

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

**F I L E D**

SEP 30 1991

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

DANNY DUN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 91-C-276-E
	)	
WAL-MART STORES, INC.,	)	
	)	
Defendant.	)	

O R D E R

At issue before this Court is Plaintiff's Motion for Remand. In order to maintain jurisdiction in a diversity case, such as the one at bar, the amount in controversy is required to exceed \$50,000.00 exclusive of interest and costs. 28 U.S.C. §1331(a). Plaintiff admits in his reply to Defendant's response to the Motion for Remand that the amount in controversy does not exceed this amount. Therefore since the jurisdictional requirement has not been met, Plaintiff's Motion for Remand is granted.

So ORDERED this 27<sup>th</sup> day of September, 1991.

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

**FILED**

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

SEP 30 1991

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

JACKY D. PANTER a/k/a JACKY  
PANTER; CHRISTY KAY PANTER  
a/k/a CHRISTY PANTER;  
COUNTY TREASURER, Ottawa County,  
Oklahoma; and BOARD OF COUNTY  
COMMISSIONERS, Ottawa County,  
Oklahoma,

Defendants.

CIVIL ACTION NO. 91-C-374-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 27<sup>th</sup> day  
of Sept., 1991. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Kathleen Bliss Adams, Assistant United States  
Attorney; the Defendants, County Treasurer, Ottawa County,  
Oklahoma, and Board of County Commissioners, Ottawa County,  
Oklahoma, appear by Barry V. Denney, Assistant District Attorney,  
Ottawa County, Oklahoma; and the Defendants, Jacky D. Panter  
a/k/a Jacky Panter and Christy Kay Panter a/k/a Christy Panter,  
appear not, but make default.

The Court being fully advised and having examined the  
court file finds that the Defendant, Jacky D. Panter a/k/a Jacky  
Panter, was served with Summons and Complaint on July 24, 1991;  
that the Defendant, Christy Kay Panter a/k/a Christy Panter, was  
served with Summons and Complaint on July 30, 1991 and  
acknowledged receipt of Summons and Complaint on August 5, 1991.

It appears that the Defendants, County Treasurer, Ottawa County, Oklahoma, and Board of County Commissioners, Ottawa County, Oklahoma, filed their Answer on June 11, 1991; that the Defendants, Jacky D. Panter a/k/a Jacky Panter and Christy Kay Panter a/k/a Christy Panter, have failed to answer and their 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 Ottawa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot 28 and the North 25 feet of Lot 29 in Block 4 in ELMWOOD EAST PHASE FOUR ADDITION to the City of Miami, Ottawa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on March 26, 1985, Jacky D. Panter and Christy Kay Panter executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$44,000.00, payable in monthly installments, with interest thereon at the rate of 11.875 percent per annum.

The Court further finds that as security for the payment of the above-described note, Jacky D. Panter and Christy Kay Panter executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated March 26, 1985, covering the above-described

property. Said mortgage was recorded on March 26, 1985, in Book 440, Page 92, in the records of Ottawa County, Oklahoma.

The Court further finds that on May 22, 1985, Jacky Panter and Christy Kay Panter 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 28, 1986, Jacky D. Panter and Christy Kay Panter executed and delivered to the United States of America, acting through the Farmers Home Administration, a Reamortization and/or Deferral Agreement pursuant to which the entire debt due on that date was made principal.

The Court further finds that on April 28, 1986, Jacky Panter and Christy Panter 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 November 10, 1986, Jacky Panter and Christy Panter 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 September 3, 1987, Jacky Panter and Christy Panter 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 September 21, 1988, Jacky Panter and Christy Panter 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 September 18, 1989, Jacky Panter and Christy Panter 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 Defendants, Jacky D. Panter a/k/a Jacky Panter and Christy Kay Panter a/k/a Christy Panter, made default under the terms of the aforesaid note, mortgage, reamortization and/or deferral agreement, and interest credit agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Jacky D. Panter a/k/a Jacky Panter and Christy Kay Panter a/k/a Christy Panter, are indebted to the Plaintiff in the principal sum of \$41,586.69, plus accrued

interest in the amount of \$289.70 as of September 24, 1990, plus interest accruing thereafter at the rate of 11.875 percent per annum or \$1.5666 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 \$20,846.00, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$130.00 (\$20.00 docket fees, \$102.00 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, have a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$408.05, plus penalties and interest, for the year 1990. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$20.08 which became a lien on the property as of 1990. Said lien is inferior to the interest of the Plaintiff, United States of America.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the Plaintiff have and recover judgment against Defendants, Jacky D. Panter a/k/a Jacky Panter and Christy Kay Panter a/k/a Christy Panter, in the principal sum of \$41,586.69, plus accrued interest

in the amount of \$289.70 as of September 24, 1990, plus interest accruing thereafter at the rate of 11.875 percent per annum or \$1.5666 per day until judgment, plus interest thereafter at the current legal rate of 5.57 percent per annum until fully paid, and the further sum due and owing under the interest credit agreements of \$20,846.00, plus interest on that sum at the current legal rate of 5.57 percent per annum from judgment until paid, plus the costs of this action in the amount of \$130.00 (\$20.00 docket fees, \$102.00 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, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, have and recover judgment in the amount of \$408.05, plus penalties and interest, for ad valorem taxes for the year 1990, plus the costs of this action.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, have and recover judgment in the amount of \$20.08 for personal property taxes for the year 1990, plus the costs of this action.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that upon the failure of said Defendants, Jacky D. Panter a/k/a Jacky Panter and Christy Kay Panter a/k/a Christy Panter, 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 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 Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, in the amount of \$408.05, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

**Third:**

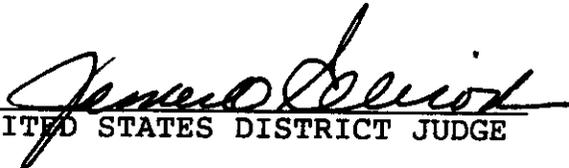
In payment of the judgment rendered herein in favor of the Plaintiff;

**Fourth:**

In payment of Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, in the amount of \$20.08, 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.

  
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 V. 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-374-E

KBA/css



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

**F I L E D**

SEP 27 1991

MURRELL E. FREEMAN, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 RON CHAMPION and THE ATTORNEY )  
 GENERAL OF THE STATE OF OKLAHOMA, )  
 )  
 Respondents. )

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

91-C-178-C

ORDER

The court has for consideration the Report and Recommendation of the Magistrate Judge filed August 29, 1991, in which the Magistrate Judge recommended that petitioner's application for a writ of habeas corpus be denied. 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 Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is denied.

Dated this 27<sup>th</sup> day of Sept., 1991.

  
 H. DALE COOK, CHIEF  
 UNITED STATES DISTRICT JUDGE

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

DANNY L. HUNT, )  
 )  
 ) Petitioner, )  
 )  
 v. )  
 )  
 MIKE PARSONS, WARDEN, )  
 )  
 ) Respondent. )

90-C-125-B  
**FILED**

SEP 27 1991

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

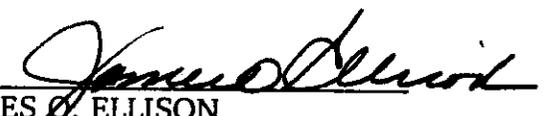
ORDER

The court has for consideration the Report and Recommendation of the Magistrate Judge filed July 10, 1991, in which the Magistrate Judge recommended that petitioner's Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 be denied. 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 petitioner's Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 is denied.

Dated this 27<sup>th</sup> day of ~~August~~ <sup>Sept</sup>, 1991.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

entered  
**FILED**  
SEP 27 1991 A  
Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

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

IN RE:  
HOME-STAKE PRODUCTION COMPANY  
SECURITIES LITIGATION

M.D.L. Docket No. 153 ✓  
Case No. 75-C-432  
74-C-228

FINAL JUDGMENT AWARDING ATTORNEYS' FEES, COSTS  
AND EXPENSES TO PLAINTIFFS' COMMITTEE OF COUNSEL

This Court has concurrently herewith filed its Findings of Fact and Conclusions of Law regarding the Application of Plaintiffs' Committee of Counsel for Attorneys' Fees, Costs and Expenses. Based on those Findings of Fact and Conclusions of Law, and good cause appearing therefor,

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. Pursuant to this Court's Final Judgment Awarding Attorneys' Fees, Costs And Expenses To Plaintiffs' Committee Of Counsel, filed January 26, 1990, Doc. 2748 (the "Fee Judgment"), Plaintiffs' Committee of Counsel is awarded attorneys' fees equal to \$1,422,677 out of the New Fund created by the settlement with Defendant McKee, Atkins & Schuler, plus 30% of all interest accrued on the \$4,000,000 settlement amount to the date of distribution of the settlement amount.

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2. The following law firms are awarded unreimbursed costs and expenses incurred by them through May 9, 1991 from the New Fund:

<u>Firm</u>	<u>Amount</u>
Broad, Schulz, Larson & Wineberg	\$ 82,164.34
Caplin & Drysdale, Chartered	218,770.78
William H. Hinkle	17,554.93

3. After paying itself attorneys' fees and reimbursing itself for costs and expenses in accordance with Paragraphs 1 and 2, above, Plaintiffs' Committee of Counsel shall file with this court an accounting setting forth the total New Fund (including accrued interest) from which the payments were made, and the total amounts of all payments made.

4. Plaintiffs' Committee of Counsel shall be responsible for allocating among its members and their present and former law firms and partners the fees awarded above. This Court retains jurisdiction to resolve any disputes which may arise among and between them.

5. This court retains jurisdiction to award Plaintiffs' Committee of Counsel additional attorneys' fees, costs and expenses in accordance with the above formula in the event any New Fund is hereafter created.

6. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, this Court expressly determines that there is no just reason for delay in the entry of this judgment and the Clerk is

expressly directed to enter judgment forthwith as set forth herein.

7. This Court expressly retains and reserves continuing jurisdiction with respect to the subject matter of this judgment, notwithstanding its finality.

DATED: Sept 27, 1991

  
\_\_\_\_\_  
HONORABLE MANUEL L. REAL  
UNITED STATES DISTRICT JUDGE

Judgment entered:

A. M. Muciel  
Clerk of the Court

Entered  
**FILED**

SEP 27 1991

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

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

\_\_\_\_\_  
IN RE: \_\_\_\_\_ )  
HOME-STAKE PRODUCTION COMPANY \_\_\_\_\_ )  
SECURITIES LITIGATION \_\_\_\_\_ )  
\_\_\_\_\_ )

M.D.L. Docket No. 153 ✓

Case No. 75-C-432

SETTLEMENT APPROVAL ORDER

By Order filed July 2, 1991 (the "Settlement Class and Notice Order"), upon the joint motion of plaintiffs and the defendant who are parties to the Stipulation of Settlement dated May 29, 1991, and following a hearing thereon, this Court determined that, for purposes of the partial settlement only, the above-captioned action shall be maintained as a class action on behalf of the settlement class defined in the Settlement Class and Notice Order (the "Robertson Class") and directed that notice be mailed to all members of the Robertson Class in the form attached as Exhibit A to the Settlement Class and Notice Order (the "Notice").

