

91-C-932-B⁴ DOCKET NO. 875

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION
FILED
February 4, 1992
PATRICIA D. HOWARD
CLERK OF THE PANEL

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
IN RE ASBESTOS PRODUCTS LIABILITY LITIGATION (NO. VI)

(SEE ATTACHED SCHEDULE CTO-12)

CONDITIONAL TRANSFER ORDER

On July 29, 1991, the Panel transferred 27,696 civil actions to the United States District Court for the Eastern District of Pennsylvania for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407. Since that time, more than 4,500 additional actions have been transferred to the Eastern District of Pennsylvania. With the consent of that court, all such actions have been assigned to the Honorable Charles R. Weiner.

It appears that the actions listed on the attached schedule involve questions of fact which are common to the actions previously transferred to the Eastern District of Pennsylvania and assigned to Judge Weiner.

Pursuant to Rule 12 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 120 F.R.D. 251, 258, the actions on the attached schedule are hereby transferred under 28 U.S.C. §1407 to the Eastern District of Pennsylvania for the reasons stated in the opinion and order of July 29, 1991, (771 F.Supp. 415), as corrected on October 1, 1991, October 18, 1991, November 22, 1991, December 9, 1991, and January 16, 1992 with the consent of that court, assigned to the Honorable Charles R. Weiner.

This order does not become effective until it is filed in the office of the Clerk of the United States District Court for the Eastern District of Pennsylvania. The transmittal of this order to said Clerk shall be stayed fifteen (15) days from the entry thereof and if any party files a notice of opposition with the Clerk of the Panel within this fifteen (15) day period, the stay will be continued until further order of the Panel.

INASMUCH AS NO OBJECTION IS PENDING
AT THIS TIME THE STAY IS LIFTED AND
THIS ORDER BECOMES EFFECTIVE
FEB 2 11 1992
PATRICIA D. HOWARD
CLERK OF THE PANEL

FOR THE PANEL:

Patricia D. Howard
Patricia D. Howard
Clerk of the Panel

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION
FILED

FEB. 4, 1992

PATRICIA D. HOWARD
CLERK OF THE PANEL

SCHEDULE CTO-12 — TAG ALONG CASES
DOCKET NO. 875 — IN RE ASBESTOS PRODUCTS LIABILITY LITIGATION (NO. VI)

DISTRICT	DIV	CIVIL ACTION#	DISTRICT	DIV	CIVIL ACTION#	DISTRICT	DIV	CIVIL ACTION#
CONNECTICUT			IL.,C.	1	91-1381			
CT.	2	91-1101	IL.,C.	1	91-1382			
CT.	2	91-1103	IL.,C.	1	91-1383			
CT.	2	91-1199	IL.,C.	1	91-1391			
FLORIDA MIDDLE			IL.,C.	1	91-1396			
FL.,M.	3	92-25	IL.,C.	1	91-1409			
FL.,M.	5	91-224	IL.,C.	1	91-1410			
GEORGIA SOUTHERN			IL.,C.	2	91-2476			
GA.,S.	4	91-27	IL.,C.	2	91-2477			
GA.,S.	4	91-150	IL.,C.	2	91-2478			
ILLINOIS CENTRAL			IL.,C.	2	91-2479			
IL.,C.	1	91-1346	IL.,C.	2	91-2480			
IL.,C.	1	91-1347	IL.,C.	2	91-2481			
IL.,C.	1	91-1348	IL.,C.	2	91-2482			
IL.,C.	1	91-1349	IL.,C.	2	91-2483			
IL.,C.	1	91-1350	IL.,C.	2	91-2484			
IL.,C.	1	91-1351	IL.,C.	2	91-2485			
IL.,C.	1	91-1352	IL.,C.	2	91-2486			
IL.,C.	1	91-1353	IL.,C.	2	91-2487			
IL.,C.	1	91-1354	IL.,C.	2	91-2488			
IL.,C.	1	91-1355	IL.,C.	2	91-2489			
IL.,C.	1	91-1356	IL.,C.	2	91-2490			
IL.,C.	1	91-1357	IL.,C.	2	91-2500			
IL.,C.	1	91-1358	IL.,C.	2	91-2501			
IL.,C.	1	91-1359	IL.,C.	2	91-2502			
IL.,C.	1	91-1360	IL.,C.	2	91-2518			
IL.,C.	1	91-1361	IL.,C.	2	91-2519			
IL.,C.	1	91-1362	IL.,C.	2	92-2003			
IL.,C.	1	91-1363	LOUISIANA EASTERN					
IL.,C.	1	91-1364	LA.,E.	2	90-1042			
IL.,C.	1	91-1365	LA.,E.	2	91-4156			
IL.,C.	1	91-1369	LA.,E.	2	91-4173			
IL.,C.	1	91-1370	MAINE					
IL.,C.	1	91-1371	ME.	1	92-7			
IL.,C.	1	91-1372	ME.	2	92-14			
IL.,C.	1	91-1373	MICHIGAN EASTERN					
IL.,C.	1	91-1374	MI.,E.	2	88-71806			
IL.,C.	1	91-1375	MI.,E.	2	91-70472			
IL.,C.	1	91-1376	MI.,E.	2	91-70475			
IL.,C.	1	91-1377	MI.,E.	2	91-70478			
IL.,C.	1	91-1378	MI.,E.	2	91-70484			
IL.,C.	1	91-1379	MI.,E.	2	91-70487			
IL.,C.	1	91-1380	MI.,E.	2	91-76542			
						MINNESOTA		
						MN.	4	92-36
						NORTH DAKOTA		
						ND.	2	91-175
						NEW JERSEY		
						NJ.	1	92-199
						NEW MEXICO		
						NM.	1	80-73
						NM.	1	80-556
						NM.	1	80-670
						NM.	1	80-785
						NM.	1	81-44
						NM.	6	81-357
						NEW YORK EASTERN		
						NY.,E.	1	88-52
						OKLAHOMA NORTHERN		
						OK.,N.	4	88-386
						OK.,N.	4	88-775
						OK.,N.	4	88-941
						OK.,N.	4	91-314
						OK.,N.	4	91-399
						OK.,N.	4	91-400
						OK.,N.	4	91-401
						OK.,N.	4	91-402
						OK.,N.	4	91-470
						OK.,N.	4	91-471
						OK.,N.	4	91-472
						OK.,N.	4	91-473
						OK.,N.	4	91-474
						OK.,N.	4	91-475
						OK.,N.	4	91-932
						TENNESSEE EASTERN		
						TN.,E.	1	91-180
						TN.,E.	1	91-514
						TN.,E.	1	91-515
						TEXAS EASTERN		
						TX.,E.	1	86-410
						TX.,E.	1	86-569

~~TX.,E. 1 85-1465~~ vacated
~~TX.,E. 1 87-447~~ vacated
 TEXAS SOUTHERN
 TX.,S. 4 88-1511

VIRGINIA EASTERN
 VA.,E. 2 91-782
 VA.,E. 4 91-22
 VA.,E. 4 91-23
 VA.,E. 4 91-24
 VA.,E. 4 91-48
 VA.,E. 4 91-49
 VA.,E. 4 91-50
 VA.,E. 4 91-51
 VA.,E. 4 91-52
 VA.,E. 4 91-53

VIRGINIA WESTERN
 VA.,W. 5 91-72
 VA.,W. 7 91-752
 VA.,W. 7 91-797
 VA.,W. 7 91-798

~~NY.,E. 1 88-52~~ off-set

~~TX.,E. 1 86-410~~ vacated
~~TX.,E. 1 86-569~~ vacated

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

RESOLUTION TRUST CORPORATION, as
CONSERVATOR FOR STANDARD FEDERAL
SAVINGS AND LOAN ASSOCIATION,

Plaintiff,

v.

ALEXANDER J. STONE; PROFESSIONAL
INVESTORS INSURANCE GROUP, INC., A
DELAWARE CORPORATION; PROGRESSIVE
ACCEPTANCE CORPORATION, AN OKLAHOMA
CORPORATION; UNION PLANTERS
INVESTMENT BANKERS CORPORATION, A
TENNESSEE CORPORATION; UNION
PLANTERS INVESTMENT BANKERS GROUP,
INC., A TENNESSEE CORPORATION;
INVESTMENT GROUP MORTGAGE
CORPORATION, A TENNESSEE
CORPORATION; UNION PLANTERS
CORPORATION, A TENNESSEE
CORPORATION; AND UNION PLANTERS
NATIONAL BANK,

Defendants.

FILED

FEB 20 1992

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

CASE NO. 89-C-878-E

A M E N D E D J U D G M E N T

This cause came on to be heard at a trial by jury which concluded on March 25, 1991, and from which the Court enters a judgment as follows:

1. At the close of the proof, the Court ruled that Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc., Investment Group Mortgage Corporation, Union Planters Corporation and Union Planters National Bank were liable to the Plaintiff under Courts 11 and 13 of the Complaint. By its verdict, the jury determined that the Plaintiff suffered no damages for its claims under Counts 11 and 13 of the Complaint.
2. By its verdict, the jury decided that the Defendant Alexander J. Stone had no liability to the Plaintiff for any of the claims set forth in the Complaint.
3. By its verdict, the jury decided that the Defendants Union Planters Corporation and Union Planters National Bank had no liability to the Plaintiff pursuant to Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, 15 and 16 of the Complaint.
4. By its verdict, the jury decided that the Defendant, Professional Investors Insurance Group, Inc., had no liability to the Plaintiff under Counts 2, 3, 4, 6, 8, 9, 10 and 14 of the Complaint.
5. By its verdict, the jury decided that the Defendants Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc. and Investment Group Mortgage

Corporation had no liability to the Plaintiff pursuant to Counts 2, 4, 6, 8, 10, 12 and 14 of the Complaint.

6. By its verdict, the jury decided that the Defendants Professional Investors Insurance Group, Inc., Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc., and Investment Group Mortgage Corporation were jointly and severally liable to the Plaintiff under Count 1 of the Complaint, and awarded damages of \$200,000.00. Pursuant to 18 U.S.C. §1964(c), these damages are trebled.

7. By its verdict, the jury decided that the Defendants Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc., and Investment Group Mortgage Corporation were jointly and severally liable to the Plaintiff under Count 3 of the Complaint, and awarded damages of \$100,000.00. Pursuant to 18 U.S.C. §1964(c), these damages are trebled.

8. By its verdict, the jury decided that the Defendants Professional Investors Insurance Group, Inc., Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc., and Investment Group Mortgage Corporation were jointly and severally liable to the Plaintiff under Count 5 of the Complaint, and awarded damages of \$200,000.00. Pursuant to 18 U.S.C. §1964(c), these damages are trebled.

9. By its verdict, the jury decided that the Defendants Professional Investors Insurance Group, Inc., Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc., and Investment Group Mortgage Corporation were jointly

and severally liable to the Plaintiff under Count 7 of the Complaint, and awarded damages of \$200,000.00. Pursuant to 18 U.S.C. §1964(c), these damages are trebled.

10. By its verdict, the jury decided that the Defendants Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc., and Investment Group Mortgage Corporation were jointly and severally liable to the Plaintiff under Count 9 of the Complaint, and awarded damages of \$100,000.00. Pursuant to 18 U.S.C. §1964(c), these damages are trebled.

11. By its verdict, the jury decided that the Defendants Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc., and Investment Group Mortgage Corporation were jointly and severally liable to the Plaintiff under Count 15 of the Complaint, and awarded damages of \$1,500,000.00.

12. By its verdict, the jury decided that the Defendants Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc., and Investment Group Mortgage Corporation were jointly and severally liable to the Plaintiff under Count 16 of the Complaint, and awarded damages of \$500,000.00.

13. By its subsequent verdict on the issue of whether the Plaintiff was entitled to recover punitive damages from the Defendants Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc., and Investment Group Mortgage Corporation under Count 15 of the Complaint, the jury

decided that the Defendants Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc., and Investment Group Mortgage Corporation were jointly and severally liable to the Plaintiff for punitive damages under said Count 15 of the Complaint and awarded punitive damages of \$2,000,000.00.

14. By its subsequent verdict on the issue of whether the Plaintiff was entitled to recover punitive damages from the Defendants Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc., and Investment Group Mortgage Corporation under Count 16 of the Complaint, the jury decided that the Defendants Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc., and Investment Group Mortgage Corporation were jointly and severally liable to the Plaintiff for punitive damages under said Count 16 of the Complaint and awarded punitive damages of \$1,600,000.00.

15. Pursuant to 18 U.S.C. §1964(c), as a result of the jury having determined liability pursuant to 18 U.S.C. §1962 under Counts 1, 3, 5, 7, and 9 of the Complaint, the Court will conduct further proceedings to determine the amount, if any, of attorneys' fees and costs of the Plaintiff to be paid, jointly and severally, by the Defendants Professional Investors Insurance Group, Inc., Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc., and Investment Group Mortgage Corporation.

16. No judgment for or against Progressive Acceptance Corporation is contained in this Judgment, as the automatic stay in bankruptcy has not been lifted.

17. Thus, a total of \$4,400,000 in actual damages [as enhanced by trebling pursuant to 18 U.S.C. §1964(c)] was awarded by the jury, jointly and severally, against Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc. and Investment Group Mortgage Corporation (of which \$4,400,000, \$1,800,000 thereof was awarded jointly and severally against Professional Investors Insurance Group, Inc., Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc. and Investment Group Mortgage Corporation), and in addition to said \$4,400,000, a total of \$3,600,000 in punitive damages was awarded by the jury, jointly and severally, against Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc. and Investment Group Mortgage Corporation.

18. Attorney fees and costs are awarded to Plaintiff pursuant to 18 U.S.C. §1964(c) in the amount of \$942,265.30, the same being \$838,600 in attorney fees and \$103,665.30 in expenses. The \$942,265.30 is awarded jointly and severally against Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc., Investment Group Mortgage Corporation and Professional Investors Insurance Group, Inc.

19. Postjudgment interest is awarded to Plaintiff from June 7, 1991 at the current legal rate of 6.09 percent per annum. Prejudgment interest has been denied.

So ORDERED this 20 day of February, 1992, ~~to be effective from and after June 7, 1991.~~

S/ JAMES O. ELLISON

JAMES O. ELLISON
CHIEF JUDGE

SFSBI.822

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

FILED

FEB 20 1992 *cl*

JAMES ANDREW THOMAS,)
)
 Plaintiff,)
)
 vs.)
)
 DEPARTMENT OF THE ARMY,)
)
 Defendant.)

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

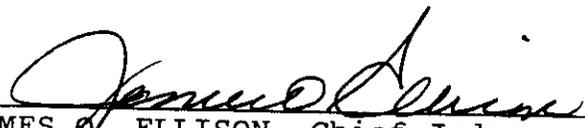
No. 88-C-1539-E ✓

ORDER AND JUDGMENT

The Court has considered the pending motions in light of relevant authority and concludes there is no reason to vacate its previous orders denying Plaintiff's Motions to Reinstate.

This case is therefore dismissed, parties to bear their own costs herein.

So ORDERED this 19th day of February, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

FILED

FEB 19 1992

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ROY A. CONKLIN,
Plaintiff
v.
UNITED STATES OF AMERICA,
Defendant

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

Civ. No. 90-C-398 E

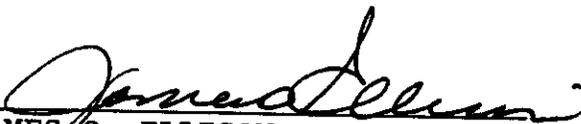
ORDER

AND NOW, this 18th day of February, 1992, upon the plaintiff's failure to appear at the jury trial scheduled for February 3, 1992 at 9:30 a.m. and the plaintiff's failure to abide by the Local Rules of this Court, it is hereby ORDERED AND DECREED that:

1. The defendant's motion to substitute the United States on behalf of the Internal Revenue Service is GRANTED.
2. The defendant's motion to dismiss the plaintiff's

complaint is GRANTED; the plaintiff's complaint is DISMISSED with prejudice.

SO ORDERED THIS 18th day of February, 1992.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Prepared by:


JAY P. GOLDER
Trial Attorney
Tax Division
U.S. Department of Justice
P.O. Box 7238
Washington, D.C. 20044
Telephone: (202) 514-6544
(FTS) 368-6544

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

CLESTER BILLS,)
)
 Plaintiff,)
)
 v.)
)
 DR. TERRY STRICKLIN,)
 STANLEY GLANZ, Tulsa County Sheriff,)
 DREW DIAMOND, Chief of Police)
 for the City of Tulsa, ROGER RANDAL,)
 Mayor for the City of Tulsa,)
)
 Defendants.)

91-C-303-E

F I L E D

FEB 19 1992

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

REPORT AND RECOMMENDATION AND ORDER OF U. S. MAGISTRATE JUDGE

REPORT AND RECOMMENDATION

This report and recommendation pertains to Plaintiff's Amended Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 (Docket #5)¹, Defendants' Motion to Dismiss or in the Alternative Motion for Summary Judgment (Docket #6), and Plaintiff's Response to Motion to Dismiss (Docket #11). Plaintiff alleges that, while incarcerated at the Tulsa County Jail, he was given inadequate medical attention in connection with an injury he sustained when he slipped and fell. He alleges that, since his fall, he has been denied the services of a specialist.

Defendants seek dismissal on the grounds that Plaintiff's complaint fails to state a claim upon which relief may be granted, because disagreement as to proper medical treatment does not result in a civil rights violation. Defendants also contend that they

¹ "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

cannot be held liable under a theory of respondeat superior in this case because no custom or policy of denial of medical care has been alleged.

Pro se complaints are held to less stringent standards than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). The district court may dismiss the complaint only if "the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id. at 521 (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). Thus, "if the [district] court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements." Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991).

The court can read plaintiff's complaint to state a claim for deliberate indifference to a prisoner's injury constituting a violation of the Eighth Amendment to the U. S. Constitution and therefore should not grant defendants' Motion to Dismiss. The court should consider in the alternative defendants' Motion for Summary Judgment.

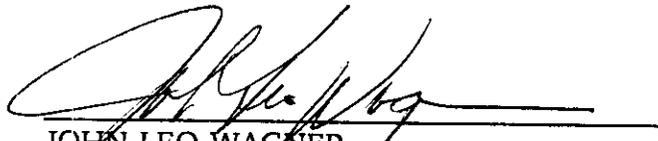
ORDER

Defendants have submitted a Special Report containing sworn affidavits and medical records in support of their Motion for Summary Judgment and plaintiff has submitted a limited response to the Motion to Dismiss listing names of witnesses who will support his claims and general unsupported statements.

The plaintiff is granted thirty (30) days to respond to the Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, a copy of which is

attached, and to submit to the court supporting affidavits from the witnesses listed in his response to the Motion to Dismiss.

Dated this 19th day of February, 1992.


JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) **Form of Affidavits; Further Testimony; Defense Required.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) **When Affidavits are Unavailable.** Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) **Affidavits Made in Bad Faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Mar. 2, 1987, eff. Aug. 1, 1987.)

Rule 56. Summary Judgment

(a) **For Claimant.** A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) **For Defending Party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) **Motion and Proceedings Thereon.** The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) **Case Not Fully Adjudicated on Motion.** If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the

Lee Brown and Karen G. Brown a/k/a Karen Gail Brown n/k/a Karen Gail Pryor, with interest and costs to date of sale is \$76,269.27.

The Court further finds that the appraised value of the real property at the time of sale was \$47,500.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered August 28, 1990, for the sum of \$42,660.00 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 January 29, 1992.

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, Ronnie L. Brown a/k/a Ronnie Lee Brown, as follows:

Principal Balance as of 8-28-90	\$63,478.50
Interest	9,877.78
Late Charges to Date of Judgment	579.60
Appraisal by Agency	750.00
Management Broker Fees to Date of Sale	697.60
Abstracting	470.00
Publication Fees of Notice of Sale	190.79
Court Appraisers' Fees	<u>225.00</u>
TOTAL	\$76,269.27
Less Credit of Appraised Value	- <u>47,500.00</u>
DEFICIENCY	\$28,769.27

plus interest on said deficiency judgment at the legal rate of 4.21 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, Ronnie L. Brown a/k/a Ronnie Lee Brown, a deficiency judgment in the amount of \$28,769.27, plus interest at the legal rate of 4.21 percent per annum on said deficiency judgment from date of judgment until paid.

BY JAMES O. ELLISON

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/esr

FILED

FEB 18 1992

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

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

W. DAVID HOLLOWAY, M.D., <u>et al.</u> ,)
)
Plaintiffs,)
)
v.)
)
PEAT, MARWICK, MITCHELL & CO., <u>et al.</u> ,)
)
Defendants.)

No. 84-C-814
(Conway)

STIPULATION REGARDING APPROVAL OF SETTLEMENT

This Stipulation regarding approval of the Settlement ("Approval Stipulation") is entered into by and between counsel for the Plaintiffs and the Settlement Class ("Class") in this action; designated counsel for the Settling Defendants; and R. Dobie Langenkamp, Successor Trustee in the bankruptcy proceedings involving Republic Financial Corporation and Republic Trust & Savings Company (the "Trustee") in regard to the proposed partial settlement of this litigation between the Class in this action and all but one of the Defendants.

RECITALS :

A. On August 23, 1991, the Settling Plaintiffs and Settling Defendants entered into a Stipulation of Settlement. The parties to that Stipulation of Settlement have also agreed to the terms of an Amendment to the Stipulation, a

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copy of which is attached hereto as Exhibit "A" (collectively "Holloway Stipulation").

B. On August 23, 1991, Settling Plaintiffs and Settling Defendants in Stover v. Peat, Marwick, Mitchell & Co., et al., Case No. C-87-57-D, also entered into a Stipulation of Settlement to resolve that action. The parties to that Stipulation of Settlement have also agreed to the terms of an Amendment to the Stipulation (hereinafter collectively "Stover Stipulation").

C. Unless otherwise stated, all definitions set forth in the Holloway and Stover Stipulations are adopted and incorporated herein.

D. The Stipulations in Holloway and Stover were preliminarily approved by the Courts and the Notice to the Settlement Class was given as ordered by the Court. The Court in Stover has entered a final order approving the partial settlement under the terms of the Stover Stipulation. The hearing on the fairness of the Holloway Stipulation is set for February 14, 1992.

E. The Trustee has objected to the proposed partial settlement in Holloway and Stover and he claims that he has standing to object and be heard regarding the fairness of the proposed settlements. The Settling Plaintiffs and Settling Defendants deny the Trustee has standing or the right to object to the settlement in Holloway and Stover. The Court

in Stover has ruled the Trustee has no standing and the Court in Holloway has tentatively ruled that the Trustee has no standing. The Trustee has filed a Petition in Error, to appeal the rulings in Stover and believes the tentative ruling in Holloway is also in error.

F. The Settling Plaintiffs and Settling Defendants believe the Trustee has no standing but desire to avoid the time involved in an appeal which would have the effect of delaying any distribution in Holloway or Stover.

THEREFORE THE PARTIES TO THIS APPROVAL STIPULATION AGREE AS FOLLOWS:

1. Counsel for Plaintiffs hereby agree to reduce and limit their request for attorneys' fees to 25% of the \$8,788,000 (plus accrued interest) in the Holloway escrow fund under the Holloway Stipulation. The request for a 25% attorneys' fee shall be for all work through January 15, 1992. The limitation of the fee request to 25% shall be contingent upon the approval by the Court of the terms of this Approval Stipulation.

2. The Settling Plaintiffs' counsel, the Settling Defendants, and the Trustee agree not to appeal any final order approving the Stipulations in Holloway or Stover. The Trustee agrees to and will immediately withdraw all objections to the settlement in Holloway or Stover. The Trustee also agrees to immediately dismiss with prejudice the

Petition in Error filed with the Oklahoma Supreme Court in Stover upon the entry of a final order of the Court in Stover implementing this Approval Stipulation.

3. The parties to this Approval Stipulation further agree that they will not directly or indirectly encourage or assist any Class member or person to file an appeal of the final orders approving the settlements in Holloway or Stover.

4. Settling Plaintiffs and Settling Defendants agree to eliminate the Prosecution Fund as defined in Paragraph 13(d) of the Stipulation and agree to an order distributing the sums in the Prosecution Fund (including all interest thereon) along with the distribution under Paragraph 13(c) of the Stipulation. Trustee's agreement herein is contingent upon the distribution of the Prosecution Fund in both Holloway and Stover. Magistrate John Leo Wagner, the Settling Plaintiffs and Settling Defendants agree that the conditions for distribution of the Prosecution Fund in Paragraph 13(d) of the Stipulation have been satisfied.

5. The parties to this Approval Stipulation agree that the Trustee is not a member of the Class in Holloway or Stover and will seek an order of the Courts in Holloway and Stover clarifying that fact, specifically finding without limitation: (i) that the provisions of Paragraph 17 and 18 of the Stipulation do not pertain to RFC v. Peat, Marwick, Mitchell & Co., CJ-86-01426 in the District Court, Tulsa

County, Oklahoma; and (ii) the release provisions of the Stipulation do not apply to claims, causes of action or other rights held by the Trustee, including, without limitation, that asserted in Langenkamp v. McKinney pending in the United States Bankruptcy Court for the Northern District of Oklahoma. Further, Settling Plaintiffs' counsel (including Stover counsel) and Settling Defendants' counsel agree not to object to the claims acquired or to be acquired by the Trustee and, to the extent possible, will not object to or resist the Trustee's asserted right to receive distribution thereon.

6. The Trustee agrees:

- a. if requested, to provide assistance in the claims evaluation and distribution process; and
- b. to support the approval of the Settlement consistent with this Approval Stipulation.

7. The Settling Defendants agree that any use of the Settlement Fund pursuant to Paragraph 12(ii) of the Stipulation will be paid from the Claims Over Fund in Paragraph 13(d) of the Stipulation.

8. In all other respects, the Stipulations are hereby ratified and confirmed, and the terms, provisions, conditions and covenants of the Stipulations remain in full force and

effect without modification, except as specifically set out herein and except as approved by the Court.

9. The provisions of this Approval Stipulation, however, shall not waive or affect any rights arising by operation of law.

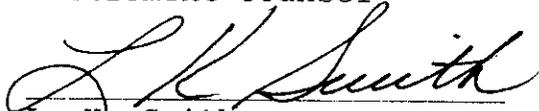
10. This Approval Stipulation is contingent upon a final, non-appealable order being entered in Holloway and Stover appropriate to effect the provisions and intent hereof.

11. The undersigned counsel for Settling Defendants are authorized to enter into this Approval Stipulation on behalf of all Settling Defendants.

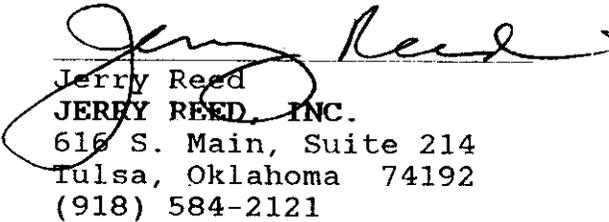
IN WITNESS WHEREOF, the parties hereto have caused this Approval Stipulation to be executed by them or by their duly authorized attorneys as of the day and year set out below.

DATED this 13th day of February, 1992.

Settling Defendants by
Settlement Counsel

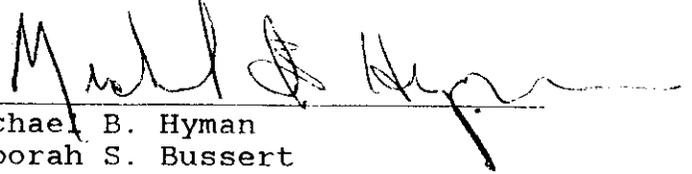


L. K. Smith
J. Schaad Titus
**BOONE SMITH DAVIS HURST
& DICKMAN**
500 ONEOK Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103
(918) 587-0000

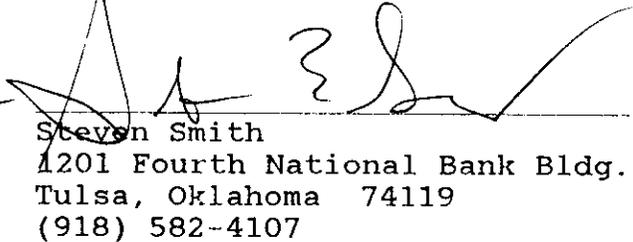


Jerry Reed
JERRY REED, INC.
616 S. Main, Suite 214
Tulsa, Oklahoma 74192
(918) 584-2121

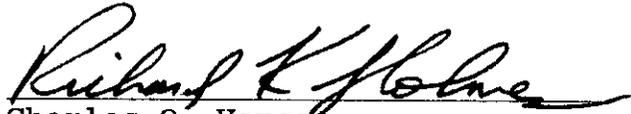
Settling Plaintiffs



Michael B. Hyman
Deborah S. Bussert
**MUCH SHELIST FREED DENENBERG
& AMENT, P.C.**
200 N. SaSalle, Suite 2100
Chicago, Illinois 60601-1095
(312) 346-3100



Steven Smith
1201 Fourth National Bank Bldg.
Tulsa, Oklahoma 74119
(918) 582-4107



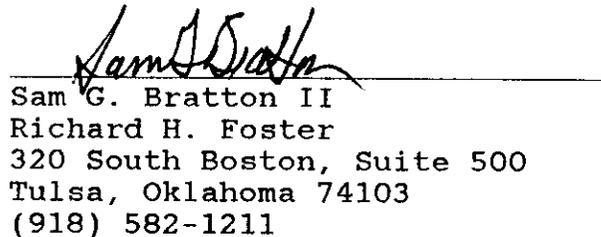
Charles O. Hanson
Richard K. Holmes
Stewart Field
HANSON HOLMES FIELD & SNIDER
5918 East 31st Street
Tulsa, Oklahoma 74135
(918) 627-4400

Successor Trustee



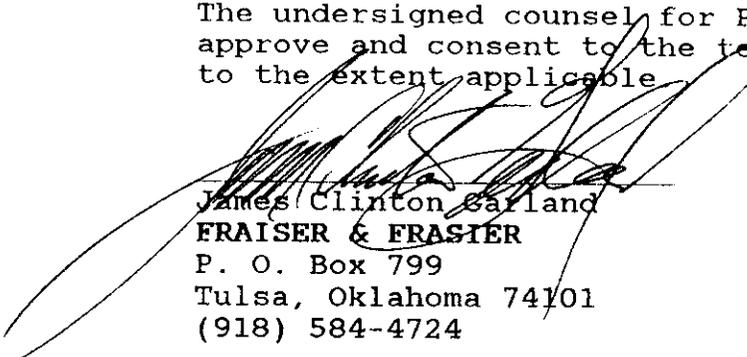
R. Dobie Langenkamp
400 S. Boston, Suite 1200
Tulsa, Oklahoma 74103
(918) 583-4514

Attorney for Successor Trustee

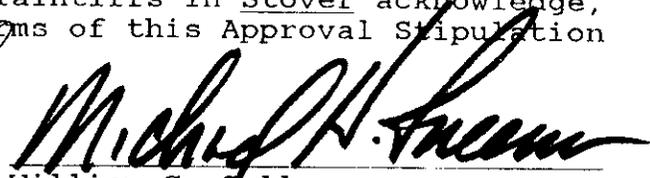


Sam G. Bratton II
Richard H. Foster
320 South Boston, Suite 500
Tulsa, Oklahoma 74103
(918) 582-1211

The undersigned counsel for Plaintiffs in Stover acknowledge, approve and consent to the terms of this Approval Stipulation to the extent applicable.

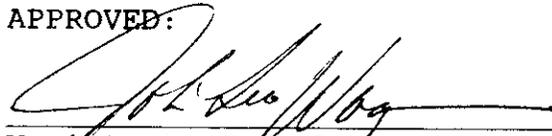


James Clinton Garland
FRAISER & FRASIER
P. O. Box 799
Tulsa, Oklahoma 74101
(918) 584-4724



William C. Sellers
Michael H. Freeman
P. O. Box 1404
Sapulpa, Oklahoma 74067-1404
(918) 224-5357

APPROVED:



Magistrate John Leo Wagner

(h) "Claims Over" means any action, claim or proceeding (such as, for example, an action, claim or proceeding for contribution or indemnification, regardless of whether such action, claim or proceeding is asserted by way of cross-claim, third-party claim or independent claim or action) which is or may be brought against any of the Settling Defendants seeking recovery on any grounds relating in any way to the liability or liabilities arising from the facts giving rise to the Holloway, Stover or RFC Litigation.

- d. The first sentence of paragraph 18 is deleted and such paragraph shall be amended to read as follows:

"The foregoing is not intended to diminish in any respect any claims or potential claims that the Class may have against Peat, Marwick, nor any claims or potential claims that Peat, Marwick may have against the Settling Defendants. Further, the parties recognize that the members of the Class that is certified in the continuing litigation against Peat, Marwick may be different from the members of the Class as defined herein. Therefore, the provisions of the preceding paragraph with regard to satisfaction of Claims Over by the Class shall be deemed to include and apply to any judgment or recovery obtained against Peat, Marwick by any member or group of members within the Class as well as the Class itself."

2. The FDIC was not originally a Settling Defendant under the Stipulation but desires to become a Settling Defendant under the Stipulation with this Amendment, subject to the following provisions applicable only to the FDIC:

- a. Paragraph 21 of the Stipulation shall not apply to the FDIC or FDIC's counsel except that the FDIC agrees to comply to the extent possible with reasonable discovery requests.
- b. The General Release of Other Settling Defendants, the General Release of International Surplus Lines Insurance Company, and the Stipulation shall be governed and interpreted in accordance with the law of the State of Oklahoma as set out in such agreements except to the extent that federal law applies to the FDIC.

- c. Nothing contained in paragraph 12 of the Stipulation should compel the FDIC to accept representation by the two law firms described in that paragraph; provided, however, that the FDIC shall have no right to recover its attorneys' fees, costs or expenses under the provisions of paragraph 12 or 13 of the Stipulation to the extent that it uses attorneys other than the law firms designated to represent and act on behalf of Settling Defendants.
- d. The General Release of the Insurance Company and the General Release of Other Settling Defendants will be modified to reserve any claims the FDIC has against accountants, attorneys or other professionals who provided services to Central Bank & Trust, as well as any contractual claims against officers and/or directors of Central Bank & Trust as a maker, endorser or guarantor of a promissory note or other instrument of indebtedness to Central Bank & Trust or any other financial institution or the FDIC.

3. Exhibit "C" to the Stipulation is amended to correct the identification and listing of all members of the Stover Class. Exhibit "C" is attached hereto and incorporated herein by reference.

4. In all other respects, the Stipulation is hereby ratified and confirmed, and the terms, provisions, conditions and covenants of the Stipulation remain in full force and effect without modification, except as specifically set out herein. The provisions of this Amendment, however, shall not waive or affect any rights arising by operation of law.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to the Stipulation of Settlement to be executed by them or by their duly authorized attorneys as of the day and year set out below.

\\\\\\

DATED the _____ day of _____, 1991.

Steven E. Smith
1201 Fourth National Bank Bldg.
Tulsa, Ok 74119
(918) 582-4107

and:

MUCH SHELIST FREED DENENBERG &
AMENT, P.C.

By:

Michael B. Hyman
200 N. LaSalle St., Suite 2100
Chicago, Illinois 60601-1095
(312) 346-3100

and:

HANSON HOLMES FIELD & SNIDER

By:

Charles O. Hanson
Richard K. Holmes
Stewart E. Field
5918 East 31st Street
Tulsa, Ok 74135
(918) 627-4400

and:

Joseph C. Long
University of Oklahoma,
College of Law
300 Timberdell Road
Norman, Ok 73019
(405) 325-4699

ATTORNEYS FOR HOLLOWAY PLAINTIFFS

\\amd-stip.hol

Settling Defendants' signatures and their attorneys' signatures are on the following signature pages which are part of this Amendment. (Balance of page intentionally left blank).

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

W. DAVID HOLLOWAY, M.D.,
et al.,

Plaintiffs,

vs.

PEAT, MARWICK, MITCHELL & CO.,
a partnership, et al.,

Defendants.

No. 84-C-814-Conway

**ORDER AWARDING PLAINTIFFS' COUNSEL ATTORNEYS'
FEES AND REIMBURSEMENT OF COSTS AND EXPENSES**

Notice having been given, as directed by the Court by Order dated December 13, 1991, pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure, of the hearing on the partial settlement of the above-captioned action (the "Action") on February 14, 1992 (the "Hearing"), and of the intention of plaintiffs' counsel ("Counsel") to apply for an award of attorneys' fees in an amount of up to 30 percent of the settlement fund, plus reimbursement of actual costs and expenses incurred through January 15, 1991, in the Action;

The Court having considered plaintiffs' Joint Petition of Class Counsel and Memorandum for an Award of Attorneys' Fees and Reimbursement of Costs and Expenses;

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The Hearing having been held on February 14, 1992, and this Court having executed an Order With Respect to Final Approval of Stipulation, approving the Settlement as fair, reasonable and adequate and in the best interest of plaintiffs and the Settlement Class and dismissing the action on the merits and with prejudice against the Settling Defendants only;

The Court adopts the "Common Fund" approach to fees with regard to this matter as more fully set forth in Brown v. Phillips Petroleum Co., 838 F.2d 451, 456 (10th Cir.) and Paul, Johnson, Alston & Hunt v. Graulty, 886 F.2d 268, 272 (9th Cir. 1989), Blum v. Stenson, 456 U.S. 886 (1984) and Mashburn v. National Health Care, Inc., 684 F.Supp. 697 (N.D. Ala. 1988);

The Court having considered all appropriate criteria as set out in Johnson v. Georgia Highway Express, 488 F.2d 714 (5th Cir. 1974) and finding ample evidence of:

- a) the considerable amount of time and labor required and the very contingent nature of the undertaking of the case by Counsel;
- b) the novelty and difficulty of the case, the unusual number of pre-judgment appeals to the U.S. Supreme Court and the Tenth Circuit Court of Appeals;
- c) the skill and aptitude required of the attorneys to pursue and maintain this litigation to this stage;
- d) the demands of this case and its limitation or preclusion of Counsel of other employment due to this case;
- e) the customary fee charged by Counsel for similar work in their community and the delay in payment or recoupment of expenses;
- f) the time limitations imposed in representation on this matter as Counsel;

g) the multi-million dollar partial settlement reached and approved by this Court as evidence of the very significant results by Counsel;

h) the considerable experience, knowledge, reputation and abilities of Counsel;

i) the considerable time that Counsel have represented the clients and the several different forums in which that representation has occurred;

j) the awards in similar cases which have awarded amounts considerably in excess of thirty percent (30%) as requested here and the many cases which have used a considerably higher lodestar multiplier to achieve those amounts.

The Court also having carefully considered all petitions, memoranda, affidavits and other material submitted by plaintiffs' counsel and reviewed letters in support from class members and timely objections of class members and having found such objections to be without merit;

The Court further considering the recommendation and support of the award of attorneys' fees by the Settlement Judge, Magistrate Judge John Leo Wagner;

After careful consideration of the lodestar, multiplier and percentage methods of reasonable compensation to plaintiffs' counsel, the Court finds that the percentage method submitted by plaintiffs, and particularly the requested 30 % of the original settlement fund plus earned interest, fairly establishes the reasonable and proper attorneys' fee award to counsel, is a proper charge against the common fund recovered, and also protects the interests of the class members.

The Court further finds that Counsel has submitted to this Court the Stipulation Regarding Approval of Settlement of February

13, 1992, and is requesting this Court to set an award of 25 % of the fund plus interest, and hereby approves of said stipulation and request as fair and reasonable.

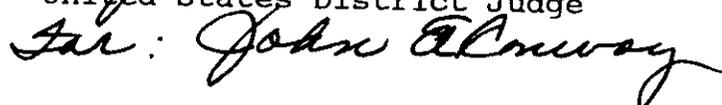
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Counsel for plaintiffs are awarded the sum of 25 % of the \$8,788,000 settlement fund, to wit: \$2,197,000, plus 25 % of the accrued interest equal to the rate of interest earned by the fund to the date of distribution, as and for their legal fees through January 15, 1992, which sum the Court finds to be fair and reasonable.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Counsel for plaintiffs are awarded in addition reimbursement of costs and expenses in the amount of \$102,891.64 for expenses, and \$142,108.36 is awarded for reimbursement of members of the Settlement Class who contributed funds for expenses in the prosecution of this litigation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, upon final approval, of the Proposed Partial Settlement by this Court and the Court in Stover v. Peat Marwick Mitchell & Co., No. C-87-57-D (District Court of Creek County, OK), in accordance with the terms of the Stipulations, the Escrow Agent of the Holloway Settlement is authorized and directed to pay the sums awarded here by a check made jointly payable to Steven E. Smith, Much Shelist Freed Denenberg & Ament, P.C., and Hanson, Holmes, Field & Snider. Based on agreement of Counsel, the fees shall be allocated and distributed by Counsel. Counsel are also directed to make

reimbursement to class members who contributed funds for prosecution of the litigation.

SO ORDERED at Tulsa, Oklahoma, this 18th day of February, 1992.


United States District Judge
for: 

FILED

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

W. DAVID HOLLOWAY, M.D., et al.,)
)
 Plaintiffs,)
)
 v.)
)
 PEAT, MARWICK, MITCHELL & CO.,)
 et al.,)
)
 Defendants.)

RECEIVED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 84-C-814 (Conway)

**ORDER WITH RESPECT TO FINAL APPROVAL OF
STIPULATION OF SETTLEMENT WITH ALL
DEFENDANTS EXCEPT PEAT, MARWICK,
MITCHELL & CO., NOW KNOWN AS KPMG PEAT MARWICK**

Plaintiffs have executed a Stipulation of Settlement with the Settling Defendants¹ (collectively, the "Settling Parties"), dated August 23, 1991. A Stipulation of Settlement was filed with the Court on August 23, 1991 (the "Stipulation"), an Amendment to the Stipulation dated February 14, 1992 was filed with the Court (the "Amendment") and a Stipulation Regarding

¹ The "Settling Defendants" are all the Defendants except Peat, Marwick, Mitchell & Co., and are listed as follows: William J. Doyle; Robert J. Peterson; Edward B. Wilcox; G. Larry Young; Ted C. Bodley; Edward L. Taylor; G. Richard Degen; Robert C. Bates; Bob C. Lamirand; Rodney Miller; Timothy J. Sullivan, Roger H. Laubach; Phillips Breckenridge, Administrator of the Estate of Glen F. Prichard, deceased; Personal Representative of the Estate of Brown J. Akin, Jr.; Trustee of the Bankruptcy Estate of Sunbelt Bancorporation, Inc.; Paul W. Anderson, Jr.; Martha J. Cravens; Charles Schusterman; R.R. Bastian III; Hal W. Oswald; Harold J. Born; Horace H. Porter; William W. Ramsey; Altus E. Wilder III; Orville J. Bertalot; Wesley R. McKinney; Keith E. McNeal; Ansil Ludwick, Jr.; Richard G. Bell; Douglas W. Dixon; Dan W. Allred; Dwight A. Pilgrim; James D. Essig; Wilma F. Wood; Richard Willford; FDIC, as Receiver of Central Bank & Trust, formerly Sunbelt Bank & Trust Co. and formerly Republic Bank & Trust Co.

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Approval of Settlement dated February 13, 1992 and was filed with the Court (the "Approval Stipulation") (collectively, the "Stipulations").

Solely for the purpose of effectuating the settlement, the Settling Defendants agreed to the establishment of a Settlement Class as defined in Paragraph 1(e) of the Stipulation ("Settlement Class").

By Order dated December 13, 1991, the Court preliminarily approved the Stipulation with the Settling Defendants and authorized notice to the Settlement Class. On December 30, 1991, Plaintiffs' Counsel mailed 6,491 notices and on January 15, 1992 a corrected notice was mailed (in the form approved by the Court) to the members of the Settlement Class identified in the lists of creditors submitted to the Class Plaintiffs by the successor trustee in the bankruptcy proceedings involving Republic Financial Corporation ("RFC") and Republic Trust & Savings Company ("RTS") or otherwise identified. Plaintiffs' counsel also published a publication notice (in the form approved by the Court) in the national edition of the Wall Street Journal, The Daily Oklahoman and the Tulsa World.

Counsel for the Settling Parties have filed memoranda and other Briefs including the Affidavit of Settlement Judge John Leo Wagner in support of the settlement. Various members of the Class filed objections and letters of support of the settlement.

Pursuant to the Stipulation, the Settlement Class reserves its full rights to pursue its claims against the non-settling defendant.

Having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises, the Court concludes that the settlement negotiations were conducted at arms' length and in good faith by counsel acting on behalf of the Plaintiffs and the Settlement Class and Settling Defendants under the supervision of the Settlement Judge John Leo Wagner.

NOW, THEREFORE, on reviewing the Stipulations and materials submitted by counsel, and based on the pleadings and papers in this action, arguments of counsel in connection with the settlement and others as well as after addressing questions of the members of the Settlement Class,

IT IS ORDERED THAT:

1. For purposes of the Stipulations only, the Court approves and certifies, pursuant to Rule 23 of the Federal Rules of Civil Procedure, the following Settlement Class known as the "Holloway Class":

a. For purposes of the settlement, the Class consists of all persons who purchased or held securities or other evidence of indebtedness (sold to the investing public) by the Republic Companies (as defined in the Stipulation), and who owned or held the same on September 24, 1984, as identified in the schedule in

Bankruptcy Cases No. 84-1460, No. 84-1461, No. 84-1462, and No. 85-1458, as modified by proceedings of the Bankruptcy Court, or otherwise included in the class certification process, including but not limited to all members of both the Holloway Class and the Stover Class.

- b. The Class also includes any person(s) who owned a security (although such person may not have owned the security on September 24, 1984), issued by the Republic Companies and (a) who has been or who may later be found or determined to have received a voidable preference under the Bankruptcy Code - 11 U.S.C. §547 and/or §550 - in a final, not further appealable judgment in any action(s) by the trustee for the estate(s) of the Republic Companies against such person(s), or (b) who has entered into some type agreement with the trustee for the estate(s) of the Republic Companies (in settlement of a claim or assertion by the trustee for the estate(s) of the Republic Companies) whereby such person has paid or is obligated to pay or transfer any monies or other things of value to the trustee in the nature of a repayment obligation of a voidable preference under 11 U.S.C. §547 and/or §550. Any persons described in this paragraph who are not yet identified in either the

Stover Class or the Holloway Class shall be allocated between the Holloway Class and the Stover Class according to the 67.6% and 32.4% division, respectively, among those two Classes as set forth in paragraph 1(p) of the Stipulation.

- c. Excluded from the Class are (1) the Republic Companies, their successors and assigns, and (2) any Settling Defendants who are officers and directors of the Republic Companies, their personal representatives, heirs or assigns. No distribution shall be made to any member of the Class against whom the Class or any individual member of the Class has a claim related to the facts giving rise to this litigation, until the Republic Litigation is finally resolved.
- d. The Holloway Class consists of all members of the Class except the members of the Stover Class. The Stover Class consists of those persons specifically identified by name in Exhibit "C" of the Stipulation, who agreed in 1987 to participate in the Stover Litigation and who executed retainer agreements with Stover counsel.
- e. The Successor Trustee of the bankruptcy estates of RFC and RTS (the "Trustee") is not a member of the Class or the Settlement Class. Therefore, without limitation:
 - (i) the provisions of Paragraph 17 and 18 of the Stipulation do not pertain to RFC v. Peat, Marwick,

Mitchell & Co., CJ-86-01426 in the District Court, Tulsa County, Oklahoma; and (ii) the release provisions of the Stipulation do not apply to claims, causes of action or other rights held by the Trustee, including, without limitation, those asserted in Langenkamp v. McKinney pending in the United States Bankruptcy Court for the Northern District of Oklahoma.

2. Steven E. Smith and Joseph Long as well as the firms of Much Shelist Freed Denenberg & Ament and Hanson Holmes Field & Snider are approved as counsel for the Settlement Class.

3. The Class Notice given to the Holloway Class of the settlement set forth in the Stipulation and the other matters set forth therein was the best notice practicable under the circumstances, including the individual notice to all members of the Settlement Class who could be identified through reasonable effort and the publication notice published in the national edition of the Wall Street Journal, the Tulsa World and The Daily Oklahoman. The Class Notice fully and accurately informed members of the Holloway Class of all material elements of the Class Actions and the proposed settlement, and provided due and adequate notice of those proceedings and of the matters set forth therein to all persons entitled to such notice. The Class Notice fully satisfied the requirements of Rule 23(c)(2) and 23(e) of the Federal Rules of Civil Procedure, and the United States Constitution.

4. The objections to this settlement are hereby denied.

5. The Court finds that no member of the Holloway Class seeks to exclude himself, herself or itself from the Settlement Class.

6. The Court finds that the settlement, as evidenced by the Stipulations, is in all respects, fair, reasonable, and adequate, in accordance with Rules 23 and 54 of the Federal Rules of Civil Procedure, and directs implementation of all the terms and provisions thereof.

7. Plaintiffs, the Holloway Class and Settling Defendants shall consummate the settlement according to the terms of the Stipulations.

8. This action is dismissed with prejudice and on the merits and without costs with respect to Settling Defendants only pursuant to the terms of the Stipulations and including, but not limited to, a dismissal with prejudice of all claims, actions, causes of actions, suits, obligations, debts, demands, agreements, promises, liabilities, controversies, costs, expenses, and attorneys' fees whatsoever which the plaintiffs and the Settlement Class, individually and in their representative capacity and their respective heirs, executors, administrators, representatives, agents, successors and assigns or any of them have or may have, or which have been or could have been asserted against any of the Settling Defendants and their respective affiliates, subsidiaries, predecessors, successors, officers,

directors and employees in connection with, arising out of, or which are in any way related to any acts, failures to act, omissions, misrepresentations, facts, events, transactions, occurrences or other matters set forth, alleged, embraced or otherwise referred to in this action or which could have been brought against Settling Defendants.

9. A separate order shall be entered approving an award of attorneys' fees and expenses for Settlement Class Counsel. That order shall not disturb or affect any of the terms of this Order.

10. Upon Settlement Effective Date as defined in the Stipulation, the release provisions set out in Paragraph 28 of the Stipulation, and the provisions of Paragraph 17 and Paragraph 13 of the Stipulation as amended shall be effective and operate according to their terms and the terms of this Order.

11. The Court finds that there is no just reason for delay in the entry of judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, and the Clerk of the District Court is directed to enter this judgment. Certification under Rule 54(b) will not result in unnecessary appellate review nor will review of the adjudicated claims moot any further developments in this case. Even if subsequent appeals are filed, the nature of these claims are such that the appellate court would not have to decide the same issues more than once.

12. Upon the Settlement Effective Date, as defined in the Stipulation, distribution and payment of the Settlement Fund

pursuant to the Stipulations shall be made in the following manner:

- (a) In accordance with Paragraph 13(a) of the Stipulation, \$245,000 shall be applied to reimbursement of all costs and expenses advanced by the Settlement Class and Settlement Class Counsel;
- (b) In accordance with Paragraph 13(b) of the Stipulation, 25% of the Holloway Settlement Fund (plus accruing interest thereon) shall be reserved from the Settlement Fund with respect to Settlement Class Counsel's petition for attorneys' fees, costs and expenses;
- (c) In accordance with Paragraph 13(c) of the Stipulation, one-half of the residue (plus accruing interest thereon) shall be distributed to the Holloway Class, upon application of plaintiffs' counsel (less a fund to be held for any person(s) against whom the bankruptcy trustee of the Republic Companies (1) has already obtained a judgment, or (2) has pending and unresolved an action asserting that such person(s) has received a voidable preference under 11 U.S.C. §547 and/or §550 from the Republic Companies;
- (d) In accordance with the Approval Stipulation, one-quarter of the residue (plus accruing interest thereon) shall be distributed to the Holloway Class along with the distribution under Paragraph 13(c) of

the Stipulation and consistent with the terms of Paragraph 12(c) of this Order set out above.

- (e) As provided in Paragraph 13(d) and (e) of the Stipulation, one quarter of the residue (plus accruing interest thereon) shall be retained in escrow for defense of Claims Over and disbursed consistent with the Stipulations as approved by the United States Magistrate or Special Master John Leo Wagner.

13. In the event that the settlement does not become effective in accordance with the terms of the Stipulation, then this Order shall be rendered null and void and be vacated and the Stipulations and all orders entered in connection therewith by this Court shall be rendered null and void.

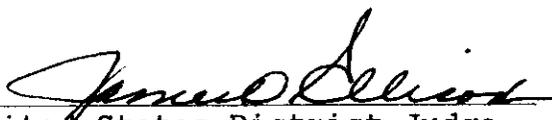
14. Without affecting the finality of this Order in any way, this Court retains jurisdiction of the settlement for all further proceedings, including matters related to administration and disbursement of the settlement funds, retains jurisdiction over the Settling Defendants solely with respect to their continuing covenants under the Stipulations and approves the delegation of duties to Magistrate John Leo Wagner as Magistrate or Special Master under the Stipulations.

15. Without affecting the finality of this Order in any way, this Court retains jurisdiction of this proceeding as to all claims of Plaintiffs and the putative class against the non-

settling defendant, Peat, Marwick, Mitchell & Co., now known as
KPMG Peat Marwick.

IT IS SO ORDERED.

Dated: Tulsa, Oklahoma February 18, 1992.


United States District Judge
for: John E. Conway

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

FILED

FEB 18 1992

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

ALBERT D. TOLIVER and SHERRY
L. TOLIVER, his wife,

Plaintiffs,

vs.

CURTIS TRANSPORT, INC.,
GEORGE ALFRED HARTLE, and
COREY WAYNE BATES,

Defendants.

Case No. 90-C-584-E

ORDER

COMES NOW for hearing this 15th day of January, 1992, the motion to dismiss filed herein by defendant Bates. All parties are present by and through their attorneys of record. The court being fully advised in the premises finds that the motion to dismiss should be and hereby is sustained. The claims of the plaintiff and the claims of co-defendants for contribution are hereby dismissed with prejudice. The claim of defendant Curtis Transport for property damage is dismissed without prejudice to allow the parties to proceed with arbitration pursuant to the inter-company arbitration agreement.

/s/ JAMES O. ELLISON

JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

[Signature]
D. STUART BASHAM

[Signature]
RICHARD CARPENTER

[Signature]
DON HAMMER

[Signature]
TIMOTHY S. HARMON

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

LOCAL AMERICA BANK OF TULSA,
a federal savings bank,

Plaintiff,

vs.

Case No. 91-C-148-E

DON E. GASAWAY, a/k/a DONALD
E. GASAWAY, and GEORGANN
GASAWAY, a/k/a GEORGANN S.
GASAWAY, husband and wife;
SUTTON INVESTMENTS, INC.,
an Oklahoma corporation;
PIONEER SAVINGS AND
INVESTMENT COMPANY, an
Oklahoma corporation;
BANK OF COMMERCE AND TRUST
COMPANY; UNITED STATES OF
AMERICA, ex rel. DEPARTMENT
OF TREASURY, INTERNAL REVENUE
SERVICE; STATE OF OKLAHOMA,
ex rel. OKLAHOMA TAX
COMMISSION; JOHN CANTRELL,
County Treasurer of Tulsa
County, Oklahoma; THE BOARD
OF COUNTY COMMISSIONERS OF
TULSA COUNTY, OKLAHOMA;
CAMPBELL ENTERPRISES, INC.,
an Oklahoma corporation;
BANK OF OKLAHOMA, N.A.;
CORE INVESTMENT GROUP, INC.;
JOHN W. MULLEN, JR.; BANKERS
FINANCIAL LIFE COMPANY; SHERRON
ERICKSON SMITH, Independent
Executrix of the Estate of
Stasia Ericksen, deceased;
WALDO S. POWELL; and JOAN
DODGE,

Defendants.

FILED

FEB 18 1992

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

AGREED PARTIAL JOURNAL ENTRY OF JUDGMENT

This cause comes on for hearing this 14 day of February,
1992, before the undersigned Judge of the United States District
Court for the Northern District of Oklahoma. The Plaintiff, Local
America Bank of Tulsa, a federal savings bank ("Local"), appears

through its attorneys of record, Rosenstein, Fist & Ringold, by Margaret S. Millikin. The defendants, John W. Mullen, Jr., ("Mullen"), Waldo S. Powell ("Powell"), Sherron Ericksen Smith, independent executrix of the estate of Stasia Ericksen, deceased ("Smith") and Joan Dodge a/k/a Joann Dodge ("Dodge"), are in default and do not appear. The defendants, Pioneer Savings and Trust Company ("Pioneer"), Core Investment Group, Inc. ("Core"), Bankers Financial Life Company ("Bankers"), do not appear pursuant to Disclaimers of Interest filed in this action. The defendant, Don E. Gasaway, a/k/a Donald E. Gasaway, having filed Chapter 13 Bankruptcy on January 27, 1992, and the defendant, Georgann Gasaway, a/k/a Georgann S. Gasaway, pursuant to the co-debtor stay imposed by 11 U.S.C. §1301, do not join in this judgment. The defendants, Successor Trustee for the Estate of Sutton Investments, Inc. ("Sutton"), The Federal Deposit Insurance Corporation in its corporate capacity as successor to all rights of Bank of Commerce & Trust Company in certain notes and mortgages involved herein ("FDIC"), United States of America, ex rel. Department of Treasury, Internal Revenue Service ("IRS"), The State of Oklahoma ex rel. Oklahoma Tax Commission ("OTC"), John Cantrell, County Treasurer of Tulsa County, Oklahoma ("Cantrell"), The Board of County Commissioners of Tulsa County, Oklahoma ("Board"), Campbell Enterprises, Inc. ("Campbell"), and Bank of Oklahoma, N.A., Southwest, Tulsa, Oklahoma ("BOK") appear through their attorneys of record and approve this Agreed Partial Journal Entry of Judgment.

On January 30, 1992, this Court issued an order directing the parties to enter into an Agreed Partial Journal Entry of Judgment disposing of all issues not relating to the Debtor Defendants. Pursuant to that order, the parties submit this Agreed Partial Journal Entry of Judgment and the Court makes the following findings:

1. This Court finds that it has jurisdiction over the subject matter, all parties joining in this Agreed Partial Journal Entry of Judgment and all defendants who are in default or who have disclaimed.

2. The Court further finds that the defendants, Mullen, Powell, Smith, Dodge, Pioneer, Bankers, Sutton, the FDIC, the IRS, the OTC, Cantrell, the Board, Campbell and BOK were served with a summons and a copy of Local's Complaint, First Amendment to Complaint and Second Amendment to Complaint, as evidenced by the verified returns of service and certificates of mailing filed herein. Sutton was not served due to the automatic stay imposed by its bankruptcy filing in the United States Bankruptcy Court for the Northern District of Louisiana - Opelousas Division, Case No. 80-50938. However, Sutton voluntarily entered an appearance in this case on September 26, 1991. The stay in the Sutton bankruptcy was modified on November 25, 1991, allowing all parties with pending claims in the action herein to prosecute the claims to judgment and enforce them against Sutton.

3. The Court further finds that Dodge, Mullen, Powell and Smith have not made any response to Local's Complaint, First

Amendment to Complaint and Second Amendment to Complaint and that they are in default pursuant to Fed. R. Civ. P. Rule 12.

4. The Court further finds that on December 29, 1988, Local took possession of Community Federal Savings and Loan Association ("Community"), successor in interest to MidAmerica Federal Savings and Loan Association ("MidAmerica"), which is successor in interest to Tulsa Federal Savings & Loan Association ("Tulsa Federal") and succeeded to all right, title, powers and privileges of Community. On that day, Community transferred substantially all of its assets, deposits and secured liabilities, including Note I and Mortgage I, to Local. Local is the holder of Note I and Mortgage I which are subjects of this foreclosure action.

5. The Court further finds that Tulsa Federal recorded a mortgage ("Local Mortgage I") purportedly securing a note made, executed and delivered by the Debtor Defendants to Tulsa Federal affecting the following described real property:

All that part of Lots Eighteen (18) and Nineteen (19), Block Eight (8), WOODLAND HEIGHTS, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof, described as follows, to-wit:

Beginning at the Southeast corner of said Lot 18, thence North along the East line of said Lot 18, a distance of One hundred twenty-three and two tenths (123.2) feet to the Northeast corner of said Lot; thence West along the North line of said Lot, a distance of One hundred seven and five tenths (107.5) feet to a point on the North line of said Lot; thence Southerly on a straight line to a point on the South line of said Lot 19, Seventy (70) feet West on the Southeast corner of said Lot 19; thence East along the South line of 19 and 18, One hundred seventy (170) feet to the Southeast corner of said Lot 18, the point of beginning (the "Property"),

on March 7, 1975 in Book 4156 at Page 221 in the office of the County Clerk of Tulsa County.

6. The Court further finds that MidAmerica filed a mortgage ("Local Mortgage II") purportedly securing a note made, executed and delivered by the Debtor Defendants to MidAmerica and purportedly affecting the Property, on June 24, 1977, in Book 4210 at Page 2397 in the records of the County Clerk of Tulsa County.

7. The Court further finds that Local is the owner and holder of Local Mortgage II.

8. The Court further finds that any interest that Mullen, Powell, Smith, Dodge, Pioneer, Core, Bankers, Sutton, FDIC, IRS, OTC, Cantrell, Board, Campbell and BOK claim in the Property is inferior, subsequent and subordinate to Local's claim in the Property.

9. The Court further finds that prior to May 8, 1986, Bank of Commerce & Trust Company ("BOC") was a banking corporation organized under the laws of the State of Oklahoma, with its principal place of business in Tulsa, Oklahoma. The Oklahoma State Banking Commissioner (the "Commissioner") assumed exclusive custody and control of the property and affairs of BOC, pursuant to tit. 6, Okla. Stat. § 1202(b), at the close of business on May 8, 1986. The Commissioner subsequently tendered to the Federal Deposit Insurance Corporation appointment as Liquidating Agent of BOC, pursuant to tit. 6, Okla. Stat. § 1205(b). The Federal Deposit Insurance Corporation, as Liquidating Agent, sold certain of the assets of BOC to the Federal Deposit Insurance Corporation in its

corporate capacity, referred to herein as the "FDIC." Among the assets included in the transfer were the notes and mortgages which are the basis of the FDIC's Cross-Claim. The FDIC is now the owner and holder of those assets.

10. The Court further finds that Pioneer Savings & Trust Company ("Pioneer") recorded a mortgage ("FDIC Mortgage I") purportedly securing a note (or extension note) made, executed and delivered by the Debtor Defendants to Pioneer and affecting the Property on April 23, 1979 in Book 4394, at Page 919 in the records of the County Clerk of Tulsa County.

11. The Court further finds that Pioneer recorded a mortgage ("FDIC Mortgage IA") purportedly securing a note (or extension note) made, executed and delivered by the Debtor Defendants to Pioneer and affecting the Property on July 15, 1982 in Book 4625, at Page 886 in the records of the County Clerk of Tulsa County.

12. The Court further finds that Pioneer recorded a mortgage ("FDIC Mortgage II") purportedly securing a note (or extension note) made, executed and delivered by the Debtor Defendants to Pioneer and affecting the Property on February 11, 1980 in Book 4457, at Page 1345 in the records of the County Clerk of Tulsa County.

13. The Court further finds that Pioneer recorded a mortgage ("FDIC Mortgage III") purportedly securing a note (or extension note) made, executed and delivered by the Debtor Defendants to Pioneer and affecting the Property on May 19, 1980 in Book 4475, at Page 1219 in the records of the County Clerk of Tulsa County.

14. The Court further finds that FDIC Mortgage I, FDIC Mortgage IA, FDIC Mortgage II and FDIC Mortgage III, along with all indebtedness secured thereby, was subsequently assigned to BOC, and the FDIC is now the owner and holder thereof.

15. The Court further finds that the right, title, lien, estate, encumbrance, claim, assessment or interest in and to the real property which is the subject of this action or the Separate Personal Property claimed by any and all of the FDIC's co-defendants other than Sutton and the Debtor Defendants are subject, junior and inferior to the lien of the FDIC's mortgages encumbering the Property and the security agreement on the Separate Personal Property as defined and identified in the pleadings herein.

16. The Court further finds that Sutton Investments, Inc. is a corporation organized and existing under and by virtue of the laws of the State of Oklahoma with its principal place of business located in the City of Tulsa, Tulsa County, Oklahoma. On April 24, 1984, Sutton Investments, Inc. filed for protection under the provisions of Title 11 of the United States Code in the United States Bankruptcy Court for the Western District of Louisiana. Hugh William Thistlethwaite, Jr. was subsequently appointed Trustee of the Estate. The Court reacted to the death of Trustee Hugh William Thistlethwaite, Jr. by appointing Paul DeBaillon as Successor Trustee. Among the assets of the Estate was the Promissory Note (the "Sutton Note") and the Real Estate Mortgage (the "Sutton Mortgage") which is the basis of the Successor

Trustee's claim herein. The Estate is now the owner and holder of those assets and thus is the real party in interest.

17. The Court further finds that Texanna Holding and Land Company recorded a mortgage (the "Sutton Mortgage") purportedly securing a note made, executed and delivered by Debtor Defendants to Texanna and affecting the Property on January 30, 1981 in Book 4524 at Page 194, the assignment of which to Sutton was recorded January 30, 1981 in Book 4524 at Page 195 in the records of the County Clerk of Tulsa County.

18. The Court further finds that the priority of the Local, FDIC and Sutton mortgages shall be as set forth below:

Priority of Local, FDIC and Sutton

<u>Priority</u>	<u>Per Diem Interest After 12/12/91</u>	<u>Mortgagee</u>	<u>Amount of Indebtedness</u>	<u>Mortgage</u>
1	Not stated	Local	\$33,824.95 with interest at the rate of 8.75% per annum from 6/1/90 until paid, plus abstracting costs, plus accrued and accruing late charges, escrow deficiency, costs and expenses, including a reasonable attorney's fee.	Mortgage Recorded March 7, 1975 in Book 4156 at Page 221 (Local Mortgage I)
2	Not stated	Local	\$12,054.93 with interest at the rate of 11.04% per annum from 4/20/90 until paid, plus accrued and accruing late	Mortgage Recorded June 24, 1977 in Book 4270 at Page 2397 (Local Mortgage II)

			charges, costs and expenses including a reasonable attorney's fee	
3	\$ 6.60	FDIC	\$ 38,762.87	FDIC Mortgage I
4	\$ 7.92	FDIC	\$ 41,730.04	FDIC Mortgage II
5	\$12.45	FDIC	\$ 65,378.90	FDIC Mortgage III
6	\$21.92	Sutton	\$185,786.47	Mortgage Recorded in Book 4524, at Page 194 (Sutton Mortgage)
7	\$ 1.03	FDIC	\$ 5,199.21	FDIC Mortgage I, II and III
8	\$ 7.09	FDIC	\$ 37,366.86	FDIC Mortgage I, IA, II and III
9	\$ 1.16	FDIC	\$ 6,089.99	FDIC Mortgage I, IA, II and III

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court as follows:

A. That Local has first and prior mortgages on the real estate and improvements on the Property. Any and all right, title and interest which the defendants, John W. Mullen, Jr., Waldo S. Powell, Sherron Ericksen Smith, independent executrix of the estate of Stasia Ericksen, deceased, Joan Dodge a/k/a Joann Dodge, Pioneer Savings and Trust Company, Core Investment Group, Inc., Bankers Financial Life Company, the Successor Trustee for the Estate of Sutton Investments, Inc., the Federal Deposit Insurance Corporation in its corporate capacity as successor to all rights of Bank of Commerce & Trust Company in certain notes and mortgages involved herein (FDIC), United States of America ex rel. Department of Treasury, Internal Revenue Service, The State of Oklahoma ex rel. Oklahoma Tax Commission, John Cantrell, County Treasurer of Tulsa County, Oklahoma, The Board of County Commissioners of Tulsa

County, Oklahoma, Campbell Enterprises, Inc. and Bank of Oklahoma, N.A., Southwest, Tulsa, Oklahoma, have or claim in the Property, is subsequent, junior, subordinate and inferior to the mortgage liens of Local.

B. The FDIC and Sutton have valid mortgage liens on the Property and the FDIC has a valid security interest in the Separate Personal Property and such liens are hereby adjudged and established to be superior to any interest of all defendants except the interests of the Debtor Defendants. The priority of the interests of the FDIC and Sutton in and to the Property is set forth in paragraph 19 above.

S/ JAMES E. ELTON

JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

Margaret S. Millikin

Margaret S. Millikin
OBA #13736
ROSENSTEIN, FIST & RINGOLD
525 S. Main, Suite 300
Tulsa, Oklahoma 74103
(918) 585-9211

Attorneys for Local America Bank
of Tulsa, a federal savings bank

Agreed Partial
Journal Entry of Judgment
Case No. 91-C-148-E

APPROVED AS TO FORM:


Tony W. Haynie, OBA #11097
P. Scott Hathaway, OBA #13695
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

Attorneys for Paul Debaillon,
Successor Trustee for the Estate
of Sutton Investments, Inc.

Agreed Partial
Journal Entry of Judgment
Case No. 91-C-148-E

APPROVED AS TO FORM:

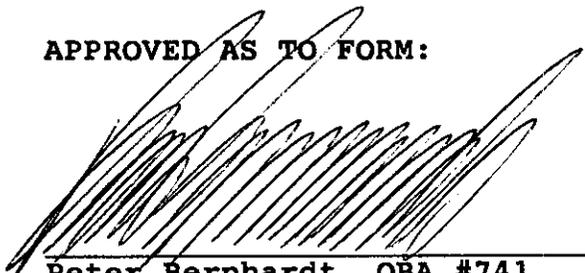


Jeffrey D. Hassell, OBA #12325
Gable & Gotwals, Inc.
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119
(918) 582-9201

Attorneys for Federal Deposit Insurance
Corporation on behalf of Bank of Commerce
& Trust Company

Agreed Partial
Journal Entry of Judgment
Case No. 91-C-148-E

APPROVED AS TO FORM:



Peter Bernhardt, OBA #741
Assistant United States Attorney
3600 United States Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Attorney for United States of America
ex rel. Department of Treasury, Internal
Revenue Service

Agreed Partial Journal Entry of Judgment
Case No. 91-C-148-E

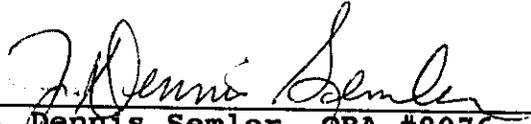
APPROVED AS TO FORM:

Diane Allbaugh
M. Diane Allbaugh, OBA #14667
Assistant General Counsel
OKLAHOMA TAX COMMISSION
P.O. Box 53248
Oklahoma City, OK 73152-3248
(405) 521-3141

Attorney for The State of Oklahoma
ex rel. Oklahoma Tax Commission

Agreed Partial
Journal Entry of Judgment
Case No. 91-C-148-E

APPROVED AS TO FORM:

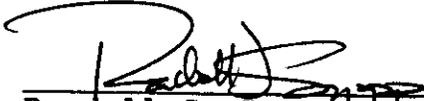


J. Dennis Semler, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918)584-0440

Attorney for John Cantrell, County
Treasurer of Tulsa County, Oklahoma,
and
The Board of County Commissioners of
Tulsa County, Oklahoma

Agreed Partial
Journal Entry of Judgment
Case No. 91-C-148-E

APPROVED AS TO FORM:

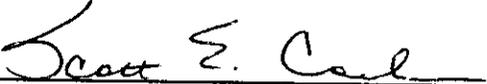


Randall J. Snapp, OBA #11169
Jones, Givens, Gotcher, & Bogan
3800 First National Tower
Tulsa, Oklahoma 74103-4309
(918) 581-8200

Attorneys for Campbell Enterprises, Inc.

Agreed Partial
Journal Entry of Judgment
Case No. 91-C-148-E

APPROVED AS TO FORM:



Scott E. Coulson, OBA #12622
Robinson, Lewis, Orbison, Smith
& Coyle
P.O. Box 1046
Tulsa, Oklahoma 74101
(918) 583-1232

Attorneys for Bank of Oklahoma, N.A.,
successor by merger to Bank of Oklahoma,
Southwest Tulsa

FILED

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

FEB 18 1992

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

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

Plaintiff,)

vs.)

Case No. CIV 91-C 644 B

GUNNEBO JOHNSON CORPORATION,
d/b/a JOHNSON MANUFACTURING
COMPANY,)

Defendant.)

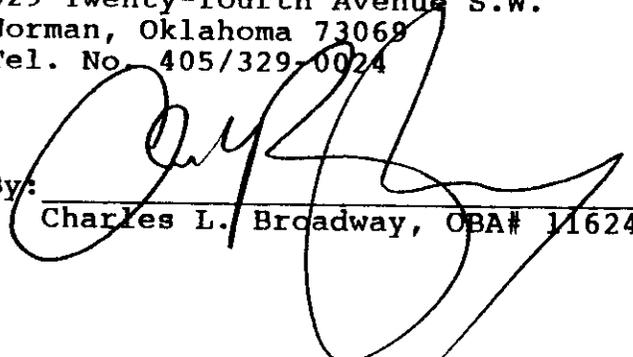
DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Billy R. Vining, Trustee on behalf of the Bankruptcy Estate of Steve D. Thompson Trucking, Inc., and dismisses this cause of action with prejudice to the bringing of any other action on the facts alleged herein, against this named party defendant and against Gunnebo Johnson Corporation, its assigns or subsidiaries.

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

PLAINTIFF

CHARLES L. BROADWAY
629 Twenty-fourth Avenue S.W.
Norman, Oklahoma 73069
Tel. No. 405/329-0024

By: 
Charles L. Broadway, OBA# 11624

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

FILED

FEB 18 1992

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

Plaintiff,

vs.

S.U.N. ENGINEERING, INC.

Defendant.

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

Case No. CIV 91-C-646 B

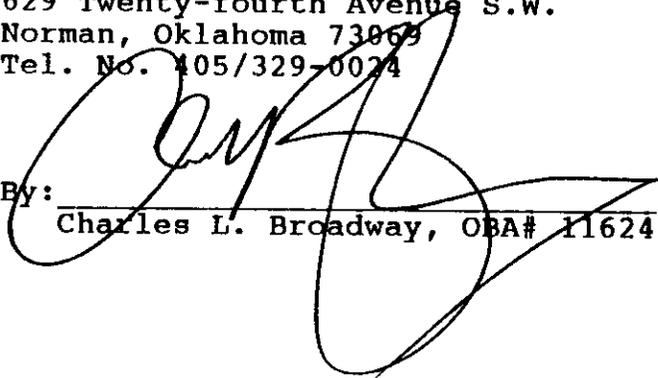
DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Billy R. Vining, Trustee on behalf of the Bankruptcy Estate of Steve D. Thompson Trucking, Inc., and dismisses this cause of action with prejudice to the bringing of any other action on the facts alleged herein, against this named party defendant and against S.U.N. Engineering, Inc. its assigns or subsidiaries.

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

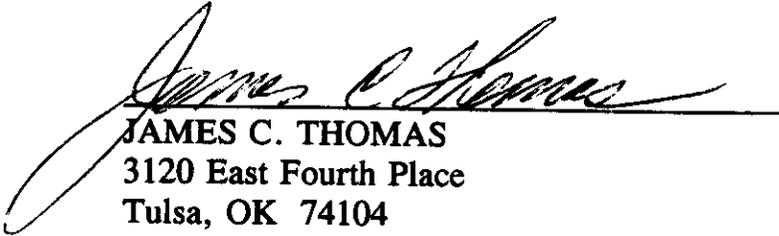
PLAINTIFF

CHARLES L. BROADWAY
629 Twenty-fourth Avenue S.W.
Norman, Oklahoma 73069
Tel. No. 405/329-0024

By: 
Charles L. Broadway, OBA# 11624

THOMAS v. UNITED STATES
CIVIL ACTION NO. 91-C-281-E

APPROVED AS TO FORM AND CONTENT:



JAMES C. THOMAS
3120 East Fourth Place
Tulsa, OK 74104

TONY M. GRAHAM
United States Attorney



KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

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

FILED

FEB 18 1992

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

KIRK & BLUM MANUFACTURING
COMPANY,

Plaintiff,

vs.

AIR MANAGEMENT INDUSTRIES,
INC.,

Defendant.

Case No. 92-C-005-E

JUDGMENT BY DEFAULT

This matter comes on for hearing this 14 day of February, 1992, upon Application and Affidavit of the Plaintiff duly made for judgment by default. It appears that the Defendant herein is in default and that the Clerk of the United States District Court has previously searched the records and entered the default of the Defendant. It further appears upon Plaintiff's Affidavit that Defendant is indebted to Plaintiff in the sum of \$123,384.17 for failure to pay notes together with interest, that default has been entered against Defendant for failure to appear, and that Defendant is not an infant or incompetent person, and is not in the military service of the United States. The Court having heard the argument of counsel and being fully advised, finds that judgment should be entered for the Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff recover from Defendant the sum of \$123,384.17, together with interest as allowed by law, and costs in the sum of \$180.00.

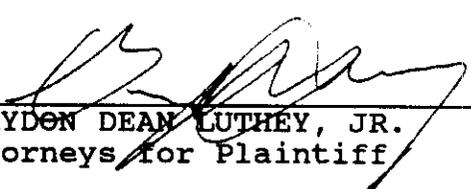
Judgment rendered this 14 day of February, 1992.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Approved:

JONES, GIVENS, GOTCHER & BOGAN
a professional corporation



GRAYDON DEAN LUTHEY, JR.
Attorneys for Plaintiff

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

F I L E D

FEB 14 1992

PIONEER-STANDARD ELECTRONICS,)
INC.)
)
Plaintiff,)
)
vs.)
)
AMERICAN BINARY TECHNOLOGIES,)
INC.)
)
Defendant.)

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

Case No. 91-C-365-B

NOTE: THIS ORDER IS TO BE MAILED
BY WARD TO ALL COUNSEL AND
PRO SE PARTIES IMMEDIATELY
UPON RECEIPT.

ORDER

This matter comes on before the Court on plaintiff's application for attorney's fees. After reviewing the pleadings and the affidavit of C. Robert Burton, IV, the Court finds as follows:

Plaintiff is granted attorney's fees in the sum of \$ 6,202.50.

Dated this 14th day of Feb., 1992.

S/ THOMAS R. BRETT

Thomas R. Brett, United States
District Judge

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

FILED

FEB 14 1992

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

THE FIRST NATIONAL BANK &)
TRUST COMPANY OF TULSA)
)
Plaintiff,)
)
v.)
)
DUKE MANUFACTURING, INC.,)
PROCHEM, INC., JERRY N.)
DUKE, PATRICIA MAGEE, and)
RUSS FARTHING)
)
Defendants.)

Case No. 91-C-675-B

JUDGMENT

This matter comes on before the Court on the parties Application for Entry of Agreed Judgment. The Court, having reviewed the pleadings and being fully advised makes the following findings:

1. The First National Bank & Trust Company of Tulsa ("First Tulsa") is the Trustee of the Duke Manufacturing, Inc. 401(k) Profit Sharing Plan and Trust Plan ("Plan"). The Plan is an employee pension benefit plan within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A).

2. Defendants, Duke Manufacturing, Inc., ("Duke") and ProChem, Inc., ("ProChem") are fiduciaries with respect to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), and employers with respect to the Plan within the meaning of ERISA § 3(5), 29 U.S.C. § 1002(5).

3. Defendants, Jerry N. Duke and Patricia Magee, as members of the committee responsible for the administration of the Plan, are administrators with respect to the Plan within the meaning of ERISA §3(16)(A), 29 U.S.C. § 1002(16)(A) and fiduciaries with respect to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

4. On or about October 10, 1990, Duke and ProChem executed The First National Bank and Trust Company of Tulsa Master Profit Sharing Plan Joinder Agreement ("Joinder Agreement"). Pursuant to this Joinder Agreement, Duke and ProChem, as adopting employers, agreed to adopt, amend, restate, and continue the Plan in the form of The First National Bank and Trust Company of Tulsa Master Defined Contribution Plan ("Master Plan") and the First National Bank and Trust Company of Tulsa Master Defined Contribution Trust ("Master Trust") and expressly adopted as their Plan all the terms and provisions of the Master Plan and Master Trust.

5. Plaintiff, First Tulsa, has not received the Elective Deferrals withheld by the employers, Duke and ProChem, from the participants' compensation for the months of March, April, May and June, of 1991.

6. Defendants, Duke and ProChem are in violation of Section 4.8 of the Plan, which requires the employers Duke and ProChem to contribute to the Trust the Elective Deferrals of all Plan participants.

7. Defendants Duke, ProChem, Jerry N. Duke, and Patricia Magee (collectively "defendants") are in actual violation of their fiduciary duties under ERISA § 404, 29 U.S.C. § 1104, with respect to the Plan as follows:

A) By failing to contribute to the Trust the Elective Deferrals withheld from the participants of the Plan for the months of March, April, May and June of 1991, the defendants did not discharge their fiduciary duty with respect to the Plan solely in the interest of the participants and beneficiaries for the exclusive purpose of providing benefits.

B) By failing to contribute to the Trust the Elective Deferrals, which are Plan assets, the defendants converted Plan assets for a purpose other than paying benefits to the participants and beneficiaries of the Plan.

C) Defendants did not discharge their duties with respect to the Plan with the care, skill, prudence, and diligence under the circumstances that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and like aims.

D) Defendants did not discharge their duties with respect to the Plan in accordance with the provisions of the Plan.

8. Defendants, Jerry N. Duke and Patricia Magee are personally liable as a result of the breach of their fiduciary duty imposed upon them under ERISA § 404, 29 U.S.C. § 1104.

9. By failing to contribute the elective deferrals to the Trust, the defendants have breached their responsibility and obligation not to deal with the assets of the Plan in their own interest or for their own account and are in actual violation of the responsibility and obligation imposed upon them under ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1).

10. Defendants, Jerry N. Duke and Patricia Magee are personally liable as a result of their breach of the responsibilities and obligations imposed upon them under ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1).

11. Defendants, Duke, ProChem, Jerry N. Duke, and Patricia Magee participated knowingly in an act or omission of another fiduciary knowing such act or omission was a breach of fiduciary duty under ERISA in violation of ERISA § 405(a)(1), 29 U.S.C. § 1105(a)(1).

12. Defendants, Duke, ProChem, Jerry N. Duke, and Patricia Magee had knowledge of a breach of other fiduciaries and failure to make reasonable efforts under the circumstances to remedy the breach violated ERISA § 405(a)(3), 29 U.S.C. § 1105(a)(3).

14. Plaintiff, First Tulsa is entitled to recover its costs and attorney's fees, pursuant to ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1), and pursuant to § 8.7 of the Plan.

IT IS THEREFORE ORDERED that plaintiff, The First National Bank & Trust Company of Tulsa, have and recover from the defendants, Duke Manufacturing, Inc., ProChem, Inc., Jerry N. Duke, and Patricia Magee, jointly and severally, a money judgment in the sum of \$13,935.62, consisting of the unpaid Elective Deferrals for the months of March, April, May and June of 1991, minus the partial payment in the form of a check drawn on the trust account of Sanders & Carpenter in the amount of \$2,000.00, made payable to The First National Bank & Trust Company, N.A.

IT IS FURTHER ORDERED that plaintiff, The First National Bank & Trust Company of Tulsa, have and recover from defendants, Duke Manufacturing, Inc., ProChem, Inc., Jerry N. Duke, and Patricia Magee, jointly and severally, a money judgment in the sum of \$643.74, consisting of the interest that would have been earned if the Elective Deferrals for the months of March, April, May, and June of 1991, had been timely deposited in short term investments.

IT IS FURTHER ORDERED that plaintiff, The First National Bank & Trust Company of Tulsa, have and recover from defendants, Duke Manufacturing, Inc., ProChem, Inc., Jerry N. Duke, and Patricia Magee, jointly and severally, interest at the rate of six percent (6%) per annum, on the principal sum of \$14,579.36, from January 30, 1992, until paid, for all of which let execution issue.

IT IS FURTHER ORDERED that plaintiff, The First National Bank & Trust Company of Tulsa, is granted its attorney's fees and costs from the defendants, Duke Manufacturing, Inc., ProChem, Inc., Jerry N. Duke, and Patricia Magee, jointly and severally, in the sum of \$4,169.43, for all of which let execution issue.

DATED this 14th day of February, 1992.

S/ THOMAS R. BRETT

Thomas R. Brett,
United States District Judge

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

KIRK W. LEMMON,

Plaintiff,

VS.

NO. 90-C-697-B

B. F. WILLIAMS, Individually
and as a Police Officer;
D. W. ROSELL, Individually
and as a Police Officer;
JOHN WESLEY JOHNSON,
Individually and/or as a
Police Officer; DEPUTY
THOMPSON, Individually and
as a Police Officer;
SHERIFF STANLEY GLANZ and
CITY OF TULSA and COUNTY OF
TULSA and DOES I-X, INCLUSIVE

Defendants.

FILED

FEB 14 1992

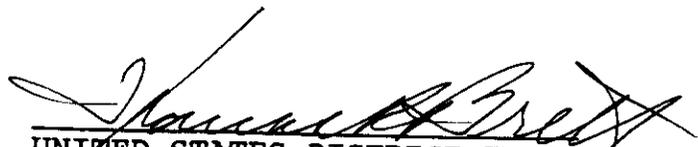
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

NOW on this 14 day of Feb., 1992 and upon Plaintiff's Motion for Voluntary Dismissal of Defendants B. F. Williams and D. W. Rosell and for good cause shown, the Court finds that said Motion should be granted in its entirety.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendants B. F. Williams and D. W. Rosell are voluntarily dismissed from the above styled cause of action.

Entered this 14th day of Feb., 1992.


UNITED STATES DISTRICT JUDGE

106

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

FILED

FEB 14 1992

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

REGINALD CHARLES HORNER,)
)
Plaintiff,)
)
v.)
)
MANAGEMENT TRAINING CORPORATION,)
and TULSA JOB CORP,)
)
Defendants.)

Case No. 91-C-835-B

ORDER TO AMEND PLEADINGS BY
DISMISSING THIRD CAUSE OF ACTION

NOW on this 14 day of Feb., 1992, the
Plaintiff's Motion to Amend Pleadings by Dismissing Third Cause of
Action.

The Court, being fully advised in the premises, hereby orders
that the pleadings of the Plaintiff, REGINALD CHARLES HORNER, be
amended to reflect the dismissal of the Third Cause of Action for
constructive discharge.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court
that the Plaintiff's Third Cause of Action against the Defendants
is dismissed.

S/ THOMAS R. BRETT

JUDGE OF THE DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

HOWARD AND WIDDOWS, P.C.
W. Allen Vaughn
O.B.A.#14479
2021 South Lewis, Suite 570
Tulsa, Oklahoma 74104
(918) 744-7440

NOTE: THIS ORDER IS TO BE MAILED
BY COURIER TO ALL COUNSEL AND
FILED WITH THE COURT IMMEDIATELY
UPON RECEIPT.

FILED

FEB 14 1992

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

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

LEC CAPITAL CORPORATION,)
)
 Plaintiff,)
)
 vs.)
)
 CAMPBELL DRILLING COMPANY, INC.,)
 BOB E. WALLS, TRUMAN D. HOOVER,)
 BOB L. HAMILTON and BYTHEL)
 CAMPBELL,)
)
 Defendants.)

Case No. 89-C-1047B

ORDER OF DISMISSAL WITH PREJUDICE

Upon Motion of the Plaintiff herein, IT IS ORDERED, ADJUDGED AND DECREED that the claims of LEC Capital Corporation against the Defendant Campbell Drilling Company shall be, and are hereby, dismissed with prejudice to the filing of any further claims or causes of action in connection with the above-referenced matter.

DATED this 14th day of February, 1992.

S/ THOMAS R. BRETT,

United States District Judge

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

FILED

FEB 14 1992

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

LEC CAPITAL CORPORATION,)
)
)
 Plaintiff,)
)
 vs.)
)
)
 CAMPBELL DRILLING COMPANY, INC.,)
)
)
 BOB E. WALLS, TRUMAN D. HOOVER,)
)
)
 BOB L. HAMILTON and BYTHEL)
)
)
 CAMPBELL,)
)
)
 Defendants.)

Case No. 89-C-1047B

ORDER OF DISMISSAL WITH PREJUDICE

Upon Motion of the Plaintiff herein, IT IS ORDERED, ADJUDGED AND DECREED that the claims of LEC Capital Corporation against the Defendant Truman D. Hoover shall be, and are hereby, dismissed with prejudice to the filing of any further claims or causes of action in connection with the above-referenced matter.

DATED this 14th day of February, 1992.

S/ THOMAS R. BRETT

United States District Judge

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

FILED

FEB 12 1992

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

No. 91-C-48-B

DONALD D. DAVIS,
Plaintiff,
v.
CLARENCE RANDY HOHL, individually,
and FLOWERS BY ANTHONY, INC., an
Iowa corporation
Defendants.

O R D E R

This matter comes on for consideration upon Motion to Dismiss filed by the Defendants, Clarence Randy Hohl ("Hohl") and Flower's by Anthony, Inc., for the reason that the Court lacks personal jurisdiction over the defendants.

The plaintiff, Donald D. Davis, claims that in January of 1989 he was involved in a car collision caused by the negligence of Hohl who was allegedly acting in the scope of his employment for Flowers by Anthony, Inc. Plaintiff is a resident and citizen of Oklahoma. The alleged accident took place in Des Moines, Iowa. Hohl is a resident of Iowa and his duties of employment for Flowers by Anthony, Inc. are performed exclusively in Iowa. Defendant, Flowers by Anthony, Inc. is a corporation which was incorporated in Iowa, has its principal place of business in Iowa, does not have employees located in Oklahoma, and does not advertise or solicit business in Oklahoma.

Defendants assert and Plaintiff concedes that this Court lacks jurisdiction in this matter because Defendants do not have the

requisite minimum contacts with the state of Oklahoma to create jurisdiction over them in this Court. Plaintiff alleges that because venue is not properly vested in this Court, this Court should transfer the case to a forum where venue is proper pursuant to 28 U.S.C. §1406(a). Defendants, however, maintain that because this Court lacks jurisdiction over them, this Court may not transfer but must dismiss the action.

If this case is to be transferred the proper authority for the transfer is 28 U.S.C. §1631 and not §1406(a) on which Plaintiff relies. Section 1631 is entitled "Transfer to cure want of jurisdiction" and provides:

Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, ... is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

As noted above, all parties agree that this court is without jurisdiction over the defendants. Because this original filing appears to have been made in good faith and the statute of limitations may preclude refileing in the proper court at this time, it is in the interest of justice to transfer rather than dismiss.¹

¹ See Nation v. United States Government, 512 F.Supp. 121 (S.D. Ohio 1981) (transfer is usually considered to be more in the interest of justice than dismissal; courts generally should resolve any doubts in favor of preserving the action.)

Furthermore, the United States District Court for the Northern District of Iowa is clearly a court "in which the action could have been brought at the time it was filed" 28 U.S.C. §1631. The accident happened in Iowa and the defendants are residents and do business in Iowa.

The Court, therefore, denies Defendants' Motion to Dismiss and transfers the case to the United States District Court for the Northern District of Iowa.

IT IS SO ORDERED this 12 day of February, 1992.

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

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

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

FEB 12 1992

STACEY ELAINE WODARSKI,)
)
 Plaintiff,)
)
 vs.)
)
 LLOYDS PROPERTY MANAGEMENT CORP.,)
 a Delaware corporation and DAVID)
 ZARECKI, individually,)
)
 Defendants.)

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

Case No. 90-C-588-E

ORDER OF DISMISSAL WITHOUT PREJUDICE

NOW ON THIS 11th day of February, 1992, this Court hereby allows Plaintiff, Stacey Elaine Wodarski, to dismiss without prejudice the Defendants, Lloyd's Property Management Corp. and David Zarecki, pursuant to F.R.C.P. 41(a)(1).

S/ JAMES O. ELLISON

US District Court Judge

APPROVED:


Clifford N. Ribner, OBA 7535
110 South Hartford, Suite 111
Tulsa, Oklahoma 74120
(918) 582-6567
ATTORNEY FOR PLAINTIFF


B. Jack Smith, Esq.
Works, Lentz & Pottorf, Inc.
1717 South Boulder, Suite 200
Tulsa, Oklahoma 74119
ATTORNEY FOR DEFENDANT

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

FILED

FEB 12 1992

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

NATIONAL UNION FIRE INSURANCE)
COMPANY OF PITTSBURGH, PA,)
a Pennsylvania Corporation,)
)
Plaintiff,)
)
vs.)
)
LEROY COURSEY,)
)
Defendant.)

No. 91-C-820-B ✓

O R D E R

Before the Court is the motion of the Defendant to dismiss. This is an action brought by Plaintiff pursuant to 28 U.S.C. § 2201 for a declaratory judgment regarding one of its insurance policies. The Complaint alleges that Flint Industries, Inc. ("Flint") was the named insured on a policy of business auto insurance issued by Plaintiff. Defendant Coursey was an employee of Flint and was involved in an accident with an allegedly uninsured or underinsured motorist. Coursey has filed a lawsuit in Rogers County, Oklahoma, naming both the other driver and National Union as defendants. The state court lawsuit necessarily places in issue the extent of coverage, if any, under the National Union policy. The Second Amended Petition was filed in state court on June 4, 1990. The present federal action was begun October 17, 1991.

Although Defendant's motion is styled "Motion to Dismiss for Lack of Subject Matter Jurisdiction," it is clear from the text of the brief that Defendant actually requests the Court to decline, in its discretion, to exercise jurisdiction because of the pending state action.

In response, Plaintiff does not address Defendant's argument and cited authority, but simply notes that this Court has jurisdiction over an action such as this, while a state court in Oklahoma does not. This jurisdictional issue has recently been definitively addressed in Horace Mann Ins. Co. v. Johnson, ___ F.2d ___ (10th Cir.) (December 17, 1991). However, it is not the basis upon which this Defendant seeks dismissal.

In Kunkel v. Continental Casualty Co., 866 F.2d 1269 (10th Cir. 1989), the court cited with approval a five-factor test:

(1) whether the declaratory action would settle the controversy; (2) whether it would serve a useful purpose in clarifying the legal relations in issue; (3) whether the declaratory remedy is being used merely for the purpose of "procedural fencing" or "to provide an arena for a race for *res judicata*;" (4) whether use of a declaratory action would increase friction between federal and state courts and improperly encroach upon state jurisdiction; and (5) whether there is an alternative remedy which is better or more effective.

Id. at 1275-76 n. 4 (citing Allstate Ins. Co. v. Green, 825 F.2d 1061, 1063 (6th Cir. 1987)).

In ARW Exploration Corp. v. Aguirre, 947 F.2d 450 (10th Cir. 1991), the court elaborated:

" A federal court generally should not entertain a declaratory judgment action over which it has jurisdiction if the same fact-dependent issues are likely to be decided in another pending proceeding." However, jurisdiction should not be refused merely because another remedy is available. Rather, the court must decide whether the controversy can better be settled in a pending action, i.e., "whether there is such a plain, adequate and speedy remedy afforded in the pending

state court action, that a declaratory judgment action will serve no useful purpose." Relevant considerations including the scope of the pending action, the nature of the available defenses in the action, whether all parties' claims can satisfactorily be adjudicated in that proceeding, and whether necessary parties have been joined.

Id. at 454 (citations omitted).

Here, Plaintiff has not disputed Defendant's assertions that the state court action has proceeded through discovery and that a summary judgment motion is pending before the state court which will resolve the coverage issue. Defendant also states that he will agree to an interlocutory appeal to the Supreme Court of Oklahoma from the decision in state court regarding the issue of policy coverage. Considering the factors detailed above, it is difficult to see what this declaratory judgment action would accomplish which will not be accomplished more quickly through the state court system. The Court finds the motion to be well taken.

It is the order of the Court that the motion of the Defendant to dismiss is hereby GRANTED. The Court declines to exercise jurisdiction in view of the pending proceedings.

IT IS SO ORDERED this 12th day of February, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

FEB 12 1992

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

DONNIE RAY ROSS,)
)
Plaintiff,)
)
v.)
)
STANLEY GLANZ, SHERIFF, et al,)
)
Defendants.)

91-C-608-B ✓

ORDER

On September 18, 1991, defendants Drew Diamond, K. L. Jones, M. Sherwood, and "Detective Parks" filed their Motion to Quash Submitted on Behalf of All City Defendants (Docket #5)¹ and on October 18, 1991, Defendant Stanley Glanz filed his Motion to Dismiss (#9). Although plaintiff did not file a response or seek an extension of time within fifteen (15) days as required by Local Rule 15A², on December 4, 1991, the court, sua sponte, granted plaintiff an additional thirty (30) days to respond to the motions.

No response or further extension of time having been sought by plaintiff, the court, pursuant to Local Rule 15A of the Northern District of Oklahoma, concludes that plaintiff has therefore waived any objection or opposition to the motions. See, Woods Construction Co. v. Atlas Chemical Indus., Inc., 337 F.2d 888, 890 (10th Cir. 1964).

¹ "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

² Local Rule 15A provides as follows:

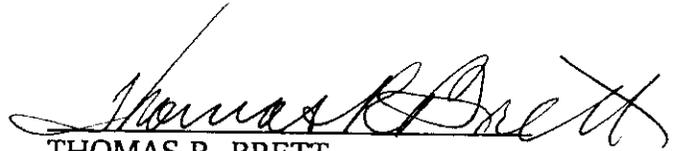
Briefs. Each motion, application and objection filed in every civil and criminal case shall set out the specific point or points upon which the motion is brought and shall be accompanied by a concise brief. Memoranda in opposition to such motion and objection shall be filed within fifteen (15) days in a civil case, and within five (5) days in a criminal case, after the filing of the motion or objection. Any reply memoranda in a civil case shall be filed within eleven (11) days thereafter. Failure to comply with this paragraph will constitute waiver of objection by the party not complying, and such failure to comply will constitute a confession of the matters raised by such pleadings.

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2-13

It is therefore ordered that the Motion to Quash Submitted on Behalf of All City Defendants (#5) and Defendant Stanley Glanz's Motion to Dismiss (#9) are granted and plaintiff's civil rights complaint pursuant to 42 U.S.C. § 1983 is dismissed.

Dated this 17 day of Feb., 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

UNITED STATES FOR AND ON
BEHALF OF THE OSAGE TRIBE OF
INDIANS,

Plaintiff,

vs.

PLASTIMET CORPORATION; NU-
CON INTERNATIONAL, INC.; and
WILLIAM W. KINZIE, individually
d/b/a OSAGE PRECISION HOMES,

Defendants.

FILED

FEB 12 1992

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

CIVIL ACTION NO. 91-C-496-B

JUDGMENT

This matter comes on for consideration this 12th day of Feb., 1992, the plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the defendants William W. Kinzie, individually d/b/a Osage Precision Homes, Plastimet Corporation and Nu-Con International, Inc., having failed to appear at a status/scheduling conference before Magistrate Judge John Wagner on January 30, 1992, and having failed to file an Answer after having being lawfully served on November 26, 1991, finds that said defendants' default has been entered by the Court Clerk on February 10, 1992 and further finds that:

1. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1345 and 1362 and personal jurisdiction over the parties.

NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT

2. On June 15, 1983, the defendant Plastimet Corporation, executed a building lease with the plaintiff, a copy of which is attached hereto and incorporated herein as Exhibit A. The said lease is in default for failure to pay rent. That notice of the delinquency was served on the lessee and payments have not been made. Pursuant to said lease the plaintiff has elected to accelerate and cancel the lease. By reason of default the plaintiff is entitled to the sum of \$45,750.00 and immediate possession of the leased premises.

3. On December 3, 1984, a Building Lease was executed with the defendant William W. Kinzie, d/b/a Osage Precision Homes, a copy of which is attached hereto and incorporated herein as Exhibit B. That said lease is in default for failure to pay rent. That notice of the delinquency was served on the lessee and payments have not been made. Pursuant to said lease the plaintiff has elected to accelerated and cancel the lease. By reason of the default the plaintiff is entitled to the sum of \$213,884.40 and immediate possession of the leased premises.

4. On November 13, 1985, the defendant Nu-Con International, Inc., executed a note and security agreement, in favor of the plaintiff for equipment sold to the defendant, copies of which are attached hereto and incorporated herein as Exhibit C. That said note is in default for failure to pay the prescribed payments and the plaintiff has elected to accelerate the entire debt. By reason of the default the plaintiff is entitled to the sum of \$270,611.21 and foreclosure of its security interest in the equipment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against the defendant, Plastimet Corporation for the sum of \$45,750.00 plus interest from the date of judgment at the current

legal rate of 4.21 percent per annum until paid, and costs of this action. The said defendant is ordered to immediately surrender possession of the leased premises to the plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against the defendant, William W. Kinzie, d/b/a Osage Precision Homes for the sum of \$213,884.40 plus interest from the date of judgment at the current legal rate of 4.21 percent per annum until paid, and costs of this action. The said defendant is ordered to immediately surrender possession of the leased premises to plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover against the defendant, Nu-Con International, Inc. a judgment in the principal sum of \$270,611.21 plus interest from the date of judgment at the current legal rate of 4.21 percent per annum until paid, and costs of this action .

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff's Security Agreement be foreclosed and all rights, titles, and interest of Plastimet Corporation, Osage Precision Homes, Nu-Con International, Inc. and William W. Kinzie and any persons holding by, through or under them, including any equity or redemption rights, rights of any junior lienholders, be forever barred in and to the aforesaid premises and equipment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, by and through duly authorized agents of the Osage Tribe, may immediately seize and possess the equipment listed on the security agreement and sell said equipment at a regularly conducted and well advertised equipment auction in the vicinity and that from the proceeds generated from the sale, the United

States pay any incidental commissions and fees in conjunction with the sale with any remaining proceeds being paid to the United States of America on behalf of the Osage Tribe of Indians to be applied toward the judgment against the defendant Nu-Con International Inc.

IT IS SO ORDERED THIS 12th DAY OF Feb., 1991.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:



PHIL PINNELL, OBA # 7169
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 494-3653

BUILDING LEASE

STATE OF OKLAHOMA
County of OSAGE

THIS INSTRUMENT OF LEASE, made in duplicate, this 15th day of June, 1981, by and between THE OSAGE TRIBE OF INDIANS OF OKLAHOMA here-in after referred to as "TRIBE" party of the first part, (hereinafter called party of the first part, whether one or more,) and PLASTINET CORPORATION An Oklahoma Corporation, Party of the Second Part.

WITNESSETH: That the party of the first part, for and in consideration of the rents, covenants and agreements hereinafter contained, does and by these presents, demises, leases and rent, for a period of MONTH TO MONTH from the 15th day of June, 1981, to the party of the second part, the following described property, to-wit:

A portion of an existing metal building located on the Osage Nation Industrial Park in Osage County. Said portion shall consist of 800 square feet of warehouse space.

The party of the second part, for and in consideration of the use and possession of said premises for said period, does hereby agree to pay unto the party of the first part, the sum of \$125.00 Dollars, said sum to be paid in the following amounts and at the time herein designated, to-wit:
On the 15th day of June, 1981, the sum of One Hundred and Twenty Five (125.00) Dollars
and on the 1st day of each and every month thereafter the sum of Two Hundred and Fifty (250.00) Dollars (250.00) until the total sum of Until new building is completed Dollars (\$) shall have been fully paid.

THE PARTY OF THE SECOND PART further agrees to keep and maintain all portions of the building let to him by the terms of this contract, in as good state of repair as the same are turned over to him, natural wear and tear excepted, and to hold said first party free from any and all expenses on said building in accordance with covenants for light, heat, water, and any other expenses incidental to the occupancy of said property.

THE PARTY OF THE SECOND PART further agrees to hold free and harmless and does hereby release said first party from any and all damages that occur to the contents of any portion of the building here let, during the term granted.

THE PARTY OF THE SECOND PART agrees not to use said building, or any portion thereof, for any purposes that will increase the insurance rate or risk on said building, or for any purpose prohibited by the Statutes of the State of Oklahoma or the ordinances of the City of THE OSAGE NATION INDUSTRIAL PARK

IT IS UNDERSTOOD AND AGREED, that time to the essence of this contract, and should the party of the second part default in the payment of any installment or the principal sum herein named, the total principal sum shall become immediately due and payable and the party of the first part shall be entitled to the possession of the premises, at his option, and the party of said second party therein contained, and may sell and dispose of said leasehold and said property of said second party at public auction, and the party of the second part shall be liable to the party of the first part for the remaining sum unpaid and the expenses incidental to the collection thereof.

IT IS FURTHER UNDERSTOOD AND AGREED that the property herein leased will be used for Office, Warehousing, Manufacturing, purpose only, and for no other object or purpose, and this lease shall not be assigned or sublet without the written consent of the party of the first part.

IT IS FURTHER PROVIDED that in the event of the assignment to creditors by the party of the second part, or either of them, or the institution of bankruptcy proceedings against the party of the second part, or either of them, such events, or either of them, shall forthwith end of their effect and hold for naught this lease, and all rights thereunder, and possession of said property shall immediately, by such act or acts, pass to the party of the first part, at his option.

THE PARTY OF THE SECOND PART further agrees that after the expiration of the time given in this lease, to-wit: the 15th day of June, 1981, without notice from the first party, to give possession of said portion of said building to said party of the first part, loss by fire also excepted. The destruction of the building on said premises by fire shall work a termination of this lease.

It is Further Understood and Agreed that upon completion of the proposed 6250 Square foot building to be located on portions of lot seven (7) and eight (8) block two (2) of The Osage Nation Industrial Park that Plastinet Corporation will occupy said building and be paying monthly payments of \$34.15 per month for a period of five (5) years with a five (5) year option and a re-negotiated rental rate at that time, same conditions as agreed upon in this agreement shall be applied to the now proposed building and regarded as his by both parties of this agreement;
IN WITNESS WHEREOF, the parties hereto have, hereunto set their hands the day and year first above written.

WITNESS:

[Handwritten signatures]

[Handwritten signature]
Party of the First Part
[Handwritten signature]
Party of the Second Part

BUILDING LEASE

(Commercial)

STATE OF OKLAHOMA,

County of Osage)

THIS INDENTURE OF LEASE, made in duplicate, this 3rd day of December, 1984

by and between The Osage Tribe Of Indians Of Oklahoma
party of the first part, (hereinafter called party of the first part, whether one or more,) and
Osage Precision Homes
party of the second part, (hereinafter called party of the second part, whether one or more.)

WITNESSETH: That the party of the first part, for and in consideration of the rents, covenants and agreements hereinafter contained, does and by these presents, demises, leases and rent, for a period of Fifteen (15) years from the 1st day of completion of a 10,750 sq. ft. Bldgs (See Remarks) to the party of the second part, the following described property, to-wit:

Remarks: Lease is based on a successful grant application and completion of a metal building to be constructed on portions of lot Seven (7) and Eight (8) of Block Two (2) of the Osage Nation Industrial Park legally described as being in the South Half (SH) of the Southeast Quarter (SEQ) of Section Thirteen (13), Township Twenty Three (23) North, Range Eight (8) East, containing 79 acres more or less in Osage County Oklahoma.

The party of the second part, for and in consideration of the sum of (\$ See attached remarks on rental schedule

hereby agree to pay unto the party of the first part, the sum of See Attachment Dollars, said sum to be paid in the following month and at the time herein designated, to-wit:

On the day of , 19 , the sum of See Attachment Dollars and on the day of each and every month thereafter the sum of See Attachment Dollars () until the total sum of See Attachment Dollars () shall have been fully paid.

THE PARTY OF THE SECOND PART further agrees to keep and maintain all portions of the building lot to him by the terms of this contract, in as good state of repair as the same are turned over to him, natural wear and tear alone excepted, and to hold said first party free from any and all expense on said building in accordance for light, heat, water, and any other expenses incidental to the occupancy of said property.

THE PARTY OF THE SECOND PART further agrees to hold free and harmless and does hereby release said first party from any and all damages that occur to the contents of any portion of the building here let, during the term granted.

THE PARTY OF THE SECOND PART agrees not to use said building, or any portion thereof, for any purposes that will increase the insurance rate or risk on said building, or for any purpose prohibited by the Statutes of the State of Oklahoma or the ordinances of the CITY of Osage Nation Industrial Park

IT IS UNDERSTOOD AND AGREED, that if in the absence of this contract, and should the party of the second part default in the payment of any installment or the principal sum herein named, the total principal sum shall become immediately due and payable and the party of the first part shall be entitled to the possession of the premises, or his option, and the property of said second party therein contained, and may sell and dispose of said leasehold and said property of said second party at public auction, and the party of the second part shall be liable to the party of the first part for the remaining sum unpaid and the expenses incident to the collection thereof.

IT IS FURTHER UNDERSTOOD AND AGREED that the property herein leased will be used for

Manufacturing and Warehousing purposes only, and for no other object or purpose, and this lease shall not be assigned or sublet without the written consent of the party of the first part.

IT IS FURTHER PROVIDED that in the event of bankruptcy proceedings against the party of the second part, or either of them, or the institution of bankruptcy proceedings against the party of the second part, or either of them, such assets, or other of them, shall forthwith and of itself cancel and hold for naught this lease, and all rights thereunder, and possession of said property shall immediately, by such act or acts, pass to the party of the first part, at his option.

THE PARTY OF THE SECOND PART further agrees that after the expiration of the time given in this lease, to-wit: the 3rd day of December, 1984 without notice from the first party, to give possession of said portions of said building to said party of the first part, less by fire alone excepted. The destruction of the building on said premises by fire shall work a termination of this lease.

It is further understood that Osage Precision Homes and subsidiaries and related businesses shall give preference to Tribal Members for training, employment and sub-contracting. It is further agreed that upon completion of the proposed building, the rent will be deferred for a period of ninety (90) days so as to give Osage Precision Homes adequate time to install and test the production line and assemble the work force. Any future changes pertaining to this agreement must be brought before the Osage Tribal Council for consideration and approval.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

WITNESSES:

Morona J. Mayne
Peter M. Poweaka (12-5-84)

Peter M. Poweaka, Manager
Osage Nation Industrial Park

George L. Tallahy
Party of the First Part
Principal Chief, Osage Tribe

W. J. [Signature]
Party of the Second Part
President, Osage Precision Homes

EXHIBIT B



OSAGE NATION

Industrial Park
HOMINY, OKLAHOMA 74038
918-885-6330
918-887-8408

December 3, 1986

The following is the attachment referred to in the lease agreement between the Osage Tribe and Osage Precision Homes in the rental of a proposed new 18,750 square foot building to be constructed on the Osage Nation Industrial Park, north of Hominy, Oklahoma. The new facility is to be constructed with grant funds to be acquired through the C.D.B.G. grant program.

The lease is a fifteen year lease however, the 12% return has been calculated over a ten year period.

The building will be re-captured over a 0.75 year period which is highly desirable, and the added benefits are the monies that will be turned over in the community through the creation of (76) new jobs for low and moderate income Tribal Members.

Lease schedule is as follows:

C.D.B.G. - \$ 223,237.00 at 12% = per month 1986 \$ 267,884.00

Year one	\$ 15,600.00	1300.00
Year two	\$ 18,000.00	1500.00
Year three	\$ 20,400.00	1700.00
Year four	\$ 21,600.00	1800.00
Year five	\$ 24,000.00	2000.00
TOTAL	\$ 99,600.00	\$ 99,600.00

Year six thru ten:

\$ 2,804.73 per month

5 years x 12 months = 60 months

\$ 2,804.73 x 60 = \$168,284.40

\$168,284.40

TOTAL

\$267,884.40 or 12% return

Norma J. Maye
OSAGE TRIBE

Wm. L. ...
OSAGE PRECISION HOMES

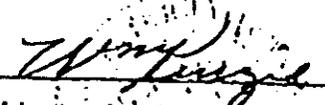
(12-5-86)

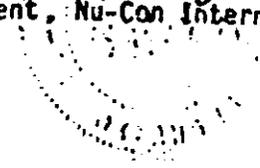
ADDENDUM TO SECURITY AGREEMENT

The collateral described herein is security for a loan in the amount of \$194,000.00 to Developer by Recipient. That said Security Agreement constitutes a first lien in favor of Recipient. Debtor warrants that said equipment is free and clear of any other encumbrances and that Debtor has the authority to execute the Security Agreement and this Addendum. That said Security Agreement is given as security for Debtors obligation to repay a loan as evidenced by the Parties Agreement of August 22, 1985, and that the first lien of Recipient shall remain in full force and effect until such loan to the Developer is paid in full. Developer agrees that he will maintain said equipment in good condition and repair; that he will not permit any liens to affix to said property; that he will pay all taxes, levies and impositions levied as well as the cost of repairs or maintenance and that he will not permit anything which would impair the value of said equipment. That said equipment is deemed to be a fixture and a part of the leasehold property. That said Security Agreement and Addendum was executed in good faith for the consideration cited. That nothing in the negotiation, signing, or subsequent action shall excuse the Developer from the payment of the debt.

In case of default in the payment when due, or in the observance or performance of any of the agreements of Developer, or if warranties or representation contained herein shall prove to be false or misleading, or if there is instituted against the Developer any proceedings for the appointment of a receiver or against the Developer under the provisions of the Bankruptcy Act or if Developer should make an assignment for the benefit of creditors or become insolvent, then in the happening of any such events, the entire balance shall become due and payable at Recipients option.

The document entitled Security Agreement Equipment is hereby incorporated by reference and made a part hereof.


President, Nu-Con International, Inc.



No-Con International, Inc.

Orange T-11be

P.O. Box 69

Omega Agency Campus

Henry Oklahoma 74035

Paragon Oklahoma 74055

1. Debtor(s) (Last Name First) and address(es)

2. Secured Party(ies) and address(es)

3. This financing statement covers the following types (or items) of property:

ACCT. NO. 6001 DATE 11/13/85

0 2 4 2 e 2

FILED

For Filing Officer (Date, Time, Number, and Filing Office)

NOV 13 5 33 PM '85

Assignee of Secured Party Address

1. Pacific Brake Press, Ser. #3273
2. 150-Ton Hydraulic Press, Ser. #4193
3. Power Shear, Ser. #P37-772
4. Rotary Air Compressor (Atlas Copco), Ser. #904-191
5. Two Motor Splindle Drill Press, Ser. #120V497
6. (3) Penel Saws, Ser. #1's P8601, P8602, P8603
7. (12x6) Welding Beams, Ser. #1's WB4001, WB4002, WB4003, WB4004, WB4005, WB4006, WB4007, WB4008

Proceeds and Products of collateral are also covered; however such shall not be construed to mean that the secured party consents to any sale of such collateral.

File with: THE COUNTY CLERK Orange County, State of Oklahoma, under Uniform Commercial Code effective January 1, 1963, S.B. 36

by: William W. Sparks, Jr. No-Con International, Inc. Assistant Chief, Omega T-11be
Signature(s) of Debtor(s) Signature(s) of Secured Party(ies) or Assignee

(5) Debtor Copy-Originator-Remove this copy and forward balance of form intact for filing.

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

F I L E D

SOS INTERNATIONAL (STRATEGIC)
ORGANIZATIONAL SYSTEMS)
ENVIRONMENTAL ENGINEERING)
DIVISION, INC.), a corporation,)
)
Plaintiff,)

FEB 12 1992

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

vs.)
)
PUBLIC SERVICE COMPANY)
OF OKLAHOMA, a corporation,)
)
Defendant.)

Case No. 89-C-727-C

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes before the Court on the Joint Stipulation of Dismissal with Prejudice of the parties in which the parties stipulate that Plaintiff shall dismiss its Complaint in this matter with prejudice and that Defendant shall dismiss its Counterclaim in this matter with prejudice.

IT IS THEREFORE ORDERED that Plaintiff's Complaint is dismissed with prejudice and Defendant's Counterclaim is likewise dismissed with prejudice. Each party shall bear its own attorney fees and costs.

DATED this 12 day of Feb, 1991.

(Signed) H. Dale Cook

H. DALE COOK
UNITED STATES DISTRICT JUDGE

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

WILLIAM LOCKETT MARKLEY,)
)
Petitioner,)
)
v.)
)
R. MICHAEL CODY, Warden,)
)
and THE ATTORNEY GENERAL OF)
THE STATE OF OKLAHOMA,)
)
Respondents.)

91-C-444-B

F I L E D

FEB 12 1992

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 January 21, 1992, in which the Magistrate Judge made recommendations regarding petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

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

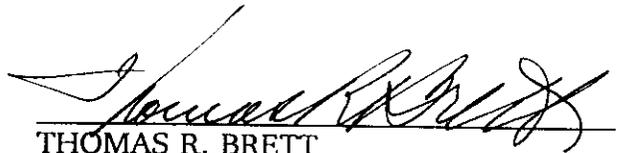
It is therefore Ordered that petitioner's claim that the trial court abused its discretion by limiting defense counsel's cross-examination of a state witness is dismissed for the reasons more fully set out in the Report and Recommendation.

It is further Ordered that petitioner's claim that prosecutorial misconduct during closing arguments deprived the petitioner of his right to a fair and impartial jury trial is also dismissed for the reasons more fully set out in the Report and Recommendation.

Petitioner's remaining claims will be considered upon receipt of additional information from the state in accordance with the Order of the Magistrate Judge.

7-13

Dated this 12th day of February, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

FEB 12 1992

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

STATE FEDERAL SAVINGS ASSOCIATION,)
by and through its Conservator,)
Resolution Trust Corporation,)
as successor-in-interest to)
to certain assets of State Federal)
Savings and Loan Association,)
Plaintiff,)

vs.)

Case No. 90-C-802-B

BASIL W. THOMAS, a/k/a B.W. THOMAS, and)
LORENE E. THOMAS; B.W. THOMAS, INC.,)
JOHN F. CANTRELL, COUNTY TREASURER,)
TULSA COUNTY and the BOARD OF COUNTY)
COMMISSIONERS, Tulsa County, Oklahoma;)
and BANK OF OKLAHOMA, N.A., formerly)
known as Bank of Oklahoma-Mercantile)
Center, Successor to Mercantile Bank)
and Trust Company,)
Defendants.)

ORDER TERMINATING RECEIVERSHIP

On the 12th day of February, 1992, this action was heard upon the Application of Plaintiff, State Federal Savings Association, as successor-in-interest to certain assets of State Federal Savings and Loan Association, by and through its Conservator, Resolution Trust Corporation, for an Order Terminating the Receivership, Exonerating the Receiver's Bond and Approving the Receiver's Final Report, concerning the following described property:

The West 150 feet of the North 225 feet of Lot One (1), Block Two (2), BRIANA ANN ADDITION, a subdivision in Tulsa County, Oklahoma, according to the recorded Plat thereof (the "Property").

The Court, having examined the Application and after hearing statements from counsel, makes the following findings:

1. On the 25th day of October, 1991, the Court approved a Judgment confirming the sale of the Property to State Federal and directing the Sheriff of Tulsa County, Oklahoma, to issue a deed to State Federal covering the Property.

2. The Receivership is no longer necessary to operate the Property.

3. The Final Report of the Receiver has been filed and considered by the Court and should be approved. All of the funds remaining in the Receiver's Account should be paid to State Federal for application upon its judgment.

4. The Receiver's Bond should be exonerated.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court as follows:

A. The Receivership concerning the Property is hereby terminated.

B. The Final Report filed by the Receiver is approved.

C. All of the funds remaining in the Receiver's Account are ordered to be paid by the Receiver to State Federal for application upon its judgment.

D. The Receiver is hereby discharged, and the Receiver's Bond is exonerated.

DATED this 12th day of February, 1992.


UNITED STATES DISTRICT JUDGE

BURK E. BISHOP, OBA #813
BOESCHE, McDERMOTT & ESKRIDGE
800 ONEOK Plaza, 100 West 5th
Tulsa, Oklahoma 74103
(918) 583-1777

ATTORNEYS FOR PLAINTIFF

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

FILED

FEB 11 1992

FOURTH NATIONAL BANK OF TULSA,
a National Banking Association,

Plaintiff,

vs.

FEDERAL INSURANCE COMPANY,
a New Jersey Corporation,

and

HOME INSURANCE COMPANY,
a New Hampshire Corporation,

Defendants.

FEDERAL CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 90-C-173-C

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

It is hereby stipulated, by and between counsel for all parties hereto as follows:

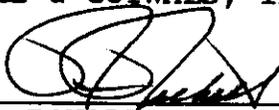
1. The Third Party Complaint of Defendant, Federal Insurance Company, is dismissed without prejudice pursuant to Rule 41(c) of the Federal Rules of Civil Procedure.

2. The Third Party Complaint of Defendant, The Home Insurance Company, is dismissed without prejudice pursuant to Rule 41(c) of the Federal Rules of Civil Procedure.

Dated this 11th day of February, 1992.

Respectfully submitted,

GABLE & GOTWALS, INC.

By: 

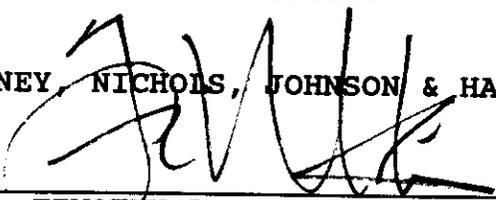
RONALD N. RICKETTS
2000 Fourth Nat'l Bank Bldg.
15 West Sixth Street
Tulsa, OK 74119-5447
(918) 582-9201

ATTORNEY FOR PLAINTIFF

HAROLD D. MURRY, JR.
PHILIP H. HECHT
HOWREY & SIMON
1730 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 783-0800

ATTORNEYS FOR PLAINTIFF

LOONEY, NICHOLS, JOHNSON & HAYES

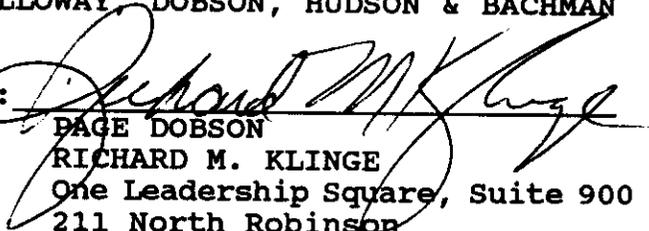
By: 

TIMOTHY L. MARTIN
OBA #10385
528 Northwest 12th Street
Oklahoma City, OK 73103
(405) 235-7641

**ATTORNEYS FOR DEFENDANT
HOME INSURANCE COMPANY**

and

HOLLOWAY DOBSON, HUDSON & BACHMAN

By: 

PAGE DOBSON
RICHARD M. KLINGE
One Leadership Square, Suite 900
211 North Robinson
Oklahoma City, OK 73102
(405) 235-8593

**ATTORNEYS FOR DEFENDANT
FEDERAL INSURANCE COMPANY**

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

FILED

FEB 11 1992

NATCOM, INC., an Oklahoma Corporation,
Plaintiff,
vs.
ENGLEHARD HANOVIA, INC.,
d/b/a Fulfillment Corporation
of America,
Defendant.

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

Case No. 91-C-222-B

ADMINISTRATIVE CLOSING ORDER

The Parties having entered into a settlement agreement, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, by 3-11-92, the Parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 10th day of February, 1992.


UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

15

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

BOBBY L. CORLEY,)
)
Plaintiff,)
)
v.)
)
GARY MAYNARD and RICK HUDLEY,)
)
Defendants.)

91-C-418-B

FILED
FEB 11 1992
Richard M. Lawrence, clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Defendants filed a Motion to Dismiss on November 5, 1991. Although plaintiff did not file a response or seek an extension of time within fifteen (15) days as required by Local Rule 15A¹, on December 4, 1991, the court, sua sponte, granted plaintiff an additional thirty (30) days to respond to the Motion to Dismiss.

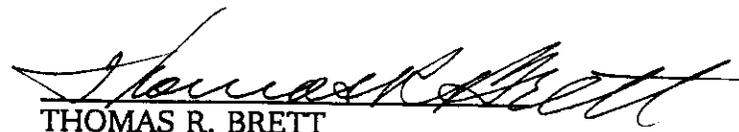
No response or further extension of time having been sought by plaintiff, the court, pursuant to Local Rule 15A of the Northern District of Oklahoma, concludes that plaintiff has therefore waived any objection or opposition to the motions. See, Woods Construction Co. v. Atlas Chemical Indus., Inc., 337 F.2d 888, 890 (10th Cir. 1964).

It is therefore ordered that the Defendants' Motion to Dismiss plaintiff's civil rights complaint pursuant to 42 U.S.C. § 1983 is granted.

¹ Local Rule 15A provides as follows:

Briefs. Each motion, application and objection filed in every civil and criminal case shall set out the specific point or points upon which the motion is brought and shall be accompanied by a concise brief. Memoranda in opposition to such motion and objection shall be filed within fifteen (15) days in a civil case, and within five (5) days in a criminal case, after the filing of the motion or objection. Any reply memoranda in a civil case shall be filed within eleven (11) days thereafter. Failure to comply with this paragraph will constitute waiver of objection by the party not complying, and such failure to comply will constitute a confession of the matters raised by such pleadings.

Dated this 11 ^{tw} day of Feb, 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

C. ARNOLD BROWN, TRUSTEE FOR THE)
KWB, INC. AND SUBSIDIARY PROFIT)
SHARING PLAN AND TRUST,)

Plaintiff,)

vs.)

COMPENSATION PROGRAMS, INC.,)
et al.,)

Defendants.)

FEB 11 1992

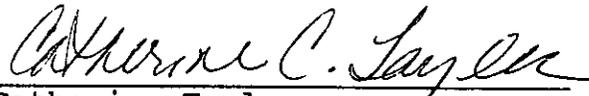
RICHARD M. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

Case No. 91 C 120 E

MASTER MORTGAGE INVESTMENT FUND, INC. AND FIRST
TRUST OF MIDAMERICA'S DISMISSAL WITHOUT
PREJUDICE OF THEIR THIRD PARTY COMPLAINT

Comes now Master Mortgage Investment Fund, Inc. and First Trust of MidAmerica and hereby dismiss without prejudice their Third Party Complaint against C. Arnold Brown, Charles A. Ellis, Michael H. Vaughn, Gaylen R. Howe and Ashley M. Houghton.

Respectfully submitted,



Catherine Taylor
Rhodes, Hieronymus, Jones, Tucker &
Gable
2800 Fourth National Bank Building
15 West Sixth Street
Tulsa, Oklahoma 74119
(918) 582-1173
Telecopier (918) 592-3390


Christine L. Schlonmann, MO #27849
J. Bradley Pace, MO #
Wirken & King, P.C.
4740 Grand Avenue, Third Floor
Kansas City, MO 64112
Telephone: (816) 753-6666
Telecopier: (816) 531-6661

ATTORNEYS FOR MASTER MORTGAGE

INVESTMENT FUND, INC. and FIRST
TRUST OF MIDAMERICA

Certificate of Mailing

I hereby certify that a copy of the foregoing Master Mortgage Investment Fund, Inc. and First Trust of MidAmerica's Dismissal Without Prejudice of Their Third Party Complaint was deposited in the regular United States mail, postage prepaid, this _____ day of February, 1992, to:

R. Scott Savage
Moyers, Martin, Santee, Imel & Tetrick
320 S. Boston, Suite 920
Tulsa, Oklahoma 74103

Charles C. Taylor

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

CONOCO INC.,
a Delaware corporation,

Plaintiff,

v.

ANTHONY ARKEKETA, an individual;
PHYLLIS DAILEY, an individual;
CHRISTI SIMPSON, an individual;
WATSON MANAGEMENT GROUP, INC.,
an Oklahoma corporation;
CEJA CORPORATION, an Oklahoma
corporation; CORONADO PETROLEUM
CORPORATION, an Oklahoma
corporation;
RONCO ENERGY RESOURCES, INC.,
an Oklahoma corporation;
BRANOIL, INC., an Oklahoma
corporation; and
BECKER OIL CORPORATION, an
Oklahoma corporation,

Defendants.

FILED
1992
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 92-C-014-B

DISMISSAL WITHOUT PREJUDICE

Pursuant to Fed. R. Civ. P. 41, plaintiff Conoco Inc. hereby
dismisses its claim asserted herein against defendant Coronado
Petroleum, Inc. without prejudice to the refiling of the same.

Respectfully submitted,

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

By: Fred M. Buxton
Ross O. Swimmer, OBA #8801
D. Richard Funk, OBA #13070
Fred M. Buxton, OBA #12234
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2732

ATTORNEYS FOR PLAINTIFF,
CONOCO INC.

Of Counsel:

Ernest J. Altgelt
Counsel
Legal Department
Conoco Inc.
P.O. Box 2197
Houston, TX 77252-2197
(713) 293-1853

CERTIFICATE OF MAILING

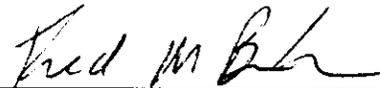
I the undersigned do hereby certify that on the 11th day of February, 1992, a true and correct copy of the above and foregoing document was forwarded by U.S. Mail, with proper postage thereon fully prepaid, to the following counsel of record:

John Fredericks, III
1881 9th Street, Suite 216
Boulder, CO 80302

Chadwick Smith
P.O. Box 9192
Tulsa, OK 74157

Richard L. Harris
1924 S. Utica, Suite 700
Tulsa, OK 74104

Kandi Jepsen Pate
205 Northwest Sixty-Third Street
Suite 160
Oklahoma City, OK 73116



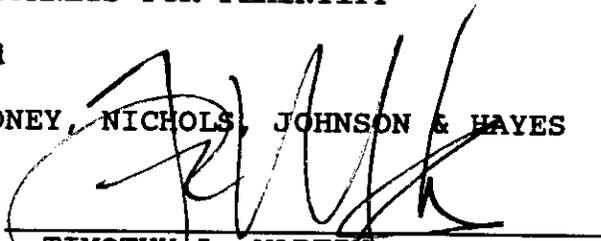
Fred M. Buxton

HAROLD D. MURRY, JR.
PHILIP H. HECHT
HOWREY & SIMON
1730 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 783-0800

ATTORNEYS FOR PLAINTIFF

and

LOONEY, NICHOLS, JOHNSON & HAYES

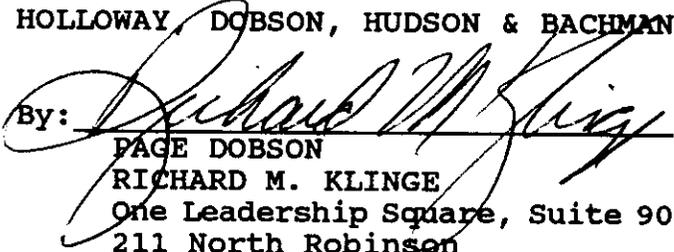
By: 

TIMOTHY L. MARTIN
OBA #10385
528 Northwest 12th Street
Oklahoma City, OK 73103
(405) 235-7641

**ATTORNEYS FOR DEFENDANT
HOME INSURANCE COMPANY**

and

HOLLOWAY, DOBSON, HUDSON & BACHMAN

By: 

PAGE DOBSON
RICHARD M. KLINGE
One Leadership Square, Suite 900
211 North Robinson
Oklahoma City, OK 73102
(405) 235-8593

**ATTORNEYS FOR DEFENDANT
FEDERAL INSURANCE COMPANY**

FILED
FEB 11 1992
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
FEB 11 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE CORPORATION
in its corporate capacity for the
NORTHSIDE STATE BANK, TULSA, OKLAHOMA,

Plaintiff,

-vs-

No. 91 C 603 B ✓

MIKE STRIPLING one and the same person
as JAMES MICHAEL STRIPLING and as
J. MICHAEL STRIPLING and as JAMES M.
STRIPLING, et al.,

Defendants.

FILED
MAR 02 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JOURNAL ENTRY OF JUDGMENT

NOW on this 23rd day of January, 1992, the above cause came on for hearing pursuant to regular assignment. The Plaintiff appeared by its attorney, James G. Wilcoxon; Defendants Mike Stripling one and the same person as James Michael Stripling and as J. Michael Stripling and as James M. Stripling and Margaret Stripling, husband and wife, and Defendant J & A Investment Company, Inc., appeared by and through their attorney of record, Steven W. Vincent; Mercury Mortgage Co., Inc., appeared by and through its attorney of record, Joe Francis; Defendant The Carpet Showroom, Inc., appeared by and through its attorney of record, J. Lyon Morehead; Defendant Chrysler First Financial Service Corporation, appeared by and through its attorney of record, Delmer W. Porter, and disclaimed any interest herein; Defendant Southern Electric Supply of Tulsa, Inc., appeared by and through its attorney, James O. Cox; Defendant, the Office of the County Treasurer of Tulsa County,

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Oklahoma, appeared by and through its attorney, J. Dennis Semlar, Assistant District Attorney for Tulsa County; Defendant the Board of County Commissioners for Tulsa County, Oklahoma, appeared by and through its attorney of record, J. Dennis Semlar, Assistant District Attorney for Tulsa County, and disclaimed any interest herein; Defendant State of Oklahoma, ex rel., Oklahoma Tax Commission appeared by and through its attorney of record, Lisa Haws, Assistant General Counsel, and disclaimed any interest herein; Defendant, United States of America, ex rel., Internal Revenue Service, appeared by and through its attorney, Wyn Dee Baker, Assistant United States Attorney; Defendants Mill Creek Lumber & Supply Co., and Arrow Concrete Co., Inc., appeared by and through their attorney, Douglas R. Haughey; Defendant William E. Davis & Sons, Inc. appeared and disclaimed any interest herein; Defendants, Leonard J. Turner and Betty E. Turner, husband and wife, appeared and disclaimed their interest herein.

1. The Court finds upon examining the pleadings, process and files in this cause, and being fully advised in the premises, that due and regular service of summons with copy of Plaintiff's Petition attached was served upon each of the Defendants, as follows, to-wit: Defendants, Mike Stripling one and the same person as James Michael Stripling and as J. Michael Stripling and

as James M. Stripling and Margaret Stripling, were personally served on August 21, 1991, by private process server; Defendant, J & A Investment Company, Inc. was served by certified mail on August 20, 1991; Defendant, Mercury Mortgage Co., Inc. was served by certified mail on August 20, 1991; Defendant, the Carpet Showroom, Inc. was served by certified mail on August 20, 1991; Defendant, Chrysler Financial Services Corporation was served by certified mail on August 20, 1991; Defendant Southern Electric Supply of Tulsa, Inc. was served by certified mail on August 20, 1991; Defendant, the Office of the County Treasurer of Tulsa County, Oklahoma, and the Board of County Commissioners of Tulsa County, Oklahoma, were served by certified mail, on August 20, 1991; Defendant, State of Oklahoma, ex rel., Oklahoma Tax Commission, was served by certified mail on August 21, 1991; Defendant, United States of America, ex rel., Internal Revenue Service, was served by certified mail on August 20, 1991, in Tulsa, Oklahoma, and on August 23, 1991 in Washington, D.C.; Defendant, Mill Creek Lumber & Supply Co., was served by certified mail on August 20, 1991; Defendant, Arrow Concrete Co. Inc., was served by certified mail on August 20, 1991; Defendant, William E. Davis & Sons, Inc. was served by certified mail on August 20, 1991; and

that said summons and said service thereof is legal and regular in all respects.

3. The Plaintiff thereupon introduced the notes and mortgages herein sued upon, and rested, and the Court, being fully advised in the premises, finds generally in favor of the Plaintiff as against the Defendants above named, and that the allegations of Plaintiff's Petition are true.

4. That default has occurred under the terms and conditions of said notes and mortgages as alleged in Plaintiff's Petition and that the Plaintiff is entitled to a foreclosure of its mortgages sued upon in this cause, as against the Defendants, Mike Stripling one and the same person as James Michael Stripling and as J. Michael Stripling and as James M. Stripling and Margaret Stripling, husband and wife, in and to each cause as hereinafter set out:

First and Second Causes of Action

On the 29th day of October, 1986, the Defendants, Mike Stripling one and the same person as James Michael Stripling and as J. Michael Stripling and as James M. Stripling and Margaret Stripling, husband and wife, executed and delivered unto the Northside State Bank, a certain promissory note and real estate

mortgage of that date, promising and agreeing to pay the holder of the sum of \$315,000.00 with interest thereon until paid. (See notes and mortgages attached to plaintiff's petition.)

The aforementioned real estate mortgage covered the following described real property and premises situated in Tulsa County, Oklahoma, to-wit:

The South 115 feet of Lots 1 thru 5 inclusive, **YATES RESUBDIVISION** of Lots 3, 4, 17 and 18, Block 1, Acre Gardens Addition, and the South 115 feet of Lot 2, Block 1, Acre Gardens Addition, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

On the 15th day of October, 1987, the aforementioned defendants executed and delivered a promissory note refinancing the total principal indebtedness reflected in the aforementioned note made payable to Northside State Bank of Tulsa in the principal amount of \$333,426.09 with interest accruing at the rate of 10% per annum to be adjusted annually 1/2 percent below Bank of Oklahoma Prime. This note required monthly payments of \$3,583.02 and is secured by the aforementioned real estate mortgage.

FDIC is now the owner and holder of the above mentioned refinanced promissory note and mortgage.

Payment has not been made according to the terms of this note and mortgage. There is now due on said note the principal sum of \$324,525.95 plus interest accrued thereon through August 1, 1991 in the amount of \$129,055.95 together with continuing interest from the 1st day of August, 1991 at the rate of \$97.80 per diem until paid, a reasonable attorney's fees and costs of this action.

Plaintiff has made demand on the defendants, James Michael Stripling and Margaret Stripling, that all the past due sums be paid, and the loan be brought current in compliance with the terms and conditions of the note. The defendants have not complied with the demands and are currently in default.

That Defendant, The County Treasurer of Tulsa County, has a valid lien upon the real property and premises described in said Petition by virtue of ad valorem taxes due and owing for the years:

1990 in the amount of \$139.00, Certificate No. 891026;
1989 in the amount of \$125.00, Certificate No. 891026;
1988 in the amount of \$115.00, Certificate No. 891026;

covering the W63S115Lt 2 Blk 1, Acre Gardens;

1990 in the amount of \$3.00, Certificate No. 891027;
1989 in the amount of \$3.00, Certificate No. 891027;
1988 in the amount of \$3.00, Certificate No. 891027;

covering the W1.5E64 S115 Lt2 Blk.1, Acre Gardens;

1990 in the amount of \$2,515.00, Certificate No. 901043;
1989 in the amount of \$2,276.00, Certificate No. 901043;

covering the E62½S115 Lt2 Blk 1, Acre Gardens.

That Plaintiff has a first lien subject to the lien of the Defendant Tulsa County Treasurer upon the real property and premises described in the First and Second Causes of Action in the Petition by virtue of said mortgage as security for the payment of said indebtedness, including interest, attorney fees and costs.

That said mortgage owned, held and sued upon by the Plaintiff herein expressly waives appraisalment or not at the option of the owner and holder thereof, such option to be exercised at the time judgment is rendered herein, and that the Plaintiff elects to have said property sold with appraisalment.

That Defendant, Mercury Mortgage Co., Inc. has a second real estate mortgage covering the aforescribed real property and premises and that their mortgage was filed January 16, 1987, and recorded in Book 4995 at Page 2381 and was subject to the first mortgage held by North Side State Bank in the amount of \$125,000.00, recorded in Book 4830 at Page 2515.

That said Defendant, Mercury Mortgage Co., Inc., prays for judgment against the Defendants, Michael Stripling and Margaret Stripling in the amount of \$35,000.00 plus interest at 14% per

annum on \$25,000.00 from November 13, 1986, until the date of this judgment herein, and interest on \$10,000.00 at 14% per annum from January 15, 1987, until the date of this judgment, plus a reasonable attorney fees.

That Defendant, Arrow Concrete Co., Inc. claims an interest in the above described real property and premises by virtue of a judgment against the Defendant, Mike Stripling, Tulsa County Case No. SC-87-16977, in the principal amount of \$713.48, plus the costs of the action accrued and accruing; said judgment was filed with the County Clerk on December 23, 1987 and recorded in Book 5071 at page 1309.

That Defendant, Mill Creek Lumber & Supply Company ("Mill Creek") claims an interest in the above described real property and premises by virtue of a judgment against the Defendants, Mike Stripling and Margaret Stripling, by reason of a judgment in Tulsa County, Case No. CJ-87-00950, in the principal amount of \$26,401.01, which has been reduced to \$18,268.10, plus accrued interest in the amount of \$6,598.99 as of October 27, 1987, and accruing at the rate of 18% per annum, thereafter, until paid in full, and for all costs of the action. Said judgment was recorded with the Tulsa County Clerk on May 24, 1988, in Book 5101 at Page 1984.

On the 14th day of June, 1988, Defendant, Mill Creek, obtained a judgment against the Defendants, Mike Stripling and Margaret Stripling, Tulsa County, Case No. CJ-87-00950, for attorney's fees of \$3,000.00. Said judgment was filed with the County Clerk of Tulsa County, Oklahoma, on August 2, 1988 in Book 5118 at page 2480.

That said Defendant, United States of America, ex rel., Internal Revenue Service, has an interest in the real estate described in Plaintiff's petition, by virtue of certain tax liens. The nature of the taxes, the amounts, assessment dates and date of filing of the liens are as set out with particularity in Form 668, Notice of Federal Tax Lien under Internal Revenue Laws, as set out hereinafter, to-wit:

Recording Number: 898632 - Lien recorded: 05/21/90
at 10:05 a.m. - IRS Number: 739007373 in the total
amount of \$20,682.03;

Recording Number: 934331 - Lien recorded: 10/01/90
at 9:55 a.m. - IRS Number: 739014275 in the total
amount of \$24,878.88;

Recording Number: - Lien recorded: 03/14/88
at 00:00 a.m.- IRS Number: 95882 in the total
amount of \$41,203.22.

That Defendant, The Carpet Showroom, Inc., claims an interest in the above described real property and premises by virtue of its Judgment entered in the District Court, Tulsa County, Oklahoma,

Case No. CS-85-4656. There is now due the sum of \$1,014.00 with interest thereon at the rate of 10% per annum from March 12, 1987, until paid.

That Defendant, Southern Electric Supply of Tulsa, Inc., claims an interest in the above described real property and premises by virtue of its judgment entered in the District Court of tulsa County, Oklahoma, Case No. CS-85-06031. There is now due the sum of \$3,606.42 plus interest until paid.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff, Federal Deposit Insurance Corporation in its corporate capacity for the Northside State Bank, Tulsa, Oklahoma, have judgment in personam against the Defendants, James Michael Stripling one and the same person as J. Michael Stripling and as James M. Stripling and as J. Michael Stripling and as James M. Stripling and Margaret Stripling, husband and wife, and each of them, and judgment in rem in its favor against the Defendants, Mike Stripling one and the same person as James Michael Stripling and as J. Michael Stripling and as James M. Stripling and Margaret Stripling, husband and wife, J & A Investment Company, Inc., Mercury Mortgage Company, Inc., The Carpet Showroom, Inc., Chrysler First Financial Services Corporation, Southern Electric Supply of Tulsa, Inc., The Office of the County Treasurer of Tulsa County,

Oklahoma, The Board of County Commissioners of Tulsa County, Oklahoma, and The State of Oklahoma, ex rel., Oklahoma Tax Commission, United States of American ex rel., Internal Revenue Service, and each of them, for the unpaid principal outstanding under the note in the amount of \$324,525.95, accrued interest in the amount of \$129,055.95, together with continuing interest from August 1, 1991, at the rate of \$97.80 per diem until paid; further, the amounts expended and to be expended to protect and preserve the mortgaged property, including a reasonable attorney's fee of \$4,000.00, abstracting and all costs of collection and enforcement, **subject** to the payment of the ad valorem taxes as hereinafter set forth due to the Defendant, Tulsa County Treasurer.

IT IS FURTHER ORDERED by the Court that Defendants, The County Treasurer of Tulsa County, has a valid lien upon the real property and premises described in said Petition by virtue of ad valorem taxes due and owing for the years:

1990 in the amount of \$139.00, Certificate No. 891026;
1989 in the amount of \$125.00, Certificate No. 891026;
1988 in the amount of \$115.00, Certificate No. 891026;

covering the W63S115Lt 2 Blk 1, Acre Gardens;

1990 in the amount of \$3.00, Certificate No. 891027;
1989 in the amount of \$3.00, Certificate No. 891027;
1988 in the amount of \$3.00, Certificate No. 891027;

covering the W1.5E64 S115 Lt2 Blk.1, Acre Gardens;

1990 in the amount of \$2,515.00, Certificate No. 901043;
1989 in the amount of \$2,276.00, Certificate No. 901043;

covering the E62½S115 Lt2 Blk 1, Acre Gardens.

That Plaintiff has a first lien **subject** to the lien of the Tulsa County Treasurer upon the real property and premises described in said Petition by virtue of said mortgage as security for the payment of said indebtedness, including interest, attorney fees and costs, said property being described as follows, to-wit:

The South 115 feet of Lots 1 thru 5 inclusive, **YATES RESUBDIVISION** of Lots 3, 4, 17 and 18, Block 1, Acre Gardens Addition, and the South 115 feet of Lot 2, Block 1, Acre Gardens Addition, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof;

and that any right, title or interest which the Defendants have or claim to have in or to said real property and premises is subsequent, junior and inferior to the lien of the Plaintiff.

That said mortgage owned, held and sued upon by the Plaintiff herein expressly waives appraisement or not at the option of the owner and holder thereof, such option to be exercised at the time judgment is rendered herein, and that the Plaintiff elects to have said property sold with appraisement.

IT IS FURTHER ORDERED that said Defendant, Mercury Mortgage Co., Inc., have judgment against the Defendants, Michael Stripling and Margaret Stripling in the amount of \$35,000.00 plus interest at 14% per annum on \$25,000.00 from November 13, 1986, until the date of this judgment herein, and interest on \$10,000.00 at 14% per annum from January 15, 1987, until the date of this judgment, plus a reasonable attorney fee of \$12,000.00.

IT IS FURTHER ORDERED by the Court that Defendant, Arrow Concrete Co., Inc. have in rem judgment against the Defendant, Mike Stripling, Tulsa County Case No. SC-87-16977, in the principal amount of \$713.48, plus the costs of the action accrued and accruing; said judgment was filed with the County Clerk on December 23, 1987 and recorded in Book 5071 at page 1309.

IT IS FURTHER ORDERED by the Court that Defendant, ("Mill Creek") have in rem judgment against the Defendants, Mike Stripling and Margaret Stripling, by reason of a judgment in Tulsa County, Case No. CJ-87-00950, in the principal amount of \$26,401.01, which has been reduced to \$18,268.10, plus accrued interest in the amount of \$6,598.99 as of October 27, 1987, and accruing at the rate of 18% per annum, thereafter, until paid in full, and for all costs of

the action. Said judgment was recorded with the Tulsa County Clerk on May 24, 1988, in Book 5101 at Page 1984.

IT IS FURTHER ORDERED by the Court that the Defendant, Mill Creek, have in rem judgment against the Defendants, Mike Stripling and Margaret Stripling, by reason of a judgment in Tulsa County, Case No. CJ-87-00950, for attorney's fees of \$3,000.00. Said judgment was filed with the County Clerk of Tulsa County, Oklahoma, on August 2, 1988 in Book 5118 at page 2480.

IT IS FURTHER ORDERED by the Court that said Defendant, United States of America, ex rel., Internal Revenue Service, have judgment against the Defendants, Mike Stripling and Margaret Stripling, by virtue of certain tax liens as hereinafter set forth. The nature of the taxes, the amounts, assessment dates and date of filing of the liens are as set out with particularity in Form 668, Notice of Federal Tax Lien under Internal Revenue Laws, as set out hereinafter, to-wit:

Recording Number: 898632 - Lien recorded: 05/21/90
at 10:05 a.m. - IRS Number: 739007373 in the total
amount of \$20,682.03;

Recording Number: 934331 - Lien recorded: 10/01/90
at 9:55 a.m. - IRS Number: 739014275 in the total
amount of \$24,878.88;

Recording Number: - Lien recorded: 03/14/88
at 00:00 a.m.- IRS Number: 95882 in the total
amount of \$41,203.22.

IT IS FURTHER ORDERED that the Defendant, The Carpet Showroom, Inc., have judgment against Mike Stripling and Margaret Stripling in the amount of \$1,014.00 by virtue of its Judgment entered in the District Court, Tulsa County, Oklahoma, Case No. CS-85-4656.

IT IS FURTHER ORDERED by the Court that Defendant, Southern Electric Supply of Tulsa, Inc., have judgment against Mike Stripling and Margaret Stripling in the amount of \$3,606.42 by virtue of its Judgment entered in the District Court, Tulsa County, Oklahoma, Case No. CS-88-06031.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that upon confirmation of said sale, the Defendants herein, **(save and except the County Treasurer of Tulsa County)**, and all persons claiming by, through or under them since the commencement of this action, be forever barred, foreclosed and enjoined from asserting or claiming any right, title, interest, estate, or equity of redemption in or to said real property and premises, or any part thereof.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the first mortgage and lien of the Plaintiff in the amounts hereinabove found and adjudged be foreclosed, and a Special

Execution and Order of Sale issue out of the office of the District Court Clerk, in this cause, directed to the Sheriff to levy upon, advertise and sell, after due and legal appraisalment, unpaid taxes, advancements by Plaintiff for taxes, insurance premiums, or expenses necessary for the preservation of the subject property, if any, and pay the proceeds of said sale to the Clerk of this Court, as provided by law, for application as follows:

First: To the payment of the costs herein accrued and accruing.

Second: To the payment of the ad valorem taxes due as set out above to the County Treasurer of Tulsa County.

Third: To the payment of the judgment and liens of the Plaintiff in the amounts herein set out and any advancements by Plaintiff for taxes, insurance premiums or expenses necessary for the preservation of the subject property.

Fourth: To the Defendant, Mercury Mortgage Co., for payment of its judgment as above set forth.

Fifth: To the Defendant, Carpet Showroom, Inc., for payment of its judgment as above set forth.

Sixth: To the Defendant, Southern Electric Supply of Tulsa, Inc., for payment of its judgment as above set forth.

Seventh: To the Defendant, Arrow Concrete Co., Inc., for payment of its judgment as above set forth.

Eighth: To the Defendant, United States of America, ex rel., Internal Revenue Service, for payment of its Federal Tax Lien No. 95882.

Ninth: To the Defendant, Mill Creek Lumber & Supply Company, for payment of its judgment.

Tenth: To the Defendant, United States of America, ex rel., Internal Revenue Service, for payment of its Federal Tax Lien No. 739007373.

Eleventh: To the Defendant, United States of America, ex rel., Internal Revenue Service, for payment of its Federal Tax Lien No. 739014275.

Twelfth: The balance, if any, to be paid to the Clerk of this Court, to await the further order of this Court.

Third and Fourth Causes of Action:

Beginning on the 6th day of February, 1987, the Defendants, Mike Stripling one and the same person as James Michael Stripling and as J. Michael Stripling and as James M. Stripling and Margaret Stripling, husband and wife, executed and delivered unto the Northside State Bank, a series of promissory notes and real estate mortgages, promising and agreeing to pay the holder the sums of \$21,045.00, \$15,025.00 and \$42,000.00, respectively, with interest thereon until paid. (See notes and mortgages attached to plaintiff's petition).

The aforementioned real estate mortgages covered the following described real property and premises situated in Tulsa County, Oklahoma, to-wit:

Lot Two (2), Block One (1), PEORIAN ADDITION, Tulsa County, State of Oklahoma, according to the recorded plat thereof;

On the 5th day of October, 1987, the aforementioned defendants executed and delivered a promissory note refinancing the total principal indebtedness reflected in the aforementioned notes made payable to Northside State Bank of Tulsa in the principal amount of \$108,534.14 with interest accruing at the rate of 10% to be adjusted annually 1/2 percent below Bank of Oklahoma Prime. This note required monthly payments of \$1,434.29 and is secured by the aforementioned real estate mortgage.

FDIC is now the owner and holder of the above mentioned refinanced promissory note and mortgage.

The aforementioned notes, refinanced note and mortgages are held subject to a valid first mortgage lien held by Mager Mortgage Company in the amount of \$52,700.00 executed by the defendants Stripling on the 10th day of July, 1978, and secured by the same real property.

Payment has not been made according to the terms of Plaintiff's note and mortgage. That there is now due on said note the principal sum of \$108,534.14, with interest accruing at the

rate of 10% plus 1% over BOK prime and was to mature on November 8, 1997; a reasonable attorney's fees and costs of this action.

Plaintiff has made demand on the defendants, James Michael Stripling and Margaret Stripling, that all the past due sums be paid, and the loan be brought current in compliance with the terms and conditions of the note. The defendants have not complied with the demands and are currently in default.

The defendants, Mill Creek Lumber & Supply Co. and Arrow Concrete Co., Inc., disclaim any and all interest herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff, Federal Deposit Insurance Corporation in its corporate capacity for the Northside State Bank, Tulsa, Oklahoma, have judgment in personam against the Defendants, Mike Stripling one and the same person as James Michael Stripling and as J. Michael Stripling and as James M. Stripling and Margaret Stripling, husband and wife, and in rem judgment against the Defendants, Mike Stripling one and the same person as James Michael Stripling and as J. Michael Stripling and as James M. Stripling and Margaret Stripling, husband and wife, The Carpet Showroom, Inc., Chrysler First Financial Services Corporation, Southern Electric Supply of Tulsa, Inc., United States of America, ex rel., Internal Revenue

Service, Mill Creek Lumber & Supply Company, Arrow Concrete Co., Inc., William E. Davis and Sons, Inc., Leonard J. Turner and Betty E. Turner, husband and wife, the Office of the County Treasurer of Tulsa County, Oklahoma, the Board of County Commissioners of Tulsa County, Oklahoma, and the State of Oklahoma, ex rel., Oklahoma Tax Commission, and each of them, in the sum of \$97,033.18, accrued interest of \$36,093.74, together with continuing interest from August 1, 1991 at the rate of \$30.57 per diem until paid; further, the amounts expended and to be expended to protect and preserve the mortgaged property, including a reasonable attorney's fee of \$1,000.00, abstracting and all costs of collection and enforcement, and that said amounts are secured by said second mortgage and constitute a lien upon the real property and premises situated in Tulsa County, State of Oklahoma, to-wit:

Lot Two (2), Block One (1), **PEORIAN ADDITION**, Tulsa County, State of Oklahoma, according to the recorded plat thereof;

and that any right, title or interest which the Defendants have or claim to have in or to said real property and premises is subsequent, junior and inferior to the second mortgage and lien of the Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the second mortgage of the Plaintiff in the amounts hereinabove

found and adjudged be foreclosed, and a Special Execution and Order of Sale issue out of the office of the District Court Clerk, in this cause, directed to the Sheriff to levy upon, advertise and sell, after due and legal appraisalment, unpaid taxes, advancements by Plaintiff for taxes, insurance premiums, or expenses necessary for the preservation of the subject property, if any, and pay the proceeds of said sale to the Clerk of this Court, as provided by law, for application as follows:

First: To the payment of the costs herein accrued and accruing.

Second: To the payment of the ad valorem taxes due as set out above to the County Treasurer of Tulsa County.

Third: To the payment of the judgment and liens of the Plaintiff in the amounts herein set out and any advancements by Plaintiff for taxes, insurance premiums or expenses necessary for the preservation of the subject property.

Fourth: To the Defendant, Carpet Showroom, Inc., payment of its judgment as above set forth.

Fifth: To the Defendant, Southern Electric Supply of Tulsa, Inc., for payment of its judgment as above set forth.

Sixth: To the Defendant, United States of America, ex rel., Internal Revenue Service, payment of its Federal Tax Lien No. 95882.

Eighth: To the Defendant, United States of America, ex rel., Internal Revenue Service, payment of its Federal Tax Lien No. 739007373.

Ninth: To the Defendant, United States of America, ex rel., Internal Revenue Service, payment of its Federal Tax Lien No. 739014275.

Tenth: To the balance, if any, to be paid to the Clerk of this Court, to await the further order of this Court.

FIFTH CAUSE OF ACTION

That as a part and parcel of the same transaction alleged in the Third and Fourth Causes of Action, and for said consideration, Defendants, Mike Stripling one and the same person as James Michael Stripling and as J. Michael Stripling and as James M. Stripling and Margaret Stripling, Husband and Wife, then and there made, executed and delivered unto Plaintiff a certain Security Agreement, under the terms of which was pledged, as security for said Note, to-wit:

1972 Stardust 50 Ft. Houseboat #12281
1980 Kawasaki Jet Ski #KAW346940680
1984 Conroy 19 Ft. Boat #CN000893M84B
1979 Ford Van, VIN #S15HHDJ9901
1979 Datsun, VIN #HS130-146555

That, contemporaneously with the execution of said Security Agreement, a Lien Entry Form was duly recorded in the Office of the County Clerk of Tulsa County. A copy of said Lien Entry Form is attached hereto and marked "Exhibit H".

That by virtue of said Security Agreement aforesaid, Plaintiff holds a lien upon, a special ownership in, and the right to

immediate possession of said property. That the Defendants unlawfully hold and detain from Plaintiff the possession thereof in the total value of \$108,454.14. That Plaintiff has demanded of the Defendants the possession of such property so held and detained. That Defendants have failed and refused and do now fail and refuse to deliver the same to Plaintiff, thereby depriving Plaintiff the use of the same, to Plaintiff's damage in the sum of \$108,454.14.

That, as aforesaid, said personalty is wrongfully detained by the Defendants and said property to the best of my knowledge was not taken in execution or on any order or judgment against Plaintiff or by virtue of any order or delivery issued in replevin or any other mesne or final process issued against the Plaintiff provided that some possessory determination may have previously been made concerning the stardust houseboat.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff be granted permanent possession and holds all right, title and interest in the following described personal property, to-wit:

1972 Stardust 50 Ft. Houseboat #12281
1980 Kawasaki Jet Ski #KAW346940680
1984 Conroy 19 Ft. Boat #CN000893M84B
1979 Ford Van, VIN #S15HHDJ9901

and that upon sale of same and after deduction of costs for sale and the costs incurred by the Plaintiff in this action, including reasonable attorney's fees, the sale proceeds shall be applied to the indebtedness of the Defendants, and if there be any surplus after the aforementioned costs and fees are satisfied, same shall be paid over to the Defendants.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff be granted permanent possession and holds all right, title and interest in the following described personal property, to-wit:

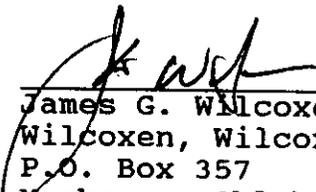
1972 Stardust 50 Ft. Houseboat #12281
1980 Kawasaki Jet Ski #KAW346940680
1984 Conroy 19 Ft. Boat #CN000893M84B
1979 Ford Van, VIN #S15HHDJ9901

and that upon sale of same and after deduction of costs for sale and the costs incurred by the Plaintiff in this action, including reasonable attorney's fees, the sale proceeds shall be applied to

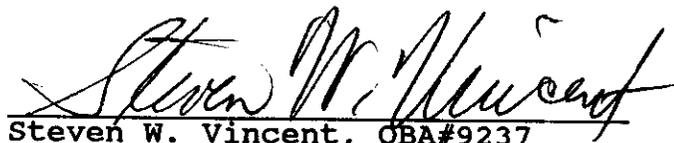
the indebtedness of the Defendants, and if there be any surplus after the aforementioned costs and fees are satisfied, same shall be paid over to the Defendants.


UNITED STATES MAGISTRATE JUDGE

APPROVED:


James G. Wilcoxen, OBA #9605
Wilcoxen, Wilcoxen & Primomo
P.O. Box 357
Muskogee, Oklahoma 74402
(918) 683-6696

Attorney for Plaintiff



Steven W. Vincent, OBA#9237

616 South Main, Suite 308

Tulsa, OK 74119

Attorney for Defendants Stripling
and Defendant J & A Investment Company, Inc.



Joe Francis, OBA#3082
Francis & Francis
717 South Houston - Suite 506
Tulsa, OK 74127

Attorneys for Defendant Mercury Mortgage
Co., Inc.

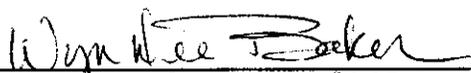
J. Lyon Morehead

J. Lyon Morehead, OBA#6373
Chapel, Riggs, Abney, Neal & Turpen
502 West Sixth Street
Tulsa, OK 74119-1010

Attorneys for Defendant The Carpet
Showroom, Inc.

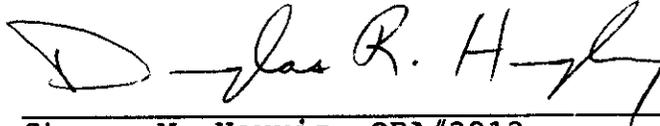
J. Dennis Semlar J.E. for 91-C-603-B
J. Dennis Semlar, OBA#8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, OK 74103

Attorney for Defendants
The County Treasurer of Tulsa
County and The Board of County
Commissioners of Muskogee
County



Wyn Dee Baker, OBA#465
Assistant United States Attorney
3600 United States Courthouse
Tulsa, OK 74103

Attorney for Defendant United States of America
ex rel., Internal Revenue Service



Steven M. Harris, OBA#3913
Douglas R. Haughey, OBA#13290
2431 East 61st Street, Suite 260
Tulsa, OK 74136

Attorneys for Defendants, Mill Creek
Lumber & Supply Co.

and

Arrow Concrete Co., Inc.