cong. & Admin. News at 2412. There is no indication that Oklahoma has ever acted pursuant to this Act to assume jurisdiction. See, e.g., Ross v. Neff, 905 F.2d at 1352 (noting that Oklahoma "has not acted to assume jurisdiction by this method"); Indian Country, U.S.A., 829 F.2d at 980 and n.6 (noting Oklahoma's official stance that Public Law 280 was thought unnecessary for state assertions of jurisdiction in Indian country); Confederated Bands & Tribes of Yakima Indian Nation v. Washington, 550 F.2d 443, 445 n.3 (9th Cir. 1977) (listing Oklahoma as one of ten states yet to have acted pursuant to Public Law 280), rev'd on appeal after remand, 439 U.S. 463 (1979).

that confers such authority on the state by agreement.  
18 U.S.C. § 1166(d) gives the United States "exclusive  
jurisdiction . . . ."

Id. at 652 (quoting IGRA).

In United States v. Sisseton-Wahpeton Sioux Tribe, 897 F.2d 358 (8th Cir. 1990), the tribe had sought declaratory and injunctive relief regarding the validity, under IGRA, of its blackjack gaming operations on its South Dakota reservation. The tribe asserted that its blackjack operation, normally class III gaming, fell within IGRA's "grandfather clause" which classified certain pre-existing Indian enterprises as class II. See IGRA, § 2703(7)(C). Reversing the district court, which found the grandfather clause inapplicable and the games improper under either class II or class III, the Eighth Circuit stated:

We are convinced that Congress intended that class II gaming be subject to tribal and federal oversight, and that the states' regulatory role be limited to overseeing class III gaming, pursuant to a Tribal-State compact. Permitting South Dakota to apply its substantive law to the blackjack game here, which is properly classified as class II gaming, conflicts with congressional intent.

Sisseton-Wahpeton Sioux Tribe, 897 F.2d at 364. Although neither Sisseton-Wahpeton Sioux Tribe, nor Lac du Flambeau Band are ACA cases, they clearly show that Congress has limited the states' enforcement role to class III gaming conducted under a compact. Compare Manshantucket Pequot Tribe v. Connecticut, 737 F. Supp. 169, 173 (D. Conn.), aff'd, 913 F.2d 1024 (2d Cir. 1990) (stating that IGRA's "legislative history notes that the provisions regarding class II gaming, primarily bingo, were intended to be consistent with the tribal rights recognized in Cabazon").<sup>18</sup>

The legislative history also supports the view that IGRA was intended to preempt state assertions of prosecutorial authority over Indian bingo through the ACA:

The mechanism for facilitating the unusual [sic] relationship in which a tribe might affirmatively seek extension of State jurisdiction and the application of state laws to activities conducted on Indian land is a tribal-State compact. In no instance, does S. 555 [enacted as IGRA] contemplate the extension of State jurisdiction or the application of State laws for any other purpose.

S. 555 is intended to expressly preempt the field in the governance of gaming activities on Indian lands. Consequently, Federal courts should not balance competing Federal, State, and tribal interests to determine the extent to which various gaming activities are allowed.

S. Rep. No. 100-446, 100th Cong., 2d Sess., reprinted in 1988 U.S. Code Cong. and Admin. News 3071, 3075-76. The legislative history addresses Oklahoma's status under IGRA by explaining that:

There are five States . . . that criminally prohibit any type of gaming, including bingo. S. 555 bars any tribe within those States, as a matter of Federal law, from operating bingo or any other type of gaming. In the other 45 States [including Oklahoma], some forms of bingo are permitted and tribes with Indian lands in those States are free to operate bingo on Indian lands, subject to the regulatory scheme set forth in the bill.

Id. at 3081-82 (emphasis added) (the bracketed language "[including Oklahoma]" was added by us). And specifically addressing the use of the ACA in the context of class II gaming, IGRA's Senate Report states:

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(Footnote continued):

This reference is to the Supreme Court's pre-IGRA ruling in California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987). As noted by the district court in Mashantucket, Cabazon "held that tribes have a right to conduct gaming on Indian lands without state regulation if located in a state which permits, subject to regulation, the gaming." 737 F. Supp. at 174. Oklahoma regulates, but does not prohibit bingo. See Indian Country, U.S.A., 829 F.2d at 972.

The phrase "not otherwise prohibited by Federal Law" refers to gaming that utilizes mechanical devices as defined in 15 U.S.C. 1175. That section prohibits gambling devices on Indian lands but does not apply to devices used in connection with bingo and lotto. It is the Committee's intent that with the passage of this act, no other Federal statute, such as those listed below, will preclude the use of otherwise legal devices used solely in aid of or in conjunction with bingo or lotto or other such gaming on or off Indian lands. The Committee specifically notes the following sections in connection with this paragraph: 18 U.S.C. section 13[.]

Id. at 3082 (emphasis added).

IGRA's statutory language, and this concise expression of congressional intent in the legislative history, almost make it mere surplusage to also reiterate the well established rule of construction noted by appellants: "[A]ny ambiguities in legislation enacted for the benefit of Indians will be construed in their favor." 134 Cong. Rec. H8153 (daily ed. Sept. 26, 1988)(Representative Udall's statement supporting S.555 (IGRA)); see also Montana v. Blackfeet Tribe of Indians, 471 U.S. 759, 759 (1985)(same).

We are mindful of the views expressed in United States v. Burns, 725 F. Supp. 116 (D.N.Y. 1989), aff'd sub nom. United States v. Cook, \_\_\_ F.2d \_\_\_, 1991 WL 480 (2d Cir. 1991), but find their analyses distinguishable. There the defendants, members of the Mohawk tribe, were indicted, inter alia, on federal charges of conducting an illegal gambling business (operating slot machines) under 18 U.S.C. § 1955, and violation of IGRA's § 1166. The defendants argued that § 1955 had been preempted by IGRA and sought dismissal of the § 1955-based count. The district court rejected the preemption argument, noting that "the goals of 18 U.S.C. § 1166 and 1955 are distinct, and the argument that one

must preempt the other on the basis of their similarity must fail." Id. at 124.

On appeal in Cook, the Second Circuit affirmed, using an "implicit repeal" analysis instead of a "preemption" one. See Cook at \_\_\_\_\_. Although § 1155 and IGRA were viewed as "two acts on the same subject[,]" id. at \_\_\_\_\_, the appellate court was unable to find the required "positive repugnancy between the [two acts'] provisions" necessary to find that IGRA repealed § 1155. See id. at \_\_\_\_\_ (quoting United States v. Batchelder, 442 U.S. 114, 122 (1979)). Finding that the statutes could be given independent, although somewhat overlapping, effect, the court concluded that "the provisions do not demonstrate the mutual exclusivity necessary to impute to Congress the clear, affirmative intent to repeal." Id. at \_\_\_\_\_. Neither the preemption analysis in Burns, nor the implicit repeal analysis on appeal in Cook, are persuasive here. Clearly, the Burns court's focus on the "distinct goals" between IGRA's § 1166 and § 1955 cannot be applied to § 1166 and the ACA -- the ACA having no substantive goal other than to serve interstitially during congressional inaction. In fact, even though the Burns court did not accord full preemption to IGRA, it, too, scrutinized the senate report language quoted above (containing specific reference to the ACA) and found IGRA preemptive in "its potential application to class II gaming." Burns at 124. As for Cook, the implicit repeal approach used there cannot logically be applied to this case because by the passage of IGRA, Congress did not intend to "repeal" the ACA. Rather, as shown above, Congress sought to

circumscribe its use by states against Indian gaming. Thus, the implicit repeal analysis is inapposite.<sup>19</sup>

Most importantly, however, is that the text and judicial construction of the ACA itself mandates that it no longer be available to Oklahoma here.<sup>20</sup> The ACA expressly applies to acts or omissions in Indian country "not made punishable by any enactment of Congress[.]" Such wording shows clear legislative intent. Accordingly, since first construed by the Supreme Court in Williams v. United States, 327 U.S. 711 (1946), the rule has been that the ACA can only apply where Congress has not spoken to the conduct proscribed. See id. at 723 (noting that the ACA's legislative history shows "the Act was to cover crimes on which Congress had not legislated"); see also United States v. Patmore, 475 F.2d 752, 753 (10th Cir. 1973) ("The Act has no application if such acts or omissions are made penal by federal statute."); United States v. Marcyes, 557 F.2d 1361, 1365 (9th Cir. 1977) ("the Government can assimilate state law under the ACA only if no act

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Even were the ACA given continued substantive content, the injunction must still be lifted. As the most recent and more particular enactment of federal law, IGRA controls. See FDIC v. Bank of Boulder, 911 F.2d 1466, 1478 (10th Cir. 1990) (en banc). By designating the United States' jurisdiction as "exclusive" over Indian gaming, Congress intended that no functionally equivalent power would remain in the states under such "pre-existing" federal law. Thus, insofar as the ACA previously provided an implicit cause of action to Oklahoma to attack the Horseshoe Bend bingo enterprise, through the passage of IGRA's comprehensive enforcement scheme there exists the "mutual exclusivity necessary to impute to Congress the clear, affirmative intent to repeal" that part of the incorporated ACA. Cf. Cook at \_\_\_\_.

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Notably, one federal court has held that "Congress could have, but has not, provided for injunctive relief as a remedy for violations of . . . the ACA." United States v. Bay Mills Indian Community, 692 F.Supp. 777, 780 (W.D.Mich. 1988), vacated on other grounds, 727 F.Supp. 1110 (W.D.Mich. 1989).

of Congress makes such conduct punishable"); United States v. Butler, 541 F.2d 730, 734 (8th Cir. 1976) ("the plain meaning of that Act requires that state law not be 'assimilated' where 'any enactment of Congress' punished the conduct"). The Williams case involved direct application of this principle:

If Congress had been satisfied to continue to apply local law to this and related offenses it would have been simple for it to have left the offense to the Assimilative Crimes Act. A contrary intent of Congress has been made obvious. Congress repeatedly has increased its list of specific prohibitions of related offenses and has enlarged the areas within which those prohibitions are applicable. It has covered the field with uniform federal legislation affecting areas within the jurisdiction of Congress.

Id. at 724 (footnote omitted). So, too, in the area of Indian gaming, Congress has occupied the field, barring application of the ACA.

This court has interpreted the ACA in like manner. In Cheyenne-Arapaho Tribes v. Oklahoma, 618 F.2d 665 (10th Cir. 1980), an Indian tribe sought to enjoin the State from exercising its jurisdiction over hunting and fishing in Indian country. The district court had held that the state hunting and fishing laws applied to Indian country through the ACA. We disagreed and held that "[t]he Assimilative Crimes Act does not assimilate state law which is inconsistent with federal policies expressed in federal statutes." Id. at 668. Finding that Congress had "consistently protected the hunting and fishing rights of Indians" by treaty, we held parallel state laws inapplicable under the ACA. "It would be inconsistent to forbid states the right to control Indian hunting and fishing directly, and then to give that control back indirectly through the Assimilative [Crimes] Act." Id. at 668-69. Where, as in IGRA, Congress has restricted state jurisdiction over

Indian gaming to that defined by a tribal-state compact, it would be equally inconsistent to permit the ACA-based injunction against the UKB to stand.

Here we note that IGRA came into existence after the state law was already incorporated by the ACA in this action. There is no reason, however, for this fortuity of timing to serve as a means for the State to continue to use the ACA to bypass the limitations on state jurisdiction imposed by IGRA. As noted in Patmore, "[t]he purpose of the [ACA] is to supplement the Criminal Code of the United States by adopting state criminal statutes relating to acts or omissions . . . 'not made punishable by any enactment of Congress.'" Id. at 753. IGRA, however, now provides both civil and criminal sanctions for Indian gaming not in accordance with its provisions. See IGRA, 25 U.S.C. § 2713, 18 U.S.C. §§ 1166-1168. Congress has clearly occupied the regulatory field on Indian gaming. Although Oklahoma law was poured into the ACA as federal law by the district court, Congress has since poured in controlling federal law.<sup>21</sup>

Nor is it relevant that the prohibitions and penalties of Oklahoma law are different, and possibly broader than those imposed by IGRA. Congress is certainly free to impose greater or lesser penalties than those contained in state law. See Williams at 723 (the ACA was not intended to "enlarge or otherwise amend" definitions of federal crimes). As stated by the Eighth Circuit,

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We are mindful that in grounding part of our disposition on IGRA, we are applying a new statute not briefed or argued to us. However, the necessary factual predicate is before us and we are convinced that the result we reach is clearly indicated by the statute which Congress has now adopted.

"the legislative history [of IGRA] reveals that Congress intended to permit a particular gaming activity, even if conducted in a manner inconsistent with state law, if the state law merely regulated, as opposed to completely barred, the particular gaming activity." Sisseton-Wahpeton, 897 F.2d at 365 (footnote omitted).

Nor can it be said that Oklahoma's bingo laws fall within the exception in § 1166(d), *i.e.*, those laws which were not "made applicable under [that] section." *Id.* Such an argument would be specious in light of Indian Country, U.S.A.'s holding that Oklahoma's bingo laws are preempted as to Indian country, *id.* at 981-82, and the additional, unappealed rulings by the district court below that the Tyner allotment is Indian country and Oklahoma has no criminal jurisdiction over it. CL Nos. 9 & 16. This is not a case, like Iowa Tribes, 787 F.2d 1434 (10th Cir. 1986), wherein Congress specifically delegated jurisdiction to the State. *See id.* at 1438-40 (holding that the Kansas Act conferred jurisdiction on Kansas over non-major state offenses, including gambling, committed on Indian reservations); Ross v. Neff, 905 F.2d 1349, 1352 (10th Cir. 1990) ("Oklahoma has neither received by express grant nor acted pursuant to congressional authorization to assume criminal jurisdiction over this Indian country").

The United States is not before us. Oklahoma is.<sup>22</sup> Thus,

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We are pointedly aware of the Eleventh Amendment implications to our perception of this case. *See Edelman v. Jordan*, 415 U.S. 651 (1974). Notably, the relief obtained by the UKB in the district court consisted of a declaratory judgment against the State, CL No. 16, and a permanent injunction against the District Attorney for Tulsa County. There was no appeal by the State from the declaratory judgment. The caption designation of the defendant[s] reads: "The State of Oklahoma, ex rel. David Moss, District Attorney of Tulsa County." In both the brief and the Footnote continued on next page

although we would agree with the district court below on several of its findings and conclusions which are adverse to the tribe,<sup>23</sup> we must conclude that the appellant UKB is entitled to the equitable relief sought: the lifting of the injunction requested by the Tulsa County District Attorney. Accordingly, the injunction directed at the UKB and those assisting them in operation of the Horseshoe Bingo gaming venture is hereby VACATED. The amended permanent injunction enjoining the Tulsa County District Attorney, "and all persons acting in active concert with him or under his control[,]" as well as the declaratory judgment against the State of Oklahoma, are AFFIRMED.

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(Footnote continued): pleadings, however, the "District Attorney" and "State" designations have been used interchangeably. See, e.g., Answer and Counterclaim at 1 ("Comes now the State of Oklahoma"); Brief of Appellee at 10, 13, 14 (making assertions on behalf of "the State"); id. at 16 ("the District Attorney submits"). Nor is there any indication, of record, that the State Attorney General has sought formal appearance or intervention in this case. Accordingly, since the Tulsa County District Attorney has, all along, purported to represent the State, see CL Nos. 14, 16, 18, and no challenge has been made asserting otherwise, we perceive the State of Oklahoma as a party before us.