Pursuant to paragraph 3 of the Settlement Class and Notice Order, a hearing was held by this Court on September 27, 1991 (the "Settlement Hearing") to consider whether the partial settlement set forth in the Stipulation of Settlement should be approved and confirmed by this Court as fair, reasonable and adequate, and to consider any objections to said partial settlement. This Court has carefully considered the matters presented at the Settlement

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Hearing, including all of the arguments of counsel and all papers filed with respect to said matters, and other relevant pleadings, papers and other documents on file in this litigation (including the affidavits filed by members of the Plaintiffs' Committee of Counsel in support of their joint fee application), and is now fully advised in the premises.

Upon consideration of the entire record herein, including the proceedings, files and records referred to above, this Court makes the following findings of fact and conclusions of law in connection with its consideration of the Stipulation of Settlement and the matters relating thereto presented at the Settlement Hearing:

**FINDINGS OF FACT**

1. The above-captioned action (the "Action") was originally filed as a class action in the United States District Court for the Northern District of California in 1975. Subsequently, the Action was consolidated with numerous other class and non-class actions pending in the Northern District of Oklahoma, pursuant to 28 U.S.C. § 1407, by the Judicial Panel on Multidistrict Litigation under M.D.L. Docket No. 153.

2. By Order dated July 19, 1977, following extensive discovery, briefing and argument and the lodging on February 16, 1976, by the Court of a form of order for comment and further briefing, the Court provisionally determined that the Action should be maintained as a class action (the "Initial Class Action

Order") on behalf of a class consisting of purchasers of participation interests ("units") in Home-Stake Production Company's ("Home-Stake's") 1968 annual oil and gas drilling programs ("Programs") who had not donated their units to charity and who were not Home-Stake insiders. See In Re Home-Stake Production Company Securities Litigation, 76 F.R.D., 351 (N.D. Okla. 1977). On August 7, 1987, the Court certified the Action as a class action and directed that notice be disseminated to the Robertson Class pursuant to which members of the class would be afforded the opportunity to opt out of the class. Notice was thereafter sent out and nine persons opted out of the action.

3. During the period 1974 through 1979, extensive discovery took place including the taking of deposition testimony from nearly 150 witnesses (requiring more than 500 days and resulting in over 100,000 pages of transcript) and the production and analysis of tens of thousands of documents. During the same period numerous motions both to dismiss the cases and with regard to various discovery issues (in addition to the extensive proceedings relating to class certification referred to above) were briefed, argued and decided by the Court.

4. In 1985, a second amended complaint was filed in the action. At present, as set out in the second amended complaint, the Action asserts claims against Defendant McKee, Atkins & Schuler ("McKee") for violation of Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder, in connection with the offering of units in Home-Stake's 1968

Program. Defendant McKee denies having participated in any fraudulent activity and asserts that if an such activity occurred it was without its knowledge or assistance and that it at all times acted in good faith. In addition, Defendant McKee asserts various affirmative defenses, including the statute of limitations, and challenges the plaintiffs' assertion of damages.

5. After the completion in the early part of 1991 of the bulk of the pretrial proceedings set for the Action, serious settlement negotiations began between the Plaintiffs' Committee of Counsel (which had been established pursuant to the Initial Class Action Order) and the representatives of Defendant McKee. Those discussions culminated in the filing with the Court, on May 29, 1991, of the Stipulation of Settlement (the "Stipulation") for which approval is presently being sought. The Stipulation contemplates the payment of in excess of \$4,000,000 by McKee in exchange for the dismissal with prejudice of the Action (and a related pending individual action) against McKee.

6. Concurrently with the filing of the Stipulation, the Plaintiffs' Committee of Counsel and Defendant McKee filed, on May 29, 1991, a Joint Motion for Approval of Fourth Partial Settlement and Plan of Distribution, and for Dissemination of Notice of Proposed Settlement, and the Plaintiffs' Committee of Counsel filed a Memorandum of Points and Authorities in support thereof. Following a hearing thereon, this Court issued the Settlement Class and Notice Order which determined that, for purposes of the partial settlement only, the Action shall be

maintained as a class action on behalf of the Robertson Class and directed that the Notice be mailed to all members of the Robertson Class.

7. The Settlement Class and Notice Order further established August 23, 1991, as the date by which class members were required to file objections to the partial settlement and set a date of September 27, 1991 for a hearing, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, to determine whether the partial settlement should be approved.

8. On or before July 10, 1991, as required by the Settlement Class and Notice Order, the Notice was sent by first class mail, postage prepaid, to all members of the Settlement Class as reflected on the books and records maintained by the Plaintiffs' Committee of Counsel in the manner described in the Affidavit of Mailing of William H. Hinkle filed with the Court on September 26, 1991.

9. As of the conclusion of the period set for filing objections to the proposed partial settlement, no objections had been filed by and on behalf of any class member.

10. The Settlement set forth in the Stipulation was reached as a result of extended bargaining at arm's length and in good faith between members of the Plaintiffs' Committee of Counsel and counsel for Defendant McKee.

11. Plaintiffs' Committee of Counsel has conducted extensive discovery as to the claims of the plaintiffs against McKee, and are, accordingly, in a position properly to evaluate the fairness,

adequacy and reasonableness of the partial settlement set forth in the Stipulation.

12. The members of Plaintiffs' Committee of Counsel who prosecuted the claims against McKee and who negotiated the settlement set forth in the Stipulation are attorneys with considerable experience in complex securities and class action litigation. In the opinion of these counsel, the Stipulation is, in all respects, fair, adequate and reasonable.

13. Plaintiffs faced substantial risks in continuing to prosecute their claims to litigated judgment after trial. Those risks, as reflected in various pleadings filed herein over the sixteen years this litigation has been pending, include complex questions of fact and law concerning the role of Defendant McKee in Home-Stake's activities and the extent to which such conduct could serve as a basis for legal liability under the federal securities laws, as well as issues relating to statutes of limitations and the computation of damages.

14. This litigation is one of the most complex securities cases ever prosecuted. Theories of liability asserted to be applicable to the Defendant McKee, as well as its statute of limitations defenses, have been subject to the shifting currents of developments in the law through out the course of these proceedings as new court decisions in other proceedings, many of them adverse to the interests of the plaintiffs, have been handed down. See e.g., Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976);

Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson, 111 S.Ct. 2773 (1991).

15. The out-of-pocket costs incurred through May 9, 1991 by plaintiffs in these proceedings amount to almost \$320,000, and additional substantial costs would likely be incurred if the claims against Defendant McKee were not settled.

16. Based upon the foregoing, and the conclusions and recommendations of Plaintiffs' Committee of Counsel set out in the Notice, this Court finds and concludes that the amount of the settlement fund established pursuant to the Stipulation, in excess of \$4,000,000, is fair, adequate and reasonable.

17. If any Conclusion of Law herein be deemed to be a Finding of Fact, it is hereby incorporated in these Findings of Fact by this reference.

#### CONCLUSIONS OF LAW

1. This Court concludes in all respects in accordance with the foregoing findings of fact.

2. This Court has jurisdiction over the subject matter of this litigation, over all named parties to this litigation who are parties to the Stipulation, and over all members of the Robertson Class to the extent necessary to bind them with respect to the subject matter of this litigation.

3. Notice was duly mailed to the members of the Robertson Class pursuant to this Court's Settlement Class and Notice Order of July 2, 1991. The giving of said Notice was the best notice

practicable under the circumstances, including individual notice to all members of the Robertson Class who could be identified through reasonable effort, and was due and sufficient notice of the matters set forth therein. The giving of said Notice fully complied in every respect with the requirements of Rules 23(e) and 23(c)(2) of the Federal Rules of Civil Procedure.

4. Due and adequate notice, as described herein, was mailed to all those persons and entities who are members of the Robertson Class, notifying said persons and entities of the maintenance, for settlement purposes only, of the captioned case as a class action, and of the proposed partial settlement. All persons and entities who are members of the Robertson Class and who have not previously requested to be excluded from the Action are included in and are fully bound by the Stipulation and this Settlement Approval Order as though they were named parties to the Action and the Stipulation.

5. The Action has been vigorously litigated since 1975; substantial discovery on the underlying facts, conducted on an adversary basis, has been taken; Plaintiffs' Committee of Counsel were authorized to represent and act on behalf of the Robertson Class; Plaintiffs' Committee of Counsel did in fact act for the Robertson Class, and negotiated the partial settlement under consideration by the Court on their behalf; and such partial settlement was negotiated at arm's length and is not collusive.

6. Based upon all of the matters heard by this Court at the Settlement Hearing and upon the record herein, including the

pleadings, papers and other documents on file in this litigation, this Court hereby finds and concludes that the partial settlement set forth in the Stipulation is, in all respects, fair, reasonable and adequate, and therefore hereby approves said partial settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. No objections to the partial settlement have been filed. The Court further finds that the Notice adequately informed members of the Robertson Class of the material terms of the partial settlement.

7. If any Finding of Fact herein be deemed to be a Conclusion of law, it is hereby incorporated in these Conclusions of Law by this reference.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. This Court having previously ordered that, for purposes of this partial settlement only, and without prejudice to a full consideration of any objections to class certification that the Defendant McKee may assert in the event that the partial settlement provided for in the Stipulation is not consummated, and without prejudice to any objections to class certification that any other defendants in the Home-Stake Securities Litigation may make at any time, the Action shall be maintained as a class action on behalf of the Robertson Class defined in the Settlement Class and Notice Order and the claims of all named plaintiffs and all members of the Robertson Class (except for those persons listed in paragraph 4 of the Conclusions of Law above) shall be determined

in accordance with the Stipulation and this Settlement Approval Order.

2. The partial settlement set forth in the Stipulation is hereby approved as fair, reasonable and adequate.

3. Defendant McKee expressly denies any liability to the Settling Plaintiffs (as defined in the Stipulation), and expressly denies any wrongdoing of any description, or any deficiencies, faults, errors or omissions of any nature whatever; it has entered into the Stipulation solely for the purpose of terminating this litigation as to it and to avoid the cost, expense and effort required to continue to participate in such complex and protracted litigation. The Stipulation shall not be deemed an admission or concession on the part of Defendant McKee as to the validity of any claims asserted against it, or as to any liability to any of the Settling Plaintiffs or others or as to any wrongdoing by it, or any deficiencies, faults, errors or omissions of any nature whatever. Neither the Stipulation, or any statement or document made or filed in connection therewith, nor any of the terms thereof, shall be filed or offered or received in evidence, in any civil, criminal or administrative action or proceeding, except as required to obtain necessary approvals pursuant to the Stipulation or to implement or enforce the terms thereof.

4. After Defendant McKee makes the payments required by section 5.1 of the Stipulation, this Court shall enter judgments of dismissal, with prejudice and without costs to any party, in the Action.

5. After Defendant McKee makes the payments required by section 5.1 of the Stipulation, this Court shall enter a judgment of dismissal, with prejudice and without costs, in the action captioned Anderson v. Home-Stake Production Company, Case No. 74-C-228, pending in the United States District Court for the Northern District of Oklahoma, insofar as such action is asserted against Defendant McKee.

