

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

OCT 31 1991

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

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

Plaintiff,)

vs.)

Case No. 90-C-576-C

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

Defendants.)

JUDGMENT

Upon the Order Granting Request for Entry of Judgment entered in this case

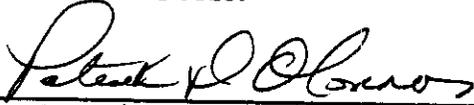
IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff, have and recover of the Defendant, Inland Mortgage Corporation on its Claims for Relief, the sum of \$206,110.00 with prejudgment interest from the 3rd day of July, 1990 at the rate of ten percent per annum until judgment, attorney fees in the sum of \$30,000.00, plus court costs, with interest therefrom from and after the date of entry of this Judgment on the appropriate sums at the statutory rate of 6.62 percent per annum, until paid.

DATED this 29th day of October, 1991.

(Signed) H. Dale Cook

H. Dale Cook
United States District Judge

APPROVED AS TO FORM:



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

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



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

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

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

F I L E D

OCT 31 1991

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

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

Plaintiff,)

vs.)

Case No. 90-C-576-C

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

Defendants.)

ORDER GRANTING REQUEST FOR ENTRY OF JUDGMENT

On this 29th day of October, 1991, there came on for consideration the Joint Stipulations and Request for Entry of Judgment ("Joint Application") filed in this case by the Plaintiff and the Defendant, Inland Mortgage Corporation. Upon consideration of the Joint Application, the Court finds that the Request for Entry of Judgment in the Joint Application should be granted, and that judgment should be entered in favor of the Plaintiff and against Defendant, Inland Mortgage Corporation, in the amount of \$206,110.00, with pre-judgment interest from the 3rd day of July, 1990 at the rate of ten percent per annum until judgment, attorney fees in the sum of \$30,000.00, plus court costs and post-judgment interest thereon as provided by law.

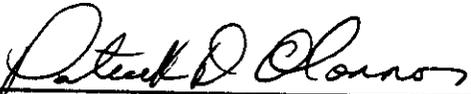
IT IS THEREFORE ORDERED that the Request for Entry of Judgment filed by the Plaintiff and Defendant, Inland Mortgage Corporation, is granted. Judgment shall be entered in favor of the Plaintiff and against Defendant, Inland Mortgage Corporation in the amount of

\$206,110.00, with pre-judgment interest from the 3rd day of July, 1990 at the rate of ten percent per annum until judgment, attorney fees in the sum of \$30,000.00, plus court costs and post-judgment interest thereon as provided by law.

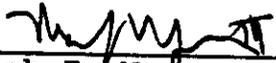
(Signed) H. Dale Cook

H. Dale Cook
United States District Judge

APPROVED:


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

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


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

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

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

FILED

OCT 31 1991

RICHARD M. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

SAMUEL E. POTTS,

Plaintiff,

vs.

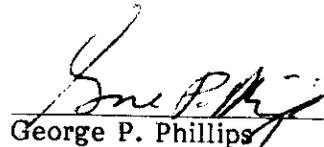
PRINCIPAL MUTUAL LIFE INSURANCE
COMPANY,

Defendant.

Case No. 91-C-455-C

STIPULATION OF DISMISSAL WITH PREJUDICE

The Plaintiff, Samuel E. Potts, and the Defendant, Principal Mutual Life Insurance Company, pursuant to F.R.Civ.P. 41(e)(1), hereby stipulate to dismissal of this action with prejudice.



George P. Phillips
P.O. Box 4680
Tulsa, OK 74159
(918) 583-4484

ATTORNEY FOR PLAINTIFF



Elsie C. Draper, OBA #2482
Patricia Ledvina Himes, OBA #5331
GABLE & GOTWALS, INC.
2000 Fourth National Bank Bldg.
15 West Sixth Street
Tulsa, Oklahoma 74119-5447
(918) 582-9201

ATTORNEYS FOR DEFENDANT

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

FILED

OCT 31 1991

RICHARD M. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

PATRICIA L. CLY,

Plaintiff,

vs.

MCDONNELL DOUGLAS CORPORATION,

Defendant.

No. 90-C-764-C

JUDGMENT

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

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

IT IS SO ORDERED this 31st day of October, 1991.


H. DALE COOK

Chief Judge, U. S. District Court

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

FILED

OCT 31 1991

RICHARD M. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

PATRICIA L. CLY,)
)
Plaintiff,)
)
vs.)
)
MCDONNELL DOUGLAS CORPORATION,)
)
Defendant.)

No. 90-C-764-C

ORDER

Before the Court is the motion of the defendant for summary judgment. In her Complaint, plaintiff alleged that sex was the determining factor in defendant's decision not to promote her to the jobs of dispatcher and "tool investigator", apparently on a disparate treatment theory. In response to defendant's motion, plaintiff has confessed judgment as to the dispatcher position, but maintains her claim as to the tool investigator position. However, plaintiff now asserts only a disparate impact theory. The distinction between the two theories is as follows:

[A] claim of disparate treatment ... embod[ies] a situation where "the employer simply treats some people less favorably than others because of their race, color, religion or national origin." A claim of disparate impact exists when "employment practices that are basically neutral in their treatment of different groups in fact fall more harshly on one group than another" *Coe v. Yellow Freight Sys., Inc.* 646 F.2d 444, 448 (10th Cir. 1981) (quoting *International Bhd. of Teamsters v. United States*, 431 U.S. 324, 335, 97 S.Ct. 1843, 1854, 52 L.Ed.2d 396 (1977) (citation omitted)).

To establish a prima facie case of disparate impact discrimination, plaintiff must show that a specific identifiable employment practice or policy caused a significant disparate impact on a

protected group. Ortega v. Safeway Stores, Inc., _____ F.2d _____
(10th Cir.) (Aug. 30, 1991) (slip op. at 29).

Here, plaintiff points to the requirement of three years' prior experience to be considered for the tool investigator position. She contends that such requirement discriminates against female applicants. Even assuming that plaintiff could convince the Court that this contention is not a non sequitur, her claim must fail because she has offered only herself as an example of the alleged discriminatory impact. The Tenth Circuit has stated:

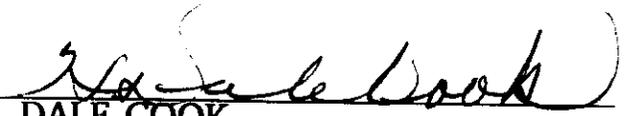
Plaintiff's disparate impact claim fails because he has not met his initial burden. In both his original and amended complaints, plaintiff identifies the two-year college requirement as the discriminatory practice. The undisputed facts show that, during the relevant hiring period, he alone of all black applicants was rejected on the basis of this requirement. A sample of one is too small to demonstrate significant impact.

Drake v. City of Fort Collins, 927 F.2d 1156, 1161
(10th Cir. 1991) (footnote omitted).

Even in discrimination cases, summary judgment is not an impossibility, and obvious cases should be weeded out before trial. See Summers v. State Farm Mut. Auto. Ins. Co., 864 F.2d 700, 709 (10th Cir. 1988). The Court is persuaded that this is such a case.

It is the Order of the Court that the motion of the defendant McDonnell Douglas Corporation for summary judgment is hereby granted.

IT IS SO ORDERED this 30th day of October, 1991.


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

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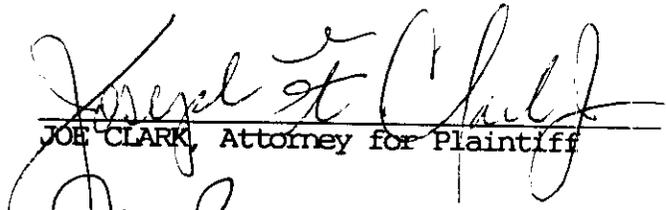
D I E D I
OCT 30, 1991
U.S. DISTRICT COURT

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

JUDY THOMAS,)	
)	
Plaintiff,)	
)	
v.)	No. 91-C-598-C
)	
ALLSTATE INSURANCE COMPANY,)	
)	
Defendant.)	

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Judy Thomas, and hereby dismisses this action with prejudice pursuant to Rule 41(a)(1) of the Federal Rules of civil Procedure.



JOE CLARK, Attorney for Plaintiff



GALEN L. BRITTINGHAM, Attorney for Defendant

361-185/GLB/mm

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 RONNIE DALE WILLIAMS; JOANNA)
 LYNN WILLIAMS; COUNTY TREASURER,)
 Tulsa County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

FILED

OCT 30 1991

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

CIVIL ACTION NO. 91-C-616-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 30th day of Oct., 1991. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by J. Dennis Semler, Assistant District Attorney, Tulsa County, Oklahoma; and the Defendants, Ronnie Dale Williams and Joanna Lynn Williams, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, Ronnie Dale Williams, acknowledged receipt of Summons and Complaint on August 26, 1991; that the Defendant, Joanna Lynn Williams, acknowledged receipt of Summons and Complaint on August 25, 1991; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 20, 1991; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 19, 1991.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on September 6, 1991; that the Defendants, Ronnie Dale Williams and Joanna Lynn Williams, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on July 17, 1989, Ronnie Dale Williams and Joanna Lynn Williams filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 89-02088-C. On August 21, 1989, Ronnie Dale Williams and Joanna Lynn Williams executed a Reaffirmation Agreement to reaffirm the terms and conditions of the note and mortgage described below. On November 8, 1989, a Discharge of Debtor was entered in the United States Bankruptcy Court for the Northern District of Oklahoma discharging the debtors from all dischargeable debts.

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

The West Half (W/2) of Lot Two (2), Block Eleven (11), GOLDEN HILL, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on March 27, 1987, the Defendants, Ronnie Dale Williams and Joanna Lynn Williams, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount

of \$14,000.00, payable in monthly installments, with interest thereon at the rate of 8.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Ronnie Dale Williams and Joanna Lynn Williams, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated March 27, 1987, covering the above-described property. Said mortgage was recorded on March 31, 1987, in Book 5011, Page 2323, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Ronnie Dale Williams and Joanna Lynn Williams, 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, Ronnie Dale Williams and Joanna Lynn Williams, are indebted to the Plaintiff in the principal sum of \$13,620.51, plus interest at the rate of 8.5 percent per annum from August 1, 1990 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Ronnie Dale Williams and Joanna Lynn Williams, in the principal sum of \$13,620.51, plus interest at the rate of 8.5 percent per annum from August 1, 1990 until judgment, plus interest thereafter at the current legal rate of 5.42 percent per annum

until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Ronnie Dale Williams and Joanna Lynn Williams, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants

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

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



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

Judgment of Foreclosure
Civil Action No. 91-C-616-B

PP/css

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

FILED

OCT 30 1991

RICHARD M. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

FRANCES GATHRIGHT and KENT }
GATHRIGHT, }
 }
 Plaintiffs, }
 }
 vs. }
 }
 AMERICAN REPUBLIC INSURANCE }
 COMPANY, }
 }
 Defendant, }
 }
 and }
 }
 LINUS MUSE, }
 }
 Third-Party Defendant. }

No. 89-C-1059-C

ORDER

Before the Court is the motion of defendant American Republic Insurance Company for attorney fees on plaintiffs' claim brought under the Unfair Trade Practice statute, 36 O.S. §1219.