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Specifically, we agree that the lease and the JVA both had to be approved by the Secretary under § 81, and since they were not, they are unenforceable. See, e.g., A.K. Management Co. v. San Manuel Band of Mission Indians, 789 F.2d 785, 789 (9th Cir. 1986)("[A]n agreement without BIA approval must be null and void in its entirety"); Armstrong v. Maple Leaf Apartments, 508 F.2d 518, 525 (10th Cir. 1974)("An [Indian] deed without [the] requisite approval conveys no interest in the land").

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

**FILED**

APR 10 1991

SHELTER INSURANCE COMPANIES, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CARL MICHAEL DEMAURO, AUGUSTUS C. )  
 OLIVER, and FARMERS INSURANCE )  
 COMPANY, INC., )  
 )  
 Defendants. )

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

No. 90-C-809-B ✓

ORDER

Before the Court is the Motion to Dismiss filed by the defendant Farmers Insurance Company, Inc. ("Farmers"). In support of its motion, Farmers states that this Court lacks subject matter jurisdiction under 28 U.S.C. §1332 as the amount in controversy does not exceed \$50,000.00.

The plaintiff, Shelter Insurance Companies ("Shelter"), brought this action for declaratory judgment in order to determine its rights and liabilities under the automobile liability policy, #35-09239-10, that Shelter issued to Carl M. Demauro ("Demauro"). The insured, Demauro, is the defendant in a personal injury action filed in the District Court of Tulsa County on May 5, 1989. Pursuant to the policy, Shelter retained counsel to defend Demauro in that suit. Shelter now brings this declaratory judgment action alleging that Demauro violated the cooperation clause of the policy.

Farmers states that although Shelter alleges in its complaint that the amount in controversy exceeds \$50,000.00, the limits of

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Shelter's liability under the policy attached to the complaint is \$25,000.00. Farmers argues that it is irrelevant that the damages sought in the underlying state court action exceeds \$50,000.00; the correct measure of the amount in controversy in this action is the maximum policy limit of liability, because Shelter seeks declaratory judgment concerning its rights and liabilities under the policy.

*Motorists Mutual Insurance Co. v. Simpson*, 404 F.2d 511 (7th Cir. 1968), *cert. denied*, 393 U.S. 988 (1969).

Shelter concedes that the amount in controversy is not measured by the damages in the underlying state court action when such damages exceed the maximum policy limit. Shelter, however, argues that because Shelter contracted to provide a defense for the insured, the cost of such defense must be considered in determining the amount in controversy in the declaratory judgment action.<sup>1</sup>

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<sup>1</sup> Shelter cites *Stonewall Insurance Co. v. Lopez*, 544 F.2d 198, 199 (5th Cir. 1976), in support of its argument:

Stonewall's liability for bodily injury under the insurance contract at issue is limited to \$10,000 per person. . . . The controversy here, however, involves not only Stonewall's potential liability for the \$10,000, but also Stonewall's obligation to defend the state-court action against Moreno, its insured. If the insurance contract covers the accident in question, Stonewall is obligated by the contract's terms, to defend Moreno. If, on the other hand, the insurance contract does not apply to the accident in question, Stonewall has no obligation to provide a defense. The pecuniary value of the obligation to defend the separate lawsuit is properly considered in determining the existence of the jurisdictional amount.

Shelter maintains that the cost of defending the underlying action will exceed \$25,000.00, so that an amount greater than \$50,000.00 is in controversy in the declaratory judgment action.

The Court finds that Shelter's estimate of the cost of its defense of the insured is too speculative so the jurisdictional amount is lacking. The Court, therefore, sustains the motion to dismiss.

IT IS SO ORDERED, this 10<sup>th</sup> day of April, 1991.

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

THOMAS R. BRET  
UNITED STATES DISTRICT JUDGE

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

**FILED**

APR 10 1991

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

BOB WOLF and SHEILA WOLF, )  
d/b/a S & B LAUNDRY )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
CITY OF JAY, OKLAHOMA; and )  
JAY UTILITIES AUTHORITY, )  
 )  
Defendants. )

Case No. 90-C-309-B

ORDER

This matter comes on for consideration upon the Motion for Summary Judgment filed by Defendants, City of Jay, Oklahoma (City), and Jay Utilities Authority (Authority) on February 21, 1991.

In September, 1987, Plaintiffs purchased and began operating a self-service laundry in Jay, Oklahoma. The laundry was open 24 hours a day but not attended by Plaintiffs and their employees during the entire day.

Plaintiffs have Cherokee Indian heritage as do many of their customers as do many of the residents and citizens of Jay, including members of the Jay Utilities Authority Board.

In the fall of 1987, Plaintiffs began to experience difficulties with the Authority over alleged excessive water and gas bills, resulting in appearances by Plaintiffs before the Authority. The minutes of the Authority meetings reflect that

Plaintiffs were inadvertently undercharged for the month of November, 1987. After the undercharge was discovered and adjusted, the resulting next-month's bill was markedly higher, causing complaints by Plaintiffs.

During the next few months, Plaintiffs met with the Authority to discuss what Plaintiffs thought were excessive gas and water charges for the months of December 1987 through March of 1988. As a result of this dispute the Authority replaced several utility meters on Plaintiffs' premises. Although the old meters ran more slowly, causing a slight undercharge, the meters, new and old, had comparable readings. An expert selected by Plaintiffs verified the old meters ran slow.<sup>1</sup> Plaintiffs past due bills with the Authority mounted, totalling \$2,827.44 in late March when the new meters were installed.

Plaintiffs retained the services of an attorney, Gary Dean, whose letter of April 5 to the Authority which contained the following:

Mr. & Mrs. Wolf will pay \$1,000.00 on April 6 to be applied on their past due bill of \$2827.44, and you will continue service.

The balance of this bill will be placed in "suspense" until my clients have 3 months billing for services under the "New" meters which have been installed, after which we will meet with the authority to seek any billing adjustment the record warrants.

Mr. & Mrs. Wolf will remain current on accruing bills.

On or about June 23, 1988, Plaintiffs stopped payment on a check in the amount of \$662.02 representing payment of the May,

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<sup>1</sup> Expert R.A. Bishop verified the natural gas meter ran 2.2% slow on the open flow test and 1.8% slow on the check flow test.

1988, utility bill. At that time Plaintiffs had less than that amount in their checking account.<sup>2</sup> The Authority disconnected utility service to Plaintiffs' laundry, which Plaintiffs then closed. In November, 1988, Plaintiffs paid all of their past due utility charges in the amount of \$4,620.20 and the Authority re-connected utility service to the laundry which Plaintiffs then re-opened. Plaintiffs continue in the laundry business since that time.

Plaintiffs brought this action in the District Court for Delaware County, removed here by Defendants because of the implication of 42 U.S.C. §1983 and certain alleged federal constitutional claims. Specifically Plaintiffs claim, in six causes of action:

- (1) wrongful termination of Plaintiffs' utilities services;
- (2) negligent failure to replace defective utility meters
- (3) Plaintiffs were slandered by Jay City Mayor Bill Roberts who told other parties that Plaintiffs had not paid their Public Service electric bill.
- (4) wrongful interference with Plaintiffs' business, economic and contractual relationships with their customers.
- (5) violation of Plaintiffs' civil and constitutional rights by retaliation against Plaintiffs for appearing at Authority meetings.
- (6) discrimination against Plaintiffs because of their Indian heritage.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate

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<sup>2</sup> Plaintiff Sheila Wolf has testified that payment was stopped on the check because of a telephone conversation between Plaintiff Bob Wolf and Authority Chairman Bill Roberts. Sheila Wolf claims the essence of that conversation is that the Authority would not reconsider adjustment of the past due charges as per Attorney Dean's letter. Bob Wolf's version of the conversation is that he asked to meet with Roberts to discuss the adjustment of the old meter charges. Roberts' response was that the matter would have to be considered by the Authority Board, as per the parties' agreement, and could not be resolved by Roberts alone. Bob Wolf then scheduled the matter with the Authority at the next regular meeting.

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

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

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

Plaintiffs admit their state tort causes of actions are time barred by 51 O.S. §156(B) which the Court perceives to be causes (1)<sup>3</sup>, (2), (3) and (4). The Court concludes these causes of action should be and the same are herewith DISMISSED.

The Court concludes Plaintiffs' causes (5) and (6) cannot be factually supported. The termination of Plaintiffs' utilities services was due to non-payment of bills. There is no factual basis

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<sup>3</sup> Also, the Court is unaware of, and the Plaintiffs have not cited, authority for the alleged state tort in Plaintiffs' first cause of action, wrongful termination of Plaintiffs' utilities services, and Plaintiffs' second cause of action, negligent failure to replace defective utility meters.

to support the alleged violation of Plaintiffs' civil and constitutional rights in alleged retaliation of Plaintiffs exercising their freedom of speech by attending Authority meetings to protest their utility bills. Additionally there is no factual basis for the alleged discrimination against Plaintiffs because of their Indian heritage.<sup>4</sup> The Authority has not treated the other businesses (with alleged non-Indian clientele) any differently<sup>5</sup>.

Plaintiffs counter Defendants' statement of undisputed facts by excerpts from Plaintiffs' own depositions and three affidavits of present or former utility board members.

The affidavits, largely identical, are conclusionary and provide no factual statements sufficient to establish genuine dispute as to critical facts.<sup>6</sup> It is insufficient to allege conclusions to counter balance a Rule 56 motion where movant has set forth undisputed facts. Lockett v. Bethlehem Steel Corp., 618 F.2d 1373 (10th Cir. 1980); Bruce v. Martin-Marietta Corp., 544 F.2d 442 (10th Cir. 1976); Stevens v. Barnard, 512 F.2d 876 (10th Cir. 1975).

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<sup>4</sup> The Court notes with interest the Affidavit of Mayor Bill Roberts who is also Chairman of the utility Authority. Roberts is 3/16ths Cherokee, his son-in-law is a full blood Indian as is his daughter-in-law. Roberts has seven grandchildren all of whom are either 1/4 or 1/2 Indian.

<sup>5</sup> See letter of Larry and Linda O'Leary, exhibit No. 38 to Utility Wolf's deposition, who are owners of L & L Laundry, wherein both O'Learys state they have half Cherokee grandmothers and serve primarily an Indian clientele.

<sup>6</sup> For example, the affidavit of Teresa Tauuneacie, states that Plaintiffs were "treated differently with regard to their complaints about utility billing and meter service", yet fails to explain factually what that treatment was. The same is true of the affidavits of Marvin Summerfield and Randolph King Trujillo.

The excerpts from Plaintiffs' own depositions lend little to their cause. Neither Sheila Wolf's recollection of her husband's telephone conversation with Bill Roberts (see fn 2) nor Bob Wolf's version provide sufficient factual disputation to avoid summary judgment. Celotex, *supra*.

Plaintiffs factual allegations are against the Jay Utilities Authority, not the City of Jay. Plaintiffs are perhaps confused because of Bill Roberts' dual role as Chairman of the Authority and Mayor of the City. Plaintiffs have stated no factual basis for actionable claims against the City of Jay. Plaintiffs allege the City is responsible for the acts of individuals serving on the Utility Board since these same individuals serve as City councilmen. Plaintiffs fail to present any authority to support this conclusionary allegation. Notwithstanding, the matter is moot in view of the Court's ruling herein.

The Court concludes Defendants' Motion for Summary Judgment should be and the same is hereby GRANTED.

IT IS SO ORDERED this 10<sup>th</sup> day of April, 1991.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

FILED  
APR 10 1991  
JACK O. HILL, CLERK  
U.S. DISTRICT COURT

IN RE: ) M-1417  
ASBESTOS LITIGATION ) ASB NO. 5709

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NICHOLAS J. ANGELO, et ux	)	89-C-910-E
LEONARD A. BALLENGER, et ux	)	88-C-209-E
JAMES BATTLES, et ux	)	88-C-111-C
J. R. BEALL, et ux	)	88-C-292-C
WILLIS C. BELL, et ux	)	88-C-110-C
LaGRACE BENIGAR (GARLAND W. BENIGAR, Deceased)	)	88-C-438-C
JEROLD T. BRANHAM, et ux	)	90-C-537-E
WILBURN BRASELTON, et ux	)	90-C-538-B
RUDELL R. BRYCE, et ux	)	89-C-132-C
GUFFREY CARLTON, et ux	)	88-C-112-B
RICHARD E. CAVIN, et ux	)	89-C-983-C
JOHN E. CHOATE, et ux	)	90-C-539-E
ROSALIE CLARK (LOUIS O. CLARK, Deceased)	)	89-C-516-B
BONNIE JEAN COLE (WILLARD TRAVIS COLE, Deceased)	)	88-C-641-E
CHARLES E. COWELL	)	90-C-540-E
JAMES W. DICKERSON, et ux	)	89-C-336-E
MARY FLICKINGER (HERBERT E. FLICKINGER, Deceased)	)	90-C-260-C

ORDER OF DISMISSAL WITH PREJUDICE  
AS TO DEFENDANT FIBREBOARD CORPORATION ONLY

LEOLA FRANKLIN (HENRY FRANKLIN, Deceased)	)	90-C-69-E
JOHN GIESEN, et ux	)	88-C-492-B
PAULA GLASGOW, et al (THOMAS C. GLASGOW, Deceased)	)	89-C-1042-C
OLLINE Y. GORHAM (VIRGIL GORHAM, Deceased)	)	88-C-134-E
L. D. GOSS, et ux	)	89-C-127-E
FRED M. HAMMICK, et ux	)	89-C-569-B
HUBERT HUMPHREYS, et ux	)	90-C-541-C
RUTH BROWN (JESSE RAY HURST, Deceased)	)	89-C-133-E
MARSALETE INGRAM	)	89-C-988-E
HAZEL BUTLER (CHARLEY O. JONES, Deceased)	)	90-C-275-E
RUTH E. KAYSER (JOHN C. KAYSER, Deceased)	)	89-C-337-B
VIOLET KELLEY (FLOYD OSCAR KELLEY, Deceased)	)	88-C-132-C
ORAN LEE KELLY	)	90-C-542-B
JERRY L. LAMBERT, et ux	)	88-C-131-B
CHARLES R. LANCASTER, et ux	)	88-C-919-B
JESSE G. LEWIS, et ux	)	90-C-263-C
DONALD LOVETT, et ux	)	89-C-335-E
ROBERT L. MARKHAM, et ux	)	89-C-568-E
BEN H. MATHEWSON, et ux	)	89-C-985-B
BILL McGOUGH, et ux	)	90-C-543-E