6. All persons and entities who are members of the Robertson Class (except those specified in paragraph 4 of the Conclusions of Law above as having duly requested exclusion from the Robertson Class) are hereby forever barred and enjoined from instituting or prosecuting any actions, causes of action, or claims against Defendant McKee of any kind or nature whatsoever, whether known, unknown, suspected or unsuspected, which were asserted or could have been asserted in the Action (the "Settled Claims").

7. Notwithstanding any other provision hereof, this Settlement Approval Order shall not operate to dismiss, bar, settle or otherwise adversely affect any claims which the members of the Robertson Class, including the class representative, have or may have against any of the non-settling defendants in the Home-Stake Securities Litigation or elsewhere or against any person or entity other than Defendant McKee to the extent provided for in this Settlement Approval Order and the Stipulation.

8. Without affecting the finality of the judgments to be entered pursuant to this Settlement Approval Order, the Court

shall retain continuing jurisdiction to administer the performance of the Stipulation in accordance with its terms, and, with respect to the Action, the Court shall retain continuing jurisdiction over the funds paid to the Settling Plaintiffs (as defined in the Stipulation) pursuant to Section 5.1 of the Stipulation, for the purpose of entering orders appropriate and consistent with the terms of the Stipulation, allowing or disallowing applications for attorneys' and accountants' fees, costs, and expenses; determining and supervising distribution procedures relating to said funds; identifying Robertson Class members and their respective interests, if any, in such funds; sending notices to Robertson Class members; reviewing claims submitted; and distributing such funds. After the completion of such matters, and pursuant to the terms of the Stipulation, such funds, except insofar as they may be otherwise disbursed pursuant to the terms of the Stipulation, shall be distributed to such persons as may be designated by the Court.

IT IS SO ORDERED this 27<sup>th</sup> day of Sept, 1991.

  
\_\_\_\_\_  
HONORABLE MANUEL L. REAL  
UNITED STATES DISTRICT JUDGE

Entered  
**FILED**

SEP 27 1991 *A*

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

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

IN RE:

HOME-STAKE PRODUCTION COMPANY  
SECURITIES LITIGATION

)  
)  
) M.D.L. Docket No. 153  
) 73-C-382 and 73-C-377  
) (Consolidated),  
) 74-C-180, 74-C-224, 74-C-225,  
) 74-C-226, 74-C-227, 74-C-228,  
) 74-C-229, 74-C-230, 75-C-432  
)

ORDER

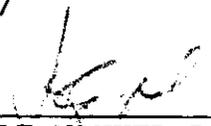
Defendants Wynema A. Cross, Cross and Company, K&E, Inc. and Elmer M. Kunkel have moved this Court to enter an order prohibiting the plaintiffs and their counsel from distributing or disbursing any funds in their possession or control which are derived directly or indirectly from any case included in M.D.L. Docket No. 153, including but not limited to the funds which are the subject of a pending settlement between a class of investors in Home-Stake Production Company's 1968 Program (the "Robertson Class") and defendant McKee, Atkins & Schuler. The basis for defendants' motion is the recent reversal by the Tenth Circuit of plaintiffs' judgments against the moving defendants together with such defendants' stated intent to file Bills of Costs in this case when and if the Tenth Circuit decision in their favor becomes final. Plaintiffs have filed a brief in opposition to defendants' motion.

Based on the pleadings, arguments of counsel and the record herein, the Court denies defendants' Motion For Order Staying

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Distribution Of Settlement Proceeds And Objection To Distribution,  
filed August 20, 1991.

IT IS SO ORDERED this 27 day of Sept, 1991.

  
\_\_\_\_\_  
HONORABLE MANUEL L. REAL  
UNITED STATES DISTRICT JUDGE

Entered -  
**FILED**

SEP 27 1991

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

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

IN RE:

HOME-STAKE PRODUCTION COMPANY  
SECURITIES LITIGATION

M.D.L. Docket No. 153 ✓

Case Nos. 75-C-432 and  
74-C-228

**FINDINGS OF FACT AND CONCLUSIONS OF LAW  
RE APPLICATION OF PLAINTIFFS' COMMITTEE OF COUNSEL  
FOR ATTORNEYS' FEES, COSTS AND EXPENSES**

These Findings of Fact and Conclusions of Law relate to the applications for attorneys' fees, costs and expenses submitted by the members of Plaintiffs' Committee of Counsel on behalf of themselves, their partners and their former partners in the following law firms: Broad, Schulz, Larson & Wineberg; Caplin & Drysdale, Chartered; William H. Hinkle; Doerner, Stuart, Saunders, Daniel & Anderson; and Gilbert, Segall and Young.

On May 29, 1991, Plaintiffs' Committee of Counsel filed an Application of Plaintiffs' Committee of Counsel For Allowance of Interim Attorneys' Fees and Reimbursement of Expenses And Memorandum In Support Thereof (hereinafter "Application"). The Application was based upon and in accordance with this Court's prior Final Judgment Awarding Attorneys' Fees, Costs and Expenses to Plaintiffs' Committee of Counsel, filed January 26, 1990, Doc. 2748 (the "Fee Judgment"). Attached as exhibits to the Application are copies of affidavits filed by members of the Plaintiffs'

Committee of Counsel detailing their expenses allocable to prosecution of the case against defendant McKee, Atkins & Schuler ("McKee") the settlement of which has given rise to the fund from which the fees, expenses and costs are being sought by Plaintiffs' Committee of Counsel.

The Application came on for hearing before this Court on September 27, 1991, pursuant to and in compliance with Rule 23 of the Federal Rules of Civil Procedure, and this Court's Notice of Hearing on Proposed Fourth Partial Settlement (the "Notice of Hearing"), which was mailed to all members of the Robertson Class in the manner prescribed in and pursuant to this Court's Order filed July 2, 1991, approving the Notice of Hearing and directing its dissemination to members of the Robertson Class. At the hearing, this Court heard and considered all the matters presented to it, including all of the documents and other papers introduced into evidence and all arguments of counsel.

On Sept 27, 1991, this Court entered its Settlement Approval Order, which contained its findings of fact and conclusions of law re the Joint Motion for Approval of Fourth Partial Settlement and Plan of Distribution, and for Dissemination of Notice of Proposed Settlement with Defendant McKee. The settlement findings are hereby incorporated in these Findings of Fact and Conclusions of Law as though they were fully set forth herein.

This Court has considered the entire record of all of the proceedings before it in and arising out of the M.D.L. Docket No. 153 actions, including the pleadings, briefs and affidavits

regarding costs and the Fee Judgment entered on January 26, 1990, and other papers pertaining to the Application.

Upon consideration of the record, including the proceedings, files and records referred to above, this Court now makes its findings of fact and conclusions of law relating to the Application.

#### FINDINGS OF FACT

1. Pursuant to the orders of this Court and the Notice of Hearing, the hearing on the Application was held before this Court on September 27, 1991, to consider whether the Application should be approved and confirmed by this Court as fair and reasonable. The Court has carefully considered the matters presented at the hearing with respect to those matters and the pleadings, papers and other documents on file in these consolidated actions, and is now fully advised in the premises.

2. This Court finds that the members of the Robertson Classes were notified of this hearing by way of the Notice of Hearing mailed July 10, 1991, in accordance with this Court's Order dated July 2, 1991, as so stated in the affidavit of William H. Hinkle re Mailing of Notice of Hearing, filed herein on September 26 1991. The Court further finds that no member of the Robertson Classes has filed an objection to the Application or requested to be heard thereon.

3. This litigation has been pending for over sixteen years during which time it was consolidated with several other actions

against numerous defendants arising out of sales of interests in oil and gas drilling programs to investors by Home-Stake Production Company and its subsidiaries. On January 26, 1990, this Court entered Findings of Fact and Conclusions of Law Re Application of Plaintiffs' Committee of Counsel for Attorneys' Fees, Costs and Expenses, Doc. 2746 (the "Prior Findings") describing the history of the consolidated litigation and the role of Plaintiff's Committee of Counsel therein. Based on the Prior Findings, the Court entered the Fee Judgment on January 26, 1990 (Doc. 2748), which applied to all future recoveries in any M.D.L. Docket No. 153 litigation on behalf of any of the plaintiff classes therein. Accordingly, the Fee Judgment applies to the present Application.

4. Pursuant to the Fee Judgment, the Court finds that Plaintiffs' Committee of Counsel should be awarded attorneys' fees equal to 30% of the Settlement Fund created pursuant to the Stipulation of Settlement dated May 29, 1991, and approved by this Court in the Settlement Approval Order dated *Sept 27*, 1991, plus reasonable expenses and costs.

5. The Fee Judgment established the following formula for determining the allowable 30% attorneys' fees which may be awarded under the Fee Judgment:

A. The amount of any New Fund created, either through execution on the judgments or through settlements approved by this Court, shall be added to the sum of all funds previously

recovered ("Prior Funds"), which sum shall constitute the Existing Total Fund;

B. The Fee to which Plaintiffs' Committee of Counsel shall be entitled shall be 30% of the Existing Total Fund;

C. From the New Fund, Plaintiffs' Committee of Counsel shall be paid the amount of the Fee less the sum of all prior fees paid; provided, however, that the amount paid shall not, from time to time, exceed 50% of the New Fund.

6. This Court finds that this formula should be applied to the New Fund of \$4,000,000, plus accrued interest, arising out of the settlement with defendant McKee. Based on the Affidavit of William H. Hinkle attached as Exhibit A to the Application, the Court finds that the fees due the Plaintiffs' Committee of Counsel from the McKee settlement under the Fee Judgment are \$1,422,677 plus 30% of all interest accrued on the \$4,000,000 settlement amount to the date of its distribution.

7. This Court finds that unreimbursed, out-of-pocket costs and expenses were reasonably and properly incurred by Plaintiffs' Committee of Counsel in the following amounts and should be reimbursed to them out of the New Fund now on hand after payment of attorneys' fees:

<u>Firm</u>	<u>Amount</u>
Broad, Schulz, Larson & Wineberg	\$82,164.34
Caplin & Drysdale, Chartered	218,770.78
William H. Hinkle	17,554.93

8. If any Conclusion of Law be deemed to be a finding of fact, it is hereby incorporated in these Findings of Fact by this reference.

CONCLUSIONS OF LAW

1. This Court concludes in all respects in accordance with the foregoing Findings of Fact.

2. Pursuant to and in compliance with Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finds and concludes that due and adequate notice was directed to all persons and entities who are members of the Robertson Class, advising them of the Application which is subject of these Findings of Fact and Conclusions of Law, and of their right to object to any part of the Application; and a full and fair opportunity was afforded to all persons and entities who are members of the Robertson Class to be heard with respect to the Application.

3. Based upon the matters heard by this Court on September 27, 1991, all pleadings, papers and other documents on file in this litigation, and the Findings of Fact hereinabove set forth, this Court hereby approves the Application, awards attorneys' fees, costs and expenses as set forth in Findings of Fact Nos. 4, 5, 6, and 7 above, and concludes that the fees, expenses and costs so awarded are in all respects fair and reasonable.

