



**FILED**

APR 30 1991

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

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

JERRY R. HILL d/b/a J. R. HILL  
TRUCKING,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. 89-C-550 C

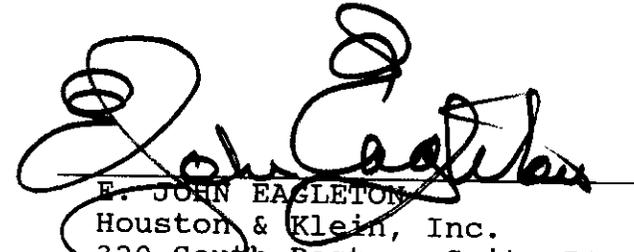
STIPULATION <sup>ob</sup> FOR DISMISSAL

It is hereby stipulated and agreed that this action shall be dismissed with prejudice, the parties to bear their own costs, including attorneys' fees.

PROPOSED BY:

TONY M. GRAHAM  
United States Attorney

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

  
\_\_\_\_\_  
E. JOHN EAGLETON  
Houston & Klein, Inc.  
320 South Boston, Suite 700  
Tulsa, Oklahoma 74103  
Tel. (918) 583-2131

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

RANDALL S. BANKSTON

Plaintiff(s),

vs.

SAFARI MANAGEMENT, et al

Defendant(s).

No. 90-C-157-B

**FILED**

APR 30 1991

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

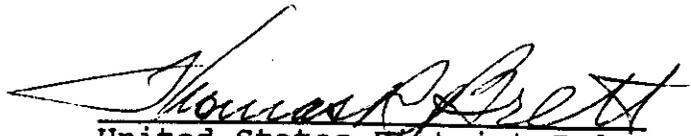
**JUDGMENT DISMISSING ACTION  
BY REASON OF SETTLEMENT**

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

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

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

IT IS SO ORDERED this 30<sup>th</sup> day of MAY April, 19 91.

  
United States District Judge  
THOMAS R. BRETT

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

MARK SAVAGE,  
Plaintiff,  
vs.

UNITED ARTISTS ENTERTAINMENT  
COMPANY, a Delaware corporation;  
and UNITED CABLE TELEVISION  
CORPORATION, a Delaware  
corporation,  
Defendants.

WILLIAM C. LUCAS,  
Plaintiff,

vs.

UNITED ARTISTS ENTERTAINMENT  
COMPANY, a Delaware corporation;  
and UNITED CABLE TELEVISION  
CORPORATION, a Delaware  
corporation,  
Defendants.

Case No. 89-C-989-B  
(CONSOLIDATED)

**FILED**

APR 30 1991

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

Case No.

89-C-990-EB

ORDER OF DISMISSAL

On stipulation of the parties, all of the plaintiffs' claims against the defendants herein are dismissed with prejudice. Each party shall bear his or its own attorneys' fees and costs.

DATED this 30th 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

MARK SAVAGE,

Plaintiff,

vs.

UNITED ARTISTS ENTERTAINMENT  
COMPANY, a Delaware corporation;  
and UNITED CABLE TELEVISION  
CORPORATION, a Delaware  
corporation,

Defendants.

WILLIAM C. LUCAS,

Plaintiff,

vs.

UNITED ARTISTS ENTERTAINMENT  
COMPANY, a Delaware corporation;  
and UNITED CABLE TELEVISION  
CORPORATION, a Delaware  
corporation,

Defendants.

Case No. 89-C-989-B  
(CONSOLIDATED)

**FILED**

APR 30 1991

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

Case No. 89-C-990-E

ORDER OF DISMISSAL

On stipulation of the parties, all of the plaintiffs' claims against the defendants herein are dismissed with prejudice. Each party shall bear his or its own attorneys' fees and costs.

DATED this 30th day of April, 1991.

S/ THOMAS R. BRETT

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

**FILED**

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

APR 30 1991

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

RONALD E. O'DELL and PAULA  
O'DELL, husband and wife,

Plaintiffs,

vs.

SUN REFINING AND MARKETING  
COMPANY,

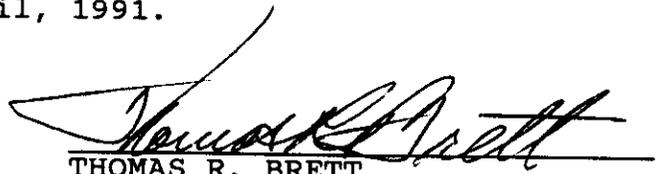
Defendant.

Case No. 89-C-434-B

J U D G M E N T

Pursuant to the verdict of the jury received and filed this date, Judgment is hereby entered in favor of Plaintiff, Ronald E. O'Dell, and against the Defendant, Sun Refining and Marketing Company, in the amount of One Dollar (\$1.00), plus prejudgment interest from the date of May 24, 1989 at the rate of 11.71% to this date, postjudgment interest from this date at the rate of 6.26% and the costs of this action, if timely applied for as provided in Local Rule 6. Judgment is granted to Defendant, Sun Refining and Marketing Company, and against the Plaintiff, Paula O'Dell, regarding her claim for loss of consortium. Further, Judgment is granted to Defendant, Sun Refining and Marketing Company, and against the Plaintiff, Ronald E. O'Dell, relative to his claim for alleged punitive damages.

DATED this 30th 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 30 1991

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

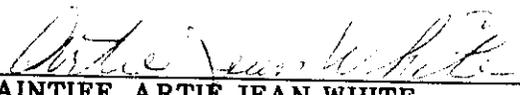
ARTIE JEAN WHITE, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 THE PRINCIPAL FINANCIAL GROUP )  
 INC., and METAL DYNAMICS )  
 CORPORATION, )  
 )  
 Defendants. )

No. 89-C-232-B

STIPULATION OF DISMISSAL WITH PREJUDICE

The Plaintiff, Artie Jean White, and Defendant, Principal Mutual Life Insurance Company (referred to in the caption as The Principal Financial Group, Inc.), hereby state to the Court that they have reached a settlement in this lawsuit and hereby stipulate for dismissal of this cause with prejudice.

The parties have executed a certain General Release, Indemnification Agreement and Covenant Not to Sue which sets forth the specific covenants of Plaintiff to Defendant, and Defendant to Plaintiff. As part of their agreement, the parties shall bear their own respective attorney's fees and costs. Nothing herein shall be construed as an admission or concession by Defendant of any violation of law, wrong doing or liability concerning any matter in this lawsuit. Such liability being expressly denied.

  
\_\_\_\_\_  
PLAINTIFF, ARTIE JEAN WHITE

*Thomas E. Whalen*

THOMAS E. WHALEN  
1722 South Carson  
Suite 2410  
Tulsa, Oklahoma 74119  
(918) 585-1078

ATTORNEY FOR PLAINTIFF

*Timothy A. Carney*

Timothy A. Carney  
GABLE & GOTWALS  
2000 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-9201

ATTORNEY FOR DEFENDANT

**FILED**

APR 26 1991

UNITED STATES DISTRICT COURT  
DISTRICT OF OKLAHOMA

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

-----  
Don Davis, individually and  
d/b/a Alko Natural Pet  
Products,

Case No. 90 C-933E

Plaintiff,

vs.

STIPULATION OF DISMISSAL  
WITH PREJUDICE

Natural Life Pet Products, Inc.,  
a Delaware corporation,

Defendant.  
-----

The above-entitled action, having been fully compromised and settled,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto, through their respective counsel, that said action may be, and hereby is, dismissed with prejudice and on the merits, but without further cost to any of the parties. The effect of this dismissal is governed by the terms and provisions of the Settlement Agreement and Mutual Release executed by the parties contemporaneously herewith.

It is further stipulated and agreed by and between the parties that a judgment of dismissal with prejudice and on the merits may be entered pursuant hereto without further notice.

Dated: 4-17-91

LARRY L. OLIVER & ASSOCIATES

Kimberly M. Steele  
Kimberly M. Steele (#12877)  
2212 E. Skelly Drive  
Tulsa, OK 74105  
(918) 745-6084

ATTORNEYS FOR PLAINTIFFS  
DON DAVIS, INDIVIDUALLY AND  
D/B/A ALKO NATURAL PET  
PRODUCTS

Dated: 4-17-91

COMFORT LIPE & GREEN

Nancy G. Gourley  
Nancy G. Gourley  
2100 Mid-Continent Tower  
401 South Boston Avenue  
Tulsa, OK 74103  
(918) 599-9400

ATTORNEYS FOR DEFENDANT  
NATURAL LIFE PET PRODUCTS, INC.

Of Counsel:

Alain M. Baudry, Esq.  
Maslon Edelman Borman & Brand  
1800 Midwest Plaza  
Minneapolis, MN 55402  
(612) 339-8015

IT IS SO ORDERED.

Dated: 4/25/91

BY THE COURT:

S/ JAMES O. ELLISON  
United States District Judge

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

**FILED**

APR 26 1991

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

LOUIS VUITTON, )  
 )  
 Plaintiff, )  
 )  
 -against- ) Civil Action No. 90-C-1062-B  
 )  
 TEDDY NICKLE doing business )  
 at EASTGATE FLEA MARKET, )  
 )  
 Defendant. )

FINAL DEFAULT JUDGMENT  
AND PERMANENT INJUNCTION

This action having been commenced by the filing of the Complaint with the Clerk of the Court by plaintiff Louis Vuitton ("Vuitton"), on December 31, 1990; and defendant Teddy Nickle having been served with copies of the Summons and Complaint on January 3, 1991; and it appearing that the time within which defendant was required to serve her answer or otherwise respond to the Complaint expired on January 23, 1991; and plaintiff, upon more than three day's notice to defendant, having moved this Court for final judgment by default and permanent injunctive relief; and

It further appearing that this Court has jurisdiction of this actin pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338, and the principles of pendent jurisdiction;

NOW, upon the motion of Reboul, MacMurray, Hewitt, Maynard & Kristol, and Sneed, Lang, Adams, Hamilton & Barnett,

attorneys for plaintiff, and all prior pleadings and proceedings heretofore had herein, it is hereby

ORDERED, ADJUDGED AND DECREED, that defendant Teddy Nickle, her principals, agents, servants, employees, successors and assigns, and all those acting in concert or participation with her be, and they hereby are, PERMANENTLY ENJOINED from:

(a) imitating, copying or making unauthorized use of Vuitton's Registered Trade-Mark Nos. 297,594, 1,045,932 or 1,519,828;

(b) manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting or displaying any product bearing any simulation, reproduction, counterfeit, copy or colorable imitation of Vuitton's Registered Trade-Mark Nos. 297,594, 1,045,932 or 1,519,828;

(c) using any simulation, reproduction, counterfeit, copy or colorable imitation of Vuitton's Registered Trade-Mark Nos. 297,594, 1,045,932 or 1,519,828 in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of any product, in such fashion as to relate or connect, or tend to relate or connect, such product in any way to plaintiff, or to any goods sold, manufactured, sponsored or approved by, or connected with plaintiff;

(d) making any statement or representation whatsoever, or using any false designation of origin or false description (including any letters, symbols or initials), or performing any act which can, or is likely to, lead the trade or public, or individual members thereof, to believe that any product manufactured, distributed or sold by defendant is in any manner associated or connected with plaintiff, or is sold, manufactured, licensed, sponsored, approved or authorized by plaintiff;

(e) engaging in any other activity constituting unfair competition with plaintiff, or constituting an infringement of any of plaintiff's trademarks or of plaintiff's rights in, or to use or to exploit, said trademarks, or constituting any dilution of the name, reputation or good will of plaintiff; and

(f) assisting, aiding or abetting any other person or business organization from performing or engaging in the acts and activities referred to in paragraphs (a) through (e) above; and it is further

ORDERED, ADJUDGED AND DECREED that:

(a) Plaintiff shall recover from defendant Teddy Nickle, \$3,322.35, representing at least three times defendant's gross sales from the sale of counterfeit Vuitton merchandise; and

(b) Plaintiff shall recover from defendant Teddy Nickle, its reasonable attorneys' fees in the sum of \$775.40; and it is further

ORDERED, ADJUDGED AND DECREED that a money judgment shall be entered in favor of plaintiff against defendant in the total sum of \$4,097.75, together with prejudgment interest thereon and the costs of this action as taxed by the Clerk of the Court.

Dated: Tulsa, Oklahoma  
April 15, 1991

**S/ JAMES O. ELLISON**

United States District Judge

ENTERED:

Clerk of the Court

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

FILED

JUDY G. TAYLOR, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 DILLARDS DEPARTMENT STORES, )  
 INC., a corporation, )  
 )  
 Defendant. )

APR 26 1991

Jack C. Silver, Clerk  
No. 90-C-330-B U.S. DISTRICT COURT

JUDGMENT

This cause having come before the Court for trial by jury, the Court having reviewed the verdict entered by the jury, now, therefore, in conformity with the jury's verdict, it is hereby

ORDERED, ADJUDGED AND DECREED that Plaintiff Judy G. Taylor have judgment against Defendant Dillard's Department Stores, Inc. in the sum of \$35,000, and post-judgment interest to accrue after April 19, 1991 at the federal post-judgment interest rate of 6.26 percent per annum, and pursuant to 28 U.S.C. §1961(b), said award of post-judgment interest shall be compounded annually, and it is further

ORDERED, ADJUDGED AND DECREED that Plaintiff shall have her costs in this action, said costs to be taxed by the Clerk.

*Anthony E. Camp*  
UNITED STATES DISTRICT JUDGE

21

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

FILED  
APR 26 1991  
JACK C. SILVER, CLERK  
U.S. DISTRICT COURT

D. B. WILKERSON, JR., an  
individual, and TINK WILKERSON  
LEASING, INC., an Oklahoma  
corporation,

Plaintiffs

vs.

Case No. 87-C-531-B

FEDERAL SAVINGS AND LOAN  
INSURANCE CORPORATION, AS  
RECEIVER FOR VICTOR SAVINGS  
AND LOAN ASSOCIATION, a federal  
savings and loan association,  
successor in interest to Victor  
Federal Savings and Loan  
Association; and the FEDERAL  
HOME LOAN BANK OF TOPEKA, a  
federal home loan bank,

Defendant.

DISMISSAL BY STIPULATION

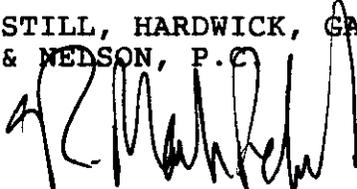
The Plaintiffs D. B. Wilkerson, Jr. and Tink Wilkerson Leasing, Inc., the Defendant the Federal Deposit Insurance Corporation as Receiver for Victor Savings and Loan Association and the Defendant the Federal Home Loan Bank of Topeka, hereby dismiss all claims pending in the above-referenced matter pursuant to Fed. R. Civ. Pro. 41. All claims are hereby dismissed with prejudice and all parties are to bear their own costs and attorneys fees incurred in this action. This Dismissal by Stipulation has been voluntarily entered into by all parties pursuant to the settlement reached in this action.

WHEREFORE, D. B. Wilkerson, Jr., Tink Wilkerson Leasing, Inc., the Federal Deposit Insurance Corporation as Receiver for Victor Savings and Loan Association and the Federal Home Loan Bank of

Topeka request that this Court enter this Dismissal in its records and dismiss this case in its entirety.

Respectfully submitted,

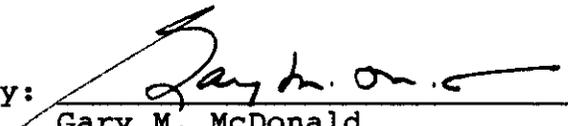
HALL, ESTILL, HARDWICK, GABLE,  
GOLDEN & NELSON, P.C.

By: 

R. Mark Petrich, OBA # 11956  
4100 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, Oklahoma 74172  
(918) 588-4161

ATTORNEYS FOR THE FEDERAL DEPOSIT  
INSURANCE CORPORATION AS RECEIVER  
FOR VICTOR SAVINGS AND LOAN  
ASSOCIATION

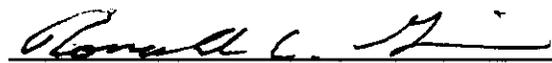
DOERNER, STUART, SAUNDERS, DANIEL  
& ANDERSON

By: 

Gary M. McDonald  
John J. Carwile  
320 South Boston Avenue,  
Suite 500  
Tulsa, Oklahoma 74103

ATTORNEYS FOR D. B. WILKERSON, JR.  
and TINK WILKERSON LEASING, INC.

HOLLIMAN, LANGHOLZ, RUNNELS &  
DORWART

By: 

Ronald E. Goins  
10 East 3rd Street, Suite 700  
Tulsa, Oklahoma 74103

ATTORNEYS FOR THE FEDERAL HOME  
LOAN BANK OF TOPEKA

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

FILED

APR 25 1991

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

ESTER WILEY, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 ST. JOHN MEDICAL CENTER, INC., )  
 )  
 Defendant. )

Case No. 90-C-0012-E

JUDGMENT

In keeping with the Court's Order dated January 14, 1991, which granted Defendant's Motion for Summary Judgment, judgment is hereby entered in favor of Defendant, St. John Medical Center, Inc., and against Plaintiff, Ester Wiley, on the merits of Plaintiff's Complaint. Further, Defendant, St. John Medical Center, Inc., is awarded judgment against Plaintiff, Ester Wiley, with respect to its costs of the defense of this matter, said amount to be determined by the Clerk of the Court.

ENTERED this 25 day of April, 1991.

§/ JAMES O. ELLISON

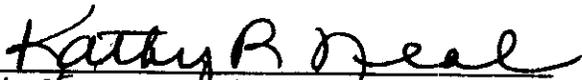
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Andrew J. Lastra Esq.  
P.O. Box 26625  
Oklahoma City, OK 73126  
(405) 235-5445

Attorney for Plaintiff

and

  
\_\_\_\_\_

Linda C. Martin, Esq.  
Kathy R. Neal, Esq.  
1000 Atlas Life Building  
Tulsa, OK 74103  
(918) 582-1211

Attorneys for St. John Medical Center, Inc.

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

FEDERAL DEPOSIT INSURANCE )  
CORPORATION as Receiver )  
of VICTOR SAVINGS AND LOAN )  
ASSOCIATION, successor in )  
interest to Victor Federal )  
Savings and Loan Association, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SUSAN WILKERSON DAVIES, )  
DAVID G. DAVIES, DEBRA )  
WILKERSON CONSEDINE and )  
JAMES F. CONSEDINE, II, )  
 )  
Defendants. )

APR 25 1991

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

Case No. 89-C-533-E

ORDER REOPENING CASE AND  
DISMISSING THE SAME WITH PREJUDICE TO THE REILING THEREOF

NOW ON this 25<sup>th</sup> day of April, 1991, came on for consideration the Joint Application of the Parties To Reopen the Case and Joint Stipulation For Dismissal of Case With Prejudice Pursuant to Federal Rules of Civil Procedure 41 ("Joint Application"), filed herein by the parties to the litigation. The Court having reviewed the same, Finds as follows:

1. This case should be reopened for purposes of receiving and considering the Joint Stipulation of the parties requesting dismissal of the case with prejudice to its refileing, and for entry of an Order of dismissal with prejudice to the refileing thereof, effectively concluding and terminating this case.

2. The Administrative Closing Order was entered upon representation of the parties that a settlement and compromise of claims between the parties had been tentatively achieved.

Pursuant to the Joint Application, the parties have informed the Court that they have consummated a settlement and compromise agreement resolving disputes, including those claims set forth in this case, and that this case may be dismissed with prejudice to the refiling thereof, each party to bear its own costs incurred.

3. An Order of Dismissal With Prejudice to the refiling thereof, pursuant to Federal Rules of Civil Procedure Section 41 should be entered as requested by all parties to this litigation, with each party to bear its own costs and attorneys fees incurred.

IT IS THEREFORE SO ORDERED, ADJUDGED AND DECREED that this case be reopened and that thereupon, the Joint Stipulation of the parties for dismissal of the action with prejudice to the refiling thereof is granted, each party to bear its own costs and attorneys fees.

DONE this 25<sup>th</sup> day of April, 1991.

S/ JAMES O. ELLISON  
\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

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

**F I L E D**

**APR 25 1991**

LOUIS VUITTON, )  
 )  
Plaintiff, )  
 )  
-against- )  
 )  
FUN FASHION and )  
DORRENE EMBREY, )  
 )  
Defendants. )

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

Civil Action No. 90 C 1063 E

FINAL CONSENT JUDGMENT  
AND PERMANENT INJUNCTION

Plaintiff Louis Vuitton ("Vuitton"), having duly commenced commenced this action by filing the Complaint herein with the Clerk of the Court on December 31, 1990, against defendants Fun Fashions and Dorrene Embrey, alleging violations of its rights in connection with its registered Trade-Mark Nos. 297,594, 1,045,932 and 1,519,828; and defendant having been served with copies of the Summons and Complaint; and defendants having appeared in this action and having stipulated and consented, with the advice and assistance of counsel, to the entry of this Final Consent Judgment and Permanent Injunction, and to each and every provision, order and decree hereof; and upon consideration of all pleadings and prior proceedings heretofore had herein; and

It further appearing that this Court has jurisdiction of this action pursuant to 15 U.S.C. §1121 and 28 U.S.C. §§1331 and 1338 and the principles of pendent jurisdiction, it is hereby

ORDERED, ADJUDGED AND DECREED that defendants Dorrene Embrey

and Fun Fashion, their officers, directors, principals, servants, employees, agents, assigns, successors and all those acting in concert or participation with them be, and they hereby are, PERMANENTLY ENJOINED from:

(a) imitating, copying or making unauthorized use of Vuitton's Registered Trade-Mark Nos. 297,594, 1,045, 932 or 1,519,828;

(b) manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting, or displaying any product bearing any simulation, reproduction, counterfeit, copy or colorable imitation of Vuitton's Registered Trade-Mark Nos. 297,594, 1,045,932 or 1,519,828;

(c) using any simulation, reproduction, counterfeit, copy or colorable imitation of Vuitton's Registered Trade-Mark No. 297,594 in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of any product, in such fashion as to relate or connect, or tend to relate or connect, such product in any way to Vuitton, or to any goods sold, manufactured, sponsored or approved by, or connected with Vuitton;

(d) using any false designation of origin or false description (including, without limitation, any letters, symbols or initials), which can or is likely to, lead the trade or public, or individual members thereof, to believe that any product manufactured, distributed or sold by

defendants is in any manner associated or connected with Vuitton or is sold, manufactured, licensed, sponsored, approved or authorized by Vuitton;

(e) engaging in any other activity constituting in infringement of any of Vuitton's trademarks, or of Vuitton's rights in, or to use or to exploit, said trademarks; and

(f) assisting, aiding or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (e) above, and it is further

ORDERED, that defendants transfer forthwith to plaintiff or plaintiff's counsel all reproductions, counterfeits, copies or colorable imitations of Vuitton's Registered Trade-Mark Nos. 297,594, 1,045,932 or 1,519,828 in their possession, custody or control.

Dated: Tulsa, Oklahoma  
April 25, 1991

S/ JAMES O. ELLISON  

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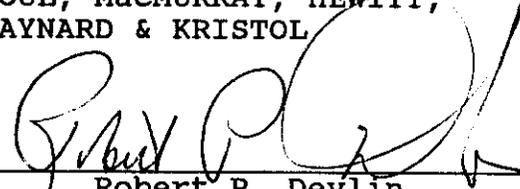
UNITED STATES DISTRICT JUDGE

CONSENT TO ENTRY

The parties and their respective counsel hereby consent to the terms and conditions of the Final Consent Judgment and Permanent Injunction as set forth above and consent to the entry thereof.

Dated: Tulsa, Oklahoma  
April 18, 1991

REBOUL, MacMURRAY, HEWITT,  
MAYNARD & KRISTOL

By 

Robert P. Devlin

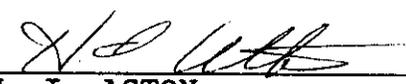
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 841-5700

-and-

SNEED, LANG, ADAMS, HAMILTON  
& BARNETT

2300 Williams Tower II  
Tulsa, Oklahoma 74103  
Telephone: (918) 583-3145

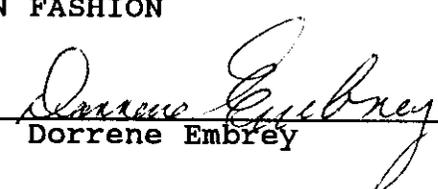
Attorneys for Plaintiff

  
H. I. ASTON

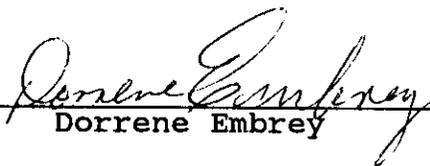
Attorney for Defendant

OBA #362  
3242 East 30th Place  
Tulsa, Oklahoma 74114  
Telephone: (918) 749-8523

FUN FASHION

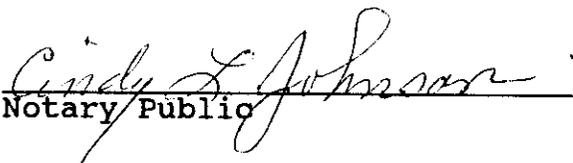
By 

Dorrene Embrey

  
Dorrene Embrey

STATE OF OKLAHOMA    )  
                                  )    ss  
COUNTY OF TULSA     )

On the 2nd day of April, 1991, before me personally came DORRENE EMBREY, to me known, who, being by me duly sworn, did depose and say that she is the PROPRIETOR of FUN FASHION, the business organization referred to as one of the defendants in this instrument on its behalf.

  
Notary Public

STATE OF OKLAHOMA    )  
                                  )    ss  
COUNTY OF TULSA     )

On the 2nd day of April, 1991, before me personally came DORRENE EMBREY, to me known, and known to me to be the same person described herein, and who executed the within instrument, and who duly acknowledged to me that she executed the same.

  
Notary Public

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

**F I L E D**

**APR 25 1991**

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

LOUIS VUITTON, )  
 )  
 Plaintiff, )  
 )  
 -against- )  
 )  
 CLARA LEA COUGHRAN and CLARA )  
 LEA'S doing business at )  
 EASTGATE FLEA MARKET, )  
 )  
 Defendants. )

Civil Action No. 90 C 1061 E

FINAL CONSENT JUDGMENT  
AND PERMANENT INJUNCTION

Plaintiff Louis Vuitton ("Vuitton"), having duly commenced commenced this action by filing the Complaint herein with the Clerk of the Court on December 31, 1990, against defendant Clara Lea's (which does business at the Eastgate Flea Market), alleging violations of its rights in connection with its registered Trade-Mark Nos. 297,594, 1,045,932 and 1,519,828; and defendant having been served with copies of the Summons and Complaint; and Clara Lea Coughran having consented to her joinder as party defendant; and defendant having appeared in this action and having stipulated and consented, with the advice and assistance of counsel, to the entry of this Final Consent Judgment and Permanent Injunction, and to each and every provision, order and decree hereof; and upon consideration of all pleadings and prior proceedings heretofore had herein; and

It further appearing that this Court has jurisdiction of this

action pursuant to 15 U.S.C. §1121 and 28 U.S.C. §§1331 and 1338 and the principles of pendent jurisdiction, it is hereby

ORDERED, ADJUDGED AND DECREED that Clara Lea Coughran be, and she hereby is, joined as party defendant, and that the caption in this action be amended accordingly; and it is further

ORDERED, ADJUDGED AND DECREED that defendant, Clara Lea Coughran, and Clara Lea's, their officers, directors, principals, servants, employees, agents, assigns, successors and all those acting in concert or participation with them be, and they hereby are, PERMANENTLY ENJOINED from:

(a) imitating, copying or making unauthorized use of Vuitton's Registered Trade-Mark Nos. 297,594, 1,045,932 or 1,519,828;

(b) manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting, or displaying any product bearing any simulation, reproduction, counterfeit, copy or colorable imitation of Vuitton's Registered Trade-Mark Nos. 297,594, 1,045,932 or 1,519,828;

(c) using any simulation, reproduction, counterfeit, copy or colorable imitation of Vuitton's Registered Trade-Mark No. 297,594 in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of any product, in such fashion as to relate or connect, or tend to relate or connect, such product in any way to Vuitton, or to any goods sold, manufactured, sponsored or approved by, or connected with

Vuitton;

(d) using any false designation of origin or false description (including, without limitation, any letters, symbols or initials), which can or is likely to, lead the trade or public, or individual members thereof, to believe that any product manufactured, distributed or sold by defendant is in any manner associated or connected with Vuitton or is sold, manufactured, licensed, sponsored, approved or authorized by Vuitton;

(e) engaging in any other activity constituting an infringement of any of Vuitton's trademarks, or of Vuitton's rights in, or to use or to exploit, said trademarks; and

(f) assisting, aiding or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (e) above, and it is further

ORDERED, that defendant transfer forthwith to plaintiff or plaintiff's counsel all reproductions, counterfeits, copies or colorable imitations of Vuitton's Registered Trade-Mark Nos. 297,594, 1,045,932 or 1,519,828 in their possession, custody or control.

Dated: Tulsa, Oklahoma  
April ~~24~~<sup>25</sup>, 1991

S/ JAMES O. ELLISON  

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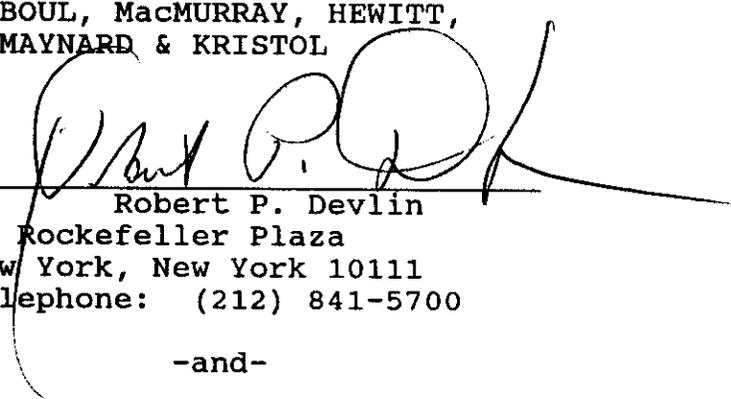
UNITED STATES DISTRICT JUDGE

CONSENT TO ENTRY

The parties and their respective counsel hereby consent to the terms and conditions of the Final Consent Judgment and Permanent Injunction as set forth above and consent to the entry thereof.

Dated: Tulsa, Oklahoma  
April 18, 1991

REBOUL, MacMURRAY, HEWITT,  
MAYNARD & KRISTOL

By 

Robert P. Devlin  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 841-5700

-and-

SNEED, LANG, ADAMS, HAMILTON  
& BARNETT  
2300 Williams Tower II  
Tulsa, Oklahoma 74103  
Telephone: (918) 583-3145

Attorneys for Plaintiff

  
H. I. ASTON  
Attorney for Defendant  
OBA #362  
3242 East 30th Place  
Tulsa, Oklahoma 74114  
Telephone: (918) 749-8523

CLARA LEA'S

BY Clara Lea Coughran  
Clara Lea Coughran

Clara Lea Coughran  
Clara Lea Coughran

STATE OF OKLAHOMA    )  
                                  )    SS  
COUNTY OF TULSA     )

On the 3rd day of April, 1991, before me personally came CLARA LEA COUGHRAN, to me known, who, being by me duly sworn, did depose and say that she is the PROPRIETOR of CLARA LEA'S, the business organization referred to as one of the defendants in this instrument on its behalf.

Cindy L Johnson  
Notary Public

STATE OF OKLAHOMA    )  
                                  )    SS  
COUNTY OF TULSA     )

On the 3rd day of April, 1991, before me personally came CLARA LEA COUGHRAN, to me known, and known to me to be the same person described herein, and who executed the within instrument, and who duly acknowledged to me that she executed the same.

Cindy L Johnson  
Notary Public

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

SAUN T. HYTCHE, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 FARMERS INSURANCE GROUP, )  
 )  
 Defendant. )

90-C-880-E

**F I L E D**

**APR 25 1991**

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

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed March 13, 1991 in which the Magistrate Judge recommended that Plaintiff's case be remanded to the state court, lacking the necessary jurisdictional prerequisites for removal.

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

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

It is, therefore, Ordered that Plaintiff's case is remanded to the state court, lacking the necessary jurisdictional prerequisites for removal.

Dated this 25 day of April, 1991.

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BETTY J. SHANNON; BANK OF )  
 OKLAHOMA; COUNTY TREASURER, )  
 Tulsa County, Oklahoma; and )  
 BOARD OF COUNTY COMMISSIONERS, )  
 Tulsa County, Oklahoma, )  
 )  
 Defendants. )

FILED

APR 25 1991

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

CIVIL ACTION NO. 90-C-680-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 25<sup>th</sup> 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, Bank of  
Oklahoma, appears by its attorney John B. DesBarres; and the  
Defendant, Betty J. Shannon, appears not, but makes default.

The Court being fully advised and having examined the  
court file finds that the Defendant, Betty J. Shannon, was served  
with Summons and Complaint on January 30, 1991; that Defendant,  
County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of  
Summons and Complaint on August 15, 1990; and that Defendant,  
Board of County Commissioners, Tulsa County, Oklahoma,  
acknowledged receipt of Summons and Complaint on August 14, 1990.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on August 29, 1990; that the Defendant, Bank of Oklahoma, filed its Answer on August 31, 1990, its Disclaimer on November 13, 1990 and a Withdrawal of Disclaimer on November 30, 1990; and that the Defendant, Betty J. Shannon, has failed to answer and her default has therefore been entered by the Clerk of this Court.

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

Lots Fifteen (15) and Sixteen (16), Block One (1), BEALE ESTATES, an Addition in the City of Glenpool, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on April 27, 1982, the Defendant, Betty J. Shannon, executed and delivered to the United States of America, acting through the Farmers Home Administration, her promissory note in the amount of \$37,000.00, payable in monthly installments, with interest thereon at the rate of 13.25 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Betty J. Shannon, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated April 27, 1982, covering the above-described property. Said mortgage

was recorded on April 27, 1982, in Book 4609, Page 784, in the records of Tulsa County, Oklahoma.

The Court further finds that on July 27, 1982, the Defendant, Betty J. Shannon, 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 April 30, 1984, the Defendant, Betty J. Shannon, 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 8, 1985, the Defendant, Betty J. Shannon, 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 April 13, 1986, the Defendant, Betty J. Shannon, 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 June 23, 1987, the Defendant, Betty J. Shannon, 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 the Defendant, Betty J. Shannon, 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, Betty J. Shannon, is indebted to the Plaintiff in the principal sum of \$33,532.87, plus accrued interest in the amount of \$5,429.59 as of September 27, 1989, plus interest accruing thereafter at the rate of 13.25 percent per annum or \$12.1729 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 \$25,519.83, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$27.56 (\$20.00 docket fees, \$7.56 fees for service of Summons and Complaint).

The Court further finds that the Defendant, Bank of Oklahoma, has a lien on the property which is the subject matter of this action by virtue of a judgment in a case styled Bank of Oklahoma, a National Bank, vs. Betty Shannon, Case No. SC 86-8292, which judgment was filed of record in Book 4973 at Page 986 in the records of the County Clerk of Tulsa County, State of Oklahoma, in the amount of \$440.10, plus accrued interest in the amount of \$259.72 through August 31, 1990, plus interest on the unpaid principal balance at the rate of 15 percent per annum from the 31st day of August, 1990, until paid, and for an attorney fee in the sum of \$44.00, together with all costs of the action, both

accrued and accruing. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has liens on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$9.00 for the year 1988 and \$8.00 for the year 1989. 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, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the Plaintiff have and recover judgment against Defendant, Betty J. Shannon, in the principal sum of \$33,532.87, plus accrued interest in the amount of \$5,429.59 as of September 27, 1989, plus interest accruing thereafter at the rate of 13.25 percent per annum or \$12.1729 per day until judgment, plus interest thereafter at the current legal rate of 6.26 percent per annum until fully paid, and the further sum due and owing under the interest credit agreements of \$25,519.83, plus interest on that sum at the current legal rate of 6.26 percent per annum from judgment until paid, plus the costs of this action in the amount of \$27.56 (\$20.00 docket fees, \$7.56 fees for service of Summons and Complaint), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendant, Bank of Oklahoma, have and recover judgment in the amount of \$440.10, plus accrued interest in the amount of \$259.72 through August 31, 1990, plus interest on the unpaid principal balance at the rate of 15 percent per annum from the 31st day of August, 1990, until paid, and for an attorney fee in the sum of \$44.00, together with all costs of the action, both accrued and accruing, by virtue of a judgment in a case styled Bank of Oklahoma, a National Bank, vs. Betty Shannon, Case No. SC 86-8292, which judgment was filed of record in Book 4973 at Page 986 in the records of the County Clerk of Tulsa County, State of Oklahoma.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$9.00 for the year 1988 and \$8.00 for the year 1989 for personal property taxes, plus the costs of this action.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, has no right, title, or interest in the subject real property.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that upon the failure of said Defendant, Betty J. Shannon, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

**First:**

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

**Second:**

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

**Third:**

In payment of the judgment rendered herein in favor of the Defendant, Bank of Oklahoma;

**Fourth:**

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$17.00, 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.

§/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

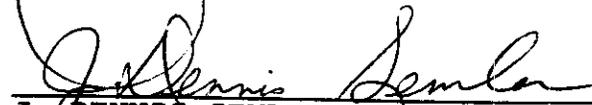
APPROVED:

TONY M. GRAHAM  
United States Attorney

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



JOHN B. DesBARRES OBA #12263  
Attorney for Defendant,  
Bank of Oklahoma



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

Judgment of Foreclosure  
Civil Action No. 90-C-680-E

PB/css

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 25 1991

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

FLEET FINANCE, INC.,  
a Delaware Corporation,  
Plaintiff,

vs.

JAMES WAYNE PARKER and SANDRA  
KAY PARKER, husband and wife;  
MERRILL LYNCH MORTGAGE  
CORPORATION; and the SECRETARY  
OF VETERANS AFFAIRS,  
Defendants,

and

UNITED STATES OF AMERICA on  
behalf of the Secretary of  
Veterans Affairs,

Third-Party Plaintiff,

vs.

THOMAS L. SMITH; COUNTY  
TREASURER, Tulsa County,  
Oklahoma; and BOARD OF COUNTY  
COMMISSIONERS, Tulsa County,  
Oklahoma,

Third-Party Defendants.

Civil Action No. 90-C-553-E  
Case No. CJ-90-02485  
(Tulsa County District Court)

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 25<sup>th</sup> day  
of April, 1991. The Third-Party Plaintiff appears by  
Tony M. Graham, United States Attorney for the Northern District  
of Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Third-Party 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 Plaintiff, Fleet Finance,

Inc., a Delaware Corporation, appears by its attorneys James P. McCann and Scott R. Rowland; the Defendant, Merrill Lynch Mortgage Corporation n/k/a Glenfed Mortgage Corporation, appears not, having previously filed its Disclaimer; the Defendants, James Wayne Parker and Sandra Kay Parker, appear not, but make default; and Third-Party Defendant, Thomas L. Smith, appears not, but makes default.

The Court being fully advised and having examined the court file finds that the Plaintiff, Fleet Finance, Inc., a Delaware Corporation, acknowledged receipt of Summons and Counterclaim on June 25, 1990; that the Defendants, James Wayne Parker and Sandra Kay Parker, acknowledged receipt of Summons and Cross-Claim on July 3, 1990; that Third-Party Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Third-Party Complaint on June 26, 1990; and that Third-Party Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Third-Party Complaint on June 25, 1990.

The Court further finds that the Third-Party Defendant, Thomas L. Smith, 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 November 28, 1990, and continuing through January 2, 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 Third-Party Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Third-Party Defendant, Thomas L. Smith, and service cannot be made upon said Third-Party Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Third-Party 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 Third-Party Defendant, Thomas L. Smith. 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 Third-Party 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 his 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 Third-Party Plaintiff, both as to subject matter and the Third-Party Defendant served by publication.

It appears that the Plaintiff, Fleet Finance, Inc., a Delaware Corporation, filed its Response to Counterclaim on July 20, 1990; that the Third-Party Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on July 16, 1990; that the Defendant, Merrill Lynch Mortgage Corporation n/k/a Glenfed Mortgage Corporation, filed its Disclaimer on July 16, 1990; and that the Defendants, James Wayne Parker and Sandra Kay Parker and the Third-Party Defendant, Thomas L. Smith, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, Merrill Lynch Mortgage Corporation, is now known as Glenfed Mortgage Corporation.

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

Lot Fourteen (14), Block Eleven (11), SUBURBAN HILLS ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on December 23, 1977, the Third-Party Defendant, Thomas L. Smith, 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, his mortgage note in the amount of \$9,400.00,

payable in monthly installments, with interest thereon at the rate of eight and one-half percent (8.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Third-Party Defendant, Thomas L. Smith, 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 December 23, 1977, covering the above-described property. Said mortgage was recorded on January 17, 1978, in Book 4305, Page 2348, in the records of Tulsa County, Oklahoma.

The Court further finds that the Third-Party Defendant, Thomas L. Smith, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Third-Party Defendant, Thomas L. Smith, is indebted to the Third-Party Plaintiff in the principal sum of \$8,043.77, plus interest at the rate of 8.5 percent per annum from October 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$293.35 (\$20.00 docket fees, \$273.35 publication fees).

The Court further finds that the Plaintiff, Fleet Finance, Inc., a Delaware Corporation, has a lien on the property which is the subject matter of this action in the amount of \$3,644.94 as of January 30, 1990 and interest accruing thereafter at the rate of \$1.29 per diem until paid in full, plus the costs of this action by virtue of a Real Estate Mortgage, dated

April 9, 1986, and recorded on April 23, 1986, in Book 4937, Page 2112 in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Merrill Lynch Mortgage Corporation n/k/a Glenfed Mortgage Corporation, disclaims all right, title and interest in the subject real property.

The Court further finds that the Defendants, James Wayne Parker and Sandra Kay Parker, are in default and have no right, title or interest in the subject real property.

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

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the Third-Party Plaintiff have and recover judgment in rem against the Third-Party Defendant, Thomas L. Smith, in the principal sum of \$8,043.77, plus interest at the rate of 8.5 percent per annum from October 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 \$293.35 (\$20.00 docket fees, \$273.35 publication fees), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Third-Party Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Plaintiff, Fleet Finance, Inc., a Delaware Corporation, have and

recover judgment against the Defendants, James Wayne Parker and Sandra Kay Parker, jointly and severally, in the amount of \$3,644.94 as of January 30, 1990 and interest accruing thereafter at the rate of \$1.29 per diem until paid in full, plus the costs of this action by virtue of a Real Estate Mortgage, dated April 9, 1986, and recorded on April 23, 1986, in Book 4937, Page 2112 in the records of Tulsa County, Oklahoma.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendants, James Wayne Parker, Sandra Kay Parker and Merrill Lynch Mortgage Corporation n/k/a Glenfed Mortgage Corporation, and Third-Party Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that 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 Third-Party Plaintiff, including the costs of sale of said real property;

**Second:**

In payment of the judgment rendered herein in favor of the Third-Party Plaintiff, United States of America;

**Third:**

In payment of the judgment rendered herein  
in favor of the Plaintiff, Fleet Finance,  
Inc., a Delaware Corporation

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

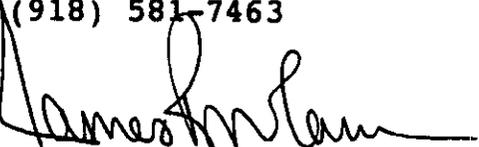
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from  
and after the sale of the above-described real property, under  
and by virtue of this judgment and decree, all of the Defendants  
and all persons claiming under them since the filing of the  
Counterclaim, Cross-Claim and Third-Party Complaint,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

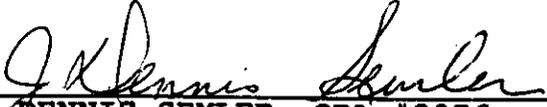
S/ JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

**APPROVED:**

TONY M. GRAHAM  
United States Attorney

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

  
JAMES P. McCANN, OBA #5864  
SCOTT R. ROWLAND, OBA #11498  
Attorneys for Plaintiff,  
Fleet Finance, Inc., a Delaware Corporation

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

Judgment of Foreclosure  
Civil Action No. 90-C-553-E

PB/css

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

**FILED**

APR 25 1991

FARM CREDIT BANK OF WICHITA, a )  
federally chartered corporation, )  
 )  
Plaintiff, )  
 )  
 )  
 )  
JACK B. SELLERS, et al., )  
 )  
 )  
Defendants. )

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

Case No. 89-C-1001-B

**JOURNAL ENTRY OF  
JUDGMENT AND DECREE OF FORECLOSURE**

Now on this 25<sup>th</sup> day of April, 1991, this matter comes on for consideration by the undersigned United States District Judge upon the Motion for Partial Summary Judgment and Decree of Foreclosure and the Application for Default Judgment filed herein by Plaintiff Farm Credit Bank of Wichita (the "Plaintiff"). Having reviewed the pleadings and evidentiary materials submitted by the parties, and the parties having agreed upon the entry of an in rem judgment, the Court finds the following:

1. Defendants Jack B. Sellers ("Sellers") and Sellers Family Partnership have filed their Answers herein.
2. Defendants Blanche Turner, Trustee U/A dated November 25, 1983 f/b/o Blanche Turner, Ruth Fleming, Trustee of the Ruth Fleming Trust, Paul Houston and his spouse Virginia Houston, Diana Houston, Marjorie Ellsworth, Trustee of the Marjorie Ellsworth Trust, Jamie Belle Long, Trustee of the Jamie

Belle Long Trust, Edward O. Bellamy and his spouse Pamela Bellamy, and the State of Oklahoma have entered their appearances herein and disclaimed any interest in the real property that is the subject matter of this action.

3. Defendants Lackey & Wendel, Inc., Floyd Lee Galpin and Patricia Galpin have been served with process but have failed to answer or otherwise appear herein and are in default.

4. The respective heirs, personal representatives, devisees, trustees, successors and assigns of Betty Wesley, deceased, Betty Bruner, deceased, and William Colbert, deceased, and their respective unknown successors, were served herein by publication. The Court conducted a judicial inquiry into the sufficiency of Plaintiff's search to determine the names and whereabouts of such Defendants. Based on the evidenced deduced, the Court finds that Plaintiff has exercised due diligence and has conducted a meaningful search of all reasonably available sources at hand. The Court approves the publication service given herein as meeting both statutory requirements and the minimum standards of state and federal due process. Although such Defendants have been duly served by publication, such Defendants have failed to answer or otherwise appear herein and are in default.

5. The Court further finds from the Affidavit as to Military Service on file herein, and from other evidence, that

the Defendants hereinabove found to be in default, and each of them, are not in the military service of the United States of America as provided by the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, that no bond should be required under said Act, and that a default judgment may be entered against said Defendants.

6. The Court has examined the Notice to the Superintendent (Area) Director of the Five Civilized Tribes of the pendency of this action, the return of the United States Marshall showing due service thereof, as well as the written response thereto by the Muscogee (Creek) Nation indicating that the subject property is no longer restricted against alienation by federal law, the Muscogee (Creek) Nation elected not to remove this action to Federal District Court (although such action was commenced in Federal District Court), and advising Plaintiff's counsel that the Department of the Interior will enter no appearance in this action. The Court finds that the Notice was served upon the Area Director of the Five Civilized Tribes in all particulars as required by the laws of the United States.

7. The Court finds that it has acquired jurisdiction over the parties and the subject matter of this action.

8. The Mortgage described in Plaintiff's Complaint accords Plaintiff the option to elect sale with or without appraisalment. Plaintiff elects sale with appraisalment.

9. The Court has reviewed the evidentiary materials filed herein by Plaintiff in support of its Motion for Partial Summary Judgment and finds that there is no controversy as to any material fact and that Plaintiff is entitled to judgment as a matter of law.

10. Plaintiff should be granted an in rem judgment in its favor against Sellers in the amount of \$557,571.20 as of November 27, 1989, interest thereafter until paid at the rate of fourteen and seventh-tenths percent (14.7%) per annum, Plaintiff's reasonable attorneys' fees in the amount of \$15,000.00, abstracting charges in the amount of \$240.00, ad valorem taxes advanced by Plaintiff in the amount of \$1,748.20, all costs of preservation of the Mortgaged Property hereinafter described and all accrued and accruing costs of this action.

11. Plaintiff holds a valid mortgage lien on the following described real property and all improvements thereon situated in Creek County, Oklahoma:

SW/4 NW/4, NE/4, SW/4 SE/4, of Section 34, Township 17 North, Range 7 East and NE/4 NE/4, W/2 E/2 SE/4 of Section 3, Township 16 North, Range 7 East and NE/4 NW/4 of Section 10, Township 16 North, Range 7 East and S/2 SW/4 of Section 13, Township 17 North, Range 7 East and S/2 NE/4 of Section 24, Township 17 North, Range 7 East and SE/4 SW/4 of Section 23, Township 17 North, Range 7 East and Lots 2 and 3 and East 23.44 acres of Lot 4 and SW/4 NE/4, W/2 SE/4 of Section 3, Township 16 North, Range 7 East and NW/4, W/2 SW/4 of Section 2, Township 16 North, Range 7 East and E/2, SE/4 SW/4 of Section 10, Township 16 North, Range 7 East and W/2 W/2 of Section 11, Township 16 North, Range 7 East,

(hereinafter described as the "Mortgaged Property"), which is a prior and superior lien in, to and against the Mortgaged Property, prior and superior to any claim, right, title, interest, lien or right or equity of redemption of all Defendants herein, and each of them, and of all persons claiming by, through or under any of the Defendants since the recording of Plaintiff's Notice of Pendency, and all parties should be, from and after the date of the confirmation of the marshal's or sheriff's sale ordered by the Court, barred, restrained and enjoined from ever having or asserting any claim, right, title, interest, lien or right or equity of redemption in, to or against the Mortgaged Property, adverse to the right and title of the purchaser at said sale.

12. The record owner of each tract of the Mortgaged Property and the predecessors in title have been in possession of the Mortgaged Property and have exercised full legal control as the owners of the Mortgaged Property, and have held themselves out as such in a notorious, open, continuous, actual, exclusive, visible, hostile and adverse possession of the Mortgaged Property, claiming title thereto under color of title for a period in excess of fifteen (15) years prior to the commencement of this action, by reason of which the title to the Mortgaged Property should be quieted against each and every Defendant in the purchaser at the marshal's or sheriff's sale for the use and benefit of such purchaser.

13. Bettie Wesley was a full-blood Creek Indian, Roll No. 142, who died May 16, 1910, in Wetumka, Oklahoma, intestate, and at the time of her death she left surviving her as her only heirs her mother, Polly Wesley (Roll No. 6448), and her father, John Wesley (Roll No. 6224), and that at the time of her death she was in title to the NW/4 of NE/4 of Section 34, Township 17 North, Range 7 East. Such property became vested in her only heirs, John Wesley and Polly Wesley, who, by mesne conveyances of record, subsequently conveyed such real property. Title to such property should be quieted in the purchaser at the marshal's or sheriff's sale for the use and benefit of such purchaser.

14. Bettie Bruner was a half-blood Creek Indian, Roll No. 2386, who died in January, 1910, intestate, and at the time of her death she left surviving her as her only heirs her husband, Richmond Bruner (Roll No. 2385), her brother, Alex McNack (Roll No. 3799), her sister Matilda Cat nee Brown (Roll No. 4271), and her niece, Julia Hardridge nee Pelfar (Roll No. 101), and at the time of her death, she was in title to the SE/4 of the SW/4 of Section 10, Township 16 North, Range 7 East. Such property became vested in her only heirs, Richmond Bruner, Alex McNack, Matilda Cat nee Brown and Julia Hardridge nee Pelfar, who, by mesne conveyances of record, subsequently conveyed such real property. Title to such property should be quieted in the purchaser at the marshal's or sheriff's sale for the use and benefit of such purchaser.

15. William Colbert was a full-blood Creek Indian, Roll No. NB888, who died at the age of 6 in 1908, intestate, and left surviving him as his only heirs his mother, Jemima Taylor Colbert nee Jones (Roll No. 7598), and his father, Daniel Colbert (Roll No. 7843), and that at the time of his death he was in title to the W/2 of the SW/4 of Section 11, Township 16 North, Range 7 East. Such property became vested in his only heirs, Jemima Taylor Colbert nee Jones and Daniel Colbert, who, by mesne conveyances of record, subsequently conveyed such real property. Title to such property should be quieted in the purchaser at the marshal's or sheriff's sale for the use and benefit of such purchaser.

16. Plaintiff holds \$24,750 in stock in Farm Credit Services of East Central Oklahoma, FLBA (successor in interest to Ninth District Federal Land Bank Association) (the "Stock"), which Stock constitutes additional security for the Note (described in the Complaint) pursuant to the Farm Credit Act of 1971, as amended, and the regulations of the Farm Credit Administration. Sellers' interest in such Stock should be foreclosed and the Stock returned to Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that an in rem judgment be entered in favor of Plaintiff and against Sellers in the amount of \$557,571.20 as of November 27, 1989, interest thereafter until paid at the rate of fourteen

and seven-tenths percent (14.7%) per annum, Plaintiff's reasonable attorneys' fees in the amount of \$15,000.00, abstracting charges in the amount of \$240.00, ad valorem taxes advanced by Plaintiff in the amount of \$1,748.20, all costs of preservation of the Mortgaged Property and all accrued and accruing costs of this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff's Mortgage (as described in the Complaint) is a prior and superior lien in, to and against the Mortgaged Property, prior and superior to any claim, right, title, interest, lien or right or equity of redemption of all Defendants herein, and each of them, and of all persons claiming by, through or under any of the Defendants since the recording of Plaintiff's Notice of Pendency.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that in the event the in rem judgment herein granted to Plaintiff against Sellers, with interest, attorneys' fees, abstracting costs, ad valorem taxes advanced, costs of preservation of the Mortgaged Property and all other costs, not be satisfied in full, a special execution and order of sale shall issue out of the office of the Court Clerk of the United States District Court for the Northern District of Oklahoma (the "Northern District Court Clerk"), directed to the United States marshal or the sheriff of Creek County, Oklahoma, commanding him to advertise for sale,

according to law, as upon special execution, with appraisement, the Mortgaged Property, free, clear and discharged of and from any and all claims, rights, titles, interests, liens, and rights of redemption of all parties herein, and all persons claiming by, through or under them since the recording of Plaintiff's Notice of Pendency, and that the Mortgaged Property be sold at a marshal's sale or sheriff's sale accordingly; and further that the proceeds of such sale be immediately transmitted to the Northern District Court Clerk and that said Clerk be, and is hereby ordered and directed to pay: first, the costs of this action, including marshal's or sheriff's costs and other costs of sale; second, the in rem judgment granted to Plaintiff herein, including interest, attorneys' fees, abstracting costs, ad valorem taxes advanced, costs of preservation of the Mortgaged Property and all other costs; and, third, that the balance, if any, be retained by the Northern District Court Clerk, pending further order of the Court; that from and after the confirmation of the marshal's or sheriff's sale of the Mortgaged Property all parties herein and all persons claiming by, through or under them since the recording of Plaintiff's Notice of Pendency, be and they are hereby barred, restrained and enjoined from having and asserting any claim, right, title, interest, lien or right or equity of redemption in, to or against the Mortgaged Property or any part thereof adverse to the right and title of the purchaser at said sale.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon confirmation of said sale, the marshal or the sheriff who conducted said sale should execute and deliver a good and sufficient deed to the Mortgaged Property to the purchaser, which deed shall convey all the right, title and interest and equity and right of redemption of any and all parties herein, and each of them, in and to the Mortgaged Property and that upon application of the purchaser, the Northern District Court Clerk shall issue a Writ of Assistance to the marshal or sheriff who conducted said sale, who shall forthwith place the Mortgaged Property in the full and complete possession and enjoyment of such purchaser.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the record owner of each tract of the Mortgaged Property and the predecessors in title have been in possession of the Mortgaged Property and have exercised full legal control as the owners of the Mortgaged Property, and have held themselves out as such in a notorious, open, continuous, actual, exclusive, visible, hostile and adverse possession of the Mortgaged Property, claiming title thereto under color of title for a period in excess of fifteen (15) years prior to the commencement of this action, by reason of which the title to the Mortgaged Property shall be quieted against each and every Defendant in the purchaser at the marshal's or sheriff's sale for the use and benefit of such purchaser.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Bettie Wesley was a full-blood Creek Indian, Roll No. 142, who died May 16, 1910, in Wetumka, Oklahoma, intestate, and at the time of her death she left surviving her as her only heirs her mother, Polly Wesley (Roll No. 6448), and her father, John Wesley (Roll No. 6224), and that at the time of her death she was in title to the NW/4 of NE/4 of Section 34, Township 17 North, Range 7 East. Such property became vested in her only heirs, John Wesley and Polly Wesley, who, by mesne conveyances of record, subsequently conveyed such real property. Title to such property shall be quieted in the purchaser at the marshal's or sheriff's sale for the use and benefit of such purchaser.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Bettie Bruner was a half-blood Creek Indian, Roll No. 2386, who died in January, 1910, intestate, and at the time of her death she left surviving her as her only heirs her husband, Richmond Bruner (Roll No. 2385), her brother, Alex McNack (Roll No. 3799), her sister Matilda Cat nee Brown (Roll No. 4271), and her niece, Julia Hardridge nee Pelfar (Roll No. 101), and at the time of her death, she was in title to the SE/4 of the SW/4 of Section 10, Township 16 North, Range 7 East. Such property became vested in her only heirs, Richmond Bruner, Alex McNack, Matilda Cat nee Brown and Julia Hardridge nee Pelfar, who, by mesne conveyances of record, subsequently conveyed such real

property. Title to such property shall be quieted in the purchaser at the marshal's or sheriff's sale for the use and benefit of such purchaser.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that William Colbert was a full-blood Creek Indian, Roll No. NB888, who died at the age of 6 in 1908, intestate, and left surviving him as his only heirs his mother, Jemima Taylor Colbert nee Jones (Roll No. 7598), and his father, Daniel Colbert (Roll No. 7843), and that at the time of his death he was in title to the W/2 of the SW/4 of Section 11, Township 16 North, Range 7 East. Such property became vested in his only heirs, Jemima Taylor Colbert nee Jones and Daniel Colbert, who, by mesne conveyances of record, subsequently conveyed such real property. Title to such property shall be quieted in the purchaser at the marshal's or sheriff's sale for the use and benefit of such purchaser.

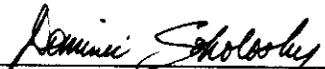
IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Sellers' interest in the Stock is hereby foreclosed and the Stock shall be returned to Plaintiff.

**S/ THOMAS R. BRETT**

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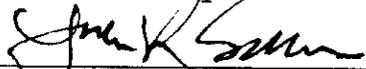
United States District Judge

Approved by:

  
\_\_\_\_\_  
Dominic Sokolosky, OBA #10475  
James E. Carrington, OBA #11249  
BAKER, HOSTER, McSPADDEN,  
CLARK, RASURE & SLICKER  
800 Kennedy Building  
Tulsa, OK 74103  
(918) 592-5555  
Attorneys for Farm Credit Bank of Wichita

  
\_\_\_\_\_  
Jack B. Sellers  
P. O. Box 730  
Sapulpa, Oklahoma 74067  
(918) 224-9070

Sellers Family Partnership

By   
\_\_\_\_\_  
Leslie R. Sellers, partner  
Jefferson D. Sellers, partner  
P. O. Box 730  
Sapulpa, OK 74067  
(918) 224-9070

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

**FILED**

APR 25 1991

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

BRENDA TABBYTITE,  
Plaintiff,  
v.  
RICHARD BRIDGE,  
Defendant.

No. 89-C-603-B

DEFAULT JUDGMENT

This action was called for non-jury trial on the 11th day of April, 1991. At issue is Count 6 of the complaint. Plaintiff appeared in person and with her counsel of record. Defendant did not appear in person or by counsel. At a previous setting on April 1, 1991, the Court admonished the defendant to be ready for trial on April 11, 1991, or a default judgment would be entered.

IT IS THEREFORE ORDERED AND ADJUDGED that the plaintiff, Brenda Tabbytite, shall recover the amounts due and owing on the following promissory notes: the promissory note dated June 3, 1987 for the principal amount of \$3000.00, plus interest at a rate of twelve percent (12%) per annum from August 15, 1987 until payment,<sup>1</sup> and the promissory note dated September 9, 1987 for the principal amount of \$2000.00, plus post-judgment interest at a rate of 6.26

<sup>1</sup> The Court finds that the parties agreed to an interest rate of 12% per annum until payment, not until judgment; the post-judgment interest rate is, therefore, inapplicable.

percent per annum until payment.<sup>2</sup> The matter of plaintiff's costs and attorney fees shall be considered upon timely application pursuant to Rule 6 of the Rules for the United States District Court for the Northern District of Oklahoma.

DATED, this 25<sup>th</sup> day of April, 1991.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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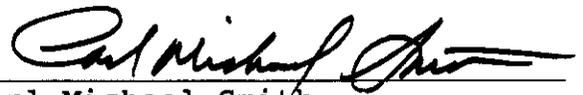
<sup>2</sup> Contrary to the plaintiff's claim, the Court finds that the parties agreed that the note would bear no interest. The Court, therefore, does not include the statutory rate of interest of six percent per annum as provided under Okla. Stat. tit. 12, §266 in its judgment.



LAWRENCE & ELLIS

ATTORNEYS FOR PLAINTIFFS,  
JERRY CHAMBERS EXPLORATION COMPANY  
and BLACKBIRD CO.

By:



Carl Michael Smith  
W. Davidson Pardue, Jr.  
Jack R. Lawrence  
600 Union Plaza  
3030 Northwest Expressway  
Oklahoma City, Oklahoma 73112

440/WPJPG

CERTIFICATE OF MAILING

I hereby certify that on this 24<sup>th</sup> day of April, 1991, a true and correct copy of the above and foregoing Defendant's Stipulation of Dismissal to Plaintiffs was mailed, first-class postage prepaid, to the following counsel of record:

Carl Michael Smith  
W. Davidson Pardue, Jr.  
Jack R. Lawrence  
600 Union Plaza  
3030 Northwest Expressway  
Oklahoma City, Oklahoma 73112

Margaret A. Sumner

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

FRANCES T. GATHRIGHT and )  
CARY K. GATHRIGHT, husband and )  
wife, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
AMERICAN REPUBLIC INSURANCE )  
COMPANY, )  
 )  
Defendant and )  
Third-Party Plaintiff, )  
 )  
vs. )  
 )  
LINUS MUSE, )  
 )  
Third-Party Defendant. )

Case No. 89-C-1059-C  
District Court No.  
CJ-89-6363 - Tulsa County

**FILED**

**APR 24 1991**

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

JUDGMENT

This matter was tried before a jury from February 19, 1991, through February 25, 1991, the Honorable H. Dale Cook presiding. On February 25, 1991, the jury returned the following verdicts:

1. In favor of the plaintiffs Frances T. and Cary K. Gathright and against defendant American Republic Insurance Company with respect to defendant's affirmative defense of misrepresentation and omission in the insurance application submitted by plaintiffs, finding that no material misrepresentations or omissions were made.

2. In favor of the defendant and against plaintiffs as to plaintiffs' claim that defendant committed an Unfair Trade Practice as a result of noncompliance with certain provisions of 36 O.S. § 1219.

3. In favor of the plaintiffs and against defendant with respect to plaintiffs' claim that defendant breached the

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obligations of good faith and fair dealing that it owes to plaintiffs, finding that as a result of the breach of such obligations, plaintiff Francis T. Gathright is entitled to actual damages in the amount of \$10,000, and plaintiff Cary K. Gathright is entitled to actual damages in the amount of \$10,000.

4. In favor of plaintiffs and against defendant with respect to plaintiffs' claim for punitive damages as a result of defendant's breach of the obligations of good faith and fair dealing that it owes to plaintiffs, finding that plaintiffs are entitled to recover punitive damages in the amount of \$50,000.

5. In favor of the third-party defendant, Linus Muse, and against defendant, with respect to defendant's third-party claim against Muse for indemnification.

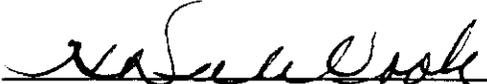
As a result of the jury's verdict set forth in paragraph 1, above, the plaintiffs are entitled to recover from defendant the amount of \$53,545.71, representing the amount of medical expenses which plaintiffs had incurred and been billed for as of February 19, 1991, which would be covered under the provisions of health insurance policy number 5952622 (the Policy), issued by defendant to plaintiffs on May 4, 1989, together with interest on such expenses, calculated in accordance with the provisions of 36 O.S. § 3629, through the date of the verdict herein, in the amount \$11,101.91. As a further result of such verdict, plaintiff Frances T. Gathright is entitled to be reinstated as an insured party under the terms of the Policy, as though she had been insured continuously from the date of issuance of such policy, and defendant is entitled to deduct from the damages for medical

expenses set forth above, premiums that would have been paid with respect to plaintiff Frances T. Gathright for insurance coverage under the Policy, in the total amount of \$1,800.60.

IT IS, THEREFORE, ORDERED that judgment should be and hereby is entered on behalf of plaintiffs and against defendant for expenses covered by the Policy, and interest thereon, in the amount of \$62,847.02, for actual damages for defendant's breach of its obligations of good faith and fair dealing in the amount of \$10,000 to plaintiff Frances T. Gathright and \$10,000 to plaintiff Cary K. Gathright, for punitive damages in the amount of \$50,000, and for plaintiffs' costs, the amount of which will be subsequently determined by the Court, with post-judgment interest on all of such judgment amounts at the rate of 6.21% per annum until paid. The issue of whether plaintiffs are entitled to recovery of their attorneys' fees and the amount of any such fees to be so recovered will be subsequently determined by the Court.

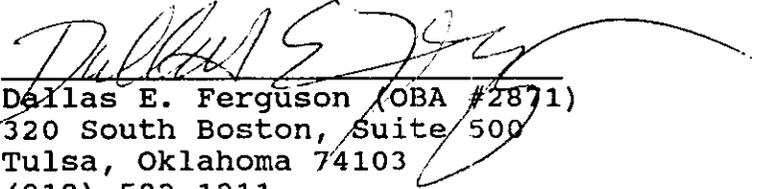
IT IS FURTHER ORDERED by the Court, that plaintiff Frances T. Gathright is to be immediately reinstated as an insured party under the terms of health insurance policy number 5952622 issued by defendant on May 4, 1989, as though said plaintiff had been insured hereunder from the date of issue of said policy.

IT IS SO ORDERED this 24<sup>th</sup> day of April, 1991.

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

APPROVED:

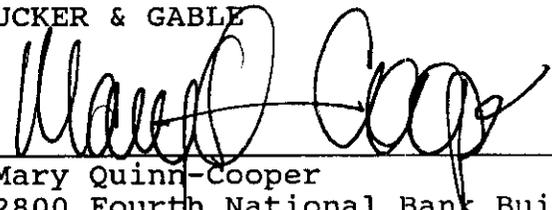
DOERNER, STUART, SAUNDERS,  
DANIEL & ANDERSON

By: 

Dallas E. Ferguson (OBA #2871)  
320 South Boston, Suite 500  
Tulsa, Oklahoma 74103  
(918) 582-1211

Attorneys for the Plaintiffs  
Frances T. Gathright and  
Cary K. Gathright

RHODES, HIERYONYMUS, JONES,  
TUCKER & GABLE

By: 

Mary Quinn-Cooper  
2800 Fourth National Bank Building  
Tulsa, Oklahoma 74119  
(918) 582-1173

Attorneys for the Defendant  
American Republic Insurance Company

  
William J. Bergner, Esq.

501 Northwest 13th  
P. O. Box 61190  
Oklahoma City, Oklahoma 73146  
(405) 232-2020

Attorney for the Third-Party  
Defendant Linus Muse

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

In Re: )

Samuel Crosslen and )  
Mary Crosslen )

Debtors, )

Fred W. Woodson, Esq., )  
Trustee, )

Plaintiff, )

vs. )

Samuel Crosslen and )  
Mary Crosslen and )  
D. E. Shirmer, Trustee of )  
the Energy Exchanger Company )  
Profit Sharing Plan, )

Defendants. )

Case No. 90-C-373-C ✓

APR 23 1991  
U.S. DISTRICT COURT

Case No. 89-03581-W  
(Chapter 7)

Adv. No. 90-0077-W

S T A T U S R E P O R T

Comes Now the Plaintiff, Fred W. Woodson, Jr., Trustee, by and through his attorney of record, James A. Hogue, Sr., of James A. Hogue, Sr. and Associates, Inc., and apprises this Court that the Adversary Proceeding, to which this case was the necessary requisite, was settled and dismissed on the 23rd day of August, 1990, as evidenced by the attached filing hereto as "Exhibit A".

In consideration of the premises, Plaintiff has considered this matter dismissed as compromised.

Dated this 19th day of April, 1991.



James A. Hogue, Sr. (OBA #4279)  
JAMES A. HOGUE, SR. AND  
ASSOCIATES, INC.

P. O. Box 2904  
Tulsa, OK 74101-2904  
(918) 583-9700

Attorney for the Plaintiff, Trustee,  
Fred W. Woodson, Jr.

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

**FILED**

AUG 23 1990

DOROTHY A. EVANS, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OKLAHOMA

In re: )  
 )  
 Samuel Crosslen and )  
 Mary Crosslen, )  
 Debtors, )  
 )  
 FRED W. WOODSON, Trustee. )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Samuel Crosslen and )  
 Mary Crosslen and )  
 D. E. Shirmer, Trustee of the )  
 Energy Exchanger Company Profit )  
 Sharing Plan, )  
 Defendants. )

Case No. 90-C-373-C.

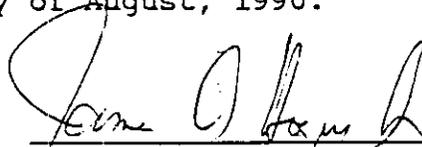
(Chapter 7 No. 89-03581-W;  
Adversary No. 90-0077-W)

NOTICE OF PAYMENT OF COMPROMISE AMOUNT

Comes now James A. Hogue, Sr. of James A. Hogue, Sr. and Associates, Inc., on behalf of the Trustee, Fred W. Woodson, Jr., and informs the Court that the Trustee has received \$2,000,00 from the Debtor herein pursuant to the Court approved compromise filed herein on August 6, 1990.

Therefore the Trustee dismisses its Adversary Proceeding filed herein as compromised.

Dated this 23rd day of August, 1990.



James A. Hogue, Sr. - OBA #4279  
James A. Hogue, Sr. and Associates, Inc.  
P. O. Box 2904  
Tulsa, OK 74101-2904  
(918) 583-9700

Attorney for the Trustee  
Fred W. Woodson, Jr.

**EXHIBIT**

"A"

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

QUINION R. LEIGH, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 DR. R. BARNES & SHERIFF STANLEY )  
 GLANZ, )  
 )  
 Defendants. )

90-C-547-C ✓

**FILED**  
**APR 23 1991**  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER

The court has for consideration the Report and Recommendation of the Magistrate Judge filed February 27, 1991, in which the Magistrate Judge recommended that Defendants' Motion to Dismiss be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

It is therefore Ordered that Defendants' Motion to Dismiss is granted.

Dated this 23<sup>rd</sup> day of April, 1991.

  
H. DALE COOK, CHIEF  
UNITED STATES DISTRICT JUDGE

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

**FILED**

APR 23 1991

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

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

CASE NO. 90-C-395 B

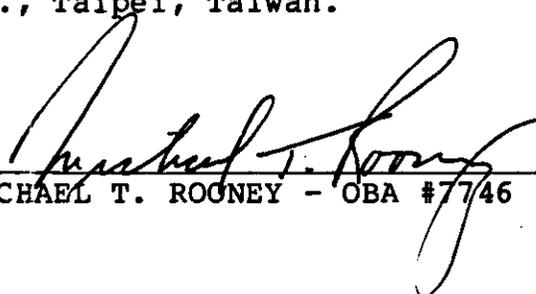
NOTICE OF DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, pursuant to Fed.R.Civ.P. 41(a)(1), and hereby dismisses the above styled action without prejudice to the filing of a future action against TAI FONG ELECTRIC COMPANY, only, reserving all rights to proceed against all remaining parties or others who may be liable. Plaintiff would show that service has not yet been obtained on TAI FONG ELECTRIC COMPANY, and such Defendant has not filed an Answer or Motion for Summary Judgment, thus dismissal without prejudice of such Defendant, only, is proper.

## CERTIFICATE OF SERVICE

I hereby certify that on this 22<sup>nd</sup> day of April, 1991  
a true and correct copy of the above and foregoing has been served upon  
the following:

Sheritone International, Inc.,  
by serving: MICHAEL SCHLESINGER,  
25 E. Washington, St., Suite 1000,  
Chicago, ILL.; WILLIAM S. HALL,  
Park Center, Suite 1400, 525 S.  
Main, Tulsa, OK 74103-4409 Atty for  
ACME Agricultural Supply, Inc.;  
TAI Fong Electric Company, by  
serving: THE PRESIDNET OR CHIEF  
EXECUTIVE OFFICER, 5 Tun Hwa South  
Road, Louis Bldg., Taipei, Taiwan.

  
MICHAEL T. ROONEY - OBA #7746

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

**FILED**

APR 22 1991

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

JAMES KELSO,  
Plaintiff, )  
vs. )  
GENERAL AMERICAN LIFE )  
INSURANCE COMPANY, a )  
domesticated insurance )  
corporation, )  
Defendant.)

Case No. 90-C-80-B ✓

ORDER

Before the Court is Defendant General American Life Insurance Company's (General American) Motion for Summary Judgment. Plaintiff James Kelso and Defendant General American agree as to the relevant facts presented in this case and have submitted findings of fact and conclusions of law to aid the Court in its determination.

This case involves a claim by James Kelso that he was wrongfully denied benefits by General American as the beneficiary of his deceased wife, Joan Kelso. Mrs. Kelso was employed by Kentube Corporation, which provided group benefits to its employees who qualified for the insurance plan purchased from General American. The insurance plan provided for eligibility of coverage either based on "early enrollment," which did not require any proof of insurability, or based on a "late enrollment," which required proof of insurability. Plaintiff Kelso was paid benefits as Joan Kelso's beneficiary for a period of time. After Joan Kelso's death, Defendant General American ceased paying benefits and denied

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that Joan Kelso was covered under the insurance. This denial of benefits led to this dispute.

The Findings of Fact and Conclusions of Law are set out below. The Court finds that Defendant General American's Motion for Summary Judgment is sustained.

#### FINDINGS OF FACT

1. On October 1, 1985, Defendant General American issued a Group Health Policy and a Group Life and Disability Policy to Division Fintube Corporation. Kentube, a division of Fintube Corporation, provided group benefits to its employees under these two policies [hereinafter referred to as Policy].

2. Employees could become eligible for benefits under the Policy through early election. This permitted employees to elect to enroll within thirty-one days after first becoming eligible for insurance. Upon early election, an employee was entitled to enroll without proof of insurability or submission of a medical history.

3. Under the Policy, employees who did not enroll within the thirty-one days after first becoming eligible for insurance were required thereafter to provide a medical history and proof of insurability to General America under a late enrollment.

4. Kentube and the covered employees each paid part of the premiums for the Policy. The amount and frequency of the contribution to be made by employees were subject to a separate agreement between the employer and its employees: the premiums were paid by Fintube to Defendant General American. General American received no information concerning the contributions made by individual employees.

5. The Policy was self-administered: Kentube provided an employee to administer the enrollment of employees and the processing of claims for submission to General American. Kentube kept the master list of employees who were covered under the Policy.

6. Kentube was responsible for providing any facts necessary to administer the insurance under the Policy and to determine the amount of premiums owed. In addition, Kentube was to make available for inspection any records relating to the insurance. This information was to be made available to General American upon request and General American had the right to audit such information at any time.

7. General American had the discretion to determine eligibility of late enrollees and to approve or deny payment of claims under the Policy.

8. Kentube, through its appointed internal administrator, processed regular enrollments and General American had the discretion to determine eligibility of late enrollees for coverage and to determine the propriety of all claims.

Claims were submitted to the internal administrator and the claims were then forwarded to General American with a certification that the employee was covered under the Policy.

The Policy does not specify what constitutes insurability or provide any guidelines to determine such. General American has promulgated internal guidelines to determine insurability, based upon industry tables assessing risk.

9. The internal administrator for Kentube was originally

Coneil Lafarlette. General American trained Ms. Lafarlette and provided her with a Group Insurance Manual. Ms. Lafarlette knew and understood the procedures for the late enrollment of employees.

10. Joan Kelso, Plaintiff James Kelso's wife, was an employee of Kentube from May 14, 1987 until May 25, 1988.

11. Joan Kelso became eligible for insurance as an early enrollee under the Policy on June 14, 1987. At the time of her employment, Joan Kelso was covered under her husband's insurance policy and she did not elect coverage under the Policy as an early enrollee.

12. In January 1988, Coneil Lafarlette's duties as internal administrator were transferred to Joan Kelso. Mrs. Kelso had previous experience as an insurance agent and that experience was part of the reason for her appointment as internal administrator. Ms. Coneil trained Joan Kelso, explained the administrative procedures to her, and provided her with a Group Insurance Manual. It is unclear as to whether the late enrollment process was specifically discussed.

13. In early 1988, Plaintiff James Kelso left his employment and Joan Kelso was no longer insured under his insurance coverage.

14. On February 15, 1988, Joan Kelso was the designated internal administrator, and at that time she completed an enrollment form for coverage for herself as a late enrollee under the Policy. However, medical information and proof of insurability were not submitted as part of her late enrollment. Had such proof of insurability been submitted, the medical history would have shown that Mrs. Kelso had undergone a mastectomy for the removal of

a malignant tumor on September 13, 1985 as well as the removal of a benign tumor in January 1988.

15. Although Mrs. Kelso was the internal administrator at the time of her enrollment, the enrollment card was signed by the former internal administrator, Ms. Lafarlette.

16. The Group Coverage Certification Form issued to Mrs. Kelso by Ms. Lafarlette indicated an effective date of February 15, 1988 and provided for life insurance in the amount of \$20,000.00, with Plaintiff James Kelso as the beneficiary.

17. On May 15, 1988, Joan Kelso first learned of, and was diagnosed as suffering from a terminal form of liver cancer. Mrs. Kelso died on December 17, 1988.

18. Medical expenses for the care of Joan Kelso were paid by General American in the amount of \$30,670.00. This amount represented approximately all of the bills for her care which were processed through January 1989.

19. After the death of Joan Kelso, Plaintiff James Kelso made a claim under the Policy for the life insurance benefit of \$20,000.00.

20. In early January 1989, Defendant General American learned that Joan Kelso had not filed evidence of insurability as part of the late enrollment, as required under the Policy.

21. Defendant General American denied Joan Kelso's eligibility as a late enrollee under the Policy, and denied the claim of \$20,000.00 in life insurance benefits as well as \$1500.00 outstanding medical benefits. In addition, General American offset the previously paid claims for \$30,670.00 against amounts owed to

Kentube under a self-funding provision of the Plan.

22. The claim for benefits was initially denied based on Joan Kelso's failure to provide proof of insurability as a late enrollee and based on her position as internal administrator for the Policy, an indication that she should have known of the requirement for a medical history.

In addition, Defendant General American subsequently reviewed the medical records of Joan Kelso and determined that as a result of her earlier medical history of breast cancer, her application for insurance as a late enrollee would have been denied under the internal guidelines for evaluation of late enrollees, even if she had properly enrolled as a late enrollee.

23. Under the Policy, refunds of premiums by General American are payable to Division Fintube Corporation as policyholder.

#### CONCLUSIONS OF LAW

1. The Court has jurisdiction pursuant to 28 U.S.C. § 1331 based on the federal question governed by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 et seq. Venue is proper pursuant to 28 U.S.C. § 1391 (b).

2. ERISA regulates employee welfare plans. A "welfare plan" is defined as:

Any plan, fund, or program ... which is maintained by an employer ... for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical or hospital care benefits, or benefits in the event of sickness, accident, disability, death ...

29 U.S.C. § 1002 (1) (emphasis added). The Policy offered by Kentube to its employees is an ERISA "welfare plan" (Plan).

3. For most purposes, ERISA regulates all "employee benefit plans," including welfare benefit plans and pension plans. 29 U.S.C. § 1002 (3). Under the statute, any program funded by the purchase of insurance and established by an employer for the purpose of providing employees and their dependents with medical, surgical, life, disability or hospital care benefits is an ERISA welfare plan. Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 41, 44; 95 L.Ed.2d 39, 46; 107 S.Ct. 1549, 1553 (1987). Such plans are ERISA plans even if the employee pays part of the premiums. Id. at 43.

The Policy established by Fintube and funded through the purchase of insurance from General American, paid with contributions from employees, is an ERISA welfare plan.

4. ERISA establishes consistent federal standards for employee benefit plans and preempts "any and all state laws insofar as they now or hereafter relate to any employee benefit plans ..." 29 U.S.C. § 1144 (a). Claims for denial of benefits are governed by ERISA. Moore v. Reynolds Metals Co. Retirement Program of Salaried Employees, 740 F.2d 454, 457 (6th Cir. 1984), cert. denied, 469 U.S. 1109, 105 S.Ct. 786, 83 L.Ed.2d 780 (1985). A suit challenging the cancellation of benefits is also governed by ERISA. Bayles v. Central States, Southeast and Southwest Areas Pension Fund, 602 F.2d 97, 99, 100 (5th Cir. 1979).

General American's denial of benefits to James Kelso is governed by ERISA.

5. State law claims for breach of contract, tortious breach of contract, fraud, bad faith failure to pay benefits, and breach

of fiduciary duty are preempted by ERISA. This is true even if the plan is funded by the purchase of a policy of insurance and even if the state law claims are authorized by state insurance regulations. Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 41, 95 L.Ed.2d 39, 47-48, and 50-51, 107 S.Ct. 1549 (1987).

Plaintiff's claims in this action are for state common law breach of contract and failure to pay benefits and are preempted by ERISA.

6. Where a plan is funded through the purchase of insurance, the terms and conditions of the insurance policy become part of the terms of the employee benefit plan. Nolan v. Aetna Life Ins. Co., 588 F.Supp. 951, 952-953 (E.D. Mich. 1984). A group insurance policy satisfies ERISA's requirement that a plan be established and maintained by a "written instrument." Musto v. American General Corp., 861 F.2d 897, 900-902, (6th Cir. 1988).

7. The terms of the plan and the provisions of ERISA govern the rights and obligations of participants, beneficiaries and fiduciaries. 29 U.S.C. §§ 1022 (b), 1132 (a) (1).

8. The claims made by the Plaintiff are governed by ERISA and all state law claims are preempted. The propriety of the decisions made by General American are determined based upon the terms of the Policy, and applicable federal law.

9. A plan fiduciary is defined:

A person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management or disposition of its assets, ... (iii) he has any discretionary authority or discretionary responsibility in the

administration of such plan.

29 U.S.C. § 1002 (21)(A).

Defendant General American is the plan fiduciary.

10. Where the fiduciary has discretionary authority to determine eligibility for benefits or to construe the terms of the plan, the Court's review of the fiduciary's decisions is limited to a determination of whether the fiduciary's actions were arbitrary or capricious, based on the information before the fiduciary at the time. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 109 S.Ct. 948, 956, 103 L.Ed.2d 80, 95 (1989).

In the plan established by Mrs. Kelso's employer, General American was given discretionary authority to evaluate claims and to determine the eligibility and insurability of late enrollees.

11. A decision is neither arbitrary nor capricious if it is based on substantial evidence and is not the result of a mistake of law. Naugle v. O'Connell, 833 F.2d 1391, 1393-1394 (10th Cir. 1987).

12. The "substantial evidence" test is satisfied if there is any evidence that could lead to the conclusion adopted by the fiduciary. The trial court does not independently assess the persuasiveness of the evidence. LeFebre v. Westinghouse Elec. Corp., 747 F.2d 197, 207-203 (4th Cir. 1984).

14. American General's denial of the Plaintiff's claim is based on substantial evidence and is not arbitrary nor capricious: Joan Kelso, as a late enrollee, was required to submit a medical history and proof of insurability to General American. Her failure to do so is substantial evidence on which General American could

deny eligibility and upon which Plaintiff James Kelso's claim could be denied.

15. The general rule is that insurance premiums should be refunded to the person who procured the insurance and paid the premiums. Kaufman v. McLaughlin, 357 F.2d 283, 286 (D.C. Cir. 1966). The premiums were paid to Defendant General American by the policyholder, Fintube Corporation. Employees paid a share of the total amount of the premium (employee's contribution) with their employer; however, the policyholder is the procurer of the insurance.

General American is responsible only to Fintube for any refunds under the Policy.

16. Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where there is no genuine issue as to any material fact and 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).

The parties have agreed to the facts and the Court has concluded that as a matter of law, the plaintiff's claims are governed by ERISA and the defendant's decision to deny plaintiff's claim for benefits is not arbitrary nor capricious and is therefore upheld. The defendant's motion for summary judgment is sustained.

IT IS SO ORDERED this 22<sup>nd</sup> day of April, 1991.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

MGAS, INC., an Oklahoma  
corporation,

Plaintiff,

vs.

TEXINIA OIL & GAS, INC., a  
Texas corporation,

Defendant.

FORTUNA ENERGY CORPORATION,  
an Oklahoma corporation,

Third-Party Defendant.

Case No. 90 C-637-C

**FILED**

**APR 22 1991**

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

ORDER OF DISMISSAL WITH PREJUDICE AS TO ALL CLAIMS

On motion of all parties, the Complaint, Third-Party Complaint, Counterclaims and all other claims for relief whatsoever herein are hereby dismissed with prejudice, with each party to bear its own attorneys' fees, costs, and expenses.

DATED this 19 day of April, 1991.

(Signed) H. Dale Cook

\_\_\_\_\_  
JUDGE OF UNITED STATES DISTRICT COURT

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

FILED

APR 22 1991

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

MIDAMERICA FEDERAL SAVINGS )  
AND LOAN ASSOCIATION, a federal )  
savings and loan association, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SHEARSON/AMERICAN EXPRESS, )  
INC., a Delaware corporation; )  
and DON CROW, an individual, )  
 )  
Defendants. )

No. 84-C-10-C

ORDER

Before the Court is the issue of the amount of attorney fees to be awarded plaintiff as a result of this litigation. The factual background and the legal issue of entitlement to fees have been addressed in previous Orders.

Unfortunately, the Court and the parties have, of necessity, ignored the Supreme Court's admonition that "[a] request for attorney's fees should not result in a second major litigation." Hensley v. Eckerhart, 461 U.S. 424, 437 (1983). Difficult issues were presented, and the amount of fees requested is larger than the amount of damages sought in most litigation. All matters having been thoroughly briefed and argued, the Court now enters its Order as to the amount recoverable.

Of course, this Court must follow Tenth Circuit precedent, which has established guidelines for proper determination. That court has stated that the most useful starting point is the number

325

of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. Ramos v. Lamm, 713 F.2d 546, 552 (10th Cir. 1983) (quoting Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). Here, the parties have stipulated as to the reasonableness of the hourly rate employed by plaintiff's counsel. Therefore, the Court's focus is on the number of hours.

At hearings held regarding the present application, the Court has referred to this litigation as "hotly contested". The phrase is not pejorative. Both sides hired excellent counsel and were entitled to zealous representation. The case was legally complex as well as being fact-intensive. Discovery was necessarily undertaken on a vast scale and led to numerous disputes. Each side raised every non-frivolous objection to the other's conduct, and argued those objections persistently. In doing so, all counsel fulfilled their obligation to represent their clients zealously within the bounds of the law, and the Court has praise -- not criticism -- for the attorneys involved. However, litigation conducted as this case was makes the resolution of an attorney fee dispute anything but routine for the Court.

Normally, the Court reviews each item listed on time records with a view to ascertaining "not just the actual hours expended by counsel, but which of those hours were reasonably expended in the litigation." Ramos, 713 F.2d at 553 (emphasis added). Further,

In determining what is a reasonable time in which to perform a given task or to prosecute the litigation as a whole, the court should consider that what is reasonable in a particular case can depend upon factors such as the complexity of the case, the number of reasonable strategies pursued, and the responses necessitated by the maneuvering of the other side.

Id. at 554.

Such retrospective scrutiny by a district court can result in "disagreement of the most odious sort" as the Tenth Circuit recognized in Mares v. Credit Bur. of Raton, 801 F.2d 1197, 1202 (10th Cir. 1986). The court stated:

No objective standard exists to resolve a dispute, for example, over ten hours logged for drafting interrogatories. A lawyer may insist the time was necessary, while a court, based upon experience and judgment, including knowledge of the case itself, may declare half the time to have been necessary.

\* \* \* \* \*

The process would descend to a contest between court and counsel... [D]isputes would be multiplied, ...

Id. at 1202-03 (emphasis added).

For this reason, the court concluded that "[t]here is no requirement ... that district courts identify and justify each disallowed hour." Id. at 1202. Instead, "[a] general reduction of hours claimed in order to achieve what the court determines to be a reasonable number is not an erroneous method, so long as there is sufficient reason for its use." Id. at 1203. The district court must provide a concise but clear explanation of its reasons for the fee award. Smith v. Freeman, 921 F.2d 1120, 1124 (10th Cir. 1990) (quoting Hensley v. Eckerhart, 461 U.S. at 437). In this Court's view, the present case is a clear instance where the Mares approach is appropriate. For example, attempting to delineate gossamer distinctions between "reasonable" discovery conduct and "excessive" discovery conduct under the facts of this case is a fruitless task. The Court will nevertheless attempt to adequately explain any reduction made after reviewing the time records presented.

Through its application and four supplements, plaintiff seeks an attorney fee of \$717,424.50, not including interest. Scores of time record pages are presented in support of the request. In their objection to the original application, filed May 27, 1986, subsequent objections filed in response to plaintiff's supplements, and through testimony of Joel Wohlgemuth at hearing, defendants set forth numerous time entries in which plaintiff's counsel failed to particularize each task within a bulk time entry as to the amount of time that task required. Further, they point out instances of contradictory records, in that attorney A records a conference with attorney B, but the conference is not recorded by attorney B, for example.

Further, defendants argue that excessive time was spent summarizing the trial transcripts, researching breach of fiduciary duty, researching the interest rate on the judgment, discussing post-trial voluntary dismissal of plaintiff's §12(2) claim, and that many services were duplicated. Upon review, the Court finds that plaintiff has deleted some of these entries in subsequent revisions of its application, but many remain. Plaintiff presented its position at the final hearing on November 5, 1990. It is "counsel's burden to prove and establish the reasonableness of each dollar, each hour, above zero." Mares, 801 F.2d at 1210. The Court finds defendants' objections listed above to be well taken.

Next, the defendants object to various billed hours in the prelitigation phase as "education" time which is more properly included in a firm's overhead. See Ramos, 713 F.2d at 554. Plaintiff correctly responds that thorough factual and legal

research is necessary in order to comport with Rule 11 F.R.Cv.P. However, the Court is again persuaded that time spent was excessive. Defendants object to the hours billed by Sam Daniel, who they argue served as "note taker" and as presenter of opening and closing arguments. See Ramos, 713 F.2d at 554 n.4. See also Mares, 801 F.2d at 1206 ("There is a difference between assistance of co-counsel which is merely comforting or helpful and that which is essential to proper representation"). The Court finds reduction appropriate.

The Court also concludes that reduction should be made regarding the numerous entries made by plaintiff referring to "conferences". There is no question that the issues involved in the case were complex and justified discussion. Yet the Tenth Circuit has approved the analogy of a district court resolving a fee application to a "senior partner in a private firm scrutinizing and adjusting time reported by subordinates." Mares, 801 F.2d at 1203. In this Court's judgment, a general reduction is required on that basis as well.

In plaintiff's third and fourth supplements to its application, the majority of time sought involves litigating the issue of entitlement to fees. The Tenth Circuit has stated:

As we stated previously, the general rule is that at least some compensation is generally allowable for work reasonably expended on the fee application, although hours not spent representing the client are at best on the borderline of what Congress intended to be compensable. There is a difference, however, between time necessary to prepare and submit an application for fees, and hours spent disputing a fee award. The latter are especially suspect, and may be disallowed in their entirety.

Mares, 801 F.2d at 1206 (citations omitted).

The Court concludes that this amount should be reduced by 50%. The parties have stipulated to the reasonableness of plaintiff's requested fees for time spent regarding the appeal. In conclusion, the Court reduces the total claim of plaintiff by 30%.

Plaintiff also seeks an award of interest as to any attorney fees awarded. Moreover, it contends that interest should run from July 23, 1986, the date of the initial judgment, which is silent as to fees. In doing so, it relies upon a single sentence in Cooper Liquor, Inc. v. Adolph Coors Company, 701 F.2d 542 (5th Cir. 1983), which states:

If a judgment is rendered that does not mention the right to attorneys' fees, and the prevailing party is unconditionally entitled to such fees by statutory right, interest will accrue from the date of judgment.

Id. at 545.

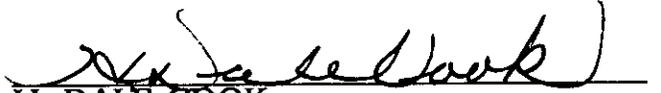
Of course, the Tenth Circuit, and by implication this Court, are not bound by decisions of other circuit courts of appeal. See United States v. Carson, 793 F.2d 1141, 1147 (10th Cir.) cert. denied, 479 U.S. 914 (1986). This Court declines to follow Cooper Liquor for several reasons.

It is correct that 28 U.S.C. §1961 governs post-judgment interest on attorney fees, as to state causes of action brought in federal court. See Transpower Constructors v. Grand River Dam Authority, 905 F.2d 1413, 1423 (10th Cir. 1990). However, at the present time there is no judgment as to attorney fees. In effect, plaintiff seeks pre-judgment interest relating back to the date of the damage judgment. "Generally, no prejudgment interest should be paid for the period before the fees are awarded." Ramos v. Lamm, 713 F.2d 546, 555 (10th Cir. 1983). "The decision whether or not

to allow pre-judgment interest rests within the sound discretion of the trial court." U. S. Industries, Inc. v. Touche Ross & Co., 854 F.2d 1223, 1255 n.43 (10th Cir. 1988). The Court believes that, under the facts and equities of this case, its discretion is better exercised in only awarding interest from the date of a judgment regarding attorney fees.

It is the Order of the Court that plaintiff MidAmerica Federal Savings and Loan Association is awarded attorney fees in the amount of \$502,197.15.

*IT IS SO ORDERED* this 22<sup>nd</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

FILED

APR 22 1991

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

MIDAMERICA FEDERAL SAVINGS )  
AND LOAN ASSOCIATION, a federal )  
savings and loan association, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SHEARSON/AMERICAN EXPRESS, )  
INC., a Delaware corporation; )  
and DON CROW, an individual, )  
 )  
Defendants. )

No. 84-C-10-C

J U D G M E N T

In accordance with the Order filed contemporaneously herewith,  
IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that the  
plaintiff recover attorney fees from the defendants in the amount  
of \$502,197.15, plus post-judgment interest at the rate of 6.26%  
per annum.

IT IS SO ORDERED this 22<sup>nd</sup> day of April, 1991.

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

509/31

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

FILED

APR 22 1991

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

UNITED SIDING SUPPLY, INC., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 GRADY BROTHERS, INC.; JACK HOKE; )  
 AND RANDY GRADY, )  
 )  
 Defendants. )

No. 90-C-594-C

FINAL JOURNAL ENTRY OF JUDGMENT  
AGAINST DEFENDANTS, GRADY BROTHERS, INC. AND RANDY GRADY

NOW, on this <sup>20</sup>~~27~~th day of <sup>MARCH</sup>~~February~~, 1991, the above-styled and numbered case comes on before me, the undersigned Magistrate Judge of the above-entitled Court. Plaintiff, United Siding Supply, Inc., appears by and through its attorneys of record, Joyce and Pollard, by Brian J. Rayment. Defendants, Grady Brothers, Inc. and Jack Hoke, appear by and through their attorney of record, Kevin Schoepel. Defendant, Randy Grady, appears by and through his attorneys of record, Richardson, Meier & Associates, by Ronald Hignight.

Plaintiff, United Siding Supply, Inc., is entitled to judgment against the defendants, Grady Brothers, Inc. and Randy Grady, individually, in the principal sum of \$106,258.48, accrued interest through March 31, 1991, in the sum of \$31,389.32, plus interest from April 1, 1991 on the principal balance at 18% per annum.

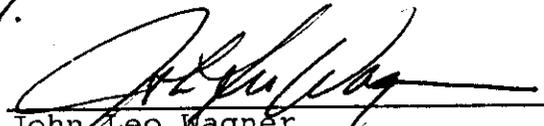
The entry of final judgment against defendant Randy Grady on plaintiff's claim is justified insofar as there is no just reason for delaying the entry of such a final judgment pursuant to Rule

54(b).

IT IS, THEREFORE, ORDERED, that plaintiff, United Siding Supply, Inc., have and recover judgment against the defendants, Grady Brothers, Inc. and Randy Grady, in the principal sum of \$106,258.48, accrued interest through March 31, 1991, in the sum of \$31,389.32, interest on the principal sum from April 1, 1991, at 18% per annum, plus the costs of this action, accrued and accruing.

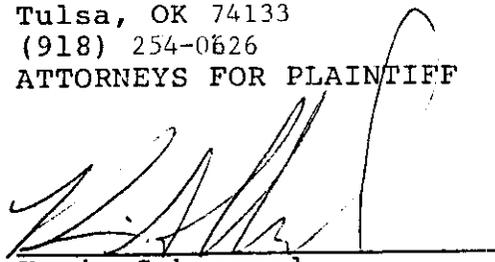
IT IS FURTHER ORDERED that plaintiff's entitlement to attorney's fees against said defendants shall be preserved for future determination by this Court.

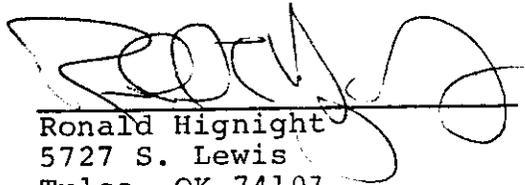
*Dated April 22, 1991.*

  
\_\_\_\_\_  
John Leo Wagner  
UNITED STATES MAGISTRATE JUDGE

APPROVAL AS TO FORM:

  
\_\_\_\_\_  
Brian J. Rayment, OBA #7441  
7666 E. 61st, #240  
Tulsa, OK 74133  
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ATTORNEYS FOR PLAINTIFF

  
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ATTORNEY FOR DEFENDANTS, GRADY  
BROTHERS, INC. AND JACK HOKE



Ronald Hignight  
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Tulsa, OK 74107  
(918) 492-7674

ATTORNEY FOR DEFENDANT, RANDY GRADY

**FILED**

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

APR 22 1991

LINDA K. CARTER,

Plaintiff,

vs.

LELAND EUGENE SCHMUTT, an  
individual, and STATE FARM  
MUTUAL AUTOMOBILE INSURANCE  
COMPANY, a foreign corporation,

Defendants.

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

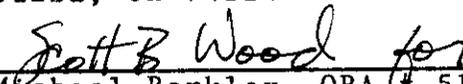
Case No. 90-C-624-C

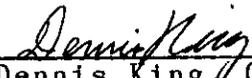
STIPULATION OF DISMISSAL WITHOUT PREJUDICE

COMES NOW the plaintiff, Linda K. Carter, the defendant,  
Leland Eugene Schmutt, and the defendant State Farm Mutual  
Automobile Insurance Company and hereby stipulate that defendant,  
State Farm Mutual Automobile Insurance Company can be dismissed  
without prejudice from the above entitled action.

Respectfully Submitted,

By   
Dale Warner, OBA # 9359  
Attorney for Plaintiff  
2521 East 21st St.  
Suite 200  
Tulsa, OK 74114

By   
Michael Barkley, OBA # 517  
Attorney for Leland Eugene Schmutt  
401 S. Boston  
Suite 2700  
Tulsa, Ok 74103

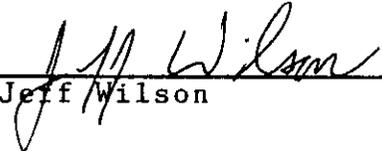
By   
Dennis King, OBA # 5026  
Attorney for State Farms Mutual  
Automobile Insurance Company  
603 Expressway Tower  
2431 E. 51st Street  
Tulsa, OK 74105

CERTIFICATE OF HAND DELIVERY

I, Jeff Wilson, hereby certify that on the 22nd day of April, 1991, I hand delivered a true and correct copy of the above and foregoing Stipulation of Dismissal Without Prejudice to:

Dale Warner,  
Attorney for Plaintiff  
2521 East 21st St.  
Suite 200  
Tulsa, OK 74114

Michael Barkley,  
Attorney for Leland Eugene Schmutt  
401 S. Boston  
Suite 2700  
Tulsa, Ok 74103

  
\_\_\_\_\_  
Jeff Wilson