ORDER OF DISMISSAL WITH PREJUDICE  
AS TO DEFENDANT FIBREBOARD CORPORATION ONLY

WILLIAM McNATT, et ux	)	88-C-493-C
	)	
VIOLA MILLER (PAUL RAY MILLER, Deceased)	)	90-C-280-E
	)	
ESTON NEWTON, et ux	)	90-C-544-E
	)	
IRA E. NICHOLSON, et ux	)	90-C-291-B
	)	
GERALD NICKS, et ux	)	88-C-304-B
	)	
LEE NORCROSS, et ux	)	89-C-567-B
	)	
GLADYS NORMAN (GEORGE D. NORMAN, Deceased)	)	89-C-834-E
	)	
LINLEY N. O'BANION, et ux	)	88-C-385-B
	)	
STANLEY J. O'BANION, et ux	)	88-C-92-E
	)	
CHESTER OSBORN, et ux	)	88-C-105-E
	)	
SUZAN ROHRBAUGH, et al (DOROTHY MAE PALMER, Deceased)	)	88-C-90-B
	)	
VELMA VIRGINIA PARKER (ERNEST L. PARKER, Deceased)	)	89-C-487-B
	)	
DELORIS PARTAIN (GRADY PARTAIN, Deceased)	)	89-C-844-C
	)	
IRVIN PRYOR, et ux	)	89-C-489-E
	)	
WILLIAM F. PUGH, et ux	)	88-C-387-C
	)	
IVAN DEAN RAMSEY, et ux	)	88-C-106-E
	)	
JEWEL JEAN COCHRAN and TERRY MELVIN SMITH (MELVIN EVERETT SMITH, Deceased)	)	87-C-521-B
	)	
NOLEN E. STIMSON, et ux	)	90-C-545-B
	)	
DON STOCKTON	)	88-C-108-B
	)	
HERMAN L. SWANK, et ux	)	88-C-1477-E

ORDER OF DISMISSAL WITH PREJUDICE  
AS TO DEFENDANT FIBREBOARD CORPORATION ONLY

HUBERT G. TRACY, et ux	)	88-C-1623-B
	)	
TRAVIS H. WELCH, et ux	)	90-C-546-B
	)	
TROY CECIL WILLIAMS, et ux	)	88-C-103-B
	)	
WEYBURN BYRON WILSON, et ux	)	88-C-104-B
	)	
J. B. WORSHAM, et ux	)	90-C-293-B
	)	
Plaintiffs,	)	
	)	
VS.	)	
	)	
FIBREBOARD CORPORATION,	)	
et al,	)	
	)	
Defendants.	)	

ORDER OF DISMISSAL WITH PREJUDICE  
AS TO DEFENDANT FIBREBOARD CORPORATION ONLY

NOW ON THIS \_\_\_\_\_ day of \_\_\_\_\_, 1991, the above-styled and numbered causes come before the undersigned Judges of the United States District Court for the Northern District of Oklahoma upon the Stipulation of Dismissal With Prejudice as to Defendant Fibreboard Corporation Only; and the Court, having examined the pleadings and being fully advised in the premises, finds that said causes should be dismissed, with prejudice, as to Defendant Fibreboard Corporation only, each party to pay their own costs, with these cases to remain pending against all other remaining Defendants.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above-styled and numbered causes be and the same are hereby dismissed, with prejudice, as to Defendant Fibreboard Corporation only, each party to pay their own costs. These

causes of action are to remain pending against all other remaining Defendants.

  
UNITED STATES DISTRICT JUDGE

  
UNITED STATES DISTRICT JUDGE

  
UNITED STATES DISTRICT JUDGE

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

FILED  
APR 10 1991  
JAMES C. HARRIS, CLERK  
U.S. DISTRICT COURT

IN RE: ) M-1417  
ASBESTOS LITIGATION ) ASB NO. 5710

---

- NICHOLAS J. ANGELO, et ux ) 89-C-910-E
- LEONARD A. BALLENGER, et ux ) 88-C-209-E
- JAMES BATTLES, et ux ) 88-C-111-C
- J. R. BEALL, et ux ) 88-C-292-C
- WILLIS C. BELL, et ux ) 88-C-110-C
- LaGRACE BENIGAR (GARLAND W. BENIGAR, Deceased) ) 88-C-438-C
- JEROLD T. BRANHAM, et ux ) 90-C-537-E
- WILBURN BRASELTON, et ux ) 90-C-538-B
- MARIE FERN BRISTOL (GENE BRISTOL, Deceased) ) 90-C-256-E
- RUDELL R. BRYCE, et ux ) 89-C-132-C
- GUFFREY CARLTON, et ux ) 88-C-112-B
- RICHARD E. CAVIN, et ux ) 89-C-983-C
- JOHN E. CHOATE, et ux ) 90-C-539-E
- ROSALIE CLARK (LOUIS O. CLARK, Deceased) ) 89-C-516-B
- BONNIE JEAN COLE (WILLARD TRAVIS COLE, Deceased) ) 88-C-641-E
- CHARLES E. COWELL ) 90-C-540-E
- JAMES W. DICKERSON, et ux ) 89-C-336-E

ORDER OF DISMISSAL WITH PREJUDICE AS TO  
DEFENDANT PITTSBURGH CORNING CORPORATION ONLY

MARY FLICKINGER (HERBERT E. FLICKINGER, Deceased)	)	90-C-260-C
LEOLA FRANKLIN (HENRY FRANKLIN, Deceased)	)	90-C-69-E
JOHN GIESEN, et ux	)	88-C-492-B
PAULA GLASGOW, et al (THOMAS C. GLASGOW, Deceased)	)	89-C-1042-C
OLLINE Y. GORHAM (VIRGIL GORHAM, Deceased)	)	88-C-134-E
L. D. GOSS, et ux	)	89-C-127-E
FRED M. HAMMICK, et ux	)	89-C-569-B
HUBERT HUMPHREYS, et ux	)	90-C-541-C
RUTH BROWN (JESSE RAY HURST, Deceased)	)	89-C-133-E
MARSALETE INGRAM	)	89-C-988-E
HAZEL BUTLER (CHARLEY O. JONES, Deceased)	)	90-C-275-E
RUTH E. KAYSER (JOHN C. KAYSER, Deceased)	)	89-C-337-B
VIOLET KELLEY (FLOYD OSCAR KELLEY, Deceased)	)	88-C-132-C
ORAN LEE KELLY	)	90-C-542-B
CHARLES R. LANCASTER, et ux	)	88-C-919-B
JESSE G. LEWIS, et ux	)	90-C-263-C
DONALD LOVETT, et ux	)	89-C-335-E
ROBERT L. MARKHAM, et ux	)	89-C-568-E
BEN H. MATHEWSON, et ux	)	89-C-985-B
BILL McGOUGH, et ux	)	90-C-543-E

ORDER OF DISMISSAL WITH PREJUDICE AS TO  
DEFENDANT PITTSBURGH CORNING CORPORATION ONLY

WILLIAM McNATT, et ux	)	88-C-493-C
	)	
VIOLA MILLER (PAUL RAY MILLER, Deceased)	)	90-C-280-E
	)	
ESTON NEWTON, et ux	)	90-C-544-E
	)	
IRA E. NICHOLSON, et ux	)	90-C-291-B
	)	
GERALD NICKS, et ux	)	88-C-304-B
	)	
LEE NORCROSS, et ux	)	89-C-567-B
	)	
GLADYS NORMAN (GEORGE D. NORMAN, Deceased)	)	89-C-834-E
	)	
LINLEY N. O'BANION, et ux	)	88-C-385-B
	)	
STANLEY J. O'BANION, et ux	)	88-C-92-E
	)	
CHESTER OSBORN, et ux	)	88-C-105-E
	)	
SUZAN ROHRBAUGH, et al (DOROTHY MAE PALMER, Deceased)	)	88-C-90-B
	)	
VELMA VIRGINIA PARKER (ERNEST L. PARKER, Deceased)	)	89-C-487-B
	)	
DELORIS PARTAIN (GRADY PARTAIN, Deceased)	)	89-C-844-C
	)	
IRVIN PRYOR, et ux	)	89-C-489-E
	)	
WILLIAM F. PUGH, et ux	)	88-C-387-C
	)	
IVAN DEAN RAMSEY, et ux	)	88-C-106-E
	)	
JEWEL JEAN COCHRAN and TERRY MELVIN SMITH (MELVIN EVERETT SMITH, Deceased)	)	87-C-521-B
	)	
NOLEN E. STIMSON, et ux	)	90-C-545-B
	)	
DON STOCKTON	)	88-C-108-B
	)	
HERMAN L. SWANK, et ux	)	88-C-1477-E

ORDER OF DISMISSAL WITH PREJUDICE AS TO  
DEFENDANT PITTSBURGH CORNING CORPORATION ONLY

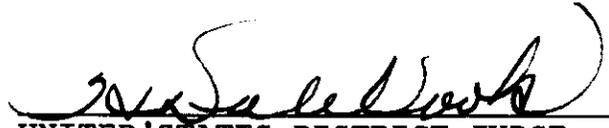
HUBERT G. TRACY, et ux	)	88-C-1623-B
	)	
TRAVIS H. WELCH, et ux	)	90-C-546-B
	)	
TROY CECIL WILLIAMS, et ux	)	88-C-103-B
	)	
WEYBURN BYRON WILSON, et ux	)	88-C-104-B
	)	
J. B. WORSHAM, et ux	)	90-C-293-B
	)	
Plaintiffs,	)	
	)	
VS.	)	
	)	
FIBREBOARD CORPORATION,	)	
et al,	)	
	)	
Defendants.	)	

ORDER OF DISMISSAL WITH PREJUDICE AS TO  
DEFENDANT PITTSBURGH CORNING CORPORATION ONLY

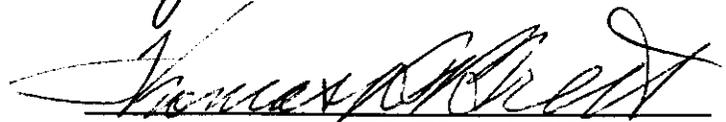
NOW ON THIS \_\_\_\_\_ day of \_\_\_\_\_, 1991, the above-styled and numbered causes come before the undersigned Judges of the United States District Court for the Northern District of Oklahoma upon the Stipulation of Dismissal With Prejudice as to Defendant Pittsburgh Corning Corporation Only; and the Court, having examined the pleadings and being fully advised in the premises, finds that said causes should be dismissed, with prejudice, as to Defendant Pittsburgh Corning Corporation only, each party to pay their own costs, with these cases to remain pending against all other remaining Defendants.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above-styled and numbered causes be and the same are hereby dismissed, with prejudice, as to Defendant Pittsburgh

Corning Corporation only, each party to pay their own costs.  
These causes of action are to remain pending against all other  
remaining Defendants.

  
UNITED STATES DISTRICT JUDGE

  
UNITED STATES DISTRICT JUDGE

  
UNITED STATES DISTRICT JUDGE

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

**FILED**

APR 9 1991

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

US WEST FINANCIAL SERVICES, )  
INC., a Colorado corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MOORAD MANAGEMENT, INC., an )  
Oklahoma corporation, et al., )  
 )  
Defendants. )

Case No. 88-C-1075-B

JOINT STIPULATION OF DISMISSAL  
WITHOUT PREJUDICE

Plaintiff US West Financial Services, Inc. ("US West") and Defendant Moorad Management, Inc. ("Moorad Management") hereby jointly stipulate, pursuant to Federal Rule of Civil Procedure 41(a)(1) and (c), to dismiss all claims asserted by and between them in this action, without prejudice to the refiling of the same.

Dated this 8 day of April, 1991.

LYNNWOOD R. MOORE, JR.  
J. DAVID JORGENSEN  
G. W. TURNER, III

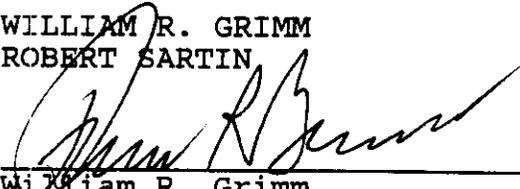
By: 

CONNER & WINTERS  
2400 First National Tower  
Tulsa, Oklahoma 74103  
(918) 586-5711

Attorneys for US WEST  
FINANCIAL SERVICES, INC.

WILLIAM R. GRIMM  
ROBERT SARTIN

By:

  
\_\_\_\_\_  
William R. Grimm

Barrow Gaddis Griffith & Grimm, P.C.  
Suite 300, 610 S. Main Street  
Tulsa, Oklahoma 74119-1224

Attorneys for MOORAD MANAGEMENT, INC.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 9<sup>th</sup> day of ~~March~~<sup>April</sup>, 1991, a true and correct copy of the foregoing was mailed, with proper postage affixed thereon, to:

Ronald E. Goins, Esq.  
Holliman, Langholz, Runnels & Dorwart  
10 East 3rd Street, Suite 700  
Tulsa, Oklahoma 74103

Kenneth C. Ellison, Esq.  
James R. Hayes, Esq.  
4815 South Harvard  
Suite 534  
Tulsa, Oklahoma 74135

Graydon Dean Luthey, Jr., Esq.  
Roy C. Breedlove, Esq.  
Steven W. Ray, Esq.  
3800 First National Tower  
Tulsa, Oklahoma 74103

C. Raymond Patton, Jr., Esq.  
Houston & Klein  
Suite 700  
320 South Boston  
Tulsa, Oklahoma 74103

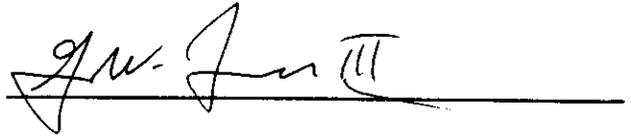
Ollie W. Greshamm, Esq.  
2727 E. 21st Street, Suite 206  
Tulsa, Oklahoma 74114

Steven W. Strange, Esq.  
5840 West I-20, Suite 230  
Arlington, Texas 76017

Ralph Richter, M.D.  
1705 E. 19th Street  
Tulsa, Oklahoma 74104

Thomas F. Birmingham, Esq.  
P. O. Box 701917  
Tulsa, Oklahoma 74170

David C. Duncan, M.D.  
602 S. Main  
Jenks, Oklahoma 74037

A handwritten signature in cursive script, appearing to read "D.C. Duncan", is written above a solid horizontal line.

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

**FILED**

APR 9 1991

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

US WEST FINANCIAL SERVICES, )  
INC., a Colorado corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MOORAD MANAGEMENT, INC., an )  
Oklahoma corporation, et al., )  
 )  
Defendants. )

Case No. 88-C-1075-B

JOINT STIPULATION OF DISMISSAL  
WITHOUT PREJUDICE

Plaintiff US West Financial Services, Inc. ("US West") and Defendant Singh & Singh, Inc. ("Singh & Singh") hereby jointly stipulate, pursuant to Federal Rule of Civil Procedure 41(a)(1) and (c), to dismiss all claims asserted by and between them in this action, without prejudice to the refiling of the same.

Dated this 9<sup>th</sup> day of April, 1991.

LYNNWOOD R. MOORE, JR.  
J. DAVID JORGENSEN  
G. W. TURNER, III

By: 

CONNER & WINTERS  
2400 First National Tower  
Tulsa, Oklahoma 74103  
(918) 586-5711

Attorneys for US WEST  
FINANCIAL SERVICES, INC.

MICHAEL E. YEKSAVICH

By:

  
Michael E. Yeksavich

Todd & Yeksavich  
Suite 110  
3747 S. Harvard Avenue  
Tulsa, Oklahoma 74135  
(918) 585-1181

Attorneys for SINGH & SINGH, INC.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 9<sup>th</sup> day of March, 1991, a true and correct copy of the foregoing was mailed, with proper postage affixed thereon, to:

Ronald E. Goins, Esq.  
Holliman, Langholz, Runnels & Dorwart  
10 East 3rd Street, Suite 700  
Tulsa, Oklahoma 74103

Kenneth C. Ellison, Esq.  
James R. Hayes, Esq.  
4815 South Harvard  
Suite 534  
Tulsa, Oklahoma 74135

Graydon Dean Luthey, Jr., Esq.  
Roy C. Breedlove, Esq.  
Steven W. Ray, Esq.  
3800 First National Tower  
Tulsa, Oklahoma 74103

C. Raymond Patton, Jr., Esq.  
Houston & Klein  
Suite 700  
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Tulsa, Oklahoma 74103

Ollie W. Greshamm, Esq.  
2727 E. 21st Street, Suite 206  
Tulsa, Oklahoma 74114

William R. Grimm, Esq.  
Barrow, Wilkinson, Gaddis,  
Griffith & Grimm  
610 South Main, Suite 300  
Tulsa, Oklahoma 74119

Ralph Richter, M.D.  
1705 E. 19th Street  
Tulsa, Oklahoma 74104

Thomas F. Birmingham, Esq.  
P. O. Box 701917  
Tulsa, Oklahoma 74170

David C. Duncan, M.D.  
602 S. Main  
Jenks, Oklahoma 74037



---

*Entered  
already  
closed*

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

JOHN MOSIER, }  
 }  
 Plaintiff, }  
 }  
 vs. }  
 }  
 OKLAHOMA DEPARTMENT OF }  
 CORRECTIONS, }  
 }  
 Defendant. }

No. 88-C-357-C

**FILED**

APR 9 1991

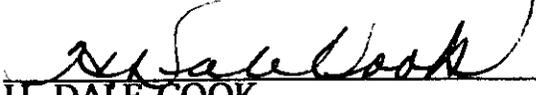
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

J U D G M E N T  
N U N C P R O T U N C

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 claim under 42 U.S.C. §1983.

IT IS SO ORDERED this 9th day of April, 1991.

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

*88*

**FILED**

**APR 9 1991**

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

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

SIT CATTLE COMPANY, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 JOHN MORLEDGE, FRANCES D. MORLEDGE, )  
 RANCH AID, INC., and SOWDER SEED CO., )  
 )  
 Defendants. )

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Civil Action

No. 89-C-857-B

VOLUNTARY DISMISSAL WITH PREJUDICE BY STIPULATION

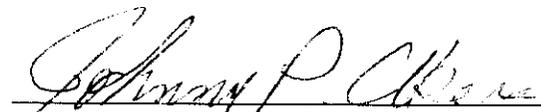
COME NOW the plaintiff, SIT Cattle Company, by its attorneys, T. E. Drummond and John B. DesBarres of the law firm of Drummond, Raymond, Hinds, DesBarres & Clausing, the defendants, John C. Morledge and Frances D. Morledge, by their attorney Johnny P. Akers of the law firm of Harris & Akers, the defendant Ranch Aid, Inc., by its attorney Kenneth R. Lang of the law firm of Morrison, Hecker, Curtis, Kuder & Parrish, and the defendant Sowder Seed Co., by its attorney Kathleen J. Adler of the law firm of Pierce, Couch, Hendrickson, Johnston & Baysinger, and hereby voluntarily dismiss the above-captioned action with prejudice <sup>as to the claims of SIT Cattle</sup> <sub>company</sub> agreeing that all costs incurred herein shall be taxed to the party incurring same. This voluntary dismissal with prejudice is submitted by stipulation signed by the attorneys for all parties who appear in this action pursuant to Rule 41 of the Federal Rules of Civil Procedure.



---

T. E. Drummond (OBA 2505)  
John B. DesBarres (OBA 12263)  
DRUMMOND, RAYMOND, HINDS, DesBARRES & CLAUSING  
1924 South Utica, Suite #1000  
Tulsa, Oklahoma 74104  
(918) 749-7378

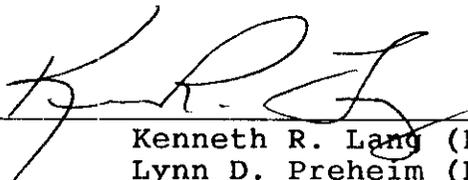
Attorneys for Plaintiff SIT Cattle Company



---

Johnny P. Akers (OBA 10711 )  
HARRIS & AKERS  
117 SE Frank Phillips Boulevard  
Bartlesville, Oklahoma 74003

Attorneys for Defendants  
John C. Morledge and Frances D. Morledge



---

Kenneth R. Lang (KS 13060)  
Lynn D. Preheim (KS 13300)  
MORRISON, HECKER, CURTIS, KUDER & PARRISH  
600 Union Center (316) 265-8800  
150 North Main Street  
Wichita, Kansas 67202-1320

Attorneys for Defendant Ranch Aid, Inc.



---

Kathleen J. Adler (OBA )  
PIERCE, COUCH, HENDRICKSON, JOHNSTON &  
BAYSINGER  
P. O. Box 26350  
Oklahoma City, Oklahoma 73126

Attorneys for Defendant Sowder Seed Co.

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

**FILED**

APR 9 1991

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

CHARLES E. BARKER, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 THE UNIVERSITY OF TULSA, )  
 )  
 Defendant. )

CASE NO. 90-C-733-E

STIPULATION OF  
DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, CHARLES BARKER, and dismisses the  
above styled matter against the Defendant, the University of  
Tulsa, with prejudice.

*Charles E. Barker*  
.....  
Charles E. Barker

*Walter M. Benjamin*  
..... OBA #702  
Walter M. Benjamin  
Attorney for Plaintiff  
2620 North Boston Place  
P.O. Box 6099  
Tulsa, OK 74148  
(918) 582-7257

THE UNIVERSITY OF TULSA  
by *David B. McKinney*  
.....  
David B. McKinney, Attorney for Def't.

CERTIFICATE OF DELIVERY

I, Walter M. Benjamin, hereby certify that on the 9 day of  
April, 1991, I delivered to the David B. McKinney, attorney for  
Defendant, University of Tulsa, at 800 Oneok Plaza, 100 W. 5th  
Street, Tulsa, OK 74103, a true and correct copy of the foregoing  
Dismissal with Prejudice.

*Walter M. Benjamin*  
.....  
Walter M. Benjamin

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

**FILED**

APR - 9 1991

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

DON STEWART ASSOCIATION, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 COMMISSIONER OF INTERNAL )  
 REVENUE, )  
 )  
 Defendant. )

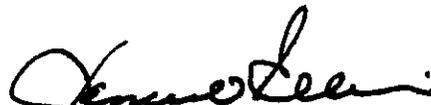
No. 90-C-219-E

O R D E R

NOW on this 8<sup>th</sup> day of April, 1991 comes on for hearing the above styled case and the Court, being fully advised in the premises finds that currently pending before the Court is Defendant's Motion to Dismiss for lack of subject matter jurisdiction. Defendants cited authorities establish that no jurisdiction is present at this time to adjudicate an action "with respect to federal taxes." Plaintiff asserts, however, that because Plaintiff seeks to have a provision of the Internal Revenue Code declared unconstitutional, the suit is not precluded. This Court finds, after careful review of the authorities cited, arguments made and exhibits provided, that Plaintiff's action at its core is, in fact, one brought with respect to federal taxes and that this Court is thus bereft of jurisdiction. See, e.g., Bob Jones University v. Simon, 416 U.S. 725 (1974). The Court notes that Plaintiff will not be deprived of a forum for its assertions of unconstitutionality, as those defenses could certainly be raised in any action timely brought under §7428 in a court with proper venue.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss must be and is hereby granted.

ORDERED this 8<sup>th</sup> day of April, 1991.



---

JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

**FILED**

APR - 9 1991

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

REUBEN LEE THOMAS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 89-C-792-E
	)	
RON CHAMPION, WARDEN, et al.,	)	
	)	
Defendants.	)	

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed April 17, 1990. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss is hereby granted and Plaintiff's Complaint is hereby dismissed.

ORDERED this 8<sup>th</sup> day of April, 1991.

  
 \_\_\_\_\_  
 JAMES O. ELLISON  
 UNITED STATES DISTRICT JUDGE

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

**FILED**

APR - 9 1991

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

WANDA C. BERRYMAN, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 LOUIS W. SULLIVAN, M.D., )  
 SECRETARY OF HEALTH AND )  
 HUMAN SERVICES, )  
 )  
 Defendant. )

No. 89-C-980-E

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed December 17, 1990. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that the decision of the Secretary of Health and Human Services denying disability benefits should be and is hereby affirmed.

ORDERED this 8<sup>th</sup> day of April, 1991.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

**FILED**

APR - 9 1991

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

DORIS A. TAYLOR, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 LOUIS B. SULLIVAN, SECRETARY, )  
 DEPARTMENT OF HEALTH AND )  
 HUMAN SERVICES, )  
 )  
 Defendant. )

No. 89-C-1002-E

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed January 9, 1991. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that this case is remanded for due consideration of the pain testimony.

ORDERED this 8<sup>th</sup> day of April, 1991.

  
\_\_\_\_\_  
JAMES C. ELLISON  
UNITED STATES DISTRICT JUDGE

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

**FILED**

APR - 9 1991

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

LOIS SHORT DOTSON, Surviving )  
Mother and next of kin to )  
Penny L. Short, deceased, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
U.S. CORP OF ENGINEERS, )  
 )  
Defendant. )

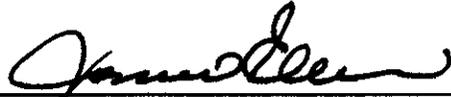
No. 90-C-670-E

ORDER

NOW on this 8<sup>th</sup> day of April, 1991 comes on for hearing the above styled case and the Court, being fully advised in the premises finds that currently pending before the Court is Defendant's Motion to Dismiss, or in the alternative, Motion for Summary Judgment. The Court has carefully reviewed the file regarding this matter, including the arguments made, authorities cited and exhibits provided, and finds that the law of this Circuit supports the application of the discretionary function exception to this case. The design and construction of the instant site falls within the planning-level process and is thus immune under the discretionary function exception. See Boyd v. United States, 881 F.2d 895 (10th Cir. 1989); Wright v. U.S., 568 F.2d 153 (10th Cir. 1977), cert. denied, 439 U.S. 824 (1978); Miller v. U.S., 710 F.2d 656 (10th Cir. 1983), cert. denied, 464 U.S. 939 (1983); Creek Nation Indian Housing Authority v. U.S., 905 F.2d 312 (10th Cir. 1990). Accordingly, this Court is bereft of jurisdiction and the case must be dismissed.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss  
must be and is hereby granted.

ORDERED this 8<sup>th</sup> day of April, 1991.



---

JAMES S. ELLISON  
UNITED STATES DISTRICT JUDGE

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

**FILED**

APR 9 1991

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

US WEST FINANCIAL SERVICES, )  
INC., a Colorado corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MOORAD MANAGEMENT, INC., an )  
Oklahoma corporation, et al., )  
 )  
Defendants. )

Case No. 88-C-1075-B

JOINT STIPULATION OF DISMISSAL  
WITHOUT PREJUDICE

Plaintiff US West Financial Services, Inc. ("US West") and Defendants Joe and Merli Fermo (the "Fermos"), hereby jointly stipulate, pursuant to Federal Rule of Civil Procedure 41(a)(1) and (c), to dismiss all claims asserted by and between them in this action, without prejudice to the refiling of the same.

Dated this 9<sup>th</sup> day of April, 1991.

LYNNWOOD R. MOORE, JR.  
J. DAVID JORGENSON  
G. W. TURNER, III

By: 

CONNER & WINTERS  
2400 First National Tower  
Tulsa, Oklahoma 74103  
(918) 586-5711

Attorneys for US WEST  
FINANCIAL SERVICES, INC.

By:

  
\_\_\_\_\_  
Grayden D. Luthey, Jr.

Jones, Givens, Gotcher & Bogan, P.C.  
3800 First National Towers  
Tulsa, Oklahoma 74103

Attorneys for JOE AND MERLI FERMO

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 9<sup>th</sup> day  
of ~~March~~<sup>April</sup>, 1991, a true and correct copy of the foregoing was  
mailed, with proper postage affixed thereon, to:

Ronald E. Goins, Esq.  
Holliman, Langholz, Runnels & Dorwart  
10 East 3rd Street, Suite 700  
Tulsa, Oklahoma 74103

Kenneth C. Ellison, Esq.  
James R. Hayes, Esq.  
4815 South Harvard  
Suite 534  
Tulsa, Oklahoma 74135

Graydon Dean Luthey, Jr., Esq.  
Roy C. Breedlove, Esq.  
Steven W. Ray, Esq.  
3800 First National Tower  
Tulsa, Oklahoma 74103

C. Raymond Patton, Jr., Esq.  
Houston & Klein  
Suite 700  
320 South Boston  
Tulsa, Oklahoma 74103

Ollie W. Greshamm, Esq.  
2727 E. 21st Street, Suite 206  
Tulsa, Oklahoma 74114

William LF. Grimm, Esq.  
Barrow, Wilkinson, Gaddis,  
Griffith & Grimm  
610 South Main, Suite 300  
Tulsa, Oklahoma 74119

Ralph Richter, M.D.  
1705 E. 19th Street  
Tulsa, Oklahoma 74104

Thomas F. Birmingham, Esq.  
P. O. Box 701917  
Tulsa, Oklahoma 74170

David C. Duncan, M.D.  
602 S. Main  
Jenks, Oklahoma 74037



---

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

**FILED**

APR 9 1991

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

US WEST FINANCIAL SERVICES, )  
INC., a Colorado corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MOORAD MANAGEMENT, INC., an )  
Oklahoma corporation, et al., )  
 )  
Defendants. )

Case No. 88-C-1075-B

JOINT STIPULATION OF DISMISSAL  
WITHOUT PREJUDICE

Plaintiff US West Financial Services, Inc. ("US West") and Defendant McCall Management, Inc. ("McCall Management") hereby jointly stipulate, pursuant to Federal Rule of Civil Procedure 41(a)(1) and (c), to dismiss all claims asserted by and between them in this action, without prejudice to the refiling of the same.

Dated this 9<sup>th</sup> day of April, 1991.

LYNNWOOD R. MOORE, JR.  
J. DAVID JORGENSON  
G. W. TURNER, III

By: J. W. Jorgenson

CONNER & WINTERS  
2400 First National Tower  
Tulsa, Oklahoma 74103  
(918) 586-5711

Attorneys for US WEST  
FINANCIAL SERVICES, INC.

STEVEN W. STRANGE

By: Steven W. Strange  
Steven W. Strange

4230 W. Green Oaks  
Suite E  
Arlington, Texas 76106

Attorney for McCALL MANAGEMENT, INC.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 9<sup>th</sup> day of ~~March~~<sup>April</sup>, 1991, a true and correct copy of the foregoing was mailed, with proper postage affixed thereon, to:

Ronald E. Goins, Esq.  
Holliman, Langholz, Runnels & Dorwart  
10 East 3rd Street, Suite 700  
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Tulsa, Oklahoma 74135

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Roy C. Breedlove, Esq.  
Steven W. Ray, Esq.  
3800 First National Tower  
Tulsa, Oklahoma 74103

C. Raymond Patton, Jr., Esq.  
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1705 E. 19th Street  
Tulsa, Oklahoma 74104

Thomas F. Birmingham, Esq.  
P. O. Box 701917  
Tulsa, Oklahoma 74170

David C. Duncan, M.D.  
602 S. Main  
Jenks, Oklahoma 74037



---

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MAURICE L. HARRIS; SHIRLEY A.  
TURNER a/k/a SHIRLEY ANN TURNER  
a/k/a SHIRLEY T. HARRIS a/k/a  
SHIRLEY TURNER HARRIS; UNION  
NATIONAL BANK; SHERIDAN SOUTH  
HOMEOWNERS' ASSOCIATION, INC.;  
STATE OF OKLAHOMA ex rel.  
OKLAHOMA TAX COMMISSION; COUNTY  
TREASURER, Tulsa County, Oklahoma;  
BOARD OF COUNTY COMMISSIONERS,  
Tulsa County, Oklahoma; and  
AMERICAN GENERAL FINANCE, INC.,

Defendants.

FILED

APR 8 - 1991

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

CIVIL ACTION NO. 90-C-618-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 3 day  
of April, 1991. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by J. Dennis Semler, Assistant District  
Attorney, Tulsa County, Oklahoma; the Defendant, State of  
Oklahoma ex rel. Oklahoma Tax Commission, appears by its  
attorney, Lisa Haws; the Defendant, First City Bank, N.A., f/n/a  
Union National Bank, appears by its attorney, David R. Guthery;  
and the Defendants, Maurice L. Harris, Shirley A. Turner a/k/a  
Shirley Ann Turner a/k/a Shirley T. Harris a/k/a Shirley Turner  
Harris, Sheridan South Homeowners' Association, Inc., and

ALL COPIES OF THIS ORDER AND  
ASSOCIATED DOCUMENTS MUST BE  
FORWARDED IMMEDIATELY  
UPON RECEIPT.

American General Finance, Inc., appear not, but make default.

The Court, being fully advised and having examined the court file, finds that the Defendant, Maurice L. Harris, was served with Summons and Amended Complaint on September 28, 1990; that Defendant, First City Bank, N.A., f/n/a Union National Bank, acknowledged receipt of Summons and Complaint on July 24, 1990; that Defendant, Sheridan South Homeowners' Association, Inc., acknowledged receipt of Summons and Complaint on July 19, 1990; that Defendant, American General Finance, Inc., acknowledged receipt of Summons and Amended Complaint on September 4, 1990; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on July 19, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on July 19, 1990.

The Court further finds that the Defendant, Shirley A. Turner a/k/a Shirley Ann Turner a/k/a Shirley T. Harris a/k/a Shirley Turner Harris, was served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning December 13, 1990 and continuing to January 17, 1991, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts

of the Defendant, Shirley A. Turner a/k/a Shirley Ann Turner a/k/a Shirley T. Harris a/k/a Shirley Turner Harris, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, Shirley A. Turner a/k/a Shirley Ann Turner a/k/a Shirley T. Harris a/k/a Shirley Turner Harris. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to her present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, filed his Answer on August 6, 1990; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on August 6, 1990; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer on July 30, 1990; that the Defendant, First City Bank, N.A., f/n/a Union National Bank, filed its Answer and Cross-Petition on August 22, 1990; that the Defendants, Maurice L. Harris, Shirley A. Turner a/k/a Shirley Ann Turner a/k/a Shirley T. Harris a/k/a Shirley Turner Harris, Sheridan South Homeowners' Association, Inc., and American General Finance, Inc., have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on September 27, 1989, Shirley Turner Harris a/k/a Shirley Ann Turner, filed her voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 89-02921C, and was discharged on January 10, 1990.

The Court further finds that on October 22, 1990, Maurice Lamar Harris filed his voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 90-03204W. On December 4, 1990, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtor by 11 U.S.C. § 362 and directing abandonment of the real property subject to this

foreclosure action and which is described below.

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

Lot One (1), Block Four (4) SHERIDAN SOUTH,  
an Addition to the City of Tulsa, Tulsa  
County, State of Oklahoma, according to the  
recorded Plat thereof.

The Court further finds that on July 17, 1985, the Defendants, Maurice L. Harris and Shirley A. Turner, 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 \$88,209.00, payable in monthly installments, with interest thereon at the rate of 11.5 percent (11.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Maurice L. Harris and Shirley A. Turner, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs,, a mortgage dated July 17, 1985, covering the above-described property. Said mortgage was recorded on July 18, 1985, in Book 4877, Page 2255, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Maurice L. Harris and Shirley A. Turner, 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, Maurice L. Harris and Shirley A. Turner, are indebted to the Plaintiff in the principal sum of \$86,411.34, plus interest at the rate of 11.5 percent per annum from September 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$364.15 (\$20.00 docket fees, \$7.80 fees for service of Summons and Complaint, \$336.35 publication fees).

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action by virtue of Motor Vehicle Warrant No. MVX 88 000066 00, filed February 29, 1988, in the amount of \$720.59 together with interest and penalty according to law. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, First City Bank, N.A., f/n/a Union National Bank, has a lien on the property which is the subject matter of this action by virtue of a Journal Entry of Judgment, No. CSJ 83-5704, filed December 29, 1983, in the District Court in and for Tulsa County, State of Oklahoma, and recorded February 28, 1985 in Book 4847, Page 547 in the records of Tulsa County, Oklahoma; there is currently due and owing First City, the principal sum of \$3,763.85 plus accrued interest in the sum of \$4,752.19 and attorney fees in the sum of \$627.93. Said lien is inferior to the interest of the Plaintiff,

United States of America.

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

The Court further finds that the Defendants, Sheridan South Homeowners' Association, Inc. and American General Finance, Inc., 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 in rem against the Defendants, Maurice L. Harris and Shirley A. Turner a/k/a Shirley Ann Turner a/k/a Shirley T. Harris a/k/a Shirley Turner Harris, in the principal sum of \$86,411.34, plus interest at the rate of 11.5 percent per annum from September 1, 1989 until judgment, plus interest thereafter at the current legal rate of 6.26 percent per annum until paid, plus the costs of this action in the amount of \$364.15 (\$20.00 docket fees, \$7.80 fees for service of Summons and Complaint, \$336.35 publication fees), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, First City Bank, N.A., f/n/a Union National Bank, have and recover judgment in the amount of \$3,763.85 plus accrued

interest in the sum of \$4,752.19, and attorney fees in the sum of \$627.93.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover judgment in the amount of \$720.59, together with interest and penalty according to law.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Sheridan South Homeowners' Association, Inc., American General Finance, Inc., County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

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

**First:**

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

**Second:**

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

**Third:**

In payment of the Defendant, First City Bank, N.A.,  
f/n/a Union National Bank, in the amount of \$3,763.85  
plus accrued interest in the sum of  
\$4,752.19, and attorney fees in the sum of  
\$627.93.

**Fourth:**

In payment of the Defendant, State of Oklahoma ex rel.  
Oklahoma Tax Commission, in the amount of  
\$720.59, together with interest and penalty  
according to law.

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

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

(Signed) H. Dale Cook

---

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

---

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

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

*Lisa Haws*  
\_\_\_\_\_  
LISA HAWS, OBA #12695  
Attorney for Defendant,  
State of Oklahoma ex rel. Oklahoma Tax Commission

*David R. Guthery*  
\_\_\_\_\_  
DAVID R. GUTHERY, OBA #3668  
Attorney for Defendant,  
First City Bank, N.A. f/n/a Union National Bank

Judgment of Foreclosure  
Civil Action No. 90-C-618-C

PB/esr



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

THE RESOLUTION TRUST CORPORATION, )  
as Receiver of WILLIAMSBURG )  
SAVINGS BANK and Conservator of )  
WILLIAMSBURG FEDERAL SAVINGS AND )  
LOAN ASSOCIATION, )

Plaintiff, )

vs. )

INLAND MORTGAGE CORPORATION; )  
DAVID W. DUBE; and DANIEL L. )  
FLICK, )

Defendants. )

Case No. 90-C-576-C

FILED

APR 8 - 1991

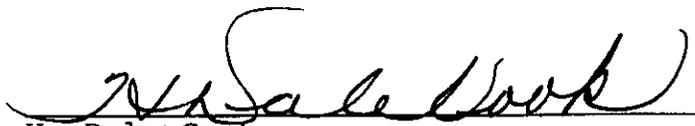
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER APPROVING ADMINISTRATIVE CLOSURE

On this 3<sup>rd</sup> day of April, 1991, there came on for consideration the Joint Motion and Stipulation for Administrative Closure filed in this case by the Plaintiff and the Defendant, Inland Mortgage Corporation. Upon consideration of the Joint Motion and Stipulation, the Court finds that the Motion for Administrative Closure should be granted.

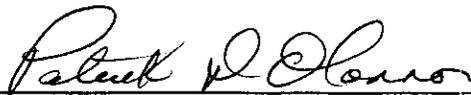
IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records without prejudice to the rights of the parties to reopen the proceeding for good cause shown, for the entry of any dismissal or judgment, or for any other purposes required to obtain a final determination of the litigation.

IT IS SO ORDERED this 3 day of April, 1991.



H. Dale Cook  
United States District Judge

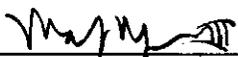
APPROVED AS TO FORM:



---

James H. Ferris, OBA #2883  
Patrick D. O'Connor, OBA #6743  
MOYERS, MARTIN, SANTEE, IMEL  
& TETRICK  
320 S. Boston, Suite 920  
Tulsa, Oklahoma 74103  
(918) 582-5281

Attorneys for Plaintiff, The  
Resolution Trust Corporation, as  
Receiver of Williamsburg Savings  
Bank and Conservator of Williamsburg  
Federal Savings & Loan Association



---

Mack J. Morgan  
Madalene A. B. Witterholt  
CROWE & DUNLEVY  
1800 Mid-America Tower  
20 North Broadway  
Oklahoma City, Oklahoma 73102

Attorneys for Defendants, Inland  
Mortgage Corporation; David W.  
Dube; and Daniel L. Flick

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

TANYA M. BESHEAR,

Plaintiff,

vs.

BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF MAYES COUNTY,  
OKLAHOMA and KARIN GARLAND,  
COURT CLERK of MAYES COUNTY,  
OKLAHOMA, individually and  
in her official capacity,

Defendants.

Case No. 90 C-429 C

**FILED**

**APR 8 - 1991**

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

**JUDGMENT**

This action came on for trial before the Court and a jury, Honorable H. Dale Cook, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict.

IT IS ORDERED, AND ADJUDGED that the Plaintiff Tanya Beshear recover of the Defendants, the sum of \$ 10,038.00 with post judgment interest thereon at the rate of 7.8%. Costs are assessed against the Defendants if timely application is made pursuant to local rule six (6). Plaintiff is entitled to an award of attorney fees if timely application is made pursuant to local rule six (6).

(Signed) H. Dale Cook

*H. Dale Cook*  
Clerk of the United States District  
Court for the Northern District of  
Oklahoma

*Entered  
does not  
close*

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

APR 8 - 1991

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ONE 1988 MERCEDES, )  
VIN WDBEA90DXJF071052, )  
and )  
ONE LADIES DIAMOND )  
AND SAPPHIRE RING, )  
 )  
Defendants. )

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

CIVIL ACTION NO. 90-C-904-C

JUDGMENT OF FORFEITURE

This cause having come before this Court upon Plaintiff's Application filed herein, and being otherwise fully advised in the premises, it is hereby

ORDERED, ADJUDGED, AND DECREED that Judgment be entered against the following-described defendant ring:

**One Ladies Diamond and  
Sapphire Ring,**

and against all persons or entities interested in such defendant ring, and that the said defendant ring be, and the same is, hereby forfeited to the United States of America for disposition by the United States Marshal according to law.

(Signed) H. Dale Cook

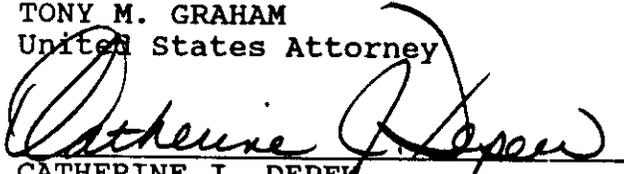
H. DALE COOK, CHIEF JUDGE OF THE  
UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

NOTE: THIS COURT IS TO BE MAILED  
BY THE CLERK OF THE COURT AND  
FROM BE FORWARDED IMMEDIATELY  
UPON RECEIPT.

**APPROVED:**

UNITED STATES OF AMERICA

TONY M. GRAHAM  
United States Attorney

A handwritten signature in cursive script, appearing to read "Catherine J. DePew", written over a horizontal line.

CATHERINE J. DEPEW  
Assistant United States Attorney

CJD/ch  
01368

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

FILED

APR -8 1991

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

DAVID A. WHITE, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THE UNIVERSITY OF TULSA, )  
 et al., )  
 )  
 Defendants. )

No. 90-C-421-C ✓

ORDER

Before the Court is the motion of Professor Winona Tanaka to dismiss Counts V through X of plaintiff's First Amended Complaint as against her. The motion was filed February 7, 1991. Despite being granted an extension of time, plaintiff has failed to respond. Pursuant to Rule 15 of the Local Rules, the motion is deemed confessed.

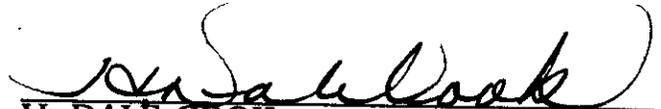
Also before the Court is the motion of all defendants except Tanaka to dismiss Counts IV, IX, and X of the First Amended Complaint. This motion, filed on February 6, 1991, has also not been responded to and is granted.

It is the Order of the Court that the motion of defendant Tanaka to dismiss is hereby granted. Counts V through X of the First Amended Complaint are hereby dismissed as to defendant Tanaka.

It is the further Order of the Court that the motion of all defendants except Tanaka to dismiss is hereby granted. Counts IV,

IX and X of the First Amended Complaint are dismissed as to those defendants.

*IT IS SO ORDERED* this 17<sup>th</sup> day of April, 1991.



H. DALE COOK

Chief Judge, U. S. District Court

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

CAL H. MCKINNEY and CAROL A. )  
MCKINNEY, husband and wife, )  
d/b/a ORACLE DATA SYSTEMS, )  
 )  
Plaintiffs, )

Case No. 90-C-255 C ✓

vs. )  
 )  
WESTERN FEDERAL CORPORATION, )  
an Arizona corporation, )  
 )  
Defendant. )

**FILED**  
APR 8 1991

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

JUDGMENT

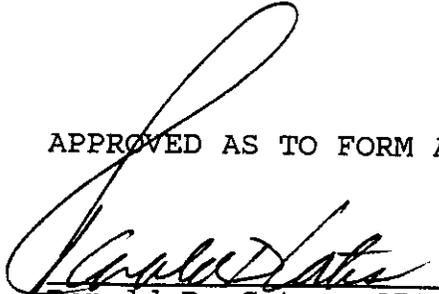
In accordance with the Settlement Agreement entered into by the parties herein and pursuant to the agreement of the parties as evidenced by the signatures of their attorneys hereto, it is hereby

ORDERED, ADJUDGED AND DECREED that the Plaintiffs Cal H. McKinney and Carol A. McKinney d/b/a Oracle Data Systems have and recover judgment from Defendant Western Federal Corporation in the amount of \$40,000.00.

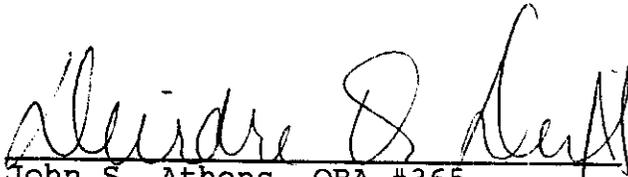
DATED: April 8, 91.

  
THE HONORABLE H. DALE COOK  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

  
\_\_\_\_\_  
Ronald D. Cates, OBA #1565  
CATES & COBB, P.A.  
109 Executive Center  
12620 East 86 Street North  
Owasso, Oklahoma 74055

Attorney for Plaintiffs



John S. Athens, OBA #365  
Deirdre O. Dexter, OBA #10780  
CONNER & WINTERS  
2400 First National Tower  
Tulsa, Oklahoma 74103  
(918) 586-5711

Attorneys for Defendant

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

FILED

APR -8 1991

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

HARTFORD INSURANCE COMPANY OF THE )  
MIDWEST, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MICHAEL SCOTT STOOL and SAM STOOL, )  
 )  
Defendants.)

No. 90-C-731-C

JOURNAL ENTRY OF JUDGMENT

NOW on this 8 day of April, 1991, comes on to be heard the Plaintiff's Motion for Summary Judgment in the above-captioned case. After considering said Motion and Brief in support thereof, it is the Order of this Court that said Motion is hereby granted. The Court finds as follows:

1. The Plaintiff has no duty to indemnify the Defendants for any liability they may incur as a result of the injuries and loss sustained by Denise Rogers on or about March 12, 1989.

2. The Plaintiff has no duty to defend the Defendants in any action brought by Denise Rogers arising out of the injuries and loss sustained by Denise Rogers on or about March 12, 1989.

3. Policy number 38 UEC FB8676 issued by the Plaintiff to the Defendant, Sam Stool, d/b/a Mike's Cleaning Service, provides no coverage for the injuries and loss sustained by Denise Rogers on or about March 12, 1989.

4. The Plaintiff is entitled to judgment in its favor on the Defendants' counter-claim for bad faith breach of the insurance contract.

IT IS SO ORDERED this 8<sup>th</sup> day of April, 1991.

(Signed) H. Dale Cook

\_\_\_\_\_  
THE HONORABLE H. DALE COOK

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

FILED

JERALD M. SCHUMAN, )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Defendant )  
 )  
 v. )  
 )  
 RALPH W. JACKSON and )  
 ARTHUR POOL, )  
 )  
 Additional Defendants )  
 on Counterclaim )

APR 8 - 1991

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

CIVIL NO. 86-C-744-C

FINAL JUDGMENT

Default Judgment was entered in this case on February 25, 1991 against Defendant on Counterclaim, Arthur Pool and in favor of Defendant, United States of America; the Plaintiff, Jerald M. Schuman's action against the Defendant, United States of America and the Defendant, United States of America's Counterclaims against Plaintiff, Jerald M. Schuman and Defendant on Counterclaim, Ralph W. Jackson came on for trial before the Court and a jury, Honorable Dale Cook, Chief Judge, presiding, and the issues having been duly tried and the jury having duly rendered its answers to special interrogatories, the Court finds that the Defendant, United States of America, recover judgment against Plaintiff, Jerald M. Schuman and Defendant on Counterclaim, Ralph W. Jackson, for the assessments against each pursuant to § 6672 of the Internal Revenue Code (100% penalty) in connection with the payroll tax liabilities of Chase Oil Field Service, Inc. for

the third and fourth quarters of 1981; Chase Drilling Corp. for the third quarter of 1981; Chase Exploration Corp. for the third and fourth quarters of 1981 and the first and second quarters of 1982; and CEC Supply Co., Inc. for the third and fourth quarters of 1981. It is therefore

ORDERED, ADJUDGED, and DECREED that Defendant, United States of America, recover of the Defendant on Counterclaim, Arthur Pool, judgment in the amount of \$265,608.66, plus interest and statutory additions as provided by law from the date of assessments June 9, 1986 until paid. It is further

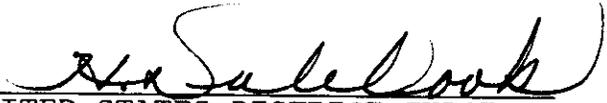
ORDERED, ADJUDGED, and DECREED that Defendant, United States of America, recover of the Defendant on Counterclaim, Ralph W. Jackson, judgment in the amount of \$265,608.66, plus interest and statutory additions as provided by law from the date of assessments June 9, 1986 until paid. It is further

ORDERED, ADJUDGED AND DECREED that the Plaintiff, Jerald M. Schuman, take nothing on his complaint against Defendant, United States of America. It is further

ORDERED, ADJUDGED, and DECREED that Defendant, United States of America, recover on its counterclaim against the Plaintiff, Jerald M. Schuman, judgment in the amount of \$265,608.66, plus interest and statutory additions as provided by law from the date of assessments, June 9, 1986 until paid. It is further

ORDERED, ADJUDGED AND DECREED that costs are to be taxed  
against Plaintiff, Jerald M. Schuman and Defendants on  
Counterclaim, Ralph W. Jackson and Arthur Pool.

DONE this 2nd day of April, 1991.

  
UNITED STATES DISTRICT JUDGE

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

FILED

APR 8 1991

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

PUBLIC SERVICE COMPANY OF )  
OKLAHOMA, an Oklahoma )  
Corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
INTERNATIONAL BROTHERHOOD )  
OF ELECTRICAL WORKERS, )  
LOCAL 1002, an Unincorporated )  
Association, )  
 )  
Defendant. )

No. 91-C-28-E

JUDGMENT

This action came before the Court, Honorable James O. Ellison, District Judge, presiding, upon the parties' cross motions for summary judgment and the Court finds that Plaintiff's motion for summary judgment should be denied; Defendant's motion for summary judgment should be granted.

IT IS THEREFORE ORDERED that Defendant's motion for summary judgment be and is hereby granted, that Plaintiff's motion for summary judgment is hereby denied; that the case be dismissed on the merits, and that costs and attorney's fees will be awarded upon proper application.

ORDERED this 8<sup>th</sup> day of April, 1991.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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

**FILED**

THOMSON MCKINNON SECURITIES INC., )  
a Delaware corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
TURNER CORPORATION OF OKLAHOMA, )  
INC., an Oklahoma corporation, )  
 )  
Defendant. )

APR 8 1991

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

Case No. 89-C-502-B

**ORDER**

Upon joint application of the parties, it is hereby ordered that the captioned case is hereby administratively closed until July 31, 1991, or until any party affirmatively requests it to be reopened.

So Ordered this 8th day of April, 1991.

S/ THOMAS R. BRETT

---

THOMAS R. BRETT,  
UNITED STATES DISTRICT JUDGE

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

**F I L E D**

**APR 8 1991**

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

EMMA LOU GULLEY,  
Plaintiff,

vs.

LOUIS W. SULLIVAN,  
SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Defendant.

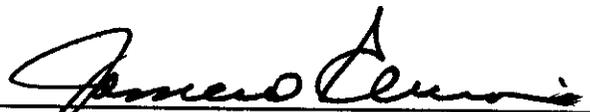
No. 90-C-485-E

O R D E R

The Court has for consideration the Findings and Recommendations of the Magistrate filed January 21, 1991. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate that claimant is entitled to disability benefits should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that the Findings and Recommendations of the Magistrate are hereby affirmed and adopted by the Court.

ORDERED this 8<sup>th</sup> day of April, 1991.



JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE







CERTIFICATE OF MAILING

I, Eugene P. de Verges, do hereby certify that a true and correct copy of the above and foregoing Dismissal with Prejudice was mailed on the 5th day of April, 1991, with postage fully prepaid to the following:

William Hohauser, Esq.  
Shearson Lehman Brothers, Inc.  
388 Greenwich Street  
New York City, New York 10013

  
Eugene P. de Verges

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

FILED  
APR 03 1991  
J. S. [unclear] Clerk  
U.S. DISTRICT COURT

LEONARD ARABIA, et al., )  
 )  
Plaintiffs, )  
 )  
and )  
 )  
PRENTICE THOMAS, et al., )  
 )  
Intervenors, )  
 )  
v. )  
 )  
GIANT PETROLEUM, INC., et al., )  
 )  
Defendants. )

Case No. 89-C-091B

ORDER DISMISSING KERR-MCGEE CORPORATION,  
TOM AND JUDY ELIAS, THE SODA STRAW, INC.,  
PHILCO PETROLEUM CO., AND MERFCO, INC.

The Court has reviewed the Joint Stipulation of Dismissal of Kerr-McGee Corporation, Tom and Judy Elias, The Soda Straw, Inc., Philco Petroleum Co., and Merfco, Inc. which has been filed by the parties to this action pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedures and finds the stipulation is well taken.

IT IS THEREFORE ORDERED that defendants Kerr-McGee Corporation, Tom and Judy Elias, The Soda Straw, Inc., Philco Petroleum, Co. and Merfco, Inc. are hereby dismissed from this action. Each party to bear its own costs and attorney's fees.

  
United States District Judge

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

INDREX, INC.,

Plaintiff,

v.

MOBIL OIL CORPORATION,

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

90-C-610-E

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

FILED  
APR 2 1991  
E D

STIPULATED ORDER OF DISMISSAL

IT IS HEREBY STIPULATED, by and between counsel for all parties hereto subject to the approval of the Court, as follows:

1. All claims presented by the complaint and all the counterclaims herein shall be dismissed with prejudice as to all parties pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

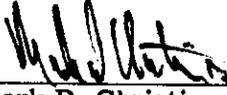
2. Each party shall bear his or its own costs and attorneys' fees.

DATED this 22<sup>nd</sup> day of March, 1991.

*Gene C. Buzzard*

Gene C. Buzzard, OBA# 1396  
GABLE & GOTWALS, INC.  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-9201

ATTORNEYS FOR PLAINTIFF,  
INDREX, INC.

  
\_\_\_\_\_  
Mark D. Christiansen  
CROWE & DUNLEVY  
500 Kennedy Building  
321 South Boston  
Tulsa, Oklahoma 74103-3313  
(918) 592-9800

ATTORNEYS FOR DEFENDANT,  
MOBIL OIL CORPORATION

SO ORDERED:

*S/* JAMES O. ELLISON

\_\_\_\_\_  
United States District Judge  
Dated 4-2-91, 1991

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

FILED

APR 02 1991

NICOLE DAVIS,

Plaintiff,

vs.

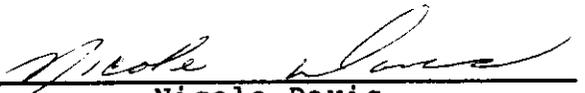
Case No. 90-C-274-B

EATERIES, INC. d/b/a GARFIELD'S  
RESTAURANT AND PUB,

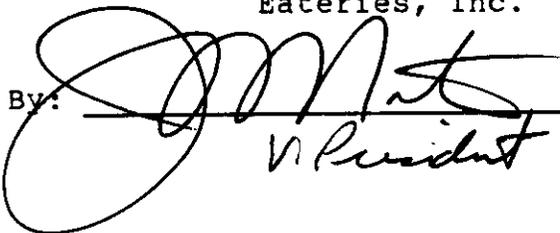
Defendant.

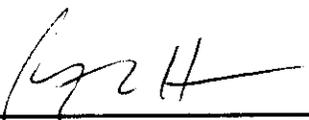
DISMISSAL WITH PREJUDICE

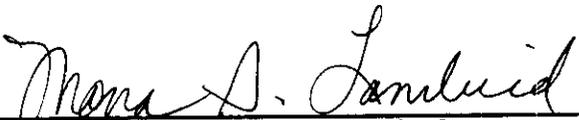
Come now the parties and pursuant to a separate confidential agreement move to dismiss this action with prejudice.

  
\_\_\_\_\_  
Nicole Davis

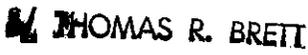
Eateries, Inc.

BY:   
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Steven R. Hickman  
Attorney for Plaintiff

  
\_\_\_\_\_  
Mona S. Lambird  
Attorney for Defendant

It is so ordered this 2<sup>nd</sup> day of ~~December~~ <sup>April</sup> ~~1990~~ <sup>January</sup>, 1991.

  
\_\_\_\_\_  
THOMAS R. BRETT  
JUDGE OF THE DISTRICT COURT

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

MARTHA BURKS,

Plaintiff,

vs.

Case No. 89-C-664-E

LARRY R. COGGINS and  
PATTY G. COGGINS; FIRST  
SECURITY MORTGAGE COMPANY;  
and RESOLUTION TRUST  
CORPORATION, Successor to  
the Federal Savings and Loan  
Insurance Corporation, as  
Receiver of Cross Roads  
Savings and Loan, a State  
Banking Association,

Defendants,

and

RESOLUTION TRUST CORPORATION,  
successor to the Federal Savings  
and Loan Insurance Corporation as  
Conservator of Cross Roads  
Savings and Loan Association,  
F.A.,

Cross-Claimant.

**FILED**

**APR 2 1991**

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

ORDER

NOW ON THIS 2<sup>nd</sup> day of April, 1991,  
Plaintiff's Request for an Order directing dismissal with  
prejudice, and for good cause shown, this Court hereby dismisses  
any and all of Plaintiff's 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, and as to the Defendants  
Larry and Patty Coggins.

IT IS FURTHER ORDERED that all 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 First Security Mortgage Company, or any other personal entity.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT COURT  
JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA APR 2 1991

MARTHA BURKS, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
LARRY R. COGGINS and )  
PATTY G. COGGINS; FIRST )  
SECURITY MORTGAGE COMPANY; )  
and RESOLUTION TRUST )  
CORPORATION, Successor to )  
the Federal Savings and Loan )  
Insurance Corporation, as )  
Receiver of Cross Roads )  
Savings and Loan, a State )  
Banking Association, )  
 )  
Defendants, )  
 )  
and )  
 )  
RESOLUTION TRUST CORPORATION, )  
successor to the Federal Savings )  
and Loan Insurance Corporation as )  
Conservator of Cross Roads )  
Savings and Loan Association, )  
F.A., )  
 )  
Cross-Claimant. )

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

Case No. 89-C-664-E

ORDER

NOW ON THIS 2<sup>nd</sup> day of April, 1991,  
upon Joint-Request by the Plaintiff, Martha Burks 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 Defendant, First Security Mortgage Company,  
without prejudice as to the refiling of same.

S/ JAMES O. ELISON

UNITED STATES DISTRICT COURT  
JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SANDRA E. BRYANT a/k/a SANDRA )  
 ELAINE BRYANT; HEAVENLY ENERGY )  
 SYSTEM; DENBO'S; BRIERCROFT )  
 SERVICE CORP.; OKLAHOMA TAX )  
 COMMISSION; COUNTY TREASURER, )  
 Rogers County, Oklahoma; and )  
 BOARD OF COUNTY COMMISSIONERS, )  
 Rogers County, Oklahoma, )  
 )  
 Defendants. )

FILED  
APR 02 1991  
COURT

CIVIL ACTION NO. 90-C-937-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 2<sup>nd</sup> day  
of April, 1991. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Kathleen Bliss Adams, Assistant United States  
Attorney; the Defendants, County Treasurer, Rogers County,  
Oklahoma, and Board of County Commissioners, Rogers County,  
Oklahoma, appear by Bill M. Shaw, Assistant District Attorney,  
Rogers County, Oklahoma; the Defendant, State of Oklahoma ex rel.  
Oklahoma Tax Commission, appears not, having previously filed its  
Disclaimer; and the Defendants, Sandra E. Bryant a/k/a Sandra  
Elaine Bryant, Heavenly Energy System, Denbo's and Briercroft  
Service Corp., appear not, but make default.