4. Plaintiffs' Committee of Counsel shall be responsible for allocating among its members and their present and former law firms and partners any fees paid hereunder. This Court retains

jurisdiction to resolve any disputes which may arise among and between them.

5. If any Finding of Fact herein is deemed to be a conclusion of law, it is hereby incorporated in these Conclusions of Law by this reference.

Dated: Sept 27, 1991

  
\_\_\_\_\_  
HONORABLE MANUEL L. REAL  
UNITED STATES DISTRICT JUDGE

entered  
**FILED**

SEP 27 1991

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

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

\_\_\_\_\_  
IN RE: \_\_\_\_\_  
HOME-STAKE PRODUCTION COMPANY  
SECURITIES LITIGATION  
\_\_\_\_\_

M.D.L. Docket No. 153 ✓  
Case Nos. 75-C-432 and  
74-C-228

ORDER APPROVING PLAN OF DISTRIBUTION  
OF PARTIAL SETTLEMENT FUND

By Order filed July 2, 1991 (the "Settlement Class and Notice Order"), upon the joint motion of plaintiffs and the defendant who are parties to the Stipulation of Settlement dated May 29, 1991 (the "Stipulation of Settlement"), and following a hearing thereon, this Court determined that, for purposes of the partial settlement only, the above captioned action shall be maintained as a class action on behalf of the Settlement Class defined in the Settlement Class and Notice Order (the Robertson Class") and directed that notice be mailed to all members of the Robertson Class in the form attached as Exhibit A to the Settlement Class and Notice Order (the "Notice").

Pursuant to paragraph 2 of the Settlement Class and Notice Order, a hearing was held by this Court on September 27, 1991 (the "Settlement Hearing"), to consider whether the partial settlement set forth in the Stipulation of Settlement should be approved and confirmed by this Court as fair, reasonable and adequate, to

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consider any objections to said partial settlement, and to consider the appropriateness of the proposed Plan of Distribution described in the Notice (the "Plan of Distribution"). This Court has carefully considered the matters presented at the Settlement Hearing, including all of the arguments of counsel and all papers filed with respect to said matters, and other relevant pleadings, papers and other documents on file in this litigation (including the affidavits filed by members of the Plaintiffs' Committee of Counsel in support of their joint fee application), and is now fully advised in the premises.

By Order dated Sept 27, 1991 (the "Settlement Approval Order"), this Court approved the partial settlement as fair and reasonable.

Upon consideration of the entire record herein, including the proceedings, files and records referred to above, this Court makes the following findings of fact and conclusions of law in connection with its consideration of the Plan of Distribution and the matters relating thereto presented at the Settlement Hearing:

1. The Court adopts by reference Findings of Fact 1 through 14 contained in the Settlement Approval Order dated Sept 27, 1991.

2. The proposed Plan of Distribution fairly reflects the difference in the amount of losses suffered by each member of the Robertson Class.

3. No objection has been filed by any member of the Robertson Class with respect to the proposed Plan of Distribution.

4. The Plan of Distribution in all respects provides a fair and reasonable basis for allocation of the Settlement Fund.

5. If any Conclusion of Law herein be deemed to be a Finding of Fact, it is hereby incorporated in these Findings of Fact by this reference.

CONCLUSIONS OF LAW

1. This Court concludes in all respects in accordance with the foregoing findings of fact.

2. The Court adopts by reference Conclusions of Law 2 through 5 contained in the Settlement Approval Order dated Sept 27, 1991.

3. Based upon all of the matters heard by this Court at the Settlement Hearing and upon the record herein, including the pleadings, papers and other documents on file in this litigation, this Court hereby finds and concludes that the Plan of Distribution is, in all respects, fair, reasonable and adequate, and therefore hereby approves said Plan of Distribution to effectuate the partial settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

4. If any Finding of Fact herein be deemed to be a Conclusion of Law, it is hereby incorporated in these conclusions of Law by this reference.

NOW, THEREFORE, IT IS HEREBY ORDERED ADJUDGED AND DECREED:

1. Settlement Counsel (as defined in the Stipulation of Settlement) will administer the Settlement Fund (as defined in the

Stipulation of Settlement). They may request additional documentation if needed to justify distribution to any claimant.

2. If deemed necessary or desirable by Settlement Counsel, a Certified Public Accountant and/or other accounting or clerical personnel may be employed, at the expense of the Settlement Fund, to assist in the preparation of an accounting for compilation of amounts to be distributed to members of the Robertson Class.

3. The Settlement Fund shall be allocated among the Robertson Class in the manner set out in Section IX of the Notice and the Court hereby approves the proposed allocation and plan of distribution set out in the Notice as fair and reasonable.

4. All disbursements of the Settlement Fund to class members shall be made by Settlement Counsel. One or more accountings, as appropriate, shall be made to the Court concerning the status of the Settlement Fund.

5. Settlement Counsel may reimburse themselves out of the Settlement Fund for necessary out-of-pocket expenses incurred in consummating the settlement and for administering the Settlement Fund.

6. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, this Court expressly determines that there is no just reason for delay in the entry of this judgment and the clerk is expressly directed to forthwith enter judgment as set forth herein.

7. This Court expressly retains and reserves continuing jurisdiction with respect to the subject matter of this Order, notwithstanding its finality.

IT IS SO ORDERED this 27 day of Sept., 1991.

  
\_\_\_\_\_  
HONORABLE MANUEL L. REAL  
UNITED STATES DISTRICT JUDGE

Entered  
**FILED**  
SEP 27 1991  
Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

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

In re  
HOME-STAKE PRODUCTION COMPANY  
SECURITIES LITIGATION  
W. D. ROBERTSON, et al.,  
Plaintiffs,  
v.  
MCKEE, ATKINS & SCHULER,  
Defendant.

M.D.L. Docket  
No. 153 .

75-C-432

ORDER AND FINAL  
JUDGMENT

A Stipulation of Settlement dated May 29, 1991, having been entered into by the parties herein, and the Court having found the terms of the Stipulation of Settlement to be fair, reasonable and adequate, and the Court having expressly determined that there is no just reason for delay in the entry of final judgment, and that a final judgment should be entered as, and be deemed, a final judgment in accordance with Fed.R.Civ.P. 54(b),

And defendant McKee, Atkins & Schuler (the "Defendant") having expressly denied any liability and any wrongdoing of any description, or any deficiencies, faults, errors or omissions of any nature whatsoever; having entered into the Stipulation of Settlement solely for the purpose of terminating this litigation as to them, and to avoid the cost, expense and effort required to continue to participate in such complex and protracted litigation; and not admitting or conceding the validity of any of the claims asserted against it, any liability to any of the plaintiffs or

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others, or any wrongdoing, deficiencies, faults, errors or omissions of any nature whatsoever,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The above-captioned action is hereby dismissed in its entirety, with prejudice to the plaintiffs and all other members of the class who have not been excluded from the class, each party to bear its own costs.

2. To the extent the Defendant has asserted or presently is asserting a counterclaim or cross-claim against any plaintiff or party to this action as against whom any action consolidated under M.D.L. Docket No. 153 was previously dismissed with prejudice pursuant to a settlement with the plaintiffs, or to the extent that any such previously dismissed party has asserted or is presently asserting a counterclaim or cross-claim against the Defendant, such counterclaims or cross-claims are hereby dismissed with prejudice, each party to bear its own costs.

3. Jurisdiction is hereby reserved by the Court over the consummation of the compromise and settlement provided for in the Stipulation of Settlement and all matters related thereto.

Dated: Tulsa, Oklahoma

Sept 27, 1991

  
\_\_\_\_\_  
Honorable Manuel L. Real  
United States District Judge

JUDGMENT ENTERED:

AMurphy  
Clerk

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

RICKEY D. ROBISON a/k/a RICK  
ROBISON; LINDA A. RICHARDSON  
f/k/a LINDA A. ROBISON f/k/a  
LINDA ROBISON; OZARK CONSTRUCTION  
COMPANY, INC.; UNION MORTGAGE  
COMPANY, INC.; THE MITSUI BANK  
LIMITED; AETNA FINANCE COMPANY,  
a Delaware Corporation doing  
business as ITT Financial  
Services, formerly Aetna Finance  
Company of Miami, Inc., an  
Oklahoma Corporation; COUNTY  
TREASURER, Ottawa County,  
Oklahoma; and BOARD OF COUNTY  
COMMISSIONERS, Ottawa County,  
Oklahoma,

Defendants.

**FILED**

SEP 27 1991

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 90-C-850-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 27 day  
of September, 1991. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Kathleen Bliss Adams, Assistant United States  
Attorney; the Defendants, County Treasurer, Ottawa County,  
Oklahoma, and Board of County Commissioners, Ottawa County,  
Oklahoma, appear by Barry V. Denney, Assistant District Attorney,  
Ottawa County, Oklahoma; the Defendant, Union Mortgage Company,  
Inc., appears by its attorney Sheldon B. Swan; and the  
Defendants, Rickey D. Robison a/k/a Rick Robinson, Linda A.  
Richardson f/k/a Linda A. Robison f/k/a Linda Robison, Ozark  
Construction Company, Inc., The Mitsui Bank Limited, and Aetna

Finance Company, a Delaware Corporation doing business as ITT Financial Services, formerly Aetna Finance Company of Miami, Inc., an Oklahoma Corporation, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, Rickey D. Robison a/k/a Rick Robinson, was served with Summons and Complaint on June 7, 1991; that the Defendant, Linda A. Richardson f/k/a Linda A. Robison f/k/a Linda Robison, was served with Summons and Complaint on May 17, 1991; that the Defendant, Ozark Construction Company, Inc., was served with Summons and Complaint on December 13, 1990; that the Defendant, Union Mortgage Company, Inc., acknowledged receipt of Summons and Complaint on November 7, 1990; that the Defendant, The Mitsui Bank Limited, was served with Summons and Complaint on December 17, 1990; that the Defendant, Aetna Finance Company, a Delaware Corporation doing business as ITT Financial Services, formerly Aetna Finance Company of Miami, Inc., an Oklahoma Corporation, acknowledged receipt of Summons and Complaint on October 11, 1990; that Defendant, County Treasurer, Ottawa County, Oklahoma, acknowledged receipt of Summons and Complaint on October 15, 1990.

It appears that the Defendants, County Treasurer, Ottawa County, Oklahoma, and Board of County Commissioners, Ottawa County, Oklahoma, filed their Answer on April 25, 1991; that the Defendant, Union Mortgage Company, Inc., filed its Answer and Cross-Claim on November 13, 1990 and its Amended Answer and Cross-Claim on February 22, 1991; and that the Defendants, Rickey D. Robison a/k/a Rick Robinson, Linda A.

Richardson f/k/a Linda A. Robison f/k/a Linda Robison, Ozark Construction Company, Inc., The Mitsui Bank Limited, and Aetna Finance Company, a Delaware Corporation doing business as ITT Financial Services, formerly Aetna Finance Company of Miami, Inc., an Oklahoma Corporation, have failed to answer and their 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 Ottawa County, Oklahoma, within the Northern Judicial District of Oklahoma:

All of Lots Twenty (20), Twenty-One (21), and Twenty-Two (22), in Block Four (4), in the Fairhome Addition to the City of Miami, Ottawa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on December 2, 1986, Rickey D. Robison and Linda A. Robison executed and delivered to the United States of America, acting on behalf of the Small Business Administration, their mortgage note in the amount of \$21,100.00, payable in monthly installments, with interest thereon at the rate of four percent (4%) per annum.

The Court further finds that as security for the payment of the above-described note, Rickey D. Robison and Linda A. Robison executed and delivered to the United States of America, acting on behalf of the Small Business Administration, a mortgage dated December 2, 1986, covering the above-described property. Said mortgage was recorded on December 2, 1986, in Book 455, Page 393, in the records of Ottawa County, Oklahoma.

The Court further finds that the Defendants, Rickey D. Robison a/k/a Rick Robinson and Linda A. Richardson f/k/a Linda A. Robison f/k/a Linda Robison, 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, Rickey D. Robison a/k/a Rick Robinson and Linda A. Richardson f/k/a Linda A. Robison f/k/a Linda Robison, are indebted to the Plaintiff in the principal sum of \$19,280.79, together with accrued interest of \$726.70 as of the 16th day of November, 1989, with interest thereafter at the daily rate of \$2.11 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$283.52 (\$20.00 docket fees, \$255.52 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, have liens on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$113.65, plus penalties and interest, for the year 1990 and \$160.63, plus penalties and interest, for the year 1989. Said liens are superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Union Mortgage Company, Inc., has a lien on the property which is the subject matter of this action in the amount of \$6,902.78, plus accrued interest in the amount of \$2,438.02 through November 8,

1990, plus interest accrued from and after November 8, 1990, at 17.98 percent per annum until paid, and \$1,200.00 for attorney fees by virtue of a Transfer and Assignment dated August 2, 1988, and recorded on August 24, 1988 in Book 469, Page 612 in the Office of the County Clerk of Ottawa County, Oklahoma. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, Ozark Construction Company, Inc., The Mitsui Bank Limited, and Aetna Finance Company, a Delaware Corporation doing business as ITT Financial Services, formerly Aetna Finance Company of Miami, Inc., an Oklahoma Corporation, 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, Rickey D. Robison a/k/a Rick Robinson and Linda A. Richardson f/k/a Linda A. Robison f/k/a Linda Robison, in the principal sum of \$19,280.79, together with accrued interest of \$726.70 as of the 16th day of November, 1989, with interest thereafter at the daily rate of \$2.11 until judgment, plus interest thereafter at the current legal rate of 5.57 percent per annum until paid, plus the costs of this action in the amount of \$283.52 (\$20.00 docket fees, \$255.52 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, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, have and recover judgment in the amount of \$274.28, plus penalties and interest, for ad valorem taxes for the years 1990 and 1989, plus the costs of this action.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendant, Union Mortgage Company, Inc., have and recover judgment in the amount of \$6,902.78, plus accrued interest in the amount of \$2,438.02 through November 8, 1990, plus interest accrued from and after November 8, 1990, at 17.98 percent per annum until paid, and \$1,200.00 for attorney fees by virtue of a Transfer and Assignment dated August 2, 1988, and recorded on August 24, 1988 in Book 469, Page 612 in the Office of the County Clerk of Ottawa County, Oklahoma.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Defendants, Ozark Construction Company, Inc., The Mitsui Bank Limited, and Aetna Finance Company, a Delaware Corporation doing business as ITT Financial Services, formerly Aetna Finance Company of Miami, Inc., an Oklahoma Corporation, 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, Rickey D. Robison a/k/a Rick Robinson and Linda A. Richardson f/k/a Linda A. Robison f/k/a Linda Robison, 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 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 Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, in the amount of \$274.28, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

**Third:**

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

**Fourth:**

In payment of the judgment rendered herein in favor of the Defendant, Union Mortgage Company, Inc.

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

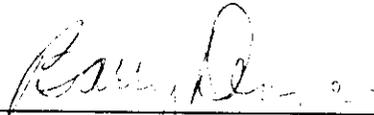
and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

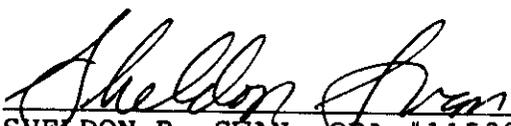
S/ JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

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 V. DENNEY, OBA #11284  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Ottawa County, Oklahoma

  
SHELDON B. SWAN, OBA #11538  
Attorney for Defendant,  
Union Mortgage Company, Inc.

Judgment of Foreclosure  
Civil Action No. 90-C-850-E

KBA/css

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

FILED

SEP 27 1991

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

LOIS B. SEITZ, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 STATE FARM FIRE & )  
 CASUALTY COMPANY, )  
 )  
 Defendant. )

CASE NO. 91-C-191-E

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the Plaintiff, Lois B. Seitz, and the Defendant,  
State Farm Fire & Casualty Company, and hereby jointly dismiss the  
above styled case with prejudice to any future action.

DATED this 30<sup>th</sup> day of August, 1991.

  
KEN UNDERWOOD, OBA #9156,  
ATTORNEY FOR PLAINTIFF

SELMAN AND STAUFFER, INC.  
BY:   
NEAL E. STAUFFER, OBA #13168  
ATTORNEY FOR DEFENDANT

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

CONNIE FAULK,

Plaintiff,

vs.

No. 90-C-395-B

SHERITONE INTERNATIONAL, INC.,  
an Illinois corporation;  
ACME AGRICULTURAL SUPPLY, INC.,  
an Arkansas corporation,

Defendants.

FILED

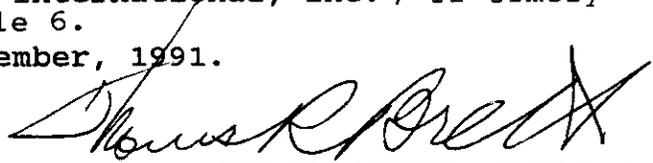
SEP 27 1991

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

J U D G M E N T

In accordance with the Order filed this date finding that an award of compensatory damages to Plaintiff, Connie Faulk, in the amount of Seventy-Five Thousand Dollars (\$75,000.00) is proper and that judgment in such amount should be granted, the Court hereby enters judgment in favor of Plaintiff, Connie Faulk, and against Defendant, Sheritone International, Inc., an Illinois corporation, in the amount of Seventy-Five Thousand Dollars (\$75,000.00), plus pre-judgment interest at the rate of 11.71% per annum (12 O.S. § Supp. 1991, §727B) from the date of May 7, 1990 to September 27, 1991, and post-judgment interest at the rate of 5.57% per annum (28 U.S.C. § 1961) from September 27, 1991 on the total of said principal sum and pre-judgment interest. Costs are assessed against the Defendant, Sheritone International, Inc., if timely applied for pursuant to Local Rule 6.

DATED this 27th day of September, 1991.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

-----X	:
Immuno Mycologics, Inc.,	:
	:
Plaintiff,	:
	:
v.	: Civil Action No.:
	: 90 C-435 (B)
Syva Company, Syntex Corporation	:
and Syntex (U.S.A.) Inc.	:
	:
Defendant.	:
-----X	:

**FILED**

**SEP 26 1991**

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

STIPULATED CONSENT JUDGMENT

ORDER

This action having come before the Court on the application of the parties for the entry of judgment, and it appearing that the parties have reached an agreement of settlement and that the parties have consented to the entry of judgment herein, it is hereby ordered, pursuant to the parties' agreement, as follows:

1. This Court has jurisdiction over this cause and over the parties hereto and shall retain jurisdiction for the purpose of enforcing this settlement and entry of judgment on the decision of any arbitration thereunder.

2. Syntex stipulates that the '438 patent remains valid and enforceable and agrees not to contest the issues of infringement and damages for infringement.

3. That the judgment herein satisfies Plaintiff's complaint, and that based on said judgment, the complaint is hereby dismissed with prejudice.

4. Each party will bear its own costs, expenses, and attorneys' fees.

AGREED TO:

Dated:

9/19/91

  
Douglas E. Olson  
Lyon & Lyon  
611 W. Sixth St., 34th Floor  
Los Angeles, California 90017  
(213) 489-1600

Attorneys for Plaintiff  
Immuno Mycologics, Inc.

AGREED TO:

Dated:

9/19/91

  
James W. Gould  
Morgan & Finnegan  
345 Park Avenue  
New York, NY 10154  
(212) 415-8553

Attorneys for Defendants  
Syva Company, Syntex  
Corporation and Syntex  
(U.S.A.) Inc.

SO ORDERED, this 26<sup>th</sup> day of ~~August~~ <sup>Sept.</sup>, 1991.

  
Hon. Thomas R. Brett, U.S.D.J.



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

9-26-91

JAMES PRESTON MARTIN,  
Petitioner,  
vs.  
UNITED STATES OF AMERICA,  
Respondent.

No. 91-C-193-C  
No. 80-CR-2-C

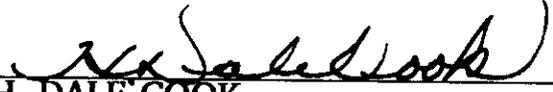
ORDER

The Court has before it petitioner's motion for relief under 28 U.S.C. §2255. Petitioner relies on Gozlon-Peretz v. United States, 111 S.Ct. 840 (1991) asserting that the sentence imposed by this Court on May 14, 1986 was illegal in that it included a five year special parole term. In Gozlon-Peretz, the Court considered the amendment to 21 U.S.C. §841 eliminating a "special parole" term in favor of a system of "supervised release". The new "supervised release" provisions became effective on October 27, 1986 under the Anti-Drug Abuse Act. However the effect of this decision does not vacate all "special parole" terms which were imposed prior to October 27, 1986 under the former 21 U.S.C. §841. A court will apply the law in effect at the time a decision is rendered. See, Bradley v. Richmond School Bond, 416 U.S. 696 (1974).

25/3

Accordingly, petitioner James Preston Martin's motion pursuant to §2255 is hereby denied.

*IT IS SO ORDERED* this 26<sup>th</sup> day of September, 1991.

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

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

FILED

SEP 26 1991

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

HOMeward BOUND, INC.  
et al.,

Plaintiffs,

v.

THE HISSOM MEMORIAL CENTER,  
et. al.,

Defendants.

Case No. 85-C-437-E

JUDGMENT

In accordance with the Order entered on this 25<sup>th</sup> day of September, 1991, awarding Plaintiffs' counsel, Bullock & Bullock, interim base attorney fees and expenses, the Court hereby enters judgment in favor of Plaintiffs' counsel, Bullock & Bullock, in the amount of \$ 71,475.00 for base fees and \$ 6,239.10 for expenses. Plaintiffs' right to an enhancement of these fees shall be held in abeyance until the matter of Plaintiffs' rights to an enhancement is resolved.

ORDERED this 25<sup>th</sup> day of September, 1991.

  
JAMES O. ELLISON  
United States District Court



Louis W. Bullock  
**BULLOCK & BULLOCK**  
320 South Boston  
Suite 718  
Tulsa, Oklahoma 74103-3708  
(918) 584-2001

**ATTORNEYS FOR PLAINTIFFS**



Charlie Waters  
Roger Stuart  
**DEPARTMENT OF HUMAN SERVICES**  
P. O. Box 53025  
Oklahoma City, Oklahoma 73152  
(405) 521-3638

**ATTORNEY FOR DEFENDANTS**

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

**FILED**

SEP 26 1991

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

BILLY R. VINING, TRUSTEE )  
ON BEHALF OF THE BANKRUPTCY )  
ESTATE OF STEVE D. THOMPSON )  
TRUCKING, INC., )

Plaintiff, )

vs. )

Case No. CIV 91-649 B

INDUSTRIAL STUDS, INC., )

Defendant. )

**ORDER GRANTING DISMISSAL**

NOW on this 3rd day of <sup>October</sup> ~~September~~, 1991, the Plaintiff's Dismissal With Prejudice having been previously filed herein it is the finding of this court that the said cause of action should be Dismissed With Prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above entitled cause of action be and is hereby Dismissed With Prejudice.

*[Faint signature]*

\_\_\_\_\_  
Judge

APPROVED:

*[Handwritten signature]*  
\_\_\_\_\_  
Charles L. Broadway, OBA# 11624  
ATTORNEY FOR PLAINTIFF

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

UTICA MUTUAL INSURANCE COMPANY, INC. )  
)  
Plaintiff, )  
)  
v. )  
)  
GATEWAY INSURANCE AGENCY, INC., an )  
Oklahoma corporation; TRI-STATE INSURANCE )  
COMPANY, an Oklahoma corporation; SILVEY )  
COMPANIES, an Oklahoma corporation; JERRY )  
WAYNE ROSS; and JUDY ROSS, )  
)  
Defendants. )

No: 91-C-410-B

**FILED**  
SEP 26 1991  
Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ORDER

NOW on this 26 day of Sept, 1991, comes on to be heard the Plaintiff's Application for dismissal of Defendants, Jerry Wayne Ross and Judy Ross, from the above-styled action. After considering said Application, it is the Order of this Court that said Application is hereby granted. Defendants, Jerry Wayne Ross and Judy Ross, are hereby dismissed from the above-styled action.

IT IS SO ORDERED this 26 day of Sept, 1991.

W. THOMAS R. BRETT  
JUDGE OF THE DISTRICT COURT



(b) The defendant shall mail each monthly installment payment to: United States Attorney's Office, Debt Collection Unit, 333 West 4th, 3600 U. S. Courthouse, Tulsa, OK 74103.

(c) Each said payment made by defendant shall be applied in accordance with the U. S. Rule, i.e., first to the payment of costs, second to the payment of postjudgment interest (as provided by 28 U.S.C. §1961) accrued to the date of the receipt of said payment, and the balance, if any, to the principal.

(d) The defendant shall keep the United States currently informed in writing of any material change in his financial situation or ability to pay, and of any change in his employment, place of residence or telephone number. Defendant shall provide such information to the United States Attorney at the address set forth in (b) above.

(e) The defendant shall provide the United States with current, accurate evidence of his assets, income and expenditures (including, but not limited to, his Federal income tax returns) within fifteen (15) days of the date of a request for such evidence by the United States Attorney.

2. Default under the terms of this Consent Judgment will entitle the United States to execute on the judgment without notice to the defendant.

3. The defendant has the right of prepayment of this debt without penalty.

4. The parties further agree that any Order of Payment which may be entered by the Court pursuant hereto may thereafter be modified and amended upon stipulation of the parties; or,

should the parties fail to agree upon the terms of a new stipulated Order of Payment, the Court may, after examination of the defendant, enter a supplemental Order of Payment.

(Signed) H. Dale Cook

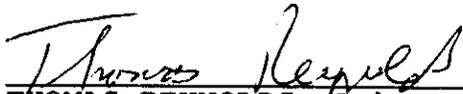
United States District Judge

APPROVED AS TO FORM:

TONY M. GRAHAM  
United States Attorney



KATHLEEN BLISS ADAMS, OBA #13625  
Assistant U. S. Attorney  
Attorney for Plaintiff



THOMAS REYNOLDS, Debtor

RCH/scf  
09/17/91

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

**F I L E D**

SEP 25 1991

JOHN D. ANDERSON and  
DIANNA ANDERSON,  
husband and wife,

Plaintiffs,

vs.

JOHN GRASSEL and CANAL  
INSURANCE COMPANY,

Defendants.

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

Case No. 91 C 0024E

**ORDER OF DISMISSAL WITH PREJUDICE**

The parties having settled and compromised all issues of fact and law in the above-captioned cause, and a Joint Stipulation for Dismissal with Prejudice having been filed by the parties, it is

ORDERED, ADJUDGED AND DECREED that the above-captioned cause is hereby dismissed with prejudice.

**S/ JAMES O. ELLISON**

**UNITED STATES DISTRICT JUDGE**

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

**F I L E D**

SEP 25 1991

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

BERNARD OLCOTT,

Plaintiff,

vs.

DELAWARE FLOOD COMPANY,  
INC., et al.,

Defendants.

No. 83-C-179-E

O R D E R

This matter is before the Court upon the Motion to Dismiss for Lack of Subject Matter Jurisdiction filed by Defendant M. Michael Galesi on February 20, 1991 and supplemented. On April 3, 1991 the Court directed the parties to submit arguments and authorities on the following questions pertinent to the jurisdiction issue:

1. As transferee court, is the Court bound by the Tenth Circuit<sup>1</sup> or the Third Circuit<sup>2</sup> approach with regard to the statute of limitations issue;
2. If the Third Circuit approach to the statute of limitations issue is applicable to the instant case, what is the effect of Gruber v. Price Waterhouse, 911 F.2d 960 (3rd Cir. 1990) on retroactive application of the rule enunciated in Data Access; and

---

<sup>1</sup>See e.g. Bath v. Bushkin, Game Gaines and Jonas, 913 F.2d 817 (1990).

<sup>2</sup>See In re Data Access Systems Securities Litigation, 843 F.2d 1537 (1988).

3. Is Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson, 111 S.Ct. 2773 sufficiently analogous to the instant case so that the Supreme Court's decision would be dispositive of Defendant's Motion to Dismiss.

The parties have filed their respective briefs in response to the Court's directive. Gilbertson was decided on June 20, 1991. The jurisdictional issue in the instant case is now ripe for resolution.

The Court finds that Gilbertson is dispositive. In Gilbertson, investors who purchased units in seven limited partnerships from 1979 to 1981 brought suits against, among others, Lampf, Pleva, et al.<sup>3</sup> The lawsuits were filed in November 1986 and June 1987 in the United States District Court for the District of Oregon. Plaintiff alleged violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, asserting that they were induced to invest in the partnerships by misrepresentations in the offering memoranda and became aware of the misrepresentations in 1985. The district court granted summary judgment for the Defendants. It held that the Plaintiffs' claims were time-barred by Oregon's two-year statute of limitations for fraud which the Court "borrowed", finding it to be applicable to the cause of action where Congress had failed to provide a statute of limitations. The Ninth Circuit reversed, in part, holding that there were material factual disputes regarding the issue of when the Plaintiffs should have discovered the alleged

---

<sup>3</sup>The law firm that prepared the offering memoranda for the limited partnerships.

misrepresentations. On writ of certiorari to the Supreme Court, Plaintiff-Respondents argued that the district court's borrowing approach should be ratified; Defendant-Petitioner urged the Court to adopt a uniform federal "one and three year" approach, citing 15 U.S.C. §77m of the Securities Act of 1933 and §78i(e), 78r(c) and 78cc(b) of the 1934 Act. Writing for the Court, Justice Blackmun first acknowledged that where, as here, Congress had provided no limitations period for a cause of action,<sup>4</sup> courts traditionally borrow the most analogous time limitation from the forum state. Justice Blackmun then went on to reject the "state-borrowing doctrine" in the 10b-5 setting, finding that the "1-and-3 year structure provided in the statutes of origin represented a "clearer indication of how Congress would have balanced the policy considerations implicit ..." in the time limitations provision than any state law parallels. Id. at 2780. Therefore, the Court held that the statute of limitations applicable to 10b actions is the one-and-three year provisions of the 1934 Act, specifically as described in 15 U.S.C. §78i(e). Id. at 2782 n. 9. There can be no question, then, that §10b actions must be commenced within one year after discovery of the facts giving rise to the action and no later than three years from the alleged violation. The Court then addressed the corollary issue of whether this limitations period would be subject to the traditional doctrine of equitable tolling.

---

<sup>4</sup>Indeed, as the Court noted, Congress has never expressly provided for a §10b-5 cause of action. The action is one of judicial creation, "having been implied under the statute for nearly half a century." Id. at 2779.

The Court concluded that "[b]ecause the purpose of the three-year limitation is clearly to serve as a cutoff, we hold that tolling principles do not apply to that period." Id. at 2782.

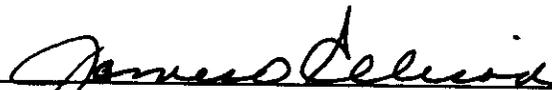
Applying this newly established uniform federal statute of limitations period to the instant case,<sup>5</sup> the Court finds that Plaintiff's claims were first filed on July 7, 1982.<sup>6</sup> The Court finds that Plaintiff's federal claims arising out of the 1976, 1977, and 1978 limited partnerships and those filed subsequently against Galesi, individually, fall clearly outside of the Gilbertson three-year limitations parameter. Further, evidence of Plaintiff's suspicions about the 1979 investment within the one-year limitation period establish that his claim arising out of that investment is barred by the one-year rule. The Court further finds that Plaintiff's federal claims pursuant to 15 U.S.C. §771(2), 15 U.S.C. §78(j)(b) and Rule 10b-5 are expressly barred by the applicable statutes of limitations. Therefore Plaintiff's federal claims should be dismissed. The Court further finds that because complete diversity of citizenship does not exist as to the state pendant claims, these claims must also be dismissed. Accordingly, Defendant's Motion to Dismiss should be granted.

---

<sup>5</sup>The limitations period was applied retroactively to the claims in Gilbertson. For the application of the limitations period to the instant case, therefore, see James B. Beam Distilling Co. v Georgia, 111 S.Ct. 2439 (1991) holding, inter alia that retroactive application should be made across the board.

<sup>6</sup>The case was initially filed in New Jersey and subsequently transferred to this Court pursuant to 28 U.S.C. §1404(a).

So ORDERED this 28<sup>d</sup> day of September, 1991.

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

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

IRVEN WILLIAM ROLEY,

Plaintiff,

vs.

BUCK JOHNSON, SHERIFF OF  
ROGERS COUNTY, ET AL.,

Defendants.

No. 90-C-620-E

**FILED**

SEP 25 1991

JUDGMENT

(Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

This action came on for consideration before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS THEREFORE ORDERED that the Plaintiff take nothing from the Defendants, that the action be dismissed on the merits, and that the Defendants recover of the Plaintiff their costs of action.

ORDERED this 23<sup>d</sup> day of September, 1991.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT SEP 24 1991  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

BILL MCGOUGH and )  
JOY M. MCGOUGH, )  
 )  
Plaintiffs )  
 )  
vs. )  
 )  
FIBREBOARD CORPORATION, et. )  
al. )  
 )  
Defendants. )

Case No. 90-C-543-E

STIPULATION OF DISMISSAL WITH PREJUDICE  
AS TO THE DEFENDANT GRANT WILSON COMPANY ONLY

COME NOW the Plaintiffs and Defendant Grant Wilson Company,  
and stipulate that all claims existing between them have been  
settled and that this cause is hereby dismissed with prejudice by  
the Plaintiffs as to Grant Wilson Company only. Plaintiffs  
reserve all claims and causes of action against other Defendants.

*Bill M. Gough*  
\_\_\_\_\_  
BILL MCGOUGH

*Joy M. M. Gough*  
\_\_\_\_\_  
JOY M. MCGOUGH

*[Signature]*  
\_\_\_\_\_  
MARK IOLA (DBA 4553)  
Attorney for the Plaintiffs

UNGERMAN & IOLA  
OF COUNSEL

P. O. Box 701917  
Tulsa, Oklahoma 74170-1917  
(918) 495-0550

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

FILED  
SEP 24 1991

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ESTON M. NEWTON and  
LOWANDA NEWTON,  
  
Plaintiffs

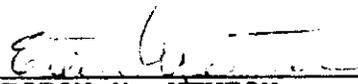
vs.

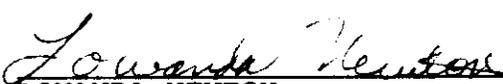
FIBREBOARD CORPORATION, et.  
al.  
  
Defendants.

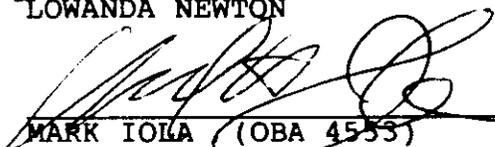
Case No. 90-C-544-E

STIPULATION OF DISMISSAL WITH PREJUDICE  
AS TO THE DEFENDANT GRANT WILSON COMPANY ONLY

COME NOW the Plaintiffs and Defendant Grant Wilson Company,  
and stipulate that all claims existing between them have been  
settled and that this cause is hereby dismissed with prejudice by  
the Plaintiffs as to Grant Wilson Company only. Plaintiffs  
reserve all claims and causes of action against other Defendants.

  
ESTON M. NEWTON

  
LOWANDA NEWTON

  
MARK IOLA (OBA 4553)  
Attorney for the Plaintiffs

UNGERMAN & IOLA  
OF COUNSEL

P. O. Box 701917  
Tulsa, Oklahoma 74170-1917  
(918) 495-0550

**F I L E D**

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

**SEP 24 1991**

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

WILLIAM C. JONES and	)
JUANITA L. JONES,	)
	)
Plaintiffs	)
	)
vs.	)
	)
FIBREBOARD CORPORATION, et.	)
al.	)
	)
Defendants.	)

Case No. 90-C-292-E

STIPULATION OF DISMISSAL WITH PREJUDICE  
AS TO THE DEFENDANT GRANT WILSON COMPANY ONLY

COME NOW the Plaintiffs and Defendant Grant Wilson Company, and stipulate that all claims existing between them have been settled and that this cause is hereby dismissed with prejudice by the Plaintiffs as to Grant Wilson Company only. Plaintiffs reserve all claims and causes of action against other Defendants.

  
WILLIAM C. JONES

  
JUANITA L. JONES

  
MARK IOLA (OBA 4553)  
Attorney for the Plaintiffs

UNGERMAN & IOLA  
OF COUNSEL

P. O. Box 701917  
Tulsa, Oklahoma 74170-1917  
(918) 495-0550

**F I L E D**

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

**SEP 24 1991**

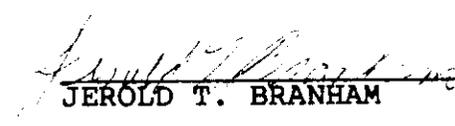
Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

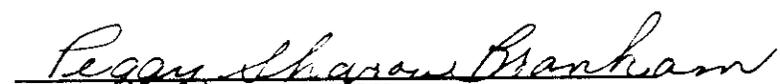
JEROLD T. BRANHAM and )  
PEGGY SHARON BRANHAM, )  
 )  
Plaintiffs )  
 )  
vs. )  
 )  
FIBREBOARD CORPORATION, et. )  
al. )  
 )  
Defendants. )

Case No. 90-C-537-E

STIPULATION OF DISMISSAL WITH PREJUDICE  
AS TO THE DEFENDANT GRANT WILSON COMPANY ONLY

COME NOW the Plaintiffs and Defendant Grant Wilson Company,  
and stipulate that all claims existing between them have been  
settled and that this cause is hereby dismissed with prejudice by  
the Plaintiffs as to Grant Wilson Company only. Plaintiffs  
reserve all claims and causes of action against other Defendants.

  
\_\_\_\_\_  
JEROLD T. BRANHAM

  
\_\_\_\_\_  
PEGGY SHARON BRANHAM

  
\_\_\_\_\_  
MARK IOLA (OBA 4553)  
Attorney for the Plaintiffs

UNGERMAN & IOLA  
OF COUNSEL

P. O. Box 701917  
Tulsa, Oklahoma 74170-1917  
(918) 495-0550

FILED

SEP 24 1991

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

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

HUBERT HUMPHREYS and )  
WILLA MAE HUMPHREYS, )  
 )  
Plaintiffs. )  
 )  
vs. )  
 )  
FIBREBOARD CORPORATION, et. )  
al. )  
 )  
Defendants. )

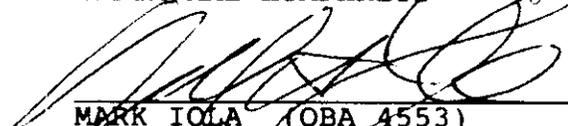
Case No. 90-C-541-C

STIPULATION OF DISMISSAL WITH PREJUDICE  
AS TO THE DEFENDANT GRANT WILSON COMPANY ONLY

COME NOW the Plaintiffs and Defendant Grant Wilson Company,  
and stipulate that all claims existing between them have been  
settled and that this cause is hereby dismissed with prejudice by  
the Plaintiffs as to Grant Wilson Company only. Plaintiffs  
reserve all claims and causes of action against other Defendants.

  
HUBERT HUMPHREYS

  
WILLA MAE HUMPHREYS

  
MARK IOLA (OBA 4553)  
Attorney for the Plaintiffs

UNGERMAN & IOLA  
OF COUNSEL

P. O. Box 701917  
Tulsa, Oklahoma 74170-1917  
(918) 495-0550

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

FILED

SEP 23 1991

Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

PROFESSIONAL INVESTORS INSURANCE )  
GROUP, INC., a Delaware )  
corporation; and ALEXANDER J. )  
STONE, )

Plaintiffs )

v. )

WOODLANDS INVESTMENT CORPORATION, )  
a Delaware corporation; DANIEL S. )  
DE LA GARZA; JOHN L. DUNN and )  
STEPHEN F. PENCE, )

Defendants )

WOODLANDS INVESTMENT CORPORATION, )  
a Delaware corporation, )

Counter-Plaintiff and )  
Third-Party Plaintiff )

v. )

JOSEPH DARRELL JORDAN; OLGA )  
NELLANS; and CLIFFORD G. SABIN )

Third-Party Defendants )

---

CHARLES STREET INVESTMENTS, INC., )  
a Texas corporation, and LIME )  
STREET INVESTMENTS, LTD., a )  
Louisiana corporation, )

Plaintiffs )

v. )

PROFESSIONAL INVESTORS INSURANCE )  
GROUP, INC., a Delaware )  
corporation; WOODLANDS INVESTMENT )  
CORPORATION, a Delaware )  
corporation; and W. FLOYD CRAIN, )

Defendants )

CIVIL NO. 91-C-202-B ✓

ORDER OF DISMISSAL

Upon the Joint Stipulation for Dismissal of all of the parties herein, the Court finds and orders as follows:

1. This Court has exclusive jurisdiction of the subject matter of all of the federal securities laws claims asserted herein. This Court has pendent jurisdiction of all other claims asserted herein, including without limitation all claims arising under the Delaware General Corporation Law.

2. The claims of Plaintiffs Professional Investors Insurance Group, Inc. (the "Corporation"), Alexander J. Stone, Lime Street Investments, Ltd., and Charles Street Investments, Inc. ("Plaintiffs") may be dismissed without prejudice by joint stipulation, pursuant to Fed.R.Civ.P. 41(a)(1).

3. By its Order Granting In Part and Denying in Part, certain Defendants' Motion for Leave to Amend Pleadings of this date, the Court has allowed Woodlands Investment Corporation ("Woodlands") and W. Floyd Crain ("Crain") to amend their counterclaims herein by asserting certain claims arising under the Delaware General Corporation Law (the "Delaware Claims"), which claims had previously been asserted in a civil action pending in a Delaware state court (the "Delaware Action"). The Delaware Claims may be dismissed with prejudice to the refileing of the same by Woodlands or Crain, but without prejudice as to any other parties that may have standing to assert the Delaware Claims.

4. All of the claims of Woodlands and Crain other than the shareholder derivative claims should be dismissed with prejudice pursuant to Fed.R.Civ.P. 41(a)(2). All such claims are hereafter called the "Non-Derivative Claims".

5. The Court finds as follows respecting the Plaintiffs' claims and the Delaware Claims:

A. All parties to the Delaware Action and this action agree that the legitimate ends of the Corporation will be harmed by the continued litigation between Defendant Woodlands Investment Corporation's proposed slate of Board of Directors, the present Board of Directors and management.

B. The Defendants, Daniel S. De La Garza, John L. Dunn, and Stephen F. Pence, have decided that it is in the best interests of the Corporation that they not serve and that under no circumstances will they serve on the Board of Directors of the Corporation, whether elected, appointed or nominated.

C. It would be in the best interests of the Corporation and its shareholders that this action be dismissed and all controversies between the parties be finally settled and compromised so that the Corporation may continue its normal activities without the uncertainty and expense of further litigation.

D. That no compensation, consideration or

remuneration of any kind or nature, whether monetary or otherwise, has been or will be paid to or received by Plaintiffs or their counsel in consideration of this Order of Dismissal.

6. The shareholder derivative claims contained in the Counterclaim and Third Party Action filed by Woodlands herein on April 12, 1991 (the "Shareholder Derivative Claims"), were not verified as required by Fed.R.Civ.P. 23.1, a fatal defect. Walden V. Elrod, 72 F.R.D 5 (W.D. Okla. 1976). The verification requirement serves a valid purpose in that it "puts pressure on the Plaintiff to tell the truth" and the court has inherent power to dismiss an unverified complaint. Id. at 13. The omission of a verification can be cured by amendment, but here, Woodlands and Crain have declined to verify the form of Counterclaim and Third Party Claim attached to those parties' Motion for Leave to File First Amended Counterclaim and Third Party Claim filed herein on May 28, 1991 (the "Amendment Motion"). As a consequence, the Court, by separate order of this date, has denied the Amendment Motion insofar as it seeks to amend the Shareholder Derivative Claims. The Court finds that the Shareholder Derivative Claims are defective as a matter of law and must be dismissed. See Johnson v. Brandon, 183 F.2d 444 (4th Cir. 1950) and other cases collected in 7C Wright, Miller & Kane, Federal Practice and Procedure §1827 at 57, n. 24 (1986 and Supp. 1991); United States v. \$84,740.00, 900

F.2d 1402 (9th Cir. 1990) (dismissing unverified complaint without prejudice). The Motion to Dismiss Plaintiffs' Counter-Claim filed herein on May 2, 1991, which Woodlands opposed by its response brief filed May 17, 1991, should therefore be, and the same is hereby, granted.

7. Fed.R.Civ.P. 23.1 does not require notice to shareholders under the circumstances set forth in the preceding paragraph. See, e.g., Marcus v. Textile Banking Co., 38 F.R.D. 185 (S.D.N.Y. 1965).

8. By its Order Granting in Part and Denying in Part Certain Defendants' Motion for Leave to Amend Pleadings of this date, the Court has allowed certain amendments to the pleadings. All claims set forth in such amendments are disposed of by this Order of Dismissal.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

(a) All of the Plaintiffs' claims should be, and the same are hereby, dismissed without prejudice;

(b) All of the Non-Derivative Claims should be, and the same are hereby, dismissed with prejudice;

(c) All of the Delaware Claims should be, and the same are hereby, dismissed with prejudice as to Woodlands and Crain, but without prejudice as to any other parties that may have standing to assert the Delaware Claims; and

(d) The Shareholder Derivative Claims should be,

and the same are hereby, dismissed without prejudice.

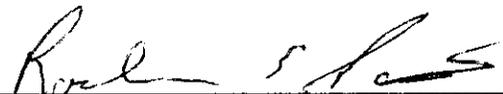
IT IS SO ORDERED on this 23<sup>rd</sup> day of Sept, 1991.

  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

  
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**FILED**

**SEP 23 1991**

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

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

CHRISTOPHER LYNN TOEDT and )  
KATHLEEN TOEDT, )

Plaintiffs, )

vs. )

MEDICAL ENGINEERING CORPORATION, )  
d/b/a SURGITEK, a subsidiary of )  
BRISTOL-MYERS SQUIBB COMPANY, )  
a foreign corporation, )

Defendant. )

Case No. 91-C-237-B

ATTORNEY'S LIEN CLAIM  
JURY TRIAL DEMANDED

ORDER OF DISMISSAL WITH PREJUDICE

On this 23 day of Sept, 1991, upon written application of the Parties for an order of dismissal with prejudice of the petition and all causes of action, the Court, having examined said Application, finds that said Parties have entered into a compromise settlement covering all claims involved in the Petition and have requested the Court to dismiss the Petition with prejudice to any future action, and the Court, being fully advised in the preises, finds that said Petition should be dismissed. It is, therefore,

ORDERED, ADJUDGED and DECREED by this Court that the Petition and all causes of action of the Plaintiffs filed herein be and the same are hereby dismissed with prejudice to any further action.

*S/* THOMAS R. BRETT

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THOMAS R. BRETT, JUDGE



DATED this 20<sup>th</sup> day of September, 1991.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written in black ink.

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



minimally, direct this Court to hold an evidentiary hearing on his claim that the United States Attorney promised him that he would not be sentenced to more than four years imprisonment.

After a lengthy review of the entire plea and sentence proceeding, including a review of the plea agreement itself, the appellate court affirmed this Court's judgment and sentence imposed in this matter.

Movant now complains by motion under §2255 that his lawyer, Ron Wallace and Assistant U.S. Attorney John Morgan had come to an agreement, prior to his plea agreement, that Gamble would receive no more than a four year sentence. The parties to this alleged agreement, Wallace and Morgan, have, by written statement, denied the existence of such agreement.

Specifically, Gamble complains of ineffective assistance of counsel, the exact charge being:

"My lawyer told me that he'd worked out a "deal" with the U.S. wherein I would "cooperate" with him (the U.S. Attorney) and in return, or as compensation, the U.S. Attorney, or his Ass't. would make such known to the Judge at the time of sentencing and do his utmost to have a period of no more than 4 yrs. imprisonment imposed in lieu of the ("cooperation") and my plea of guilty. (This did not occur.) My lawyer told me that I should understand that although the sentencing Judge would ask me if I were told of any "deals" that he did not mean the so-called "arrangement" with the prosecutor one and I should tell the Judge I have not been given any promises of leniency or a reduced period of imprisonment - that the U.S. Attorney would take care of the Reduction he'd promised and I shouldn't go into detail with the Judge as it was a waste of time. My lawyer also told me that the Judge is required to tell everyone that they face the maximum sentence but that according to the new law (C.C.C.A.) I would never receive the "maximum" sentence of 20 years, but that I would receive the FOUR as promised by the U.S. Attorney's Office. I eventually received EIGHT years.

Because Movant is proceeding *pro se* the Court will interpret his pleadings as liberally as possible. Downing v. New Mexico State Supreme Court, 339 F.2d 435 (10th Cir. 1964).

The gravamen of Movant's § 2255 motion (Conviction obtained without understanding of consequences of plea of guilty) is that Movant expected a lighter sentence than what he received. Movant entered a guilty plea as a result of a plea agreement with the government. The agreement was embodied in a letter prepared by and signed by the Assistant U.S. Attorney involved herein, John S. Morgan. The agreement was also signed by Gamble and his attorney, Ron Wallace. In the plea agreement Movant was advised that the punishment provided for by the applicable statute was not less than 10 years or more than life imprisonment, a \$4,000,000 fine, a \$50.00 special assessment, and a minimum term of five years supervised release. Movant was further advised he would be sentenced in accord with the Sentencing Guidelines. Gamble was also advised that after an offense level was determined, "additional calculations, whether reductions or increases, will be left solely to the determination of the sentencing judge." Gamble was advised that timely acceptance of responsibility would allow a two-point reduction of the offense level but that the sentencing judge (this Court) would make the determination of whether there had been such "timely acceptance". The agreement further provided:

Accordingly, the government is willing to enter into the following agreement with your client, Renaldo J. Gamble, concerning investigations being conducted by various law enforcement agencies. In return for your client's cooperation and truthful testimony before any federal

grand jury investigating illegal matters, as well as truthful testimony in any trial, including the current charge, against any defendant, or in any trial that may arise out of any case or any investigation or related investigations in other federal districts, and his plea of guilty to the above referenced Indictment, the government will not subject him to additional federal criminal prosecutions for any criminal acts he committed in connection with such conspiracy, and will grant him immunity for the use of his disclosures and testimony. Additionally, the government agrees to advise the sentencing court, by motion before sentencing and/or after sentencing pursuant to Rule 35(b), F.R.C.P., that the defendant has made a good faith effort to provide substantial assistance (§5K1.1), if he has in fact done so, thereby allowing the court to a downward departure from the guidelines, which may in fact go below the 10 year minimum sentence.

The actual sentence rendered by the district court following your client's plea of guilty remains in the sole discretion of the trial judge and the government cannot predetermine what would be the final result of the court's evaluation and decision after all factors are considered.

At the hearing when Gamble changed his plea to one of guilty, the plea agreement, with the above language therein, was presented to this Court. It is the consistent practice of this Court to make inquiry whether such agreement was the extent of the defendant's agreement with the government and such was done in this case. It is the further consistent practice of this Court to advise plea-agreement defendants that the ultimate determination of the sentence would be up to the Court, the Court not having to follow any recommendation of the government. That also was done in this case and Gamble acknowledged his understanding thereof.<sup>1</sup>

At sentencing, the government made a motion pursuant to Guideline § 5K1.1, advising this Court that Gamble had given

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<sup>1</sup> United States v. Gamble, 917 F.2d 1280, at 1281.

substantial assistance to the government in its investigation and prosecution of others who have committed federal offenses. It was agreed the guideline range was from 188 months to 235 months. Because of Gamble's assistance to the Government this Court departed downward and imposed a sentence of 96 months followed by 60 months of supervised release. Gamble said nothing at the hearing to indicate that he had been promised by the government, or anyone else, that he would receive a lesser sentence than that received.

Plea agreements are in essence contracts between parties and contract law analogies are appropriate. United States v. Calabrese, 645 F.2d 1379 (10th Cir. 1981) *cert.den.* 451 U.S. 1018, and *cert.den.* 454 U.S. 831; United States v. Stemm, 847 F.2d 636 (10th Cir. 1988); United States v. Reardon, 787 F.2d 512 (10th Cir. 1986). It is black letter contract law that the terms of a clear and unambiguous written contract cannot be changed by parol evidence. Schwartz v. Slawter, 751 F.2d 317 (10th Cir. 1984); Percival Constr. Co. v. Miller & Miller Auctioneers, 532 F.2d 166 (10th Cir. 1976). Plea agreements have been encompassed within that fundamental rule of contract law. United States v. Rutledge, 900 F.2d 1127 (7th Cir. 1990) *cert. den.* 1115 S.Ct. 203; United States v. Fry, 831 F.2d 664 (6th Cir. 1987); Hartman v. Blankenship, 825 F.2d 26 (4th Cir. 1987); Baker v. United States, 781 F.2d 85 (6th Cir., 1986) *cert. den.* 479 U.S. 1017 (1986); Blackledge v. Allison, 431 U.S. 63 (1977).

In Blackledge, the Supreme Court held that written contract provisions declaring that the contract contains the complete agreement of the parties, and that no prior or outside agreements

exist, do not absolutely bar later proof that such additional agreements exist and should be validated. The Supreme Court concluded such provisions carry great weight but can and should be set aside on grounds of fraud, mistake, duress or any other sufficient ground for setting aside contracts. The instant matter does not fit within any Blackledge exception.

The Court concludes Gamble's claim is completely refuted by the plea agreement itself and the records of the guilty-plea and sentencing proceedings.<sup>2</sup> Movant cannot vary the plea agreement by self-serving parole evidence. The Court further concludes Gamble's charge of ineffective assistance of counsel raises the same issue already raised by him on appeal, decided adversely to him. The Court further concludes there is no need to hold an evidentiary hearing in this matter. United States v. Gamble, supra.<sup>3</sup>

It is the conclusion of the Court that Gamble's §2255 Motion should be and the same is hereby DENIED.

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<sup>2</sup> Gamble entered a plea of guilty on October 10, 1989, and was sentenced on March 12, 1990.

<sup>3</sup> The Court has reviewed the transcriptions of tape recorded conversations Gamble has had with Kay Orndorff (Tulsa Police Department), Paul Bruton (sic) (Attorney) Gilbert Reynolds (co-defendant) and Patrick Lynch (F.B.I. Agent) since the entry of his plea of guilty and imposition of sentence. These transcriptions, in the main, consist of Gamble's self-serving statements relative to the alleged promise of a four year sentence rather than the eight year sentence received. The Court considers these transcriptions to have no probative value.

IT IS SO ORDERED this 23<sup>rd</sup> day of September, 1991.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE