

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

FILED

JUL 18 1991

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JOHNNY E. GLOVER,)
)
 Defendant.)

No. 89-CR-56-E
91-C-51-E

O R D E R

NOW on this 17th day of July, 1991 comes on for consideration the above-styled case and the Court, being fully advised in the premises finds:

Defendant's Motion to Dismiss his \$2255 motion without prejudice is granted.

It is so ORDERED.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

FILED
JUL 18 1991
TULSA

MCI TELECOMMUNICATIONS CORPORATION,

Plaintiff

v.

KEN JENKINS, individually,
and KEN JENKINS, d/b/a GREATER
OKLAHOMA MARKETING,

Defendant.

Case No. 91 C 130 B

NOTICE OF DISMISSAL WITHOUT PREJUDICE

COMES NOW plaintiff MCI Telecommunications Corporation, and, pursuant to Federal Rule of Civil Procedure 41(a)(1), dismisses this cause without prejudice.

Respectfully submitted,

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

By: Barbara Woltz
James J. Proszek, OBA #10443
Barbara L. Woltz, OBA #12535
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR PLAINTIFF
MCI TELECOMMUNICATIONS CORPORATION

Of Counsel:

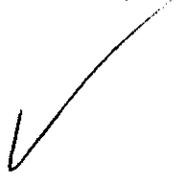
Donna M. Roberts
MCI Telecommunications Corporation
1133 19th Street, N.W.
Washington, D.C. 20036
202-887-2417

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

7-18-91 8

JOHN H. WASHINGTON,)
)
 Plaintiff,)
)
 v.)
)
 STEVE GARDALLA, et al,)
)
 Defendants.)

91-C-167-E



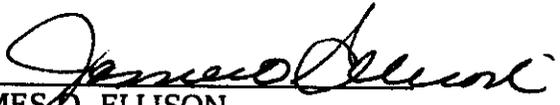
ORDER

The court has for consideration the Report and Recommendation of the Magistrate Judge filed June 24, 1991, in which the Magistrate Judge recommended that Defendants Lanning and Corgan's 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 Lanning and Corgan's Motion to Dismiss be granted and plaintiff's civil rights complaint pursuant to 42 U.S.C. § 1983 is dismissed as to these defendants.

Dated this 17th day of July, 1991.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

22

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

FILED

JUL 18 1991

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHNNY E. GLOVER,

Defendant.

No. 89-CR-56-E

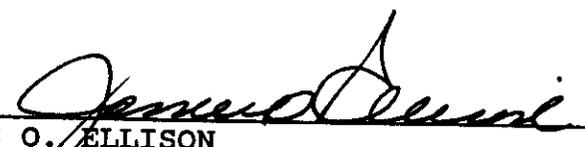
91-C-51-E

ORDER

NOW on this 17th day of July, 1991 comes on for consideration the above-styled case and the Court, being fully advised in the premises finds:

Defendant's Motion to Dismiss his \$2255 motion without prejudice is granted.

It is so ORDERED.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

It appears that the Defendants, County Treasurer, Ottawa County, Oklahoma, and Board of County Commissioners, Ottawa County, Oklahoma, filed their Answer on February 20, 1991; and that the Defendants, Aaron V. Hunt and Sharon Sue Marmon a/k/a Sharon Sue Hunt n/k/a Sharon Sue Keelow, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that Sharon Sue Marmon a/k/a Sharon Sue Hunt is now known as Sharon Sue Keelow.

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 Ottawa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lots 45. 46. 47. 48. 49. and 50 in the Townsite of Coulemelle, a sub-division of Lots 1, 2, and 3 in Section 36, Township 27 North, Range 23 East of the Indian Meridian, Ottawa County, Oklahoma.

The Court further finds that on November 16, 1987, the Defendants, Aaron V. Hunt and Sharon Sue Marmon, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of \$7,500.00, payable in monthly installments, with interest thereon at the rate of 8.5 percent (8.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Aaron V. Hunt and Sharon Sue Marmon, executed and delivered to the United States of America, acting on behalf of the Administrator of

Veterans Affairs, a mortgage dated November 16, 1987, covering the above-described property. Said mortgage was recorded on November 20, 1987, in Book 463, Page 460, in the records of Ottawa County, Oklahoma.

The Court further finds that the Defendants, Aaron V. Hunt and Sharon Sue Marmon a/k/a Sharon Sue Hunt n/k/a Sharon Sue Keelow, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Aaron V. Hunt and Sharon Sue Marmon a/k/a Sharon Sue Hunt n/k/a Sharon Sue Keelow, are indebted to the Plaintiff in the principal sum of \$6,270.18, plus interest at the rate of 8.5 percent per annum from March 1, 1990 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$176.20 (\$20.00 docket fees, \$148.20 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of Lis Pendens).

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

The Court further finds that the Defendants, Aaron V. Hunt and Sharon Sue Marmon a/k/a Sharon Sue Hunt n/k/a Sharon Sue Keelow, are in default and have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Aaron

V. Hunt and Sharon Sue Marmon a/k/a Sharon Sue Hunt n/k/a Sharon Sue Keelow, in the principal sum of \$6,270.18, plus interest at the rate of 8.5 percent per annum from March 1, 1990 until judgment, plus interest thereafter at the current legal rate of 12.39 percent per annum until paid, plus the costs of this action in the amount of \$176.20 (\$20.00 docket fees, \$148.20 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Aaron V. Hunt, Sharon Sue Marmon a/k/a Sharon Sue Hunt n/k/a Sharon Sue Keelow, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Aaron V. Hunt and Sharon Sue Marmon a/k/a Sharon Sue Hunt n/k/a Sharon Sue Keelow, 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, according to Plaintiff's election with or without appraisal, the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

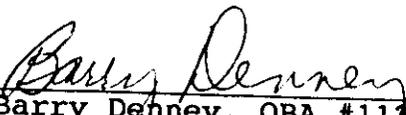
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


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


Barry Denney, OBA #11284
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Ottawa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 91-C-0086-E

KBA/esr

FILED

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

JUL 17 1991

Jack C. ...
U.S. DISTRICT COURT

MICHAEL A. KAUMEYER,
Plaintiff,

vs.

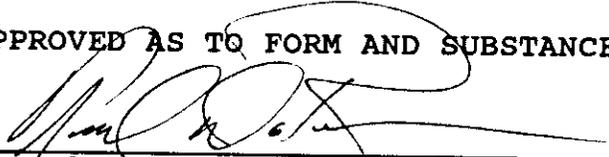
JACK REED CONSTRUCTION CO.,
an Oklahoma corporation,
Defendant.

Case No. 90 C-447 E

STIPULATION AND DISMISSAL

COME NOW the parties to this action, pursuant to Rule 41 of *The Federal Rules of Civil Procedure*, and stipulate, by and between themselves, that the within action has been fully settled and compromised, and that the within complaint should be, and hereby is, dismissed with prejudice to the filing of a further action.

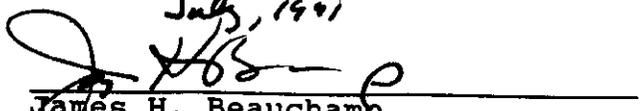
APPROVED AS TO FORM AND SUBSTANCE:


Terrel DoRemus, Attorney
for Plaintiff


James H. Beauchamp, Attorney
for Defendant

PROOF OF SERVICE

This is to certify that a copy of the foregoing pleading has been served upon the opposing counsel Terrel B. DoRemus, 100 Center Plaza, Suite D, Tulsa, OK 74119, by ordinary mail, at his address of record, this 11 day of ~~December~~ ^{July, 1991} 1990.


James H. Beauchamp

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

SCOTT CARPER a/k/a SCOTT W.)
CARPER a/k/a SCOTT WAYNE)
CARPER; MENDY CARPER a/k/a)
MELINDA L. CARPER a/k/a)
MELINDA LOU CARPER a/k/a)
MELINDA LOU WHITSITT a/k/a)
MENDY LOU WHITSITT; STATE OF)
OKLAHOMA ex rel. OKLAHOMA TAX)
COMMISSION; COUNTY TREASURER,)
Tulsa County, Oklahoma; and)
BOARD OF COUNTY COMMISSIONERS,)
Tulsa County, Oklahoma,)

Defendants.)

CIVIL ACTION NO. 90-C-689-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 17th day
of July, 1991. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Kathleen Bliss Adams, Assistant United States
Attorney; the Defendant, State of Oklahoma ex rel. Oklahoma Tax
Commission, appears not, having previously filed its Disclaimer;
the Defendants, County Treasurer, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; and the Defendants, Scott Carper a/k/a Scott W. Carper
a/k/a Scott Wayne Carper and Mendy Carper a/k/a Melinda L. Carper
a/k/a Melinda Lou Carper a/k/a Melinda Lou Whitsitt a/k/a Mendy
Lou Whitsitt, appear not, but make default.

The Court, being fully advised and having examined the court file, finds that the Defendant, Scott Carper a/k/a Scott W. Carper a/k/a Scott Wayne Carper, acknowledged receipt of Summons and Complaint on June 1, 1991; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on August 16, 1990; that the Defendant, Mendy Carper a/k/a Melinda L. Carper a/k/a Melinda Lou Carper a/k/a Melinda Lou Whitsitt a/k/a Mendy Lou Whitsitt, was served with Summons and Complaint on September 28, 1990; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 17, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 17, 1990.

The Court further finds that Scott Carper a/k/a Scott W. Carper a/k/a Scott Wayne Carper was in military service at the time of the initiation of this foreclosure action. On November 15, 1990, the Court entered its Order allowing the United States to proceed with this foreclosure action and attempt to obtain service upon this Defendant, otherwise, this foreclosure would have been prohibited under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

It appears that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed his Answer on September 4, 1990; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on September 4, 1990; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Disclaimer

on August 24, 1990; and that the Defendants, Scott Carper a/k/a Scott W. Carper a/k/a Scott Wayne Carper and Mendy Carper a/k/a Melinda L. Carper a/k/a Melinda Lou Carper a/k/a Melinda Lou Whitsitt a/k/a Mendy Lou Whitsitt, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on June 6, 1990, Scott Wayne Carper and Melinda Lou Carper a/k/a Melinda (Mendy) Lou Whitsitt, filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 90-01529-C. On August 2, 1990, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtors by 11 U.S.C. §362 and directing abandonment of the real property subject to this foreclosure action which is described below. The Debtors were discharged on September 27, 1990.

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

Lot Seven (7), Block Fifteen (15), "ORIGINAL TOWNSITE OF SAND SPRINGS", Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on May 5, 1987, the Defendants, Scott Carper and Mendy Carper, executed and delivered

to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$38,000.00, payable in monthly installments, with interest thereon at the rate of 9 percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Scott Carper and Mendy Carper, 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 May 5, 1987, covering the above-described property. Said mortgage was recorded on May 5, 1987, in Book 5021, Page 901, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Scott Carper a/k/a Scott W. Carper a/k/a Scott Wayne Carper and Mendy Carper a/k/a Melinda L. Carper a/k/a Melinda Lou Carper a/k/a Melinda Lou Whitsitt a/k/a Mendy Lou Whitsitt, made default under the terms of the aforesaid note, and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Scott Carper a/k/a Scott W. Carper a/k/a Scott Wayne Carper and Mendy Carper a/k/a Melinda L. Carper a/k/a Melinda Lou Carper a/k/a Melinda Lou Whitsitt a/k/a Mendy Lou Whitsitt, are indebted to the Plaintiff in the principal sum of \$37,456.32, plus interest at the rate of 9 percent per annum from June 1, 1989 until judgment, plus interest thereafter at the legal rate until

fully paid, and the costs of this action in the amount of \$25.04 (\$20.00 docket fees, \$5.04 fees for service of Summons and Complaint).

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

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

The Court further finds that the Defendants, Scott Carper a/k/a Scott W. Carper a/k/a Scott Wayne Carper and Mendy Carper a/k/a Melinda L. Carper a/k/a Melinda Lou Carper a/k/a Melinda Lou Whitsitt a/k/a Mendy Lou Whitsitt, are in default and have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Scott Carper a/k/a Scott W. Carper a/k/a Scott Wayne Carper and Mendy Carper a/k/a Melinda L. Carper a/k/a Melinda Lou Carper a/k/a Melinda Lou Whitsitt a/k/a Mendy Lou Whitsitt, in the principal sum of \$37,456.32, plus interest at the rate of 9 percent per annum from June 1, 1989 until judgment, plus interest thereafter at the current legal rate of 6 3/4 percent per annum until paid, plus the costs of this action in the amount of \$25.04 (\$20.00 docket fees, \$5.04 fees for service of Summons and Complaint), plus any additional sums advanced or to be advanced or expended

during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, 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 the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, disclaims any 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, according to Plaintiff's election with or without appraisalment, the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

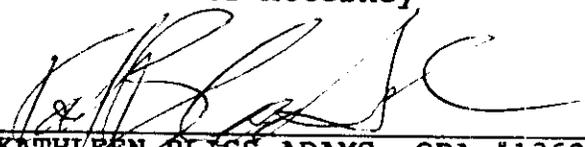
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

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.

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



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



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

Judgment of Foreclosure
Civil Action No. 90-C-689-E

KBA/esr

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUL 17 1991

JATH OIL CO.)
)
 Plaintiff,)
)
 v.)
)
 MOBIL OIL CORPORATION,)
)
 Defendant,)

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

Case No. 91-C-332-E

ORDER TRANSFERRING VENUE

The joint motion of Jath Oil Co. and Mobil Oil Corporation for transfer of venue having come on for consideration, and good cause having been shown for the granting of same,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that venue for this cause is transferred pursuant to 28 U.S.C. § 1404(a) to the United States District Court for the Western District of Oklahoma.

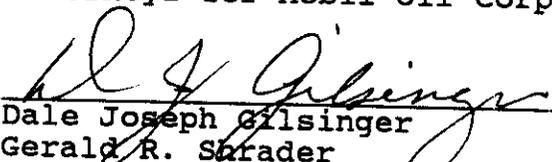
Done this 17th day of July, 1991.


United States District Court Judge

APPROVED FOR ENTRY:

PEGGY L. CLAY
L. Mark Walker
Peggy L. Clay By: 
CROWE & DUNLEVY
20 N. Broadway, Suite 1800
Oklahoma City, OK 73102
(405) 235-7700

Attorneys for Mobil Oil Corporation


Dale Joseph Gilsinger
Gerald R. Shrader
ALBRIGHT & GILSINGER
15 W. Sixth St., Suite 2601
Tulsa, Oklahoma 74119
(918) 583-5800

Attorneys for Jath Oil Co.

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

IN RE:)	Bky. No. 90-00008-G
)	(Chapter 11)
DENNIS J. DOWNING)	
MARGARET GAY DOWNING,)	
)	
Debtors,)	Adversary No. 90-0057-G
)	
AMERICAN FAMILY LIFE ASSURANCE)	
COMPANY OF COLUMBUS, A)	
FOREIGN CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 90-C-811-E
)	
DENNIS J. DOWNING AND)	
MARGARET GAY DOWNING,)	
)	
Defendants.)	

FILED
JUL 17 1991
Jack C. Silver, Clerk
U.S. DISTRICT COURT

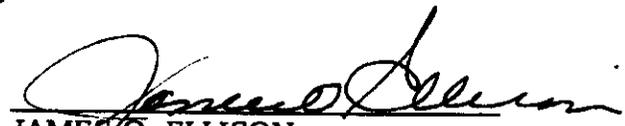
ORDER

On June 11, 1991, Defendant/Appellant was given fifteen days to file a designation of record on appeal, with the proviso that, if the designation were not filed within that time period, the court would dismiss the appeal.

Nanette McAdoo-Tucker, Chief Deputy Clerk of the United States Bankruptcy Court for the Northern District of Oklahoma, has filed an Affidavit stating that no such designation has been filed.

It is therefore ordered that this appeal is dismissed.

Dated this 17th day of July, 1991.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

STEPHEN RAY LEWIS; MARY EARLINE
LEWIS; COUNTY TREASURER, Creek
County, Oklahoma; and BOARD OF
COUNTY COMMISSIONERS, Creek
County, Oklahoma,

Defendants.

CIVIL ACTION NO. 89-C-243-E

DEFICIENCY JUDGMENT

This matter comes on for consideration this 17th day
of July, 1991, upon the Motion of the Plaintiff, United
States of America, acting on behalf of the Secretary of Veterans
Affairs, for leave to enter a Deficiency Judgment. The Plaintiff
appears by Tony M. Graham, United States Attorney for the
Northern District of Oklahoma, through Kathleen Bliss Adams,
Assistant United States Attorney, and the Defendants, Stephen Ray
Lewis and Mary Earline Lewis, appear neither in person nor by
counsel.

The Court being fully advised and having examined the
court file finds that a copy of Plaintiff's Motion was mailed to
Stephen Ray Lewis and Mary Earline Lewis, Route 4, Box 208AA,
Sapulpa, Oklahoma 74066, and all counsel and parties of record.

The Court further finds that the amount of the Amended
Judgment rendered on November 21, 1989, in favor of the Plaintiff
United States of America, and against the Defendants, Stephen Ray

Lewis and Mary Earline Lewis, with interest and costs to date of sale is \$90,471.95.

The Court further finds that the appraised value of the real property at the time of sale was \$59,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Amended Judgment of this Court entered November 21, 1989, for the sum of \$52,244.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on the 28 day of March, 1991.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Stephen Ray Lewis and Mary Earline Lewis, as follows:

Principal Balance as of 11-21-89	\$73,320.90
Interest	14,758.29
Late Charges to Date of Judgment	811.92
Appraisal by Agency	500.00
Management Broker Fees to Date of Sale	429.13
Abstracting	253.55
Publication Fees of Notice of Sale	173.16
Court Appraisers' Fees	<u>225.00</u>
TOTAL	\$90,471.95
Less Credit of Appraised Value	- <u>59,000.00</u>
DEFICIENCY	\$31,471.95

plus interest on said deficiency judgment at the legal rate of 6.39 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

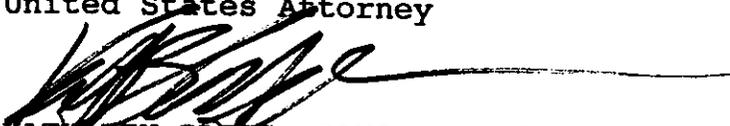
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, Stephen Ray Lewis and Mary Earline Lewis, a deficiency judgment in the amount of \$31,471.95, plus interest at the legal rate of 6.39 percent per annum on said deficiency judgment from date of judgment until paid.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney


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

KBA/css

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

FILED

JUL 16 1991

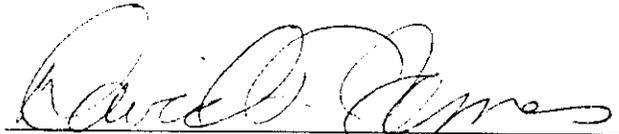
CLERK
U.S. DISTRICT COURT

JOSEPH D. JONES and HELEN JONES,)
)
 Plaintiffs,)
)
 vs.)
)
 PRUDENTIAL-BACHE SECURITIES, INC.,)
)
 Defendant.)

Case No. 90-C-522-B

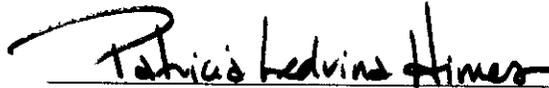
STIPULATION OF DISMISSAL WITH PREJUDICE

The Plaintiffs, Joseph D. Jones and Helen Jones, and the Defendant, Prudential Securities, Inc. f/k/a Prudential-Bache Securities, Inc., pursuant to F.R.Civ.P. 41(a)(1) hereby stipulate to dismissal of this action with prejudice, the parties to pay their own costs and attorney's fees.



David F. James, OBA #4610
HOUSTON & KLEIN, INC.
320 South Boston, Suite 700
Tulsa, Oklahoma 74103
(918) 583-2131

ATTORNEYS FOR PLAINTIFFS



Patrick O. Waddel, OBA #9254
Patricia Ledvina Himes, OBA #5331
GABLE & GOTWALS, INC.
2000 Fourth National Bank Bldg.
15 West 6th Street
Tulsa, Oklahoma 74119-5447
(918) 582-9201

ATTORNEYS FOR DEFENDANT

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

FILED

JUL 16 1991

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

PAVITER CORPORATION, a general
partnership of the Republic of
Singapore,)

Plaintiff,)

v.)

C&S EQUIPMENT SALES, INC., an
Oklahoma corporation, MICHAEL T.
RAWLINS, an Oklahoma resident,
S&S ERECTION & RENTALS, INC.,
a Missouri corporation,
HAROLD STOUT, a Missouri resident,
RAWLINS MANUFACTURING, INC.,
an Oklahoma corporation, RONALD B.
STOCKWELL, an Oklahoma resident,
HAROLD CLARK, an Oklahoma resident,
R. BLACK, INC., a Kansas company,
and ALSOP-BLACK, an Oklahoma
partnership,)

Defendants.)

Case No. 89-C-1017C

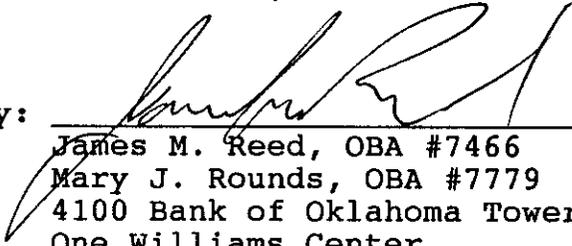
STIPULATION OF DISMISSAL

It is hereby stipulated between the above-named plaintiff
and defendant S&S Erection & Rentals, Inc., by and through their
undersigned counsel, that this action be dismissed pursuant to
Rule 41(a)(1) of the Federal Rules of Civil Procedure.

Dated this 15th day of July, 1991.

Respectfully submitted,

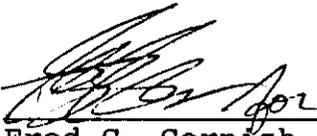
HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.

By: 

James M. Reed, OBA #7466
Mary J. Rounds, OBA #7779
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR PAVITER
CORPORATION, a Singapore
partnership

CORNISH & SCHNEIDER, INC.

By: 

Fred C. Cornish, OBA #1924
917 Kennedy Building
321 South Boston Avenue
Tulsa, Oklahoma 74103
(918) 583-2284

ATTORNEYS FOR S&S ERECTION
& RENTALS, INC.

CERTIFICATE OF MAILING

I the undersigned do hereby certify that on the 15th day of July, 1991, a true and correct copy of the above and foregoing Stipulation of Dismissal was forwarded by U.S. Mail, with proper postage thereon fully prepaid, to the following counsel of record:

Thomas J. McGeady, Esq.
Logan, Lowry, Johnston, Switzer,
West & McGeady
101 South Wilson Street
P. O. Box 558
Vinita, OK 74301-0558

James W. Keeley
1400 South Boston Building
Suite 680
Tulsa, OK 74119

James Tilly
Dan Payton
2 West Second Street, Suite 2220
P. O. Box 3645
Tulsa, OK 74101-3645



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

FILED

JUL 16 1991

RAYMARK INDUSTRIES, INC.,
:
:
Plaintiff, :
:
:
v. :
:
:
GORDON A. STEMPLE, et al., :
:
:
Defendants. :

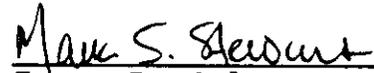
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

Case No. 87-C-775-B

NOTICE OF DISMISSAL

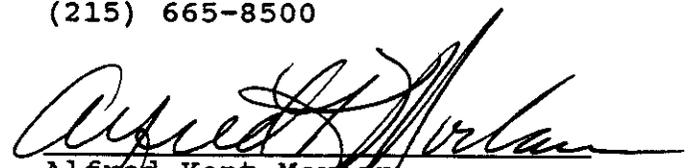
Pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure, plaintiff, by its attorneys, dismisses this action as to all parties, and all causes of action and claims that have or could have been asserted therein, with prejudice, each party to bear his, her or its own costs.

Dated: July 12, 1991



James D. Coleman
Mark S. Stewart
BALLARD, SPAHR, ANDREWS &
INGERSOLL
1735 Market Street
51st Floor
Philadelphia, PA 19103
(215) 665-8500

Dated: July 16, 1991



Alfred Kent Morlan
MORLAN, BLUMLEY & HACKETT
1820 S. Boulder Place
Tulsa, OK 74152
(918) 582-6409

Attorneys for Plaintiff
Raymark Industries, Inc.

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

KARL BOLTON, an individual; and)
NINA BOLTON, an individual,)
)
Plaintiffs,)
)
v.)
)
EVEREST AND JENNINGS,)
a California Corporation,)
)
Defendant.)

Case No. 90-C 581 E

JOINT STIPULATION OF
DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiffs, KARL BOLTON and NINA BOLTON,
and the Defendant, EVEREST & JENNINGS, a California Corporation,
and stipulate pursuant to Federal Rules of Civil Procedure, Rule
41, that this action be dismissed with prejudice.

Dated this 11th day of July, 1991.

PLAINTIFFS,
BY: C. Clay Roberts

C. Clay Roberts, III
Roberts, Marrs, & Carson
110 S. Hartford, Suite 111
Tulsa, Oklahoma 74120
(918) 582-6567

DEFENDANT: EVEREST & JENNINGS, a
California Corporation,

BY: Richard M. Eldridge
RICHARD M. ELDRIDGE, OBA #2665
RHODES, HIERONYMUS, JONES,
TUCKER & GABLE
2800 Fourth National Bank Bldg.
Tulsa, Oklahoma 74119
(918) 582-1173

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

FILED
JUL 12 1991 pw

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

MISSOURI PACIFIC RAILROAD }
COMPANY, }
 }
Plaintiff, }
 }
vs. }
 }
CRAIG TWEEDY, ALFRED MULLEN, }
and MARILYN MULLEN, }
 }
Defendants. }

No. 90-C-1008-C ✓

ORDER

On December 13, 1990 the Court conducted a hearing in this case on plaintiff's application for a preliminary injunction. At the conclusion of the hearing, the Court granted plaintiff's request for a preliminary injunction, but reserved ruling as to whether the injunction should extend to Marilyn Mullen, that is, whether a previous judgment entered by this Court in a case to which Mrs. Mullen was not a nominal party, should have preclusive effect on her ability to file actions based on the same subject matter in other forums. The parties have briefed the issue and it is now ready for determination by the Court.

A summary of the protracted history of this case is necessary to properly consider this issue. This controversy dates back to April 15, 1985 when plaintiff, Missouri Pacific Railroad Company (MoPac), filed an action with this Court (Case No. 85-C-387-E), seeking a temporary and permanent injunction to prevent defendants

Alfred Mullen and his company, Cartwright Transfer and Storage, Inc. (Cartwright) from operating semi-trailer trucks over a certain railroad crossing allegedly owned by MoPac located in Osage County, Oklahoma. The crossing is located at county road mile post 168.41. MoPac alleged that the defendants were operating semi-trailer trucks over the crossing, without the consent of MoPac, and that the heavy truck traffic was causing irreparable damage in that the crossing was not designed for such traffic. The case was assigned to Judge James O. Ellison. By Order dated January 16, 1987 Judge Ellison denied MoPac's request for an permanent injunction, finding MoPac had an adequate remedy at law, in that the crossing could be modified to accommodate heavy truck traffic for a sum of \$3,800.00. The case remained on the Court's docket for trial by jury on defendants' counterclaim.

Defendants' attorney then withdrew from the case and new counsel was substituted, Mr. Craig Tweedy. Tweedy motioned the Court to amend the counterclaim. The amended counterclaim sought to quiet title to the crossing in order to establish Mullen's personal rights and the rights of his business to use the crossing. At that time defendants asserted that the crossing was made public by order of dedication in 1940 by the Board of County Commissioner for Osage County, Oklahoma, or alternatively, that the defendants' rights arose through an easement by prescription from continuous use of the crossing since 1922 by defendants and their predecessors.

Defendants also sought compensatory and punitive damages for loss to defendants' freight hauling business by MoPac allegedly

blocking access to the crossing. (The Mullen's home and business were otherwise landlocked). Defendant Mullen also sought money damages for his physical and mental pain and suffering, and for his family's anguish in being denied the peaceful enjoyment of their property.

On October 14, 1988 the parties filed an amended pretrial order in which defendants added a claim of conspiracy. In this claim defendants alleged that MoPac conspired with some hostile neighbors of the defendants in a malicious effort to destroy defendants' business. Defendants' contended that the conspirators acted out of a fraudulent and oppressive plan by, inter alia, harassing Cartwright's truck usage in the common roadway, concealing records of the public nature of the crossing and by obstructing the rights of Cartwright and Mullen in the courts. (Amended Pretrial Order, Case No. 85-C-387-E, p.4)

The case was tried to a jury for eight days. The jurors were instructed on two issues. One claim was by Cartwright, for conspiracy to wrongfully interfere with business. This included the assertion that MoPac was part of a civil conspiracy with others to interfere with Cartwright's business. The other claim was by Mullen for conspiracy to intentionally inflict emotional distress due to alleged extreme and outrageous conduct by MoPac. The Court also advised the jury that issues regarding quiet title were not for their consideration. On February 9, 1989 the jury found in favor of MoPac as to both issues addressed.

On February 10, 1989 Judge Ellison entered an order based on the evidence presented at trial finding that the crossing was privately owned by MoPac. Specifically, Judge Ellison stated:

By reason of the journal entry of judgment entered in Osage County Case number C-85-543, the Board of County Commissioners of Osage County, Oklahoma v. Charles S. Dunn, et.al. (Plaintiff's exhibit 26-B) filed in Osage County District Court on July 29, 1987 this Court finds that the roadway leading up to the west side of the railroad easement is a public highway. Based on the evidence in this case as to prior use and the fact that the Osage County Court chose not to declare the roadway to the east of the crossing a public highway, the Court is compelled to declare that the subject road is a private road. Thus the crossing over the roadway easement is a private crossing.

Order, dated February 10, 1989, Case No. 85-C-387-E

Judge Ellison also determined that for a period in excess of fifteen years, this crossing had been used for light farm traffic and passenger vehicles. This use provided a easement by prescription. The Court also acknowledged an agreement which was entered into between MoPac and Osage County in which MoPac contractually agreed to provide and maintain the crossing for heavy truck traffic. Based on this contract, Judge Ellison determined that "Mullin and his business would have the right of access to the public road via the railroad crossing for their heavy truck traffic." Order, supra, at p.3.

On February 23, 1989 a judgment was entered in favor of MoPac on defendants' counterclaims based on the jury verdict. On that same date defendants filed a motion for a new trial asserting that the Court erred in determining the "roadway issues." Defendants asserted, inter alia, that the evidence showed an informally

dedicated county roadway easement and public use of the crossing since 1940, with MoPac approval since 1950; that the records of the Oklahoma and U.S. Department of Transportation showed this to be a public crossing since 1974; and that the Osage County Court would have determined this to be a public roadway easement except for MoPac's fraudulent misrepresentations. On May 30, 1989 defendants filed a motion to vacate the Court's Order of February 10, 1989 on the grounds that MoPac had committed fraud on this Court and on the Osage County District Court. The motion for new trial was denied and the motion to vacate was set for hearing. On January 10, 1990 Judge Ellison entered a "clarifying" order which stated in pertinent part:

The Order of February 10, 1989 is amended to reflect that this Court gave no res judicata or other conclusive effect or basis to the Judgment of the state district court for Osage County, Oklahoma entered July 29, 1987 in the case involving this defendant.

On March 23, 1989 Judge Ellison conducted an evidentiary hearing into defendants' assertions that MoPac had engaged in fraudulent misrepresentations or committed other acts of fraud and that the Court lacked subject matter jurisdiction. The Court entered its findings by written Order on June 13, 1990, which determined 1) the Court had subject matter jurisdiction, in that the Oklahoma Corporation Commission does not have exclusive jurisdiction to determine whether a crossing is public or private, 2) that the Court had made an independent determination that the subject crossing was private and did not base its determination on any order entered by the Osage County Court, 3) that MoPac had not improperly or fraudulently concealed documents during pretrial

discovery, 4) that defendants failed to offer any "new evidence" that had not previously been considered by the Court. Defendants did not appeal this Order. On June 25, 1990 defendants filed a motion for the Court to reconsider its Order denying defendants' motion to vacate, followed by a July 2, 1990 motion to recuse Judge Ellison. The latter motion was granted and on August 24, 1990 the case was transferred to Judge Cook's docket.

After transfer the Court conducted an independent review of the entire case. Based on the review, this Court concluded that subject matter jurisdiction was proper and that there was insufficient evidence to establish that fraud was perpetrated by MoPac on the Court. Accordingly on November 27, 1990 defendants' motion to reconsider was denied. Defendants filed notice of appeal from that decision on December 27, 1990. The appeal is pending.

On December 3, 1990 MoPac filed this action (Case No.90-C-1008-C) seeking a preliminary and permanent injunction to enjoin Craig Tweedy, Alfred Mullen and Marilyn Mullen from allegedly relitigating in the District Court of Tulsa County and the Oklahoma Corporation Commission the same issues which were litigated in this Court in Case No. 85-C-387-C. Specifically on July 6, 1990, defendant Craig Tweedy, on behalf of defendant Marilyn Mullen, filed an action in the District Court of Tulsa County (CJ-90-3214), against Union Pacific, Missouri Pacific and each of the attorneys who represented Missouri Pacific in 85-C-387-C.

In the Tulsa County case, Mrs. Mullen makes the following allegations against the named defendants therein:

First Claim: Fraud

1. The railroad company and its attorneys entered into a conspiracy to maliciously defraud Mrs. Mullen and her family out of the peaceful use of their property and home.
2. The defendants fraudulently concealed records which indicate the crossing is public.
3. With full knowledge of the landlocked nature of Mrs. Mullen's property, the defendants maliciously blocked and obstructed the roadway which approaches the crossing leading to her home and intentionally entrapped Mrs. Mullen and her children on their property, with full knowledge that the crossing is public.
4. The defendants fraudulently misrepresented and concealed facts to the Osage County Court causing the court to enter an erroneous order which has subsequently been vacated.
5. In April, 1990 Mrs. Mullen discovered the railroad's records which indicate that the railroad knew and recognized in 1974 that the crossing is public.
6. The conduct of the defendants has damaged Mrs. Mullen, her family and the family trucking business.

Second Claim: Invasion of Privacy

1. Defendants conduct has wrongfully invaded Mrs. Mullens privacy and the peaceful solitude of her family, home and use of her property.

Third Claim: Abuse of Process

1. Mrs. Mullen and MoPac were joined as party defendants, along with abutting neighbors, in an action commenced by Osage

County in the Osage County Court, for judicial determination of the nature of the crossing. In that action, MoPac fraudulently concealed records which would acknowledge the public nature of the crossing. MoPac concealed these records to prevent liability from wrongfully blocking the Mullen's access to their property.

2. By concealing these records, MoPac fraudulently induced Osage County to enter into a settlement without full adjudication of the roadway claims.

3. The Board of County Commissioners petitioned the Osage County Court to vacate its judgment to permit adjudication of the roadway crossing claim. The court vacated its judgment and the matter has been appealed.

4. Defendants have abused the litigation process for the ultimate purpose of injuring Mrs. Mullen's rights to the public crossing.

On October 16, 1990 Craig Tweedy filed, on behalf of Alfred and Marilyn Mullen, an action with the Oklahoma Corporation Commission styled, In Re: Determination of Full and Exclusive Jurisdiction and Regulatory Control of Corporation Commission over the County Highway at Mile Post 168.42 Under DOT Inventory No. 797-289T in Osage County against Union Pacific, Missouri Pacific, and Osage Railroad Company requesting the corporation commission to exercise jurisdiction over the crossing. In the corporation commission case, Alfred and Marilyn Mullen make the following allegations:

1. The Osage County Highway has passed over the crossing since 1974 thereby vesting the corporation commission with exclusive jurisdiction.
2. Osage County has regularly maintained the highway for decades.
3. MoPac recognized the crossing as being public in its 1974 Department of Transportation crossing inventory record.
4. The State of Oklahoma has recognized the public nature of the highway by allocation of state highway maintenance funds.
5. The railroad has ratified the jurisdiction of the corporation commission by performing, at the direction of the commission, repairs and installing cross-buck signs.
6. Since August 1984, the railroad has indirectly challenged the exclusive jurisdiction of the corporation commission by asserting claims of private crossing status in litigation in the Osage County Court and in federal court in Tulsa.

After a lengthy review of the pleadings filed in Case No. 85-C-387-C and the cases subsequently filed in the Tulsa County and before the Oklahoma Cooperation Commission, this Court finds and concludes that all three cases involve the same or similar issues, claims, subject matter and factual setting. In the jury trial before Judge Ellison in Case No. 85-C-387-E, Marilyn Mullens testified for two days (represented by 101 pages of trial transcript). Mrs. Mullen's testimony included her confrontation with the Osage County Sheriff and MoPac representatives on the date that the railroad blocked access to her property, her personal anguish and that of her family's, the disruption to and changes

caused in her family's life, the impact of the railroad's actions on their trucking company, their financial losses, and the efforts she and her husband made to persuade MoPac to restore the crossing. She further testified, she and her husband had learned from records maintained by the Department of Transportation that the crossing is classified as public and that, in 1988, the Oklahoma Corporation Commission had directed MoPac to install timber at the crossing.

Res Judicata

On January 17, 1990, the Osage County District Court entered an order finding that the settlement agreement entered in the case before it had been fraudulently procured by MoPac and that the resulting judgment was used to mislead Judge Ellison into entering an erroneous order and judgment in 85-C-387-C. Defendants therefore contend that the orders entered by this Court have no res judicata effect. However, upon motion of the parties, Judge Ellison conducted an evidentiary hearing into the allegations of fraud and specifically found that fraud had not been perpetrated on this Court and further clarified that he had not relied on the settlement agreement entered by the parties in the Osage County action. In St. Louis Baptist Temple v. F.D.I.C., 605 F.2d 1169 (10th Cir.1979), the court spoke of the doctrines of res judicata and collateral estoppel, and said:

This doctrine (res judicata) precludes relitigation of a judgment on the merits in a prior suit which involved the same parties or their privies. A related doctrine is that of collateral estoppel which precludes relitigation of issues actually litigated and determined in a prior suit regardless of whether based on the same cause.

605 F.2d at 1174

Marilyn Mullen is barred by the doctrine of res judicata from pursuing the actions presently pending before the Tulsa County Court and the Oklahoma Corporation Commission. Under the doctrine of res judicata "a final judgment of a court of competent jurisdiction upon a matter properly before it concludes the matter as to the parties to the litigation and their privity and constitutes a bar to a new action upon the same cause of action, either before the same or any other tribunal." Dearing vs. State of Oklahoma, 808 P.2d 661, 664 (Okla.1991). The doctrine further bars claims that were raised or could have been raised in that action. Sil-Flo, Inc. v. SFHC, Inc. 917 F.2d 1507,1520 (10th Cir.1990). The rationale for this doctrine is that public policy requires there be an end to litigation. Dearing, 808 P.2d at 664.

Collateral Estoppel

The main factual and legal issues raised by Marilyn Mullen in the Tulsa County action and by both Mullens before the Oklahoma Corporation Commission have been addressed and decided by this Court. Judge Ellison has specifically found (1) the railroad is private, not public, (2) there was no concealment of railroad records, (3) fraud was not perpetrated on this Court, (4) and the Court had subject matter jurisdiction. The jury had previously determined issues of civil conspiracy against the Mullens, and the Court and jury rejected the Mullen's claims of emotional distress and financial harm to their trucking business by finding in favor of the railroad on the counterclaims raised by the Mullens. Clearly these findings address the claims subsequently raised by the Mullens in the collateral proceedings. Additionally the

Mullens are estopped from raising the same legal and factual issues in an effort to create new claims, such as, abuse of process and invasion of privacy.

Privity

Further, this Court finds that Marilyn Mullen is in privity with her husband, Alfred Mullen, who was a plaintiff in 85-C-387-C. "Privity requires, at a minimum, a substantial identity between the issues in controversy and showing that the parties in the two actions are really and substantially in interest the same." St. Louis Temple, supra. at 1174. Clearly, Mrs. Mullen's interests are the same as those of her husband in the matters litigated before this court. She participated as a trial witness testifying as to her own suffering and those of her family and her husband. She testified extensively to the damage caused to their business, in which she had served as an officer. Mrs. Mullen was not a stranger to the litigation, but took an active role, along with her husband, in defending what they considered to be their rights. This comports with the fundamental policy that persons must have their day in court before they can be bound by the judgment rendered. See, Cartwright v. Atlas Chemical Industries, Inc., 623 P.2d 606, 611 f.n. 11 (Okla. 1981). Mrs. Mullen has not raised any new factual or legal issue in the subsequent cases that is particular to her interest, apart from that of her husband's. Moreover, Mrs. Mullen is being represented by the same attorney in the subsequent collateral actions as was used by Mr. Mullen and their company in the previous action.

Conclusion

Accordingly the judgment entered by this Court in 85-C-387-C is valid and binding, and has res judicata and collateral estoppel effect as to the parties and their privies, on every claim and issue decided therein.

It is the Order of the Court that the defendant Marilyn Mullen is preliminarily enjoined from pursuing any collateral action in contravention of the Order and Judgment entered in Case No. 85-C-387-C, which specifically includes the actions pending in the District Court of Tulsa County, Case No. CJ-90-3214, and the Oklahoma Corporation Commission Case No. EN000926.

IT IS SO ORDERED this 11th day of July, 1991.


H. DALE COOK

Chief Judge, U. S. District Court

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

FILED

JUL 12 1991

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

THEODORE W. FORD,
Plaintiff,

vs.
JACK W. WILEY, et al.,
Defendants.

No. 88-C-631-C

ORDER

The Court has before it for consideration a notice of appeal filed by the petitioner, Theodore W. Ford. Petitioner appeals from this Court's Order dated June 19, 1991 denying his request for an evidentiary hearing regarding delay caused by the Oklahoma Appellate Public Defender's Office in perfecting his direct state court appeal.

On June 25, 1991 petitioner filed with the Court a copy of a letter from the Oklahoma Appellate Public Defender's Office advising petitioner of an anticipated four year delay prior to filing an appeal brief in his case. This letter was filed following the Court's denial of petitioner's motion for an evidentiary hearing. Under these circumstances the Court finds that the certificate of probable cause should issue inasmuch as information has been furnished affecting petitioner's rights

JAD/sw/7/11/91

FILED

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

JUL 12 1991
Jack C. Silver, Clerk
U.S. DISTRICT COURT

STATE FARM FIRE & CASUALTY
COMPANY, a foreign corpor-
ation,

Plaintiff,

vs.

JAMES E. CARVER, EMMA C.
CARVER, PAUL KENNETH CARR,
DEBBIE LEE CARR AND MATHEW
LEE CARR,

Defendants.

Case No. 90-C 587 B

ORDER OF DISMISSAL WITHOUT PREJUDICE

NOW on this 12th day of July, 1991, the
above-captioned cause comes on before the undersigned Judge of
the District Court on plaintiff's Application to Dismiss Without
Prejudice. The Court, having reviewed said Application, finding
no objection thereto and that no other claims are pending
herein, hereby orders as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
plaintiff's Complaint against the defendants herein be dismissed
without prejudice.

IT IS SO ORDERED this 12th day of July,

1991.

BY THOMAS R. BRETT

JUDGE OF THE DISTRICT COURT

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

FILED

JUL 12 1991

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

ANNABELLE WINTERS,)
d/b/a SHARP'S PAWN SHOP,)
)
Plaintiff,)
)
vs.)
)
BOARD OF COUNTY COMMISSIONERS,)
OF OSAGE COUNTY, OKLAHOMA,)
et al.,)
)
Defendants.)

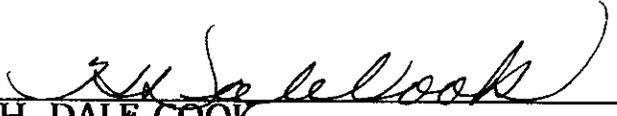
No. 90-C-508-C

ORDER

This matter came on for consideration of the motion for summary judgment of defendants. The issues having been duly considered and a decision having been duly rendered in accordance with the Order filed on June 19, 1991,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is hereby entered for defendants and against plaintiff, and that plaintiff take nothing by way of this action.

IT IS SO ORDERED this 17th day of July, 1991.


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

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

HALLIBURTON COMPANY, a)
corporation,)
)
Plaintiff,)
)
vs.)
)
MICHAEL W. KIMBREL, RICK)
LOWENHERZ, and N. FRED WILLIAMS,)
)
Defendants.)

Case No. 90-C-993-C

F I L E D

JUL 12 1991

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

ORDER

COMES NOW for consideration the Joint Motion for Administrative Closure filed by the parties herein, and for good cause, the Court FINDS AND ORDERS that said Motion should be and is hereby granted, and that this action is administratively closed until July 1, 1993, without prejudice to the Plaintiff, Halliburton Company, to reopen this action on or before that date in accordance with the terms of the Settlement Agreement entered into between the parties, and that if no motion to reopen or motion to extend the Administrative Closure is filed on or before July 1, 1993, Halliburton Company's claims against the Defendants, Michael W. Kimbrel, Rick Loewenherz and N. Fred Williams, shall be dismissed with prejudice on July 1, 1993, by this Order, with each party to bear its own attorney's fees, costs and expenses.

DATED this 11^m day of July, 1991.

(Signed) H. Dale Cook

UNITED STATES JUDGE

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

FILED

JUL 12 1991

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

RHONDA L. WALLER, as surviving)
spouse of BOBBY RAY WALLER, JR.,)
deceased, Individually and on)
behalf of HEATHER RAYLYNN WALLER)
and DAVID PAUL WALLER, surviving)
minor children,)

Plaintiffs,)

vs.)

No. 89-C-473-B

PULLMAN LEASING DIVISION, of)
SIGNAL CAPITAL CORPORATION, a)
wholly owned subsidiary of the)
HENLEY GROUP, INC., a foreign)
corporation,)

Defendant and)
Third Party Plaintiff,)

vs.)

ORTNER FREIGHTCAR CO., a foreign)
corporation, a wholly owned)
subsidiary of TRINITY INDUSTRIES,)
INC.,)

Third Party Defendant)

ORDER

Before the Court for decision is a Motion for Summary Judgment on behalf of the Defendant, PULLMAN LEASING DIVISION (PULLMAN), pursuant to Fed.R.Civ.P. 56 in relation to Plaintiffs', RHONDA L. WALLER, as surviving spouse of BOBBY RAY WALLER, JR., deceased, Individually and on behalf of HEATHER RAYLYNN WALLER and DAVID PAUL WALLER, surviving minor children (Plaintiffs), claims.

Also before the Court is Third Party Defendant's, ORTNER FREIGHTCAR COMPANY (ORTNER), Motion for Summary Judgment against Third Party Plaintiff, PULLMAN, on the issue of PULLMAN's claim of indemnity against ORTNER.

The history of this well traveled case is as follows: a suit by Plaintiffs against "ORTNER FREIGHT CAR CO." and others, Case No. 88-074-C, was originally filed on February 12th, 1988, in the United States District Court for the Eastern District of Oklahoma relating to the personal injury, and ultimate death of BOBBY RAY WALLER as a result of an allegedly faulty door on a freight car manufactured by ORTNER and owned by PULLMAN.¹ On March 30th, 1988, a Stipulation of Dismissal without prejudice was filed, releasing all named Defendant's except "ORTNER FREIGHT CAR CO." On April 5, 1988, "ORTNER FREIGHT CAR CO." answered, interposing numerous defenses including lack of jurisdiction and venue and failure to state a claim upon which relief can be granted. "ORTNER FREIGHT CAR CO." also included the following in the answer: "10. This Defendant is not an existing corporation and has no capacity to be sued."

On April 29th, 1988, Case No. 88-074-C was transferred to the United States District Court for the Western District of Oklahoma, being docketed in the Western District on the 3rd day of May, 1988, as Case No. of 88-755-P. On June 13th, 1988, the parties entered a Stipulation of Dismissal with prejudice in Case No. 88-755-P,²

¹ The parties pleadings indicate that Temple Eastex Corporation, Bobby Ray Waller's employer at the time of his death, has agreed to indemnify Pullman.

² The Stipulation was based upon the premise that "ORTNER FREIGHT CAR CO." was not a corporation and therefore had no capacity to be sued. In fact, PLAINTIFF's then attorney, Wilson M. Jones and/or Walt Adams (his affidavit does not indicate if he is or is not an attorney) apparently accepted at face value the statement made by ORTNER'S counsel that ORTNER lacked the capacity to be sued since it was not a corporation.

thereby releasing³ "ORTNER FREIGHT CAR CO.". Plaintiffs then filed a second Eastern District suit on March 2, 1989, Case No. 89-89-C, naming PULLMAN LEASING DIVISION as a single Defendant. Case No. 89-89-C was transferred to the United States District Court for the Northern District of Oklahoma, by request and agreement of the parties, on the 2nd day of June, 1989, with a designated Case No. of 89-C-473-B; PULLMAN subsequently filed a Third Party Complaint against ORTNER FREIGHTCAR CO. (ORTNER), a foreign corporation, a wholly owned subsidiary of TRINITY INDUSTRIES, INC., as a Third Party Defendant.

Motions for Summary Judgment by the Defendant, PULLMAN, and Third Party Defendant, ORTNER, followed, both relying on the previous Stipulation of Dismissal in the Western District case.

PULLMAN seeks Summary Judgment against PLAINTIFFS on the theory that a release of the manufacturer of a defective product acts as a release of those (Pullman) in the chain of distribution of that product. This theory is bottomed upon the distributor's right to indemnification against the manufacturer being barred by such release, thereby essentially leaving the distributor "holding the bag" of liability. Sochanski v. Sears, Roebuck & Co., 689 F.2d 45 (3rd Cir. 1982).

ORTNER seeks summary judgment against PULLMAN on the premise that it has already been released of any liability to Plaintiffs, by the Stipulation of Dismissal with prejudice entered in the Western District case by and between it and Plaintiffs, and

³ The efficacy of this "release" will be discusses, *infra*.

therefore it has no further liability to PULLMAN or anyone.

Summary Judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Winton Third Oil and Gas v. Federal Deposit Insurance Corp., 805 F.2d 342 (10th Cir. 1986).

The Court concludes there is a genuine issue as to the material fact of the legal status of "Ortner Freight Car Co.", the defendant in the Eastern and Western District cases, thereby precluding summary judgment herein.

What effect is to be given, if any, to the Stipulation of Dismissal from the Western District case is a legal issue to be determined once the status of "Ortner Freight Car Co." has been factually resolved. The record is devoid of evidence as to whether "ORTNER FREIGHT CAR CO." is: incorporated or non-incorporated; another extension of TRINITY INDUSTRIES, INC.; one and the same as Ortner Freightcar Co. a foreign corporation; an individual operating under or doing business under that name; any other legal entity such as a partnership.

It is clear from the record that the Stipulation of Dismissal released "ORTNER FREIGHT CAR CO." However, it is not evident that it released the Third Party Defendant, ORTNER FREIGHTCAR CO., a foreign corporation, a wholly owned subsidiary of TRINITY INDUSTRIES, INC. The Court concludes that ORTNER wants it both ways. PLAINTIFFS, in the Western district case, released "ORTNER

FREIGHT CAR CO.," a perhaps corporate entity, a perhaps non-corporate entity and maybe even a non-existent entity.⁴ If "Ortner Freight Car Co." has no capacity to be sued because "it is not a corporation" then, *a fortiori*, it would seem it has no capacity to be released as a corporation, which is the current position of both ORTNER and PULLMAN.

The determination of this issue would have a bearing upon whether a successful indemnity suit can be maintained by the Defendant, PULLMAN, and also whether Plaintiffs are barred in their action against PULLMAN because of their "release" of the product's alleged manufacturer, ORTNER.

Based upon the Court's ruling on ORTNER'S Motion for Summary Judgment herein, PULLMAN'S Motion for Summary Judgment becomes moot. Third Party Plaintiff's and Third Party Defendant's Motions for Summary Judgment each should be and the same is hereby DENIED.

IT IS SO ORDERED this 12 day of July, 1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

⁴ It does not appear in the record what legal status "ORTNER FREIGHT CAR CO." presently maintains, or has maintained in the past. ORTNER FREIGHTCAR CO. (ORTNER), on the other hand, is a foreign corporation, a wholly owned subsidiary of TRINITY INDUSTRIES, INC..

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JOHN C. WALKER; PEARLINE WALKER;)
 COMMUNITY BANK AND TRUST COMPANY;)
 FIDELITY FINANCIAL SERVICES,)
 INC., f/k/a General Credit)
 Company; COUNTY TREASURER,)
 Tulsa County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

FILED

JUL 12 1991

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

CIVIL ACTION NO. 91-C-0047-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 11th day
of July, 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; and the Defendants, John C.
Walker, Pearline Walker, Community Bank and Trust Company, and
Fidelity Financial Services, Inc., f/k/a General Credit Company,
appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendants, John C. Walker and Pearline
Walker, were served with Summons and Complaint on April 11, 1991;

that the Defendant, Community Bank and Trust Company, acknowledged receipt of Summons and Complaint on January 29, 1991; that the Defendant, Fidelity Financial Services, Inc., f/k/a General Credit Company, acknowledged receipt of Summons and Complaint on February 15, 1991; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 28, 1991; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 29, 1991.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on February 11, 1991; that the Defendants, John C. Walker and Pearline Walker, filed an Application for Extension of Time on February 13, 1991 through their attorney James A. Conrady and were granted until February 28, 1991 to answer Plaintiff's Complaint, but Defendants, John C. Walker and Pearline Walker, failed to answer and their default has therefore been entered by the Clerk of this Court; and that the Defendants, Community Bank and Trust Company and Fidelity Financial Services, Inc., f/k/a General Credit Company, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on September 29, 1987, John C. Walker and Pearline Walker filed their voluntary petition in bankruptcy in Chapter 13 in the United States Bankruptcy Court, Eastern District of Oklahoma, Case No. 87-71129. On August 17, 1989, the United States Bankruptcy Court for the

Eastern District of Oklahoma dismissed the bankruptcy case and on December 27, 1989, entered the Final Decree closing the bankruptcy case.

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 Six (6), Suburban Acres Fourth, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on December 17, 1969, the Defendants, John C. Walker and Pearline Walker, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$10,000.00, payable in monthly installments, with interest thereon at the rate of eight percent (8%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, John C. Walker and Pearline Walker, 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 17, 1969, covering the above-described property. Said mortgage was recorded on December 22, 1969, in Book 3912, Page 899, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, John C. Walker and Pearline Walker, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, John C. Walker and Pearline Walker, are indebted to the Plaintiff in the principal sum of \$6,271.25, plus interest at the rate of 8 percent per annum from June 17, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$27.20 (\$20.00 docket fees, \$7.20 fees for service of Summons and Complaint).

The Court further finds that the Defendants, Community Bank and Trust Company and Fidelity Financial Services, Inc., f/k/a General Credit Company, are in default and therefore have no right, title or interest in the subject real property.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendants, John C. Walker and Pearline Walker, in the principal sum of \$6,271.25, plus interest at the rate of 8 percent per annum from June 17, 1989 until judgment, plus interest thereafter at the current legal rate of 6.39 percent per annum until paid, plus the costs of this action in the amount of \$27.20 (\$20.00 docket fees, \$7.20 fees for service of Summons and Complaint), plus any additional sums advanced or to be advanced or expended

during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Community Bank and Trust Company, Fidelity Financial Services, Inc., f/k/a General Credit Company, and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under

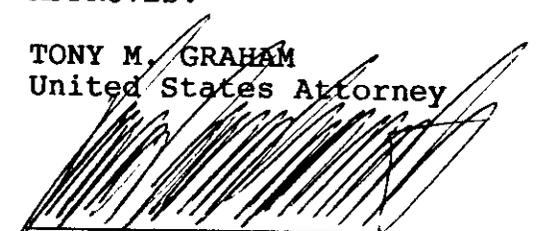
and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


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


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

Judgment of Foreclosure
Civil Action No. 91-C-0047-E

PB/css

F I L E D

JUL 12 1991

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

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

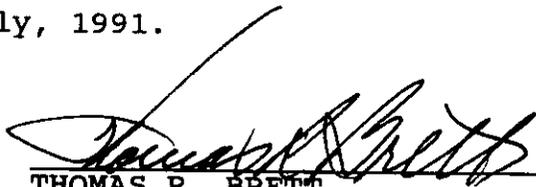
SUSAN D. WHITAKER,)
)
Plaintiff,)
)
vs.)
)
PROGRESSIVE ACCEPTANCE CORP. AND)
PROFESSIONAL INVESTORS INSURANCE)
GROUP, INC.,)
)
Defendants.)

No. 89-C-718-B ✓

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law herein, Judgment is hereby granted in favor of Defendant, Professional Investors Insurance Group, Inc. and against the Plaintiff, Susan D. Whitaker. Costs are to be paid by the Plaintiff, Susan D. Whitaker, and each party is to pay their own respective attorney fees.

DATED this 12th day of July, 1991.


 THOMAS R. BRETT
 UNITED STATES DISTRICT JUDGE