Plaintiffs Frances and Cary Gathright brought this action against the defendant seeking money damages for the alleged wrongful refusal to pay a health insurance claim of Frances Gathright and for reinstatement of Frances Gathright's insurance coverage, which plaintiffs alleged defendant wrongfully terminated. Plaintiff sought damages for breach of contract, unfair trade practices and bad faith.

Defendant answered denying plaintiffs' allegations and asserting that it had rightfully denied and canceled Frances Gathright's insurance coverage in that the Gathrights materially misrepresented or omitted facts on the insurance application form.

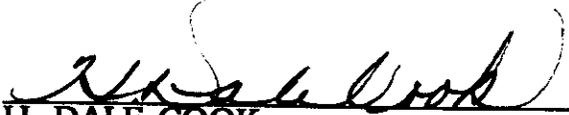
On February 25, 1991, the jury returned a verdict against defendant finding that plaintiffs did not misrepresent or omit a material fact, and awarded damages for defendant's bad faith in the sum of \$20,000.00 and additionally awarded punitive damages. The jury found in favor of defendant on plaintiffs' claim for unfair trade practices. Defendant now asserts it has a right to attorney fees as prevailing party on the unfair trade practice claim in an amount of \$69,624.75.

Defendant's request for attorney fees is denied. The defendant is not the prevailing party in this action. Plaintiffs filed this action asserting a single claim, i.e., that defendant wrongfully canceled Mrs. Gathright's insurance. The mere availability of more than one form of remedial relief upon a single cause of action does not abrogate the general rule that there can be only one prevailing party. Rambo v. Hicks, 733 P.2d 405 (Okla. 1986).

Additionally, in a case where the jury has determined that an insurer has engaged in bad faith and awarded punitive damages, it would be unjust and against public policy to award attorney fees to the insurer in a sum greater than the amount awarded for its bad faith conduct.

Accordingly, it is the Order of the Court that defendant American Republic Insurance Company's motion for attorney fees is hereby denied.

IT IS SO ORDERED this 29th day of October, 1991.



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

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ASBESTOS PRODUCTS)
LIABILITY LITIGATION (NO. VI))

CIVIL ACTION NO. MDL 875

_____ x
This Document Relates To:

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

VIOLET KELLEY, individually and as) No. 88-C-132-C
surviving spouse of)
FLOYD OSCAR KELLEY, Deceased,)

HAZEL J. HASKINS, individually, and) No. 88-C-918-E
as Surviving Spouse and Next of Kin)
of ANDY A. HASKINS, Deceased,)

THOMAS D. MAYHEW and MAXINE MAYHEW,) No. 88-C-922-B

RICHARD EUGENE CAVIN and) No. 89-C-983-C ✓
THELMA ROSE CAVIN,)

CARL DESMOND THRASHER and) No. 90-C-277-B ✓
MARGUERITE F. THRASHER,)

BOBBY LEE RHOADS and) No. 90-C-290-B ✓
ANNA MAXINE RHOADS,)

HUBERT HUMPHREYS and) No. 90-C-541-C ✓
WILLA MAE HUMPHREYS,)

Plaintiffs,)

vs.)

OWENS-CORNING FIBERGLAS CORP.,)
et al.,)

Defendants.)

ORDER ALLOWING
STIPULATED MOTION FOR DISMISSAL WITH PREJUDICE
AS TO DEFENDANT,
OWENS-CORNING FIBERGLAS CORPORATION

NOW on this 23rd day of Oct, 1991, this matter comes before the Court upon the Stipulated Motion for Dismissal With Prejudice as to Defendant, Owens-Corning Fiberglas Corporation, filed by Plaintiffs and Defendant, Owens-Corning Fiberglas Corporation.

For good cause shown, said Motion is granted and the above-styled action is hereby dismissed with prejudice as to Defendant, Owens-Corning Fiberglas Corporation, specifically reserving Plaintiff's rights as to all other parties or entities herein.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

FILED
OCT 29 1981
Richard J. ...
U.S. District Court
Eastern District of Pennsylvania

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ASBESTOS PRODUCTS
LIABILITY LITIGATION (NO. VI))

CIVIL ACTION NO. MDL 875

_____ x

This Document Relates To:

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

VIOLET KELLEY, individually and as) surviving spouse of) FLOYD OSCAR KELLEY, Deceased,)	No. 88-C-132-C
HAZEL J. HASKINS, individually, and) as Surviving Spouse and Next of Kin) of ANDY A. HASKINS, Deceased,)	No. 88-C-918-E
THOMAS D. MAYHEW and MAXINE MAYHEW,)	No. 88-C-922-B
RICHARD EUGENE CAVIN and) THELMA ROSE CAVIN,)	No. 89-C-983-C
CARL DESMOND THRASHER and) MARGUERITE F. THRASHER,)	No. 90-C-277-B
BOBBY LEE RHOADS and) ANNA MAXINE RHOADS,)	No. 90-C-290-B
HUBERT HUMPHREYS and) WILLA MAE HUMPHREYS,)	No. 90-C-541-C
Plaintiffs,)	
vs.)	
OWENS-CORNING FIBERGLAS CORP.,) et al.,)	
Defendants.)	

ORDER ALLOWING
STIPULATED MOTION FOR DISMISSAL WITH PREJUDICE
AS TO DEFENDANT,
OWENS-CORNING FIBERGLAS CORPORATION

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NOW on this 23rd day of Oct, 1991, this matter comes before the Court upon the Stipulated Motion for Dismissal With Prejudice as to Defendant, Owens-Corning Fiberglas Corporation, filed by Plaintiffs and Defendant, Owens-Corning Fiberglas Corporation.

For good cause shown, said Motion is granted and the above-styled action is hereby dismissed with prejudice as to Defendant, Owens-Corning Fiberglas Corporation, specifically reserving Plaintiff's rights as to all other parties or entities herein.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

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

CRAWFORD ENTERPRISES, INC., }
 }
 } Plaintiff, }
 }
vs. }
 }
DAVID L. HOWARD, d/b/a M & H }
GATHERING, INC., a sole }
proprietorship; and M & H GAS }
GATHERING, INC., an Oklahoma }
corporation, }
 }
 } Defendants, }
 }
vs. }
 }
ELI MASSO, }
 } Garnishee. }

No. 83-C-859-C ✓

FILED
OCT 29 1991

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

JUDGMENT

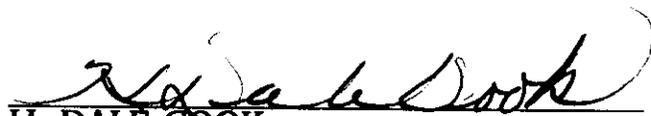
The Court, having entered its Order on June 26, 1991 finding that plaintiff Crawford Enterprises, Inc. (Crawford) is entitled to judgment against garnishee, Eli Masso, and having further entered an Order finding that Crawford is entitled to prejudgment interest, orders as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is granted in favor of Crawford and against Eli Masso on Crawford's Garnishment Affidavit in the principal sum of \$55,860.71 together with pre-judgment interest thereon in the amount of \$24,746.68 through July 7, 1991 and \$9.18 per diem from July 8, 1991 until the date this Judgment is entered, and post-judgment interest on the

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total at the rate of 6.39 percent per annum until the judgment is fully satisfied.

IT IS SO ORDERED this 29th day of October, 1991.


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

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

F I L E D

OCT 28 1991

WALTER RAY HARVEY,)
)
 Plaintiff,)
)
 vs.)
)
 WILEY BACKWATER, et al.,)
)
 Defendants.)

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

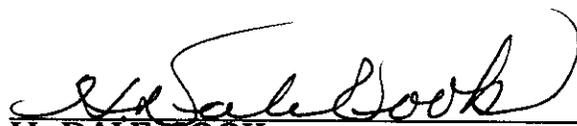
No. 90-C-1001-C

J U D G M E N T

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

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is hereby entered for defendant Wiley Backwater and against plaintiff, and that plaintiff take nothing by way of this action as to said defendant.

IT IS SO ORDERED this 24th day of October, 1991.



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

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

F I L E D

OCT 28 1991

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

WALTER RAY HARVEY,)
)
 Plaintiff,)
)
 vs.)
)
 WILEY BACKWATER, et al.,)
)
 Defendants.)

No. 90-C-1001-C

ORDER

Before the Court is the motion of defendant Wiley Backwater for summary judgment. Plaintiff has not responded, and pursuant to Rule 15 of the Local rules, the motion is deemed confessed. Nevertheless, the Court has independently reviewed the record in making its determination.

Plaintiff's claims arise out of the execution of a search warrant in which those executing it allegedly seized items of plaintiff's personal property not listed on the warrant. In his motion, defendant Backwater establishes that he was not present during the execution of the warrant or gave any directions and that plaintiff has made no showing as to custom and practice of the county. Defendant is correct that respondeat superior does not lie under §1983 and that the burden is on plaintiff to produce evidence of custom and practice. The Court has determined that entry of judgment is appropriate.

It is the Order of the Court that the motion for summary judgment of defendant Wiley Backwater is hereby granted.

IT IS SO ORDERED this ~~24~~ day of October, 1991.


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

FILED

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

OCT 28 1991

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

IN THE MATTER OF THE PETITION)
OF STANDARD ROYALTIES, INC.)
FOR PERPETUATION OF TESTIMONY.)

Case No. 89-C-371-C

ORDER

Now on this ____ day of _____, 1991, upon review of the Status Report and Motion to Withdraw Application for Order Compelling Oral Deposition in the above-referenced matter, this Court being fully advised in the premises and for good cause shown, hereby finds that Standard Royalties, Inc.'s Motion to Withdraw Application for Order Compelling the Oral Deposition of E. D. Garrison should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Standard's Application for Order Compelling the Oral Deposition of E. D. Garrison is hereby dismissed.

Granted by Minute Order
on OCT 28 1991
RICHARD M. LAWRENCE, CLERK
BY: [Signature]
Deputy Clerk

Honorable H. Dale Cook
Chief Judge

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

FILED

OCT 28 1991

HAYES RICHARDSON,)
)
 Plaintiff,)
)
 vs.)
)
 VIRLA L. MALONE, et al.,)
)
 Defendants.)

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

No. 90-C-346-C

ORDER

Before the Court is the motion of the defendants to dismiss for lack of subject matter jurisdiction. Plaintiff has not responded and pursuant to Rule 15 of the Local Rules, the motion is deemed confessed. Nevertheless, the Court has independently reviewed the record in making its determination.

Plaintiff alleges that defendants defrauded him out of a sum of money and that defendant Virla Malone used the money obtained to acquire a car and a mobile home and to pay off the loan on another mobile home. The Complaint alleges that defendants are members of the Osage Indian Nation and that the items of property are located upon tribal lands of the Osage Indian Nation.

In the early stages of this litigation, a default judgment was entered against the defendants. The subsequent motion to vacate the default judgment was referred to the United States Magistrate Judge. The Magistrate Judge recommended that the default judgment be vacated, and also addressed the issue of subject matter jurisdiction. No objections were filed to the Report and

2

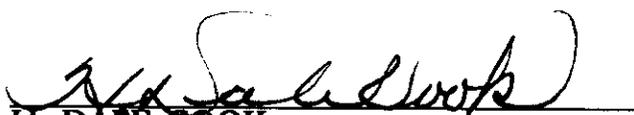
Recommendation, and the Court routinely affirmed the Magistrate Judge as to vacating the default judgment. This Court did not express approval or disapproval of the Magistrate Judge's treatment of jurisdiction. In any event, pursuant to Rule 12(h)(3) F.R.Cv.P., the issue may be raised at any time.

The Magistrate Judge concluded that jurisdiction exists based upon federal common law, in view of the fact that neither a tribal court nor a C.F.R. court exists.¹

In the materials accompanying defendants' motion, it seems clearly established that a "CFR court" has now been created for the area in question. Even in the absence of such a court, this Court rejects the Magistrate Judge's reliance upon federal common law. In doing so, the Court relies upon Schantz v. White Lightning, 502 F.2d 67 (8th Cir. 1974) and, by analogy, upon Ross v. Neff, 905 F.2d 1349, 1353 (10th Cir. 1990) ("Avenues to extended jurisdiction must come from the legislature, not from the courts ...").

It is the Order of the Court that the motion of the defendants to dismiss is hereby granted.

IT IS SO ORDERED this 28th day of October, 1991.


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

¹A "CFR court" is a Court of Indian Offenses established pursuant to regulations promulgated by the Bureau of Indian Affairs. See Tillett v. Lujan, 931 F.2d 636, 638 (10th Cir. 1991).

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

MICHEAL STEVEN SMITH,)
)
Petitioner,)
)
v.)
)
RON CHAMPION and THE)
ATTORNEY GENERAL OF THE)
STATE OF OKLAHOMA,)
)
Respondents.)

91-C-745-C ✓

FILED
OCT 28 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 October 2, 1991, in which the Magistrate Judge recommended that this case be transferred to the United States District Court for the Eastern District of Oklahoma pursuant to 28 U.S.C. § 2241(d). 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 this case is transferred to the United States District Court for the Eastern District of Oklahoma pursuant to 28 U.S.C. § 2241(d).

Dated this 28th day of Oct, 1991.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

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

TULSA MUNICIPAL AIRPORT TRUST, a)
public trust, and AMERICAN)
AIRLINES, INC., a Delaware)
corporation,)

Plaintiffs,)

v.)

GIFFELS ASSOCIATES, INC., a)
Michigan corporation, TMSI)
CONTRACTORS, INC., a)
California corporation, and)
INSURANCE COMPANY OF NORTH)
AMERICA, a Pennsylvania)
corporation,)

Defendants.)

Case No. 89-C-908-E

FILED

OCT 28 1991

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

ADMINISTRATIVE CLOSING ORDER

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

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

IT IS FURTHER ORDERED that the attorney for plaintiffs serve copies of this order by United States mail upon the attorneys for the defendants in this action.

DATED October 28, 1991.

S/ JAMES O. ELLISON

United States District Judge

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

FILED

OCT 28 1991 *RL*

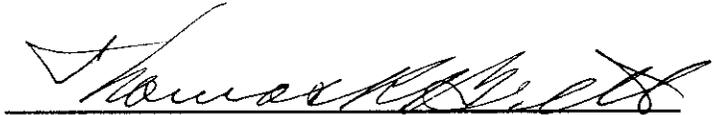
JOHN R. SOARES,)
)
 Plaintiff,)
)
 v.)
)
 DARRELL J. SEKIN & CO.)
 d/b/a Sekin Transport International,)
 a Texas corporation,)
)
 Defendant.)

RICHARD M. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK
No. 90-C-807-B ✓

J U D G M E N T

In accord with the Order filed this date sustaining the Defendant's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendant, Darrell J. Sekin & Co, and against the Plaintiff, John R. Soares. Plaintiff shall take nothing of his claim. Costs are assessed against the Plaintiff and both parties are to pay their respective attorney's fees.

Dated, this 28th day of October, 1991.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

OCT 28 1991 *hm*

JOHN R. SOARES,)
)
 Plaintiff,)
)
 v.)
)
 DARRELL J. SEKIN & CO.)
 d/b/a Sekin Transport International,)
 a Texas corporation,)
)
 Defendant.)

RICHARD M. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK
No. 90-C-807-B ✓

O R D E R

Before the Court are the cross-motions for summary judgment filed by the plaintiff, John R. Soares ("Soares"), and the defendant, Darrell J. Sekin & Co. ("Sekin").

The following facts are undisputed.

Sekin is a Texas corporation engaged primarily in the business of international transportation and custom brokerage with branch offices in the southwest and western regions of the United States, including Tulsa, Oklahoma; Phoenix, Arizona; San Francisco, California; and Los Angeles, California.

In February 1989, the plaintiff, Soares, interviewed with Sekin officials Al Mahdavi ("Mahdavi"), the Western Regional Manager, and Peter Gibert ("Gibert"), President, for the position of General Manager in a branch office to be opened in San Diego, California. At the conclusion of the final interview, Soares was offered and he accepted the position.

Consistent with the parties' discussions during the interview process, Mahdavi drafted the "employment agreement" which

incorporated the discussed terms and conditions of employment. He then faxed a copy to Soares in Tulsa. After reviewing the employment agreement via the facsimile and making an interlineation in Section 4.1, Soares signed and returned it to Mahdavi in Los Angeles prior to Soares' initial date of employment on April 17, 1989. However, no one at Sekin ever signed the employment agreement.

The terms of the employment agreement include the following:

- 1) an initial term of employment from April 17, 1989 through April 16, 1990 to be automatically renewed for successive one-year periods unless either party gives 30-day notice of termination;
- 2) a salary of \$2916.67 a month;
- 3) incentive and bonus payments to be paid at the sole discretion of the board of directors or president;
- and 4) section 5.3 which states:

There will be a commision [sic] paid by the company to the Employee of 50 Percent of net profit for the first fiscal year of operations in San Diego. This Commision [sic] rate will be adjusted annually [sic] commencing the second fiscal year of operation.

Soares began employment with Sekin on April 17, 1989 and was assigned temporarily to the Tulsa branch office because the proposed San Diego branch was not yet opened. In early May, Soares accepted the position of Branch Manager for the Tulsa office. Sekin subsequently decided not to open the San Diego branch office; therefore, Soares was never employed as General Manager of the San Diego branch office as intended under the employment agreement.

Soares remained employed as Branch Manager for the Tulsa office of Sekin until he was terminated on August 9, 1990 after

submitting his 30-day notice of termination on August 1, 1990. Soares was paid his salary through August 9, 1990: \$35,000/year plus a year-end bonus of \$4,500.00. Soares received no commission.

Soares states a claim for breach of the employment agreement or in the alternative a claim in *quantum meruit* due to Sekin's failure to pay him a commission of 50% of the net profit earned by the Tulsa branch office for the year Soares managed the office. In stating his claim in contract, Soares contends that Sekin's unilateral decision not to open the San Diego office waived its right to require performance of the employment agreement in San Diego and, therefore, Sekin is in breach of the employment agreement for its failure to pay Soares a 50% commission of the net profits from the Tulsa office. Soares also argues in the alternative that if the Court should find that no contract exists between Soares and Sekin, Soares seeks the 50% commission in *quantum meruit*.

Sekin counters that the employment agreement is unenforceable under the statute of frauds, Okla. Stat. tit. 15, §136, because Sekin failed to sign the contract and it is a contract that by its terms cannot be performed within a year from its making. Sekin also argues that even if the contract were enforceable, Soares has failed to state a claim in contract because the employment agreement unambiguously states 1) Soares was to be given a 50% commission of the net profits of the San Diego branch office, not the Tulsa office, and 2) the contract was canceled or rescinded by the parties' mutual agreement to employ Soares in the position of

Branch Manager of the Tulsa office. Sekin also rejects Soares' restitution claim stating that Soares has received and accepted adequate compensation for all services rendered and there is no evidence of any discussions or agreement between the parties that Soares would receive any commission for work brought into the Tulsa office.

Summary judgment pursuant to Fed. R. Civ. P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Where there is an absence of material issues of fact, then the movant is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.E.2d 202 (1986); Winton Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986); Commercial Iron & Metal Co. v. Bache & Co., Inc., 478 F.2d 39, 41 (10th Cir. 1973); and Ando v. Great Western Sugar Company, 475 F.2d 531, 535 (10th Cir. 1973). As no material facts are in dispute, the Court determines which party is entitled to summary judgment as a matter of law.

The Court finds that the laws of Oklahoma apply to Soares' claim for breach of contract because Soares' acceptance was solicited and he signed the employment agreement in Tulsa, Oklahoma, and any claimed performance under the contract took place in Tulsa, Oklahoma. Okla. Stat. tit. 15, §162; Paclawski v. Bristol Laboratories, Inc., 425 P.2d 452 (Okla. 1967).

The Court does not address whether Soares' full performance

under the employment agreement takes the contract out of the statute of frauds requirement of subscription, because the Court finds that no contract, written or oral, for Soares' employment as Branch Manager of the Tulsa office was intended by the employment agreement. "A contract must be so interpreted as to give effect to the mutual intention of the parties, as it existed at the time of contracting, so far as the same is ascertainable and lawful." Okla. Stat. tit. 15, §152. The language of the employment agreement clearly reflects that the parties intended Soares' employment as the General Manager of the San Diego branch office. The undisputed facts show that subsequent to Soares' signing the employment agreement, the parties mutually agreed that Soares was to take the position of Branch Manager of the Tulsa office. Soares presents no evidence that Sekin offered the same terms of employment for that position. In fact, Soares admits that no discussions concerning the terms of his employment in the Tulsa office occurred between the parties when Soares accepted the Tulsa position. Soares' uncommunicated belief that the terms of employment were the same without any evidence of Sekin's concurrence does not create a new oral contract or modify an existing written contract between the parties. Okla. Stat. tit. 15, §237 ("A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise"). The Court, therefore, concludes that Sekin is not in breach because no contract concerning Soares' employment in Sekin's Tulsa office was ever executed by the parties.

Soares also fails to prove any claim in *quantum meruit*. Soares

was paid a salary of \$35,000 a year plus a bonus of \$4,500 for the services rendered Sekin. He offers no evidence that the salary and bonus were not adequate compensation for his services or that the parties discussed or agreed that he would be paid a commission on net profit the first year he managed the Tulsa office.

For the reasons stated above, the Court enters summary judgment in favor of Sekin.

IT IS SO ORDERED, this 28th day of October, 1991.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

OCT 25 1991

CAN-AM INTERNATIONAL, INC.,)
a Virginia corporation,)
)
Plaintiff,)
)
v.)
)
FIRST PRESIDENTIAL CORPORATION,)
a Texas corporation, TULSA)
INTERCONTINENTAL JET, INC.,)
an Oklahoma corporation, ROBERT)
KIDD, a/k/a BOB KIDD, an)
individual and DECKER AVIATION,)
INC., a Tennessee corporation,)
)
Defendants.)

RICHARD M. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

Case No. 91-C-0068 B

JOINT STIPULATION OF
PARTIAL DISMISSAL WITH PREJUDICE

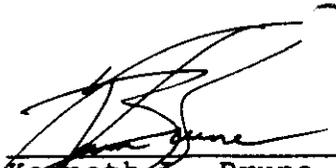
The Plaintiff, Can-Am International, Inc. and Defendants Intercontinental Jet, Inc., Robert Kidd and Corporate Aviation Service, Inc., pursuant to Rule 41(a)(1) hereby stipulate to the dismissal, with prejudice, of all claims asserted in this action, and which could have been asserted in this action, by Can-Am International, Inc. against Defendants Intercontinental Jet, Inc., Robert Kidd and Corporate Aviation Service, Inc.

Respectfully submitted,

HOLLIMAN, LANGHOLZ, RUNNELS & DORWART
A Professional Corporation

By Ronald E. Goins
Ronald E. Goins, OBA# 3430
Richard J. Cipolla, Jr., OBA# 13674
Suite 700, Holarud Building
Ten East Third Street
Tulsa, Oklahoma 74103
(918) 584-1471

Attorneys for Defendants
Intercontinental Jet, Inc.,
and Robert Kidd



Kenneth L. Brune, Esq.
Mary B. Lewis, Esq.
Brune, Pezold, Richey & Lewis
700 Sinclair Building
6 East 5th Street
Tulsa, Oklahoma 74103

Attorneys for Defendant
Corporate Aviation Services, Inc.



S. M. Fallis, Jr.
Thomas D. Robertson
Angelyn L. Dale
Nichols, Wolfe, Stamper,
Nally & Fallis, Inc.
Old City Hall Building, Suite 400
124 East Fourth Street
Tulsa, Oklahoma 74103-4004

Co-counsel for Plaintiff
Can-Am International, Inc.

F I L E D

OCT 25 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

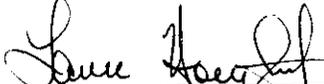
BILLY JACK SAMPSON,)
)
 Plaintiff,)
)
 -vs-)
)
 MISSOURI PACIFIC RAILROAD COMPANY,)
 d/b/a UNION PACIFIC RAILROAD)
 COMPANY, a foreign corporation,)
)
 Defendant,)
)
 and)
)
 MID-CONTINENT CASUALTY COMPANY,)
 an Oklahoma Corporation,)
)
 Intervenor.)

Case No. 90-C-436-B

STIPULATION OF DISMISSAL

COME NOW the parties to the above-captioned action, by and through their respective attorneys, and stipulate that the above action has been compromised and settled and that the action is to be dismissed with prejudice as to its refiling.

Respectfully submitted,



 Gary L. Richardson, OBA #7547
 Lance E Houghtling, OBA #13899
 RICHARDSON, MEIER & ASSOCIATES
 5727 South Lewis, Suite 520
 Tulsa, Oklahoma 74105
 (918) 492-7674

ATTORNEYS FOR PLAINTIFF

David S. Landers

Tom L. Armstrong, OBA #329
Jeannie C. Henry, OBA #12331
David S. Landers, OBA #12367
TOM L. ARMSTRONG & ASSOCIATES
601 South Boulder, Suite 706
Tulsa, Oklahoma 74119
(918) 587-3939

ATTORNEYS FOR DEFENDANT

Richard D. Gibbon

Richard D. Gibbon, OBA #3340
Steven L. Rouse, OBA #
RICHARD D. GIBBON & ASSOCIATES
1611 South Harvard
Tulsa, Oklahoma 74112
(918) 745-0687

ATTORNEYS FOR INTERVENOR

FILED

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

OCT 25 1991

RICHARD M. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

JACKIE LEE PARKER,

Plaintiff,

v.

RON CHAMPION,

Defendant.

)
)
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)

89-C-760-B

ORDER

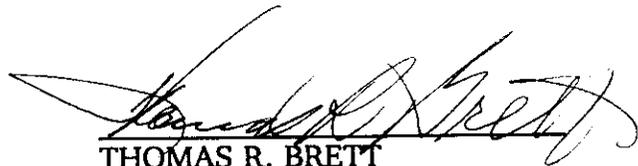
The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed September 27, 1991 in which the Magistrate Judge recommended that Defendant's Motion to Dismiss be granted.

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

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

It is, therefore, Ordered that Defendant's Motion to Dismiss is granted.

Dated this 25 day of Oct., 1991.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

JAD/sl/10/24/91

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

NORTHLAND INSURANCE)
COMPANIES, a Missouri)
corporation,)
)
Plaintiff)

vs.)

SECURITY ARMS, INC.,)
an Oklahoma corporation,)
ED MOODY, ROBERT SHEPHERD,)
LEHMAN HAY, SHIRLEY HAY and)
ERNIE COBB,)
)
Defendants.)

Case No. 91-C-713-E

FILED

OCT 25 1991

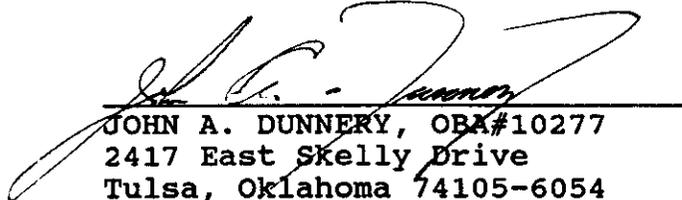
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

NOTICE OF DISMISSAL PURSUANT TO RULE 41

Comes now the plaintiff, Northland Insurance Companies, and pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure, dismisses this action without prejudice as to all defendants.

Respectfully submitted,

ROGERS, HONN & ASSOCIATES



JOHN A. DUNNERY, OBA#10277
2417 East Skelly Drive
Tulsa, Oklahoma 74105-6054
(918) 744-4499

Attorney for Plaintiff,
Northland Insurance Companies

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

FILED

OCT 25 1991

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

MIKE BUTLER, dba,)
D.M. PLASTICS,)
)
Plaintiff,)
)
-vs-)
)
UMTHUN TRUCKING COMPANY,)
and McCLURE & COMPANY, INC.,)
)
Defendants.)

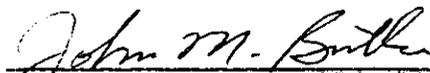
Case No. 91-C-536-E

JOINT DISMISSAL

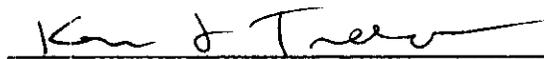
COMES NOW, the Plaintiff, MIKE BUTLER, dba, D.M. PLASTICS, acting by and through his Attorney, JOHN M. BUTLER, and the Defendant, McCLURE & COMPANY INC., acting by and through their Attorney, KENNETH J. TREECE, and do hereby dismiss the above cause of action with prejudice each to the other.

The above named Plaintiff, MIKE BUTLER, dba, D.M. PLASTICS, acting by and through his Attorney, JOHN M. BUTLER, and the Defendant, McCLURE & COMPANY INC., acting by and through their Attorney, KENNETH J. TREECE, do hereby dismiss without prejudice any cause of action they may have against the other Defendant, UMTHUN TRUCKING COMPANY.

Dated this 25th day of October, 1991.



JOHN M. BUTLER, OBA #1377
Attorney for Plaintiff
P.O. Box 700
Okmulgee, OK 74447
(918) 756-6767



KENNETH J. TREECE, OBA #12012
Attorney for Defendant
700 Sinclair Building
Six East Fifth Street
Tulsa, OK 74103
(918) 584-0506

FILED

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

OCT 25 1991

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

STEPHANIE CANTEES,)
)
Plaintiff,)
)
v.)
)
CANCER TREATMENT CENTERS)
OF AMERICA, INC.,)
)
Defendant.)

Case No. 91 C 0110E

ORDER OF DISMISSAL WITHOUT PREJUDICE

Upon consideration of defendants' Motion for Dismissal,
and for good cause shown, it is therefore

ORDERED, ADJUDGED AND DECREED that defendants' Motion
for Dismissal pursuant to FRCP 41(b) is granted and
plaintiff's case is dismissed without prejudice.

Dated this 24th day of Oct., 1991.

S/ JAMES O. ELISON
JUDGE OF THE DISTRICT COURT

Carlson and Jo Ann Carlson, with interest and costs to date of sale is \$55,648.83.

The Court further finds that the appraised value of the real property at the time of sale was \$26,500.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered October 5, 1990, for the sum of \$23,465.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on October 7, 1991.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Jerome Banfield Carlson and Jo Ann Carlson, as follows:

Principal Balance as of 10-5-90	\$47,196.05
Interest	6,803.19
Late Charges to Date of Judgment	261.12
Appraisal by Agency	500.00
Management Broker Fees to Date of Sale	278.60
Abstracting	241.00
Publication Fees of Notice of Sale	143.87
Court Appraisers' Fees	<u>225.00</u>
TOTAL	\$55,648.83
Less Credit of Appraised Value	- <u>26,500.00</u>
DEFICIENCY	\$29,148.83

plus interest on said deficiency judgment at the legal rate of 5.42 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

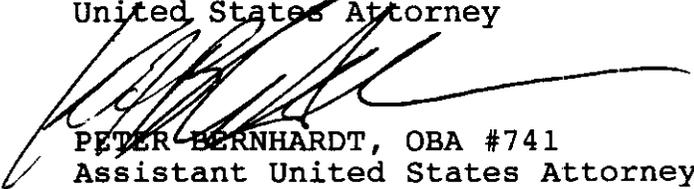
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, Jerome Banfield Carlson and Jo Ann Carlson, a deficiency judgment in the amount of \$29,148.83, plus interest at the legal rate of 5.42 percent per annum on said deficiency judgment from date of judgment until paid.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney



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

PB/esr

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

*entered
Pastorise
motion.*

FRANCES GATHRIGHT and KENT
GATHRIGHT,

Plaintiffs,

vs.

AMERICAN REPUBLIC INSURANCE
COMPANY,

Defendant,

and

LINUS MUSE,

Third-Party Defendant.

}
}
}
}
}
}
}
}
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}
}
}
}

No. 89-C-1059-C ✓

F I L E D

OCT 25 1991

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

ORDER

Before the Court is the motion of defendant American Republic Insurance Company for judgment notwithstanding the verdict, as to the jury's findings on defendant's claim of misrepresentation and on plaintiffs' claims for bad faith and punitive damages. The Court concludes that there is substantial evidence to support the jury's verdict in favor of plaintiffs, and the Court will not substitute its own judgment for that of the jury. Judgments n.o.v. are "appropriate only when the evidence points but one way and is susceptible to no reasonable inferences which may sustain the position of the party against whom the motion is made." Lucas v. Dover Corp., 857 F.2d 1397, 1400 (10th Cir. 1988). Clearly,

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judgment n.o.v. is inappropriate under the facts in this case as presented to the jury.

Defendant also seeks to have the award of punitive damages in the amount of \$50,000.00 reduced to the amount of actual damages award for bad faith (\$20,000.00). 23 O.S. §9 (Supp. 1990) states that an award of punitive damages may not exceed the amount of actual damages awarded unless prior to the submission of the case to the jury the Court finds the defendant's conduct is wanton, oppressive, fraudulent or malicious.

Plaintiffs acknowledge the application of 23 O.S. §9 to this case. Additionally, the record indicates that the Court did not make a finding at the close of the case of wanton and oppressive conduct by the defendant. Plaintiffs therefore argue that the amount they recovered under the insurance policy (\$53,545.71) plus statutory interest (\$11,101.91) should be added to the amount for bad faith (\$20,000.00) in determining the ceiling for punitive damages.

Plaintiffs' contention is without merit. Actual damages awarded for bad faith is the appropriate foundation for punitive damages. McCarroll v. Reed, 679 P.2d 851 (Ok.App. 1983). The amount of damages recoverable for breach of the insurance contract is not the appropriate indicator for determining the ceiling for punitive damages because Oklahoma law excludes punitive damage awards from breach of contract actions. An award of punitive damages must be based upon the underlying tort action. Manis v. Hartford Fire Ins., 681 P.2d 760 (Okla. 1984).

Accordingly, it is the Order of the Court that the jury verdict of \$50,000.00 in punitive damages is hereby reduced to the sum of \$20,000.00 as the amount awarded in actual damages for bad faith.

It is the Further Order of the Court that defendant's motion for judgment n.o.v. is hereby denied.

IT IS SO ORDERED this 24th day of October, 1991.


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

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

ROBERT JOSEPH BAHM,)
)
 Applicant,)
)
 v.)
)
 THE HONORABLE JAY DALTON, DISTRICT)
 JUDGE, 14TH JUDICIAL DISTRICT,)
 STATE OF OKLAHOMA, and STANLEY)
 GLANTZ, Sheriff, Tulsa County,)
 Oklahoma,)
)
 Respondents.)

91-C-724-E

FILED
OCT 24 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 October 3, 1991, in which the Magistrate Judge recommended that applicant'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, pursuant to 28 U.S.C. § 2243, applicant's Application for a Writ of Habeas Corpus is denied.

Dated this 24th day of October, 1991.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 GEORGE HUMPHREY; DEE ANN)
 HUMPHREY; STATE OF OKLAHOMA)
 ex rel. OKLAHOMA TAX COMMISSION;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

FILED

OCT 24 1991

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

CIVIL ACTION NO. 89-C-880-B

DEFICIENCY JUDGMENT

This matter comes on for consideration this 24 day of October, 1991, upon the Motion of the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, for leave to enter a Deficiency Judgment. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, George Humphrey, appears neither in person nor by counsel.

The Court being fully advised and having examined the court file finds that a copy of Plaintiff's Motion was mailed to George Humphrey, c/o Riverside Chevrolet, 707 West 51st Street, Tulsa, Oklahoma 74107 and all other counsel and parties of record.

The Court further finds that the amount of the Judgment rendered on June 12, 1990, in favor of the Plaintiff United States of America, and against the Defendant, George Humphrey, with interest and costs to date of sale is \$77,308.53.

The Court further finds that the appraised value of the real property at the time of sale was \$64,325.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered June 12, 1990, for the sum of \$57,770.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on October 4, 1991.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendant, George Humphrey, as follows:

Principal Balance as of 6-12-90	\$57,250.89
Interest	15,280.53
Late Charges to Date of Judgment	620.48
Appraisal by Agency	750.00
Management Broker Fees to Date of Sale	1,027.50
Abstracting	349.50
Publication Fees of Notice of Sale	154.63
Taxes for 1989	782.00
Taxes for 1990	868.00
Court Appraisers' Fees	<u>225.00</u>
TOTAL	\$77,308.53
Less Credit of Appraised Value	- <u>64,325.00</u>
DEFICIENCY	\$12,983.53

plus interest on said deficiency judgment at the legal rate of 5.42 percent per annum from date of deficiency judgment until

paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendant, George Humphrey, a deficiency judgment in the amount of \$12,983.53, plus interest at the legal rate of 5.42 percent per annum on said deficiency judgment from date of judgment until paid.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney

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

PB/esr

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 RODGER WAYNE SLOAN; JOYCE)
 ELAINE SLOAN; COUNTY TREASURER,)
 Tulsa County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

CIVIL ACTION NO. 90-C-175-B

FILED
OCT 24 1991
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DEFICIENCY JUDGMENT

This matter comes on for consideration this 24 day of October, 1991, upon the Motion of the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, for leave to enter a Deficiency Judgment. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Joyce Elaine Sloan, appears neither in person nor by counsel.

The Court being fully advised and having examined the court file finds that a copy of Plaintiff's Motion was mailed to Joyce Elaine Sloan, 14501 Scherry Lane, Claremore, Oklahoma 74017, and all counsel and parties of record.

The Court further finds that the amount of the Judgment rendered on December 17, 1990, in favor of the Plaintiff United States of America, and against the Defendant, Joyce Elaine Sloan, with interest and costs to date of sale is \$55,576.07.

The Court further finds that the appraised value of the real property at the time of sale was \$34,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered December 17, 1990, for the sum of \$31,502.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on the 4th day of October, 1991.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendant, Joyce Elaine Sloan, as follows:

Principal Balance as of 12/17/90	\$42,995.28
Interest	10,234.65
Late Charges to Date of Judgment	396.92
Appraisal by Agency	250.00
Management Broker Fees to Date of Sale	590.10
Abstracting	100.00
1990 Taxes	631.00
Publication Fees of Notice of Sale	153.12
Court Appraisers' Fees	<u>225.00</u>
TOTAL	\$55,576.07
Less Credit of Appraised Value	- <u>34,000.00</u>
DEFICIENCY	\$21,576.07

plus interest on said deficiency judgment at the legal rate of 5.42 percent per annum from date of deficiency judgment until

paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendant, Joyce Elaine Sloan, a deficiency judgment in the amount of \$21,576.07, plus interest at the legal rate of 5.42 percent per annum on said deficiency judgment from date of judgment until paid.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

PP/css

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

IN RE:)	M-1417
ASBESTOS LITIGATION)	ASB-I-_____
<hr/>		
CARL DESMOND THRASHER and MARGUERITE F. THRASHER,)	No. 90-C-277-B
Plaintiffs,)	
vs.)	
OWENS-CORNING FIBERGLAS CORP., et al.,)	
Defendants.)	

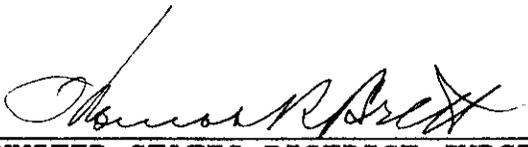
FILED
OCT 24 1991
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER ALLOWING
STIPULATED MOTION FOR DISMISSAL WITH PREJUDICE
AS TO DEFENDANT,
OWENS-CORNING FIBERGLAS CORPORATION

NOW on this 24 day of Oct, 1991, this matter comes before the Court upon the Stipulated Motion for Dismissal With Prejudice as to Defendant, Owens-Corning Fiberglas Corporation, filed by Plaintiffs and Defendant, Owens-Corning Fiberglas Corporation.

For good cause shown, said Motion is granted and the above-styled action is hereby dismissed with prejudice as to Defendant, Owens-Corning Fiberglas Corporation, specifically reserving Plaintiffs' rights as to all other parties or entities herein.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

22

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

IN RE:) M-1417
ASBESTOS LITIGATION) ASB-I-_____

BOBBY LEE RHOADS and) No. 90-C-290-B ✓
ANNA MAXINE RHOADS,)
Plaintiffs,)
vs.)
OWENS-CORNING FIBERGLAS CORP.,)
et al.,)
Defendants.)

FILED
OCT 24 1991
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER ALLOWING
STIPULATED MOTION FOR DISMISSAL WITH PREJUDICE
AS TO DEFENDANT,
OWENS-CORNING FIBERGLAS CORPORATION

NOW on this 24 day of Oct, 1991, this matter comes before the Court upon the Stipulated Motion for Dismissal With Prejudice as to Defendant, Owens-Corning Fiberglas Corporation, filed by Plaintiffs and Defendant, Owens-Corning Fiberglas Corporation.

For good cause shown, said Motion is granted and the above-styled action is hereby dismissed with prejudice as to Defendant, Owens-Corning Fiberglas Corporation, specifically reserving Plaintiffs' rights as to all other parties or entities herein.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

24

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

FILED

OCT 24 1991

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

OIL DYNAMICS, INC.,

Plaintiff,

v.
BAKER HUGHES PRODUCTION
TOOLS, INC.,

Defendant.

Civil Action No.
90-C-743 B

CONSENT JUDGMENT

The parties, having amicably resolved their differences, hereby consent to the entry of judgment as follows:

1. U.S. Patents 4,872,808 and 5,033,937, owned by plaintiff, Oil Dynamics, Inc., are valid in their entireties;
2. Defendant, Baker Hughes Production Tools, Inc., has infringed U.S. Patents 4,872,808 and 5,033,937;
3. Defendant's counterclaim is dismissed with prejudice in its entirety;
4. Each party shall bear its own costs and attorney fees.

APPROVED:

Date: 10/17/91

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James R. Head (OBA #4027)
Scott R. Zingerman (OBA #14342)
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Steven P. Petersen
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Attorneys for Plaintiff
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Date: 10/17/91



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Attorneys for Defendant
BAKER HUGHES PRODUCTION
TOOLS, INC.

ENTERED:

10/24/91
Date


United States District Judge

IN THE UNITED DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

OCT 24 1989

8

PHILLIPS PETROLEUM COMPANY,)
)
 Plaintiff,)
)
 v.)
)
 MANUEL LUJAN, JR., SECRETARY)
 OF INTERIOR, et al.,)
)
 Defendants.)

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

Case No. 89-C-914-B

✓

O R D E R

This matter comes on for consideration of cross-motions for summary judgment filed by the parties herein.

Plaintiff, Phillips Petroleum Company, (Phillips) is the lessee of an Indian lease which produces natural gas upon which Phillips pays a royalty. The Defendants, Secretary of the Interior Manuel Lujan (Secretary), several Department of Interior employees (employees), the Department of the Interior (Department) and the Mineral Management Service (MMS), a division of the Department of the Interior, are sued by Phillips as a result of an Administrative Order issued by the Defendants, dated September 26, 1989,¹ wherein Defendants demanded Phillips pay allegedly underpaid royalties in the amount of \$2,969.95 for the months of July, August and September, 1983, for the lease in issue.

The following facts have been stipulated by the parties:

1. Phillips is the lessee on oil and gas lease No. 14-20-0205-

¹ The Order was received by Plaintiff on October 2, 1989.

38

C/m

8140 (MMS-AID # 518-00-8140-0). The lessor on the above described lease is an Indian Allottee by the name of "Behind", Allottee No. 2307, of the Cheyenne-Arapaho tribe. The allottee's interest is now owned by the "Heirs of Behind."

2. Being a lease on restricted Indian allotted land, the lease is governed by 25 U.S.C. § 396 and the Federal Oil and Gas Royalty Management Act ("FOGRMA"), 30 U.S.C. §§ 1701 *et seq.*

3. Phillips' royalty payments are due and payable on the last day of the month following the month of production.

4. Phillips' royalty payments for minerals produced from the lease in the months of July, August, and September, 1983, were evaluated as part of an audit of Phillips' royalty payments for the period October 1, 1980-September 30, 1983. Review of the payments for the aforementioned months from this lease was completed prior to August 21, 1989, the date on which the issue letter was sent to Phillips (Exhibit 4 to the Administrative Record).

5. On September 26, 1989, the MMS sent to Phillips the Order attached as Exhibit 1 to the Administrative Record (filed herein on August 14, 1990) demanding that Phillips remit underpaid royalties in the total amount of \$2,969.95 for the following months of production:

		<u>Underpayment</u>
July, 1983	-	\$1,655.45
August, 1983	-	\$1,053.45
September, 1983-		\$ 261.05

The "Bill for Collection" attached to the September 26, 1989 Order

designates the "sales month" as July, 1983, for the entire \$2,969.95, but specifically references the Order itself.

6. The MMS has not commenced a lawsuit or filed a counterclaim against Phillips for the collection of the sums described in the preceding paragraph.

In an earlier motion Defendants sought Judgment on the Pleadings seeking a ruling that the Order it issued to Phillips was a non-final administrative Order implicating 28 U.S.C. § 2415.

The Order issued to Phillips contained the following:

In accordance with the provisions of 30 CFR 243.2 (1988) compliance with this order shall not be suspended by reason of an appeal having been taken. An Option is available to post a bond as surety in lieu of paying, pending the outcome of the appeal. A request for stay of payment pending appeal must be made within 30 days from the receipt of this order and sent to the address indicated above.

Phillips filed no appeal from this Order, choosing instead to lodge the present action.

In their earlier Motion, Defendants argued the issuance of the Order was the beginning of the administrative process and that they would have one year, as provided under § 2415, from any final decision rendered in the "applicable administrative proceedings" within which to file a complaint against Plaintiff. Phillips counterpointed that under §2415 Defendants must file a complaint within the six year period; that an Order filed within such period was insufficient to toll the statute.

The Court concluded the Motion for Judgment On The Pleadings was not appropriate because uncertainty existed as to the exact accrual date of the claims stated in the Defendants' Order of

September 26, 1989. The Court reserved for another day the issue whether the Order was a final agency action subject to judicial review, 5 U.S.C. § 704, noting that however, in a analogous case in this District, Phillips Petroleum Co. v. Lujan, No. 88-C-1487-E, N.D. Okla. July 13, 1989, that Court concluded a similar administrative order was final agency action because the Order did not provide for a stay pending appeal.

The parties are now in agreement that royalty payments were due at the end of the month following the month of production. The royalties for the months in issue (July, August and September, 1983) were therefore due at the ends of August, September, and October, 1983, respectively. The parties further agree the audit of same was completed before August 21, 1983, the date of MMS' "issue letter" to Phillips.² The Order to pay was issued September 26, 1989.

Defendants' current tack is that a decision on the statute of limitations issue alone will dispose of the entire case, mooting such issues as finality of the administrative "Order" or failure to exhaust administrative remedies. A principal stanchion of this argument is that Phillips conceded the issue of royalty underpayment by its decision not to appeal, administratively, the Order of September 26, 1989, resting its sole claim on the premise that such order is time-barred. Phillips has not disputed this argument.

² Defendants characterize "audit" as synonymous with "review". See Defendant's Brief, docket entry #31, filed April 3, 1991, at page 3, fn 2.

Defendants admit an administrative appeal on the statute of limitations issue would be futile since such an issue is a defense to a judicial action for money damages; that "both the MMS Director and the IBLA have held that they will not rule on a statute of limitations defense in an administrative appeal", citing Foote Mineral Co., 34 IBLA 285, 306-308, 85 I.D. 171, 182-183 (1978); Forest Oil Corp., 111 IBLA 284, 287 (1989); Mobil Oil Corp., MMS-88-0276-OCS (Sept. 14, 1989).

Phillips asserts collateral estoppel exists because of the District Court's ruling in Phillips Petroleum Co. v. Lujan, Civil No. 88-C-1487-E (N.D.Okla., Oct. 18, 1989), now on appeal to the Tenth Circuit Court of Appeals. Defendants urge the matter, not yet final, could not preclude Defendants' present positions.

The Court agrees with Defendants, on the collateral estoppel issue, for several reasons. First, Phillips has cited no valid authority for the proposition that a ruling by another District Court, which ruling is still in the appellate process, serves to collaterally estop a party from asserting the same position in another action.³ Secondly, Defendants have conceded the MMS Order of September 26, 1989, was a "final order"⁴, the precise crux of

³ In its earlier allusion to Judge Ellison's Order of July 13, 1989, (see this Court's Order of November 8, 1990) this Court did not cite the ruling as precedent but merely commented on same as an analogous ruling on an issue "The Court does not today decide. .".

⁴ In Defendants' Brief in support of their Cross-Motion For Summary Judgment Defendants state: "Therefore, DOI (Department of Interior) concedes that no exhaustion of administrative remedies with respect to the statute of limitations, the sole issue in dispute here, is required. Phillips' arguments regarding finality and exhaustion at pp. 4-7 of its brief consequently are not

Judge Ellison's Order,⁵ thereby making its application to this case on that issue inapposite.

The principal thrust of Defendants' argument is that the MMS Order of September 26, 1989, is timely under § 2415 because of time exclusions of the six year limitation period provided by § 2416, which provides in relevant part:

For the purpose of computing the limitations periods established in section 2415, there shall be excluded all periods during which --

* * * * *

(c) facts material to the right of action are not known and reasonably could not be known by an official of the United States charged with the responsibility to act in the circumstances
. . .

Since the purpose of an audit, Defendants argue, is to determine facts not then known⁶, all time expended during the audit is excluded from the six year statutory period in calculating its application. Under this approach, it would seem, an audit begun within the six year period would extend that period for the length

relevant."

⁵ Phillips "collateral estoppel" argument occurred prior in time to Defendants' brief wherein the finality of the Order of September, 1989, was conceded.

⁶ Defendants suggest that if given facts are not known and only an audit can reveal the same, the time *prior* to the audit commencement should also be excluded under § 2416. The "logical extension" of this premise is that the statute would never *begin* to run until an audit had not only been started but completed. The Court suggests the language "or could not have been known to the responsible official.", found in § 2416, would preclude such an illogical result, if audits do, as a matter of law, toll the statute.

of the audit plus the time to reasonably dispatch an Order demanding alleged underpayment.

In support of Defendants' urging that an audit tolls the six year statute of limitations, reliance is placed upon a series of Medicare cases⁷. The Court rejects the analogy out of hand. Cases interpreting payments made under Part A of the Medicare Act relate to estimated payments made to medical providers without delay. The Medicare statutory scheme requires these estimated payments to be followed by mandatory audits in order to settle the accounts with the medical providers. United States v. Graham, 471 F.Supp. 123, 124 (S.D.Tex 1979). The right of action in such cases is not known until the audit is completed by a "fiscal intermediary".

Defendants find further support in the Order issued in Phillips Petroleum Co. v. Lujan, Civil No. 88-C-1487-E (N.D.Okla., Oct. 18, 1989), where the Court stated, at page 6:

Tolling of the 6-year period would be applicable in two situations. First, if the audit had begun during the 6-year period, the limitations period would be tolled partially under section 2415(a). Second, the 6-year period could be tolled if, during the 6-year period facts material to the right of action were not known or could not have been known to the responsible official.

As stated earlier, that matter is presently on appeal. If that Court's rulings fail to collaterally estop Defendants (as Phillips would have it), the Orders could ill serve Defendants' argument.

⁷ United States v. Withrow, 593 F.2d 802 (7th Cir. 1979); United States v. Gravette Manor Homes, 642 F.2d 231 (8th Cir. 1981); United States v. Hughes House Nursing Home, Inc. 710 F.2d 891 (1st Cir. 1983); United States v. Pisani, 646 F.2d 83 (3rd Cir.1981).

The Court concludes an audit⁸ does not, *ipso facto*, toll the running of the six year statute of limitations period within which a complaint must be filed. What an audit does do is position Defendants to issue an Order, assuming the audit indicates underpayment of royalty, thereby beginning the administrative process. When the administrative process is finally concluded, Defendants have one year therefrom, but not less than the original six years from the date the royalty was due, to file their complaint.

In the present matter, the audit was commenced *and concluded*⁹ within the six year period. The demand Order was issued on September 26, 1989. As to the August, 1983 and September, 1983 royalty amounts, the Order was issued within the required six year period (the royalties thereto being due September 30, 1983 and October 31, 1983, respectively). As to the July, 1983 royalty amount the Order was issued after the six year period had expired (August 31, 1983).

However, since the Order is now, for the purposes herein, conceded to be a final Order, Defendants were allowed one year from the date of such Order (a final decision in an administrative proceeding) to file their claim against Phillips. This date was September 26, 1990. Defendants' claim, as to the August and

⁸ Active fraud in secreting and/or destroying royalty records (not alleged herein) could, it would seem, toll the statute.

⁹ The parties have stipulated the "review" was completed prior to August 21, 1989.

September, 1983 alleged underpayments, is barred because they have not filed an action or counterclaim¹⁰ against Phillips within the one year time frame.

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

The Court does not consider its recent Order in a related case¹¹ inconsistent with today's ruling. In that case this Court held that the federal lessees (Phillips and Atlantic) were required by FOGRMA to retain records beyond the six year period if and when noticed by MMS. This is consistent with a factual scenario wherein an MMS audit is begun and completed (no tolling) near the end of the six year statutory period, and an Order demanding alleged underpayment is issued prior to the six year deadline but the expected appeal of the Order through the administrative process

¹⁰ The Court is aware 28 U.S.C. §2415(f) provides:
(f) The provisions of this section shall not prevent the assertion, in an action against the United States or an officer or agency thereof, of any claim of the United States or an officer or agency thereof against an opposing party, a co-party, or a third party that arises out of the transaction or occurrence that is the subject matter of the opposing party's claim.

See Federal Deposit Ins. Corp. v. U.S., 527 F.Supp. 942, at 949 (D.C.W.Va.1981), citing Simmonds Precision Products, Inc. v. United States, 212 Ct.Cl. 305, 546 F.2d 886 (1976), for the proposition that government counterclaims are not barred by 28 U.S.C. § 2415(a). However, no counterclaim exists in the present matter.

¹¹ Phillips Petroleum v. Lujan, et al., Case No. 89-C-887-B consolidated with Atlantic Richfield v. Lujan, et al., Case No. 89-C-1052-B, N.D. of Oklahoma, Order of January 2, 1991.

would extend beyond the normal six years record retention period. §1713(b) of FOGMRA prevents a lessee from destroying records after six years which may or would be needed in administrative or judicial proceedings occurring after¹² the six year statute of limitations period.

IT IS SO ORDERED this 24th day of October, 1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹² By virtue of the one year filing period after a final administrative decision.

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

FILED

OCT 24 1991

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

GRAHAM ROGERS, INC., an
Oklahoma corporation,

Plaintiff,

vs.

GRAHAM ROGERS OF ARKANSAS,
INC., an Arkansas corporation,

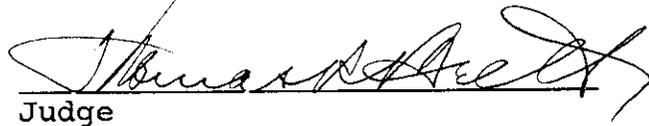
Defendant.

Case No. 90-C-745 B

ORDER OF DISMISSAL WITH PREJUDICE

NOW, on this 24 day of Oct., 1991, the
above styled and captioned matter comes on for hearing
pursuant to the Stipulation for Dismissal with Prejudice
heretofore filed by counsel for the parties, and the Court,
after reviewing said Stipulation for Dismissal with Prejudice,
finds that same should be sustained.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the
Court that the above styled and captioned matter be and same
is hereby dismissed with prejudice.

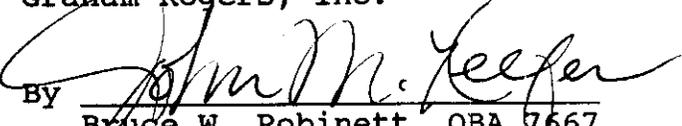

Judge

23

dm

Approved:

BREWER, WORTEN, ROBINETT,
JOHNSON, WORTEN & KING
Attorneys for Plaintiff,
Graham-Rogers, Inc.

By 

Bruce W. Robinett, OBA 7667
John M. Keefer, OBA 4904
P.O. Box 1066
Bartlesville, OK 74005
(918) 336-4132



Steven R. Hickman
Attorney for Defendant,
Graham-Rogers of Arkansas, Inc.
P.O. Box 799
Tulsa, OK 74101

FILED
OCT 24 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
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

D-ORUM HAIR PRODUCTS, INC.)
)
Plaintiff,)
)
v.)
)
CLAUDE FONVILLE, and TILLER)
WATSON, d/b/a J. LAUREN EAST,)
)
Defendants.)

CIVIL NO. 91-C-133-B

DISMISSAL WITHOUT PREJUDICE

Pursuant to Rule 41(A)(1) of the Federal Rules of Civil Procedure, Plaintiff, D-Orum Hair Products, Inc., hereby dismisses this action without prejudice.

Wanda Jones
622 Ridge Road
Munster, Indiana 46321
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Michael C. Adley
5231 Hohman Ave.
Hammond, Indiana 45320
(219) 937-1500

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By: L. Dru McQueen

L. Dru McQueen
(OBA No. 10100)
Michael C. Redman
(OBA No. 13340)
5th Floor
320 S. Boston Building
Tulsa, Oklahoma 74103
(918) 582-1211

ATTORNEYS FOR THE PLAINTIFF

CERTIFICATE OF SERVICE

I do hereby certify that on the 24th day of October, 1991, I mailed a true, correct, and exact copy of the above and foregoing instrument to:

Mark G. Kachigian, Esquire
228 W. 17th Place
Tulsa, Oklahoma 74119

Mr. Tiller S. Watson, Jr.
3685 N. Louisville
Tulsa, Oklahoma 74115

Mr. Claude Fonville
7710 E. 15th Court
Tulsa, Oklahoma

with proper postage fully prepaid thereon.

Z. Du McQueen

owing to Sefco. Sinclair further alleges as an affirmative defense that it is entitled to a set-off of \$1,155,992.78 against Sefco based upon the events of October 22, 1990. Sinclair alleges: "On that date, a crane under the custody and control of SEFCO came in contact with electric power lines at Sinclair's refinery in Sinclair, Wyoming, causing a loss of power at the refinery and ultimately giving rise to a claim by Sinclair against SEFCO in the sum of \$1,155,992.78." Sinclair also alleges this claimed amount under its three-count Counterclaim.¹

Sinclair filed its Motion For Change Of Venue two days after it filed its Amended Answer and Counterclaim. (May 29 & May 31, 1991). Sinclair alleges Plaintiff's discovery responses indicate most of the witnesses to the October 22, 1990 event, persons involved in monitoring Plaintiff's contract performance and persons engaged in calculating Sinclair's damages, are located in Wyoming.

Sefco counters that it should be entitled to collect a "debt" within the district of its own residence; that it would be greatly inconvenienced by transfer of this matter to Wyoming, resulting in a financial hardship; that there "are witnesses involved herein which this Plaintiff will be required to call at the trial of this matter which are not subject to process issued from the State of Wyoming and which are not now within the control of this

¹ Count One alleges negligence by Sefco in allowing the crane to come into contact with the electrical power lines; Count Two alleges breach of contract by Sefco in failing to perform work under the agreement diligently and carefully in a good and workmanlike manner; Count Three alleges the contract provides Sefco shall indemnify Sinclair from losses such as the loss occurring as a result of the October 22, 1990, incident.

Plaintiff." Plaintiff does not state what the expected testimony of such witnesses would reveal.

28 U.S.C. § 1404(a) provides:

For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

Jurisdiction in this matter is based upon diversity of citizenship of the parties under 28 U.S.C. § 1332. The action could have been brought where all plaintiffs or all defendants reside, or in which the claim arose. 28 U.S.C. § 1391. The action could have been filed by Sefco in the District of Wyoming since Sinclair is a Wyoming corporation.

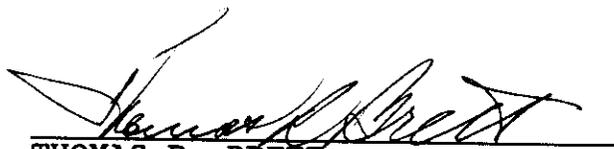
When determining the propriety of a transfer under § 1404(a) the Court should consider several criteria: 1) convenience of the parties; 2) convenience of the prospective witnesses; and 3) the interest of justice. National Sur. Corp. v. Robert M. Barton Corp., 484 F.Supp 222, 224 (W.D.Okla.1979). Plaintiff lists 17 prospective witnesses, six of whom reside in Wyoming, one in Texas and ten (including Sefco's President and Vice-President) who reside in Oklahoma. Sinclair lists 29 prospective witnesses, 25 of whom reside in Wyoming, two in Utah and two (Sefco's President and Vice-President) who reside in Oklahoma. It is noteworthy that, while there is some duplication of the parties' witness lists, only two of Sefco's six Wyoming witnesses are also listed on Sinclair's witness list, thus making a total of 29 prospective Wyoming witnesses between the parties.

It is obvious to the Court that Sefco's view of this action

would be more conveniently tried in the present district.² On the other hand, it appears the majority of the witnesses *relative to the October 22, 1990 incident* are Wyoming residents. Moreover, the plant where the incident occurred is located in Wyoming.

The Court concludes Defendant's Motion For Change Of Venue should be and the same is hereby GRANTED. This matter is hereby TRANSFERRED to the District of Wyoming. In view of the Court's ruling herein, the Court declines to rule upon Plaintiff's Motion For Summary Judgment, Motion To Sever and Motion To Enter Judgment.

IT IS SO ORDERED this 24th day of October, 1991.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

² Sefco, in its Motion To Sever and other pleadings, characterizes this action as one for debt, which the Defendant admits has not been paid, *ergo* it should be severed, judgment should be entered and collection effected. This tack ignores the plain language of Sinclair's Counterclaim, which seeks recovery (not just set-off) based upon mal-performance of the contract which created the debt.

THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 24 1991

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

CHARLES FAULL and JANECE)
FAULL, Husband and Wife,)
)
Plaintiffs,)

vs.)

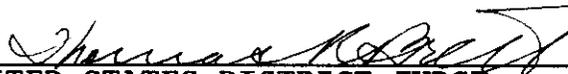
No. 91-C-189-B

QUICKIE DESIGNS, INC., a)
a Foreign Corporation d/b/a)
SUNRISE MEDICAL QUICKIE,)
)
Defendant.)

ORDER OF DISMISSAL

Pursuant to the Stipulation for Dismissal on file herein, it is ordered that the above-captioned cause is dismissed with prejudice to Plaintiffs' right to refile same.

Signed this 24 day of October, 1991.


UNITED STATES DISTRICT JUDGE

clm

7

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

FILED

OCT 24 1991

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

ROGER BERNARD THOMPSON,)
)
Petitioner,)
)
vs.)
)
JACK COWLEY, et al.)
)
Respondents.)

No. 91-C-107-B ✓

O R D E R

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed September 24, 1991 and the petitioner's Request to Submit Objection to the Report.¹ In the Report and Recommendation, the Magistrate Judge recommended that petitioner's motion to reconsider this Court's Order of May 23, 1991 be denied. After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate Judge be adopted and affirmed.

It is therefore ordered that petitioner's motion to reconsider is denied.

DATED, this 24 day of October, 1991.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹ The Court grants the petitioner leave to file the objection and has considered the petitioner's objection in reaching its decision. (The petitioner's request includes the objection.)

entered

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

FILED

OCT 24 1991

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

OIL DYNAMICS, INC.,)
)
 Plaintiff,)
)
 v.)
 BAKER HUGHES PRODUCTION)
 TOOLS, INC.,)
)
 Defendant.)

Civil Action No.
90-C-743 B

INJUNCTION

The parties having consented to the entry of judgment that the patents in suit, U.S. Patents 4,872,808 and 5,033,937, are valid and are infringed by defendant, and having consented to the issuance of an injunction to prevent further such infringement,

IT IS HEREBY ORDERED that defendant, Baker Hughes Production Tools, Inc., and its officers, agents, servants, employees, and attorneys and those persons in active concert or participation with them, are, for the duration of the terms of U.S. Patents 4,872,808 and 5,033,937 enjoined under 35 U.S.C. §283 from committing further acts which constitute (1) infringement or contributory infringement of either of said patents, or (2) the inducement of others to infringe either of said patents.

60

Clm.

APPROVED:

Date: 10/17/91

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James R. Head (OBA #4027)
Scott R. Zingerman (OBA #14342)
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Steven P. Petersen
Jeffrey B. Burgan
LEYDIG, VOIT & MAYER
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(312) 616-5600

Attorneys for Plaintiff
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Warren Jackman

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PRAY, WALKER, JACKMAN,
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R.H. Wallace Jr.
SHANNON, GRACEY, RATLIFF &
MILLER
2200 First City Bank Tower
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(817) 336-9333

Attorneys for Defendant
BAKER HUGHES PRODUCTION
TOOLS, INC.

Date: 10/17/91

ENTERED:

10-24-91
Date


United States District Judge

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

FLOYD MARKHAM,)
)
) Petitioner,)
)
 v.)
)
 CHARLIE OLEARY, et al,)
)
) Respondents.)

90-C-1027-E

F I L E D

OCT 22 1991

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

ORDER

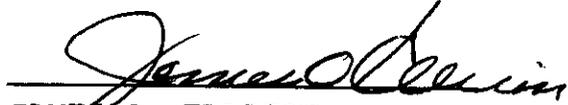
The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed September 17, 1991 in which the Magistrate Judge recommended that Respondent's Motion to Dismiss is granted.

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

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

It is, therefore, Ordered that Respondent's Motion to Dismiss is granted.

Dated this 16th day of October, 1991.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

clw

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

F I L E D

OCT 22 1991

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

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

91-C-167-E

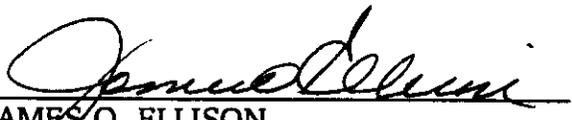
ORDER

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

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

It is therefore Ordered that Defendant Gardalla's Motion to Dismiss is granted.

Dated this 16th day of October, 1991.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

C/WR

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

ANTONIO VARGAS,

Plaintiff,

vs.

ANTHONY M. FRANK, Postmaster
General, et al.,

Defendants.

No. 90-C-31-E

FILED

OCT 22 1991

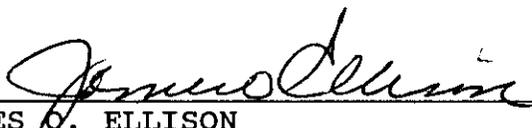
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT

This action came on for jury trial before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly tried and the jury having rendered its verdict,

IT IS THEREFORE ORDERED that the Plaintiff Antonio Vargas take nothing from the Defendants Anthony M. Frank and Jesse W. Williams and that the action be dismissed on the merits.

ORDERED this 21st day of October, 1991.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

ANN DANBACK,)
)
Plaintiff,)
)
vs.)
)
HYDRADYNE HYDRAULICS,)
A DIVISION OF LOR, INC.,)
)
Defendant.)

No. 90-C-251-E

FILED

OCT 22 1991

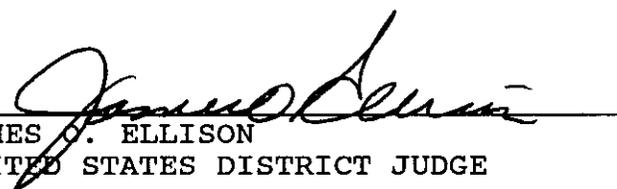
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT

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 Ann Danback take nothing from the Defendant Hydradyne Hydraulics, and that the action be dismissed on the merits.

ORDERED this 27th day of October, 1991.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

F I L E D

OCT 22 1991

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

NATIONAL UNION FIRE INSURANCE)
COMPANY, et al.,)
)
Plaintiffs,)
)
vs.)
)
A.A.R. WESTERN SKYWAYS, INC.,)
)
Defendant.)

No. 87-C-5-E

O R D E R

This contribution action came on for jury trial on June 17, 1991. At the conclusion of the trial, the jury determined that National Union Fire Insurance Company and Mid-States Aircraft Engines, Inc. had paid more than their proportionate share and that its payment of \$503,666.67 was reasonable. The jury further found that Mid-States Aircraft Engines, Inc. and A.A.R. Western Skyways were negligent; and apportioned negligence between of sixty percent (60%) by A.A.R. Western Skyways and thirty percent (30%) by Mid-States Aircraft Engines, Inc. The Court finds that the jury's apportionment between A.A.R. Western Skyways and Mid-States Aircraft Engines, Inc. means that A.A.R. Western Skyways shall bear sixty percent (60%) of the \$503,666.67 advanced by National Union Fire Insurance Company and Mid-States Aircraft Engines, Inc. The Court also finds that National Union Fire Insurance Company and Mid-States Aircraft Engines, Inc. are entitled to receive interest from the date the monies were advanced in the amount of \$217,397.57.

IT IS THEREFORE ORDERED that judgment be granted and it is hereby entered in favor of National Union Fire Insurance Company and Mid-States Aircraft Engines, Inc. against A.A.R. Western Skyways in the amount of \$519,597.17 plus costs.

DATED this 21st day of October, 1991.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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

KANSAS CITY FIRE & MARINE)
INSURANCE COMPANY,)
)
Plaintiff,)
)
v.)
)
MATHEW DOUGLAS, et al,)
)
Defendants,)
)
and)
)
SAND SPRINGS INDEPENDENT SCHOOL)
DISTRICT #2,)
)
Defendant and Third)
Party Plaintiff,)
)
v.)
)
SHELTER MUTUAL INSURANCE COMPANY,)
)
Third Party Defendant.)

90-C-874-C

FILED

OCT 22 1991

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

JUDGMENT

Pursuant to the court's Order filed October 16, 1991, judgment is entered in favor of Defendant and Third Party Plaintiff Sand Springs Independent School District #2 against plaintiff, Kansas City Fire & Marine Insurance Company and Third-party Defendant, Shelter Mutual Insurance Company. Further, judgment is entered in favor of defendant Jim Jackson against plaintiff, Kansas City Fire & Marine Insurance Company and Third-party Defendant, Shelter Mutual Insurance Company. Further, judgment is entered in favor of Third-party Defendant, Shelter Mutual Insurance Company against Third-party Plaintiff Sand Springs Independent School District #2. This Judgment is entered pursuant to the

37

Order filed herein on October 16, 1991, declaring the respective rights and obligations of the parties under the insurance policies in issue.

Dated this 22nd day of October, 1991.

A handwritten signature in black ink, appearing to read "John Leo Wagner", written over a horizontal line.

JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

GARY A. EATON
1717 E. 15th Street
Tulsa, Oklahoma 74104
(918) 743-8781

LARRY G. GUTTERIDGE
SIDLEY & AUSTIN
633 West Fifth Street
Suite 3500
Los Angeles, California 90071
(213) 896-6623

Attorneys for Plaintiff
Atlantic Richfield Company

FILED

OCT 21 1991

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY)	Consolidated Cases
)	Nos. 89-C-868-C; 89-C-869-C;
Plaintiff,)	90-C-859-C.
)	
vs.)	
)	
AMERICAN AIRLINES, et al,)	
)	
Defendants.)	

ORDER OF DISMISSAL WITHOUT PREJUDICE

Pursuant to the stipulated agreement between Plaintiff and Section 5 Defendants, and Rule 41(a)(2) of the Federal Rules of Civil Procedure, and for good cause shown, IT IS HEREBY ORDERED that:

1. The Section 5 Defendants named below are dismissed without prejudice from this litigation:
 - (a) Morrow Gill Lumber Company
 - (b) Sand Springs General Store, Inc.
 - (c) Ark Valley Gas Company, Inc.
 - (d) Marshall and Melvene Perry

2. Each Section 5 Defendant is to bear its own costs and attorney's fees.

DATED: 10-18-91

W. J. ...

JUDGE OF THE FEDERAL DISTRICT COURT

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

OCT 21 1991

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

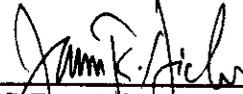
ALBERT C. GIESE,)
)
 Plaintiff,)
)
 vs.)
)
 JOHN W. CARPENTER,)
 CALVIN RODGERS, and)
 DEANIA L. RODGERS,)
)
 Defendants.)

Case No. 90-C-964-B

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW Plaintiff, Albert C. Giese, and Defendants, John W. Carpenter, Calvin Rodgers and Deania L. Rodgers, and pursuant to Rule 41(a)(1), Federal Rules of Civil Procedure, stipulate to the dismissal with prejudice of the Amended Complaint and all causes of action alleged in the above captioned litigation. This stipulation is based on the settlement agreement reached by and between the parties on October 9, 1991 and the consummation of the terms of that agreement.

Respectfully submitted,
MORREL, WEST & SAFFA, INC.



JAMES R. HICKS, OBA No. 11345
1717 South Boulder, Suite 800
Tulsa, Oklahoma 74119
(918) 592-2424
Attorney for Plaintiff

JONES, GIVENS, GOTCHER & BOGAN


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Attorney for Defendants