The Court, being fully advised and having examined the  
court file, finds that the Defendant, Denbo's, acknowledged  
receipt of Summons and Complaint on November 19, 1990; that the  
Defendant, Briercroft Service Corp., acknowledged receipt of

Summons and Complaint on November 14, 1990; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on November 5, 1990; and that Defendant, County Treasurer, Rogers County, Oklahoma, acknowledged receipt of Summons and Complaint on November 6, 1990.

The Court further finds that the Defendants, Sandra E. Bryant a/k/a Sandra Elaine Bryant and Heavenly Energy System, were served by publishing notice of this action in the Claremore Daily Progress, a newspaper of general circulation in Rogers County, Oklahoma, once a week for six (6) consecutive weeks beginning January 10, 1991, and continuing to February 14, 1991, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Sandra E. Bryant a/k/a Sandra Elaine Bryant and Heavenly Energy System, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Sandra E. Bryant a/k/a Sandra Elaine Bryant and Heavenly Energy System. The Court

conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Farmers Home Administration, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Rogers County, Oklahoma, and Board of County Commissioners, Rogers County, Oklahoma, filed their Answer and Cross-Petition on November 9, 1990; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Disclaimer on November 14, 1990; and that the Defendants, Sandra E. Bryant a/k/a Sandra Elaine Bryant, Heavenly Energy System, Denbo's and Briercroft Service Corp. have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on April 21, 1987, Sandra Elaine Bryant filed her voluntary petition in bankruptcy in

Chapter 7 in the United States Bankruptcy Court, Eastern District of California, Case No. 87-01503, was discharged on September 10, 1987, and the case was closed on November 13, 1987.

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

Lot 2 in Block 1 of Walnut Park Addition, an addition to the City of Claremore, Rogers County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on April 22, 1977, Harry A. Brewster and Frances S. Brewster executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$23,500.00, payable in monthly installments, with interest thereon at the rate of 8 percent per annum.

The Court further finds that as security for the payment of the above-described note, Harry A. Brewster and Frances S. Brewster, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated April 22, 1977, covering the above-described property. Said mortgage was recorded on April 22, 1977, in Book 515, Page 435, in the records of Rogers County, Oklahoma.

The Court further finds that on July 15, 1981, Harry A. Brewster and Frances S. Brewster executed a Warranty Deed regarding the subject property to Sandra E. Bryant. Said Deed

was recorded on July 15, 1981 in Book 604, Page 361, in the records of Rogers County, Oklahoma.

The Court further finds that on July 15, 1981, the Defendant, Sandra E. Bryant, executed an Assumption Agreement regarding the subject property to the United States of America, acting through the Farmers Home Administration.

The Court further finds that on July 15, 1981, Sandra E. Bryant executed and delivered to the United States of America, acting through the Farmers Home Administration, her promissory note in the amount of \$14,680.00, payable in monthly installments, with interest thereon at the rate of 13 percent per annum.

The Court further finds that as security for the above-described note, the Defendant, Sandra E. Bryant executed and delivered to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated July 15, 1981, covering the above-described property. This mortgage was recorded on July 15, 1981 in Book 604, Page 362 in the records of Rogers County, Oklahoma.

The Court further finds that on or about July 15, 1981, the Defendant, Sandra E. Bryant, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on or about May 21, 1983, the Defendant, Sandra E. Bryant, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on or about May 30, 1984, the Defendant, Sandra E. Bryant, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on or about May 31, 1985, the Defendant, Sandra E. Bryant, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on or about May 7, 1986, the Defendant, Sandra E. Bryant, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on May 13, 1987, the United States of America, on behalf of the Farmers Home

Administration, executed a Release From Personal Liability regarding Harry A. Brewster and Frances S. Brewster.

The Court further finds that the Defendant, Sandra E. Bryant a/k/a Sandra Elaine Bryant, made default under the terms of the aforesaid note, mortgage, and interest credit agreements, by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Sandra E. Bryant a/k/a Sandra Elaine Bryant, is indebted to the Plaintiff in the principal sum of \$36,489.25, plus accrued interest in the amount of \$10,454.37 as of January 22, 1990, plus interest accruing thereafter at the rate of \$10.1908 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of \$10,200.00, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$292.70 (\$20.00 docket fees, \$264.70 publication fees, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendant, County Treasurer, Rogers County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of the following personal property taxes:

<u>TAX YEAR</u>	<u>AMOUNT</u>	<u>ENTERED ON LIEN DOCKET</u>
1986	\$31.08	June 18, 1987
1987	28.38	June 20, 1988
1988	21.64	June 19, 1989
1989	19.48	June 15, 1990

Said liens are inferior to the interest of the Plaintiff, United States of America.

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

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, disclaims any right, title or interest in the subject real property.

The Court further finds that the Defendants, Heavenly Energy System, Denbo's, and Briercroft Service Corp., are in default and have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendant, Sandra E. Bryant a/k/a Sandra Elaine Bryant, in the principal sum of \$36,489.25, plus accrued interest in the amount of \$10,454.37 as of January 22, 1990, plus interest accruing thereafter at the rate of 10.1908 per day until judgment, plus interest thereafter at the current legal rate of 6.44 percent per annum until paid, and the further sum due and owing under the interest credit agreements of \$10,200.00, plus interest on that sum at the legal rate from judgment until paid, plus the costs of this action in the amount of \$292.70 (\$20.00 docket fees, \$264.70 publication fees, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance,

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

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendant, County Treasurer, Rogers County, Oklahoma, have and recover judgment in the amount of \$100.58 for personal property taxes for the years 1986-1989, plus the costs of this action.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendants, Heavenly Energy System, Denbo's, Briercroft Service Corp., State of Oklahoma ex rel. Oklahoma Tax Commission, and Board of County Commissioners, Rogers County, Oklahoma, have no right, title, or interest in the subject real property.

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

**First:**

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

**Second:**

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

**Third:**

In payment of Defendant, County Treasurer, Rogers County, Oklahoma, in the amount of \$100.58, personal property taxes which are currently due and owing.

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

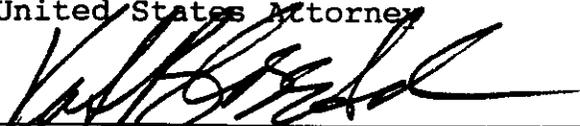
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney



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



BILL M. SHAW, OBA #10127  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Rogers County, Oklahoma

Judgment of Foreclosure  
Civil Action No. 90-C-937-B  
KBA/esr

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

**FILED**

APR 1 1991

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

LOWRANCE ELECTRONICS, INC., a )  
corporation, and LEI EXTRAS, )  
INC., a corporation, )  
Plaintiffs, )  
vs. )  
TECHSONIC INDUSTRIES, INC., )  
a corporation, and JIMMY )  
HOUSTON, an individual, )  
Defendants. )

Case No. 91-C-0083-B

**AGREED ORDER**

Plaintiffs' Motion for Preliminary Injunction comes on for hearing. Pursuant to the agreement of Plaintiffs Lowrance Electronics, Inc. and LEI Extras, Inc. (collectively "Lowrance") and Defendant Techsonic Industries, Inc., the following Order is entered:

1. Plaintiffs' Motion for Preliminary Injunction filed on March 7, 1991 remains pending with the Court's ruling thereon to be held in abeyance. The parties stipulate that the Motion for Preliminary Injunction does not apply to Mr. Houston's claims in the pending matter styled Jimmy Houston v. Lowrance Electronics, Inc., et al., Case No. C-91-94 in the District Court of Cherokee County, Oklahoma. ("Houston Lawsuit"). The Motion for Preliminary Injunction shall apply to any effort by Techsonic to initiate or pursue any claims or actions in the Houston Lawsuit or otherwise intervene therein.

2. In the event Techsonic Industries, Inc. or any of its agents or representatives (collectively "Techsonic") intend to

file or initiate another legal or equitable action or proceeding in any other court against Lowrance based upon or arising out of the transactions or occurrences that are the subject matter of the claims set forth in the Plaintiffs' First Amended Complaint, then Techsonic shall be required to deliver to Lowrance's attorneys in this case a complete copy of all the summons, pleadings or other documents to be served pursuant to F.R.Civ.P. 4 to commence any such action or proceeding, including the exact identification of jurisdiction and court in which such actions or proceedings will be filed, and shall deliver the pleading and this information to Lowrance's attorneys in Tulsa, Oklahoma fifteen (15) days in advance of the filing or initiation of any such legal or equitable actions or proceedings in any other courts.

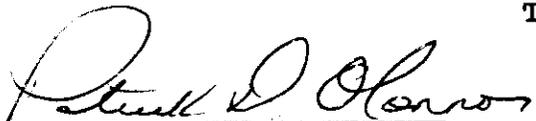
3. In the event Techsonic delivers such notice to Plaintiffs' counsel as delineated in paragraph 2 above, seeking or attempting to file, or otherwise initiate any other legal or equitable actions or proceedings against Lowrance in any other court or courts, based upon or arising out of the transactions or occurrences that are the subject matter of the claims set forth in the Plaintiff's First Amended Complaint, then within three days of Lowrance's attorneys receiving such notice, Lowrance shall file with the Court its application seeking a hearing on its Motion for Preliminary Injunction at the earliest possible date available on the Court's calendar, and Lowrance shall have the right to an immediate hearing before this Court on the

subject of Lowrance's pending Motion for Preliminary Injunction. Techsonic agrees and stipulates the Anti-Injunction Act, 28 U.S.C. § 2283 is not applicable to any State Court action, filed or initiated after March 7, 1991, for purposes of Lowrance's pending Motion for Preliminary Injunction.

*THOMAS R. BRETT*

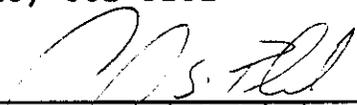
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THE HONORABLE THOMAS R. BRETT  
UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA



---

J. Randall Miller  
Patrick D. O'Connor  
John E. Rooney, Jr.  
Moyers, Martin, Santee  
Imel & Tetrick  
Suite 900  
320 South Boston Avenue  
Tulsa, Oklahoma 74103  
(918) 582-5281



---

Robert F. Biolchini  
Albert J. Givray  
Charles S. Plumb  
John J. Carwile  
Doerner, Stuart, Saunders,  
Daniel & Anderson  
320 S. Boston, Suite 500  
Tulsa, Oklahoma 74103  
(918) 582-1211

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

FILED

APR -1 1991

FEDERAL DEPOSIT INSURANCE )  
CORPORATION, in its corporate )  
capacity, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
J. F. STOABS & SONS, INC., )  
an Oklahoma corporation, et al., )  
 )  
Defendants. )

JACK G. OLIVER, CLERK  
U.S. DISTRICT COURT

Case No. 91-C-0044-C

STIPULATION OF DISMISSAL OF DEFENDANT JACK STOABS

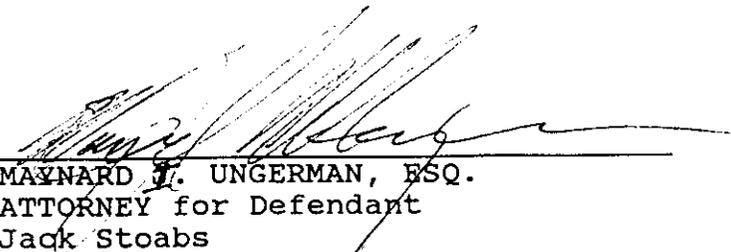
The undersigned representing all parties who have appeared herein, pursuant to Rule 41 (a) (1) of the Federal Rules of Civil Procedure, hereby stipulate to the dismissal without prejudice of Defendant Jack Stoabs from the above entitled cause and action.

Respectfully submitted,



Bradley K. Beasley, OBA #628  
Of BOESCHE, McDERMOTT & ESKRIDGE  
800 Oneok Plaza  
100 West Fifth Street  
Tulsa, Oklahoma 74103  
(918) 583-1777

ATTORNEY FOR PLAINTIFF  
FEDERAL DEPOSIT INSURANCE CORPORA-  
TION



---

MAYNARD J. UNGERMAN, ESQ.  
ATTORNEY for Defendant  
Jack Stoabs

---

T. E. DRUMMOND, ESQ.  
ATTORNEY for Defendant  
Lodema P. Florer

---

LARRY D. STUART, DISTRICT ATTORNEY,  
on behalf of Joyce Hathcoat, County  
Treasurer of Osage County

---

ROBERT P. KELLY, ESQ.,  
ATTORNEY for Defendants  
Charles J. Nelson  
John J. Florer  
J.F. Stoabs & Sons, Inc.

---

MAYNARD J. UNGERMAN, ESQ.  
ATTORNEY for Defendant  
Jack Stoabs



---

T. E. DRUMMOND, ESQ.  
ATTORNEY for Defendant  
Lodema P. Florer

---

LARRY D. STUART, DISTRICT ATTORNEY,  
on behalf of Joyce Hathcoat, County  
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---

MAYNARD J. UNGERMAN, ESQ.  
ATTORNEY for Defendant  
Jack Stoabs

---

T. E. DRUMMOND, ESQ.  
ATTORNEY for Defendant  
Lodema P. Florer

*Larry D. Stuart by John S. Boyd, Jr. Assist. DA.*  
LARRY D. STUART, DISTRICT ATTORNEY,  
on behalf of Joyce Hathcoat, County  
Treasurer of Osage County

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ROBERT P. KELLY, ESQ.,  
ATTORNEY for Defendants  
Charles J. Nelson  
John J. Florer  
J.F. Stoabs & Sons, Inc.

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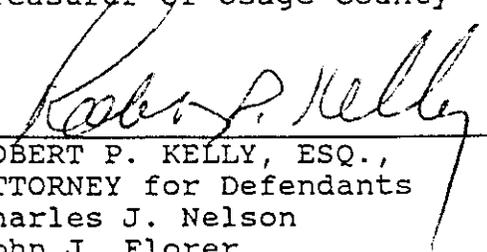
MAYNARD J. UNGERMAN, ESQ.  
ATTORNEY for Defendant  
Jack Stoabs

---

T. E. DRUMMOND, ESQ.  
ATTORNEY for Defendant  
Lodema P. Florer

---

LARRY D. STUART, DISTRICT ATTORNEY,  
on behalf of Joyce Hathcoat, County  
Treasurer of Osage County



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ROBERT P. KELLY, ESQ.,  
ATTORNEY for Defendants  
Charles J. Nelson  
John J. Florer  
J.F. Stoabs & Sons, Inc.

WMH/SB

FILED

APR -1 1991

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

D. SHAW CLERK  
DISTRICT COURT

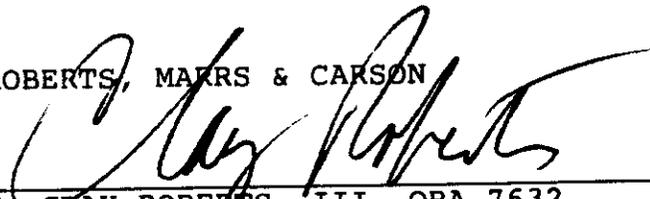
DANIEL I. CULLEY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 HILLCREST MEDICAL CENTER; )  
 ANNIE VENUGOPAL, M.D., and )  
 JOHN RUFFING, M.D., )  
 )  
 Defendants. )

Case No. 90-C-862-C

STIPULATION OF DISMISSAL

Come now the parties and stipulate to the dismissal of the above styled and numbered cause with prejudice as to Hillcrest Medical Center, only.

ROBERTS, MARRS & CARSON



C. CLAY ROBERTS, III, OBA 7632  
110 South Hartford, Suite 111  
Tulsa, Oklahoma 74120  
(918) 582-6567

Attorneys for Plaintiff

SECRET & HILL

By: 

W. MICHAEL HILL, OBA 4213  
DAN W. ERNST, OBA 2753  
7134 South Yale, Suite 900  
Tulsa, OK 74136  
Telephone: (918) 494-5905

Attorneys for Defendant,  
Hillcrest Medical Center

entered  
already  
closed

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

FILED

APR -1 1991 *rm*

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

NATALIE JOHNSON, et al., )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 INDEPENDENT SCHOOL DISTRICT )  
 NO. 4 OF BIXBY, TULSA COUNTY, )  
 OKLAHOMA, et al., )  
 )  
 Defendants. )

No. 88-C-340-C ✓

ORDER

Before the Court is the motion of the defendant for stay of Order pending review on certiorari. This Court's decision in favor of defendants was reversed by the Tenth Circuit Court of Appeals. See Johnson v. Independent School District No. 4, 921 F.2d 1022 (10th Cir. 1990). The appellate court remanded the case to this Court for further proceedings. Upon receipt of the mandate, this Court remanded the action to the Oklahoma State Department of Education for further administrative hearing. Defendants move for a stay pursuant to 28 U.S.C. §2101(f).

By its terms, §2101(f) permits a stay to be granted by a judge of the court rendering the judgment complained of or by a justice of the Supreme Court. Defendant seeks review of the judgment of the appellate court, not this Court. This Court is without authority to issue a stay. See In re Stumes, 681 F.2d 524, 525

(8th Cir. 1982); Hovater v. Equifax Services, Inc., 669 F.Supp. 392, 393 (N.D.Ala. 1987).

In their response, plaintiffs state that they do not oppose a stay until twenty days after the Supreme Court determines whether to grant certiorari. If the parties agree on the matter, filing the present motion was unnecessary.

It is the Order of the Court that the motion of the defendant for stay is hereby DENIED.

*IT IS SO ORDERED* this 29<sup>th</sup> 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  
1991

BICH NGOC BUI,  
  
Plaintiff,  
  
v.  
  
SECRETARY, UNITED STATES  
DEPARTMENT OF HEALTH AND HUMAN  
SERVICES  
  
Defendant.

Judge C. Silver, Clerk  
No. 90-C-305-B

FILED  
APR 01 1991

ORDER

Before the Court is the Report and Recommendation of the U.S. Magistrate recommending that this case be remanded for a second hearing before an Administrative Law Judge (ALJ).

Pursuant to 42 U.S.C. §405(g), the plaintiff brought this action seeking judicial review of a final decision of the Secretary of Health and Human Services (Secretary) denying Social Security Disability (SSD) and Supplemental Security Income (SSI) benefits to the plaintiff. The matter was referred to the United States Magistrate who entered his report on December 18, 1990 finding that the plaintiff's hearing before the ALJ on August 9, 1988 was inadequate due to the failure of the interpreter to translate questions and answers correctly.<sup>1</sup>

The Secretary objects to the Magistrate's finding and recommendation, stating that the ALJ discharged his "basic duty of inquiry to inform himself about facts relevant to his decision and

<sup>1</sup> The plaintiff speaks Vietnamese, but is unable to communicate in English. The Social Security Administration arranged for an interpreter to be present at the hearing.

to learn the claimant's own version of those facts." *Jordan v. Heckler*, 835 F.2d 1314, 1315 (10th Cir. 1987). The Secretary argues that even if miscommunication and misunderstanding occurred during the hearing, the record contains substantial subjective and objective evidence upon which the ALJ could arrive at his decision.

The Court finds the Secretary's argument unpersuasive. The Court agrees with the Magistrate that the transcript reveals several obvious misunderstandings and confusing translations during the hearing. (TR 34,36,39,41,44,46-47,53-56,59,61,64-66). The Court further finds that due to the inadequacy of the hearing, substantial evidence did not exist to enable the ALJ to conclude that the plaintiff did not meet the Listing of Impairments.

The ALJ's decision was based on his evaluation of the plaintiff's disability under Sections 12.04 and 12.06 of the Listing of Impairments, Appendix 1, Subpart P, Regulations No.4. The ALJ found that the plaintiff met the "'A' criteria of Listing 12.04 [affective disorders] and 12.06 [anxiety-related disorders], but does not meet the 'B' criteria, which determine the severity of mental impairments." The "B" criteria require evaluation of the above disorders' functional limitation on plaintiff's daily activities, social functioning, concentration, and ability to adapt to stress in work-like settings (Psychiatric Review Technique F, TR-19).

It is difficult for the Court to understand how the ALJ could adequately arrive at his determination as to the severity of the plaintiff's mental impairment without satisfactorily communicating

with the plaintiff. Certainly, the plaintiff would be able to provide testimony as to her daily activities, social functioning, etc. that would be rather helpful to the ALJ in his evaluation of her mental disability. Indeed the only "objective" evidence the ALJ cites in his decision concerning the severity of the plaintiff's mental impairment is the psychiatric evaluation of Dr. Thomas Goodman. Dr. Goodman, however, not only diagnoses the plaintiff's symptoms as indicative of post-traumatic stress syndrome (TR 156) and concludes that "[a]s far as I could tell, the claimant is a very terrified woman who is suffering considerably and has a rather marked change of her life from working 2 jobs at one time to being unable to function and keep 1 job," (TR 157), but he repeatedly states his concern and frustration as to the inadequacy of his own communication with the plaintiff during his examination:

She at first gave the impression of understanding the questions and comments of the examiner, although later it became apparent that there was very poor communication without interpretation by her husband. Most of the information, even mental status examination, was done via the husband's interpretation. . . . I could find no evidence of looseness or bizarreness in her speech but again I had to rely heavily upon the interpretation of her husband (Mental Status Examination, TR 156) . . . .

. . . .

The claimant is difficult to evaluate because of her speech difficulty and her lack of being able to communicate in English. . . . Treatment in this case would be difficult unless one is able to contact a person who speaks Vietnamese. (Conclusions and Other Comments, TR 156-157).

For the above reasons, the Court adopts the U.S. Magistrate's

Report and Recommendation and remands this case to the Secretary of Health and Human Services for another hearing.

IT IS SO ORDERED, this 15<sup>th</sup> day of April, 1991.

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

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

**FILED**

APR - 1 1991

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

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

THELMA R. SPENCER and ROBERT E. SPENCER, )  
individually and as husband and wife, )  
 )  
Plaintiffs, )

vs. ) Case No.: 90-C-640 E  
 )

KEVIN COLE; AMERICAN FAMILY MUTUAL )  
INSURANCE COMPANY, a foreign corporation; )  
UNITED SOUTHERN ASSURANCE COMPANY, a )  
foreign corporation; PORT CASTAWAYS; )  
KATHY HIX, as owner, proprietor and/or )  
license holder of Port Castaways; and )  
PHILLIPS PETROLEUM COMPANY, a foreign )  
corporation, d/b/a PHILLIPS 66 FOOD PLAZA, )  
 )  
Defendants.)

ORDER OF DISMISSAL OF DEFENDANT, KEVIN COLE

The Court being fully advised in the premises and on consideration of the parties' Joint Stipulation of Dismissal of With Prejudice finds that such Order should issue.

BE IT, THEREFORE, ORDERED, ADJUDGED AND DECREED that Plaintiff's causes against Kevin Cole are hereby dismissed with prejudice with said parties to bear their respective costs, and the Plaintiffs to reserve all their rights against all other remaining Defendants.

DATED this 28<sup>th</sup> day of March, 1991.

JAMES O. ELLISON

James O. Ellison, United States District  
Judge of the Northern District of Oklahoma

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

FILED

APR -1 1991 *mm*

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

EVELYN M. STANLEY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DAIRYLAND INSURANCE COMPANY, )  
 )  
 Defendant. )

No. 90-C-688-C ✓

JUDGMENT

This matter came on for consideration of the motions for summary judgment of defendant. The issues having been duly considered and a decision has been duly rendered in accordance with the Order filed contemporaneously herewith,

IT IS THEREFORE ORDERED, JUDGED AND DECREED that judgment is hereby entered for defendant Dairyland Insurance Company and against plaintiff, and that plaintiff take nothing by way of this action.

IT IS SO ORDERED this \_\_\_\_\_ day of March, 1991.

*H. Dale Cook*  
\_\_\_\_\_  
H. DALE COOK  
Chief Judge, U. S. District Court

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

FILED

APR -1 1991 *rum*

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

EVELYN M. STANLEY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DAIRYLAND INSURANCE COMPANY, )  
 )  
 Defendant. )

No. 90-C-688-C /

ORDER

Before the Court is the motion of the defendant for summary judgment. This is an action seeking recovery on an insurance policy and for bad faith denial of an insurance claim.

Plaintiff alleges that on March 31, 1990, she was injured by a hit and run driver. Defendant refused to pay her claim. Defendant relies upon the following policy provision:

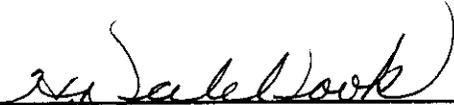
If the accident involves a hit and run driver it must be reported within 24 hours to the police or Commissioner of Motor Vehicles.

The parties do not dispute that plaintiff reported the nature of the accident to defendant's agent on April 2, 1990 and to the police on May 3, 1990. Defendant argues that, because this notice provision was not complied with, plaintiff may not recover under the policy. The Supreme Court of Oklahoma has not determined the validity of such a policy provision, but courts in other states have held them valid. See, e.g., State Farm County Mut. Ins. Co. of Texas v. Landers, 520 S.W.2d 604 (Tex.Civ.App. 1975); Friend v. State Farm Mut. Auto. Ins. Co., 746 S.W.2d 420 (Mo.App. 1988).

Even if plaintiff has a viable claim under the policy, the Court concludes that plaintiff has no viable bad faith claim. There is a legitimate dispute, and the defendant had a right to have this dispute settled in a judicial forum. See Duckett v. Allstate Ins. Co., 606 F.Sup. 728, 731 (W.D.Okla. 1984). The Court finds inapposite Brown v. United Services Auto. Ass'n, 684 P.2d 1195 (Okla. 1984), cited by plaintiff. That case holds that the victim of a hit and run driver has no duty of investigation as to identification. It does not address the duty of notification that a hit and run accident took place, which is the duty involved here.

It is the Order of the Court that the motion of the defendant for summary judgment is hereby GRANTED.

*IT IS SO ORDERED* this 20<sup>th</sup> 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

DOROTHY A. SCHELL,  
Plaintiff,  
v.  
LOUIS W. SULLIVAN, M.D.,  
Secretary of Health and Human  
Services,  
Defendant.

No. 90-C-409-B ✓

FILED

APR 21 1991

CLERK

O R D E R

Before the Court is the Report and Recommendation of the U.S. Magistrate recommending reversal of the decision of the Secretary of Health and Human Services (Secretary) to deny the plaintiff benefits under §§ 216(i) and 223 of the Social Security Act, as amended. The plaintiff brought this judicial review action pursuant to 42 U.S.C. §405(g), challenging the final decision of the Secretary. The matter was referred to the U.S. Magistrate who entered his report on December 14, 1990 finding that the plaintiff's impairment meets or equals §1104(B) of the Listing of Impairments under Appendix I to Subpart P of the Regulations, 20 C.F.R. §404.1520, and therefore, the plaintiff is automatically determined to be disabled.

The only issue before this Court is whether there is substantial evidence in the record to support the final decision of the Secretary. The Secretary's findings stand if they are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S.

389,401 (1971) (citing *Consolidated Edison Co. v. N.L.R.B.*, 305 U.S. 197, 229 (1938); *Teter v. Heckler*, 775 F.2d 1104, 1105 (10th Cir. 1985)). In deciding whether the Secretary's findings are supported by substantial evidence, the Court must consider the record as a whole. *Campbell v. Bowen*, 822 F.2d 1518, 1521 (10th Cir. 1987).

Section 11.04 (B) describes an automatic finding of disability when the claimant suffers from

*Central nervous system vascular accident.* With one of the following more than 3 months post-vascular accident: . . .

B. Significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C).<sup>1</sup>

The Administrative Law Judge (ALJ) found that the plaintiff had experienced a central nervous system vascular accident, but that it did not meet any listed impairment (Finding #5, TR 9). In light of the ALJ's Findings, the issue before the Court, stated more precisely, is whether there is substantial evidence in the record to support the ALJ's finding that plaintiff's impairment does not

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<sup>1</sup>Section 11.00C states:

C. Persistent disorganization of motor function in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory disturbances (any and all brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combination, frequently provides the sole or partial basis for decision in cases of neurological impairment. The assessment of impairment depends on the degree of interference with locomotion and/or interference with the use of fingers, hands and arms.

meet or equal that described in §11.04(B).

As noted in the Magistrate's Report, the plaintiff's impairment would meet the description in §1104(B) if she had "significant and persistent disorganization of motor function " in both of her legs "resulting in sustained disturbance of . . . gait." The Court agrees with the Magistrate that the evidence substantially supports this description of the plaintiff's impairment. 1) The plaintiff's treating physician, Donald Loveless, M.D., in addressing the plaintiff's complaint that her legs felt "rubbery" and that she felt as if she were going to fall, diagnosed her as "unsteady on feet" and referred her to Ord Mitchell, M.D., a neurologist (TR 100). 2) In his report, Dr. Mitchell concluded that "[t]he motor exam was normal. . . . Her gait is slightly wide base and a bit unsteady, perhaps a little greater on the left than the right" (TR 109). 3) The Secretary's consulting physician, Michael Karathanos, M.D., in his report stated the following:

Gait which was attempted both with her cane and without the cane showed that it is slightly wide based. She had difficulty performing tandem gait without support. . . . The gait was slightly wide based and somewhat hesitant. It was about 40-50% of normal speed. If she was slow enough it is fairly stable. Without the use of the cane however all of the above mentioned characteristics become much more prominent. (TR 114).

4) Furthermore, at the hearing, the plaintiff testified that her condition had substantially worsened since her last medical examination (TR 26) and that she could no longer use only a cane, but had to rely full-time on a "sidewalker" in order to ambulate. (TR 21 -22).

After reviewing the record and briefs, the Court concludes that the decision of the Secretary was not supported by substantial evidence. The Report and Recommendation of the U.S. Magistrate Judge, therefore, is affirmed.

IT IS SO ORDERED, this 1<sup>ST</sup> day of April, 1991.

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

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE