

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

FILED

NOV 24 1992

WILLIAM H. LAWRENCE  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OK.

NINA JEAN HALLFORD,  
Plaintiff,

v.

No. 91-C-395-E

EMPLOYEE BENEFIT PLANS OF  
OKLAHOMA, INC., an Oklahoma  
corporation, and ROBERT M.  
WINCHELL, individually,

Defendants and Third-  
Party Plaintiff,

v.

HUGHES LUMBER COMPANY,

Third-Party Defendant.

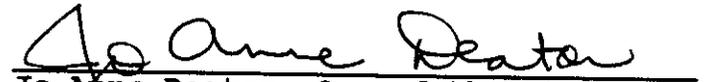
NOV 30 1992

**STIPULATION OF DISMISSAL WITHOUT  
PREJUDICE OF DEFENDANT AND THIRD-PARTY  
PLAINTIFF'S THIRD-PARTY COMPLAINT AGAINST  
THIRD-PARTY DEFENDANT, HUGHES LUMBER COMPANY**

As a result of the Order entered herein by the United States District Judge, James O. Ellison, dated August 17, 1992, filed August 18, 1992, and entered on the Docket August 19, 1992, a copy of which is attached hereto as Exhibit "A," the Defendants and Third-Party Plaintiff, Employee Benefit Plans of Oklahoma, Inc., an Oklahoma corporation, and Robert M. Winchell, individually, and Third-Party Defendant, Hughes Lumber Company, pursuant to Rule 41(a)(1) F.R.C.P. stipulate that the Defendants and Third-Party

Plaintiff's Third-Party Complaint be dismissed without prejudice,  
each party to bear their own costs.

  
John R. Woodard, III, One of the  
attorneys for Defendants and Third-  
Party Plaintiff, Employee Benefit  
Plans of Oklahoma, Inc., an Oklahoma  
corporation, and Robert M. Winchell,  
individually

  
Jo Anne Deaton, One of the attorneys  
for Hughes Lumber Company, Third-  
Party Defendant

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

ENTERED ON DOCKET  
DATE AUG 19 1992

NINA JEAN HALLFORD,  
Plaintiff,

vs.

EMPLOYEE BENEFIT PLANS OF  
OKLAHOMA, INC., et al.,  
Defendants,

vs.

HUGHES LUMBER COMPANY,  
Third-Party Defendant.

No. 91-C-395-E ✓

**F I L E D**

AUG 18 1992

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

ORDER

The Court has for consideration the Motion for Summary Judgment filed by Defendants Employee Benefit Plans of Oklahoma, Inc., (EBPO) and Robert M. Winchell. The material undisputed facts of this case compel a finding that the motion should be granted. The Court finds that this action is governed by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §1001 at §1144(a). See Pilot Life Insurance Company v. Dedeaux, 107 S.Ct. 1549 (1987) and Settles v. Golden Rule Insurance Co., 927 F.2d 505 (10th Cir. 1991). The Court adopts the position of the Fifth Circuit, in Light v. Blue Cross and Blue Shield of Alabama, 790 F.2d 1247, 1248-1249 (5th Cir. 1986), the Eleventh Circuit in Howard v. Parisian, Inc., 807 F.2d 1560, 1564 (11th Cir. 1986) and the Ninth Circuit, in Gibson v. Prudential Insurance Co., 915 F.2d 414 (9th Cir. 1990) that where, as here, the insurance company acts

as a non-fiduciary administrator, no ERISA claim will lie against it for allegedly wrongfully denied medical benefits; therefore the Motion for Summary Judgment of EBPO and Winchell should be granted.

So ORDERED this 17<sup>th</sup> day of August, 1992.

  
\_\_\_\_\_  
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET  
DATE 11/30/92

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ROBERT F. JACKSON a/k/a ROBERT )  
FRANKLIN JACKSON a/k/a ROBERT E. )  
JACKSON; LESA R. WARD f/k/a )  
LESA R. JACKSON; COUNTY )  
TREASURER, Washington County, )  
Oklahoma; and BOARD OF COUNTY )  
COMMISSIONERS, Washington County, )  
Oklahoma, )  
 )  
Defendants. )

FILED  
NOV 21 1992  
Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 91-C-665-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 25 day  
of Nov., 1992. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Phil Pinnell, Assistant United States Attorney;  
and the Defendants, Robert F. Jackson a/k/a Robert Franklin  
Jackson a/k/a Robert E. Jackson; County Treasurer, Washington  
County, Oklahoma; and Board of County Commissioners, Washington  
County, Oklahoma, appear not, but make default.

The Court being fully advised and having examined the  
court file finds that the Defendant, County Treasurer, Washington  
County, Oklahoma, acknowledged receipt of Summons and Complaint  
on September 19, 1991; and that Defendant, Board of County  
Commissioners, Washington County, Oklahoma, acknowledged receipt  
of Summons and Complaint on September 19, 1991.

The Court further finds that the Defendant, Robert F.  
Jackson a/k/a Robert Franklin Jackson a/k/a Robert E. Jackson,

was served by publishing notice of this action in the Examiner-Enterprise, a newspaper of general circulation in Washington County, Oklahoma, once a week for six (6) consecutive weeks beginning July 9, 1992, and continuing through August 13, 1992, as more fully appears from the verified amended proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, Robert F. Jackson a/k/a Robert Franklin Jackson a/k/a Robert E. Jackson, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, Robert F. Jackson a/k/a Robert Franklin Jackson a/k/a Robert E. Jackson. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Farmers Home Administration, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by

publication with respect to his present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer, Washington County, Oklahoma, and Board of County Commissioners, Washington County, Oklahoma, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

LOT TWENTY-SIX (26), EASTMAN SECOND ADDITION  
TO OCHELATA, WASHINGTON COUNTY, OKLAHOMA.

The Court further finds that on December 12, 1986, Robert F. Jackson and Lesa R. Jackson executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$32,500.00, payable in monthly installments, with interest thereon at the rate of nine and one-half percent (9.5%) per annum.

The Court further finds that as security for the payment of the above-described note, Robert F. Jackson and Lesa R. Jackson executed and delivered to the United States of

America, acting through the Farmers Home Administration, a mortgage dated December 12, 1986, covering the above-described property. Said mortgage was recorded on December 12, 1986, in Book 841, Page 1807, in the records of Washington County, Oklahoma.

The Court further finds that on December 12, 1986, Robert F. Jackson and Lesa R. Jackson executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on November 10, 1987, Robert F. Jackson executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on September 28, 1988, Robert F. Jackson executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that Lesa R. Ward f/k/a Lesa R. Jackson conveyed her interest in the subject real property described in the Complaint to Robert F. Jackson. On July 30, 1992, the Farmers Home Administration released Lesa R. Ward f/k/a Lesa R. Jackson from personal liability to the Government for the indebtedness and obligation of the note and mortgage. The Court

further finds that on September 4, 1992, the Plaintiff, United States of America, dismissed Lesa R. Ward f/k/a Lesa R. Jackson from this foreclosure proceeding.

The Court further finds that the Defendant, Robert F. Jackson a/k/a Robert Franklin Jackson a/k/a Robert E. Jackson, made default under the terms of the aforesaid note, mortgage, and interest credit agreements by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Robert F. Jackson a/k/a Robert Franklin Jackson a/k/a Robert E. Jackson, is indebted to the Plaintiff in the principal sum of \$32,889.67, plus accrued interest in the amount of \$4,839.10 as of February 5, 1991, plus interest accruing thereafter at the rate of 9.5 percent per annum or \$8.5603 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of \$5,196.00, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$245.80 (\$237.80 for publication fees; \$8.00 fee for recording Notice of Lis Pendens).

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendant, Robert F. Jackson a/k/a Robert Franklin Jackson a/k/a Robert E.

Jackson, in the principal sum of \$32,889.67, plus accrued interest in the amount of \$4,839.10 as of February 5, 1991, plus interest accruing thereafter at the rate of 9.5 percent per annum or \$8.5603 per day until judgment, plus interest thereafter at the current legal rate of 3.76 percent per annum until fully paid, and the further sum due and owing under the interest credit agreements of \$5,196.00, plus interest on that sum at the current legal rate of 3.76 percent per annum from judgment until paid, plus the costs of this action in the amount of \$245.80 (\$237.80 for publication fees; \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Robert F. Jackson a/k/a Robert Franklin Jackson a/k/a Robert E. Jackson, to satisfy the in rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

**First:**

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

**Second:**

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

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

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

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

  
PHIL PINNELL, OBA #7169  
Assistant United States Attorney  
3900 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

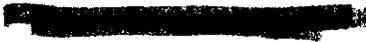
Judgment of Foreclosure  
Civil Action No. 91-C-665-B

PP/css

ENTERED IN COURT

DATE NOV 30 1992

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

  
INTERSTATE GAMING SERVICES, INC.,  
an Illinois Corporation,

Plaintiff,

vs.

WAYNE NEWTON SENECA-CAYUGA  
GAMING, INC., a Nevada Corporation,  
d/b/a WAYNE NEWTON'S FIRST  
AMERICAN'S HIGH STAKES BINGO;  
WAYNE NEWTON and MARK MORENO,

Defendants.

**ORDER OF DISMISSAL WITHOUT PREJUDICE**

Upon the Motion to Dismiss for Insufficiency of Service of Process made by Defendants Newton and Moreno and because plaintiff has not perfected service on said defendants within the sixty (60) day extension granted by the Court, IT IS HEREBY THE ORDER of the Court that pursuant to Fed.R.Civ.P. 4(j) and Fed.R.Civ. 12(b)5, plaintiff's cause of action against Defendants Newton and Moreno is hereby dismissed without prejudice.

Dated this 24 day of November, 1992.

**S/ THOMAS R. BRETT**

UNITED STATES DISTRICT JUDGE

Bill Heskett (OBA #4152)  
HESKETT & HESKETT  
304 First National Bank Bldg.  
pawhuska, Oklahoma 74056  
(918) 287-1545

**FILED**  
NOV 30 1992  
Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT

DATE 11/30/92

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

RCB BANK successor by merger to  
Bank of Oklahoma-Claremore, )

PLAINTIFF, )

VS. )

Case No. 92-C-191-B

R.B. MANTON, INC. )  
d/b/a Precision Tubulars; )  
R.B. MANTON )  
a/k/a Robert B. Manton, individually; )  
VERDIGRIS VALLEY ECONOMIC )  
DEVELOPMENT CORPORATION; )  
WASHINGTON COUNTY TRUST )  
AUTHORITY; )  
STIFFLEMIER PIPE COMPANY; )  
REDWING SERVICE & SUPPLY )  
COMPANY; )  
HAMILTON METALS, INC.; )  
BBL CO.; )  
FIRST METALS, INC. and )  
FEDERAL DEPOSIT INSURANCE )  
CORPORATION, )

DEFENDANTS. )

NOV 30 1992  
Richard M. Edwards, Clerk  
U.S. DISTRICT COURT

**JOURNAL ENTRY OF DEFAULT JUDGMENT**

THIS MATTER COMES on for hearing before me, the undersigned Judge of the  
United States District Court for the Northern District of Oklahoma, on this 25<sup>th</sup> day  
of Nov., 1992 on the Plaintiff's Motion for Default Judgment against the  
Defendants, R. B. Manton Inc. and R.B. Manton aka Robert B. Manton, individually, and  
the Plaintiff's request for default judgment against the Defendant, Stifflemier Pipe  
Company.

The Plaintiff appears by its attorney of record, Richard D. Mosier of the law firm Carle, Higgins, Mosier and Taylor, Claremore, Oklahoma, and the Defendants, R. B. Manton, Inc. and R. B. Manton aka Robert B. Manton, and Stifflemier Pipe Company appear not.

The Court having heard the statements of counsel and having examined the files and records in said cause makes the following findings of fact and conclusions of law.

### FINDINGS OF FACT

1. The Defendants, R. B. Manton, Inc. and R. B. Manton aka Robert B. Manton, were served with summons in this action according to law on January 28, 1992, and March 30, 1992, respectively, and that neither party has entered an appearance herein or answered Plaintiff's Complaint.

2. The Defendant, Stifflemier Pipe Company, filed its original answer to Plaintiff's Petition in the District Court of Washington County on or about the 12th day of February, 1992, but has since that time failed to appear for the various hearings scheduled and held in this matter including the Pre-Trial Conference held on the 12th day of November, 1992, and is therefore in default herein.

3. The Defendant, R.B. Manton, Inc. is indebted to the Plaintiff under the terms of a certain Promissory Note dated September 30, 1990, in the sum of \$477,864.83 together with interest accruing from the 12th day of November, 1992, at a rate of \$133.33 per diem. (9% per annum).

4. The Defendant, R.B. Manton aka Robert B. Manton is indebted to the Plaintiff under the terms of his written guaranty of the sums due Plaintiff from the Defendant, R.B. Manton, Inc. in the same amounts as set forth above.

5. The Plaintiff is the holder of a valid perfected security interest in the inventory of the Defendant, R.B. Manton, Inc. dba Precision Tubulars by virtue of a security agreement dated August 17, 1989, and related filings.

6. The interest of the Plaintiff in such inventory is senior and superior to any claim of the Defendant, Stifflemier Pipe Company.

7. The Defendants, R.B. Manton, Inc. and R. B. Manton aka Robert B. Manton are in default under the terms of the Promissory Note and Guaranty Agreement above described, and the Plaintiff is entitled to judgment in rem against the Defendant, R.B. Manton, Inc. and in personam against the Defendant, R. B. Manton aka Robert B. Manton for the sums due under the Agreements.

#### JUDGMENT OF THE COURT

**WHEREFORE, premises considered** the Court finds and it is ordered, adjudged and decreed that the Plaintiff have money judgment against the Defendant, R.B. Manton, Inc. dba Precision Tubulars, in rem only, and the Defendant R.B. Manton aka Robert B. Manton, individually, in personam in the sum of \$477,864.83 plus interest from the 12th day of November, 1992, at the rate of 9.00% per annum, Plaintiffs costs in this action, and a reasonable attorneys fee if timely applied for pursuant to Local Rule 6.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Plaintiff have judgment against the Defendants R.B. Manton Inc. dba Precision Tubulars, R.B. Manton aka Robert B. Manton, individually, for possession of the inventory of the Defendant R.B. Manton, Inc., that the same be sold in compliance with the Uniform Commercial Code as adopted in the State of Oklahoma and the proceeds applied to the indebtedness due the Plaintiff.

**THE COURT FURTHER ORDERS ADJUDGES AND DECREES** that the interest of the Defendant, Stifflemier Pipe Company, if any, in the inventory of the Defendant, R.B. Manton, Inc. is junior and inferior to the interest of the Plaintiff.

**S/ THOMAS R. BRETT**

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**JUDGE OF THE DISTRICT COURT**

**APPROVED BY:**



---

**RICHARD D. MOSIER, OBA #10414  
CARLE HIGGINS, MOSIER AND TAYLOR  
P.O. Box 1267  
417 W. First Street  
Claremore, OK 74018  
918 341-2131**

**ATTORNEYS FOR THE PLAINTIFF, RCB BANK successor by merger to Bank of Oklahoma-Claremore**

ENTERED ON DOCKET  
DATE NOV 27 1992

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

BARRON MOORE, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 RON CHAMPION )  
 )  
 Respondent. )

92-C-346-B

FILED  
Richard L. ...  
U.S. District Court  
Northern District of Oklahoma

ORDER

This order pertains to petitioner's Motion for Reconsideration (Docket #9)<sup>1</sup>. Petitioner asks the court to reconsider its Order of October 29, 1992 denying his Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. The court found that petitioner's three claims for relief were more suited to the situation where a person is convicted based on a jury verdict and the sentence is then enhanced based on previous convictions. Here, he pled guilty to these crimes, including the recidivist portion. The plea was made pursuant to an agreement with prosecutors. There is no indication that petitioner disputed the use of the former convictions. He claims now that the former convictions are unconstitutional, but presents no evidence to that effect.

A copy of the Summary of Facts with petitioner's guilty plea was contained in the exhibits filed by respondent and showed that, at the time he pled guilty, petitioner was questioned about his mental state, that he was informed of the charge (including the AFC portion), the minimum and maximum penalties, and the rights he was giving up, and that he was pleading guilty because he did the act charged and was pleading pursuant to a plea

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<sup>1</sup> "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.

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agreement, but without coercion or compulsion. He received almost the minimum possible sentence.

Petitioner made no attempt to support his bald assertion that his previous convictions were invalid, did not claim that he ever told his counsel that they were invalid, pled guilty with full knowledge of the charge and its effect, and did not claim that his plea was not voluntary and knowing. In short, petitioner gave no grounds upon which to predicate relief.

In his motion for reconsideration, petitioner first argues that the errors at his plea and sentencing hearing worked to his disadvantage, because he was convicted as a recidivist offender without pleading guilty to the recidivist portion of the charge. The court has already discussed this argument in its October 29, 1992 Order, saying petitioner seems to assume that the recidivist portion of the crime is separate from the crime he pled guilty to, but that is incorrect. He pled guilty to the crime which included the recidivist element. As an example, petitioner did not plea guilty to "robbery with a dangerous weapon", instead he pled guilty to "robbery with a dangerous weapon AFCF". In its Order, the court pointed out that the Tenth Circuit dealt with this question in Bailey v. Cowley, 914 F.2d 1438 (10th Cir. 1990), and concluded: "when petitioner chose to plead guilty while believing himself to be innocent, he took a calculated risk that he would fare better by pleading guilty than by going to trial. The fact that his assessment of the risk was based on a faulty premise, that his 1971 conviction would continue to be valid, did not render his plea either involuntary or unintelligent." Id. at 1442 (quoting Brady v. United States, 397 U.S. 742, 748 (1970)).

Petitioner suggests that his attorney should have examined the previous convictions before advising him for the plea hearing. However, the court in Bailey concluded that counsel could not reasonably be expected to investigate or challenge the validity of a defendant's earlier conviction if uninformed of any facts that might suggest that it was invalid. Petitioner cannot raise the issue of ineffective assistance of counsel in this motion for reconsideration when it was never raised in his petition for a writ of habeas corpus.

The court has reconsidered its Order of October 29, 1992 and finds no merit to petitioner's claims of error.

Dated this 23<sup>rd</sup> day of November, 1992.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

ENTERED ON BOOKET

DATE NOV 27 1992

BOBBY GENE STEWART,  
Petitioner, )

vs. )

R. MICHAEL CODY, et al.,  
Respondents. )

No. 92-C-891-C

**FILED**

NOV 24 1992

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

O R D E R

Petitioner has paid his filing fee pursuant to the court's last order. It has now come to the court's attention that Petitioner was convicted in Muskogee County, Oklahoma, which is located within the territorial jurisdiction of the Eastern District of Oklahoma. Therefore, in the furtherance of justice, this matter may be more properly addressed in that district.

Accordingly, pursuant to 28 U.S.C. § 2241(d), Petitioner's application for a writ of habeas corpus is hereby transferred to the Eastern District of Oklahoma for all further proceedings.

IT IS SO ORDERED this 19<sup>th</sup> day of November, 1992.

H. Dale Cook  
H. DALE COOK  
UNITED STATES DISTRICT JUDGE

4

ENTERED ON FILE  
DATE NOV 27 1992

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

ATLANTIC RICHFIELD COMPANY, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 AMERICAN AIRLINES, INC., Et. Al., )  
 )  
 Defendants. )

Consolidated Cases Nos.

89-C-868-B  
89-C-869-B  
90-C-859-B

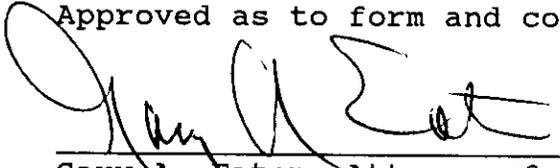
ORDER FOR DISMISSAL WITHOUT PREJUDICE

Now on this 24 day of November, 1992, upon presentation of the Stipulation for Dismissal Without Prejudice executed by Plaintiff Atlantic Richfield Company and Defendant Odell Harper, the Court finds and adjudges that all claims of Atlantic Richfield Company set forth herein against Odell Harper should be and are hereby dismissed without prejudice to any future action upon such claims and that each of these parties shall bear and be responsible for its own costs and expenses incurred herein.

SI THOMAS R. BRETT

Judge

Approved as to form and content:



Gary A. Eaton, Attorney for  
Atlantic Richfield Company

Bruce Miller Townshend, Attorney  
for Odell Harper

ENTERED ON DOCKET

DATE Nov 27 1992

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

ATLANTIC RICHFIELD COMPANY, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
AMERICAN AIRLINES, INC., Et. Al., )  
 )  
Defendants. )

Consolidated Cases Nos.  
89-C-868-B  
89-C-869-B  
90-C-859-B

FILED  
5  
D

FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

Now on this 25 day of Nov., 1992, this matter comes on for consideration of the Plaintiff Atlantic Richfield Company's (ARCO'S) NOTICE OF MOTION AND MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT (docket no. 486). The Plaintiff ARCO appears by its attorney, Larry Gutteridge, the Defendants appear by their respective lead counsel, and William Anderson appears as liaison counsel. The Court having examined the files and records and proceedings herein, having reviewed and considered the terms and conditions of the settlements in question, having reviewed and considered the Magistrate's Report and Recommendation, and being fully advised and informed in the premises FINDS, ADJUDGES, ORDERS and DECREES:

1. The settlement encompassed by the Notice of Motion and Motion for Determination of Good Faith Settlement (docket no. 486) in the above captioned action between the Plaintiff ARCO and defendant Richard Lloyd Jones, Jr., Airport is found to be in good faith, and a final judgment barring all claims against defendant Richard Lloyd Jones, Jr., Airport associated with the Site under state and federal law, except to the extent that such

claims are preserved by the settlements, and except for any claims for arranging for disposal of off-site hazardous substances, should be and is hereby entered.

2. Each and every claim asserted by the Plaintiff ARCO against defendant Richard Lloyd Jones, Jr., Airport should be and is hereby dismissed in its entirety on the merits, with prejudice and without costs.

3. Each and every claim "deemed filed" by or against defendant Richard Lloyd Jones, Jr., Airport pursuant to the terms of the First Amended Case Management Order, Section VII. B., filed March 6, 1992, is hereby dismissed in its entirety on the merits, with prejudice and without costs.

4. In accordance with the terms of the agreements with defendant Richard Lloyd Jones, Jr., Airport hereinafter referred to as the Agreement, this Judgment shall be conditioned upon the Agreement being and remaining valid and in effect.

5. Entry into the Agreement by an ineligible entity renders the Agreement null and void. An eligible entity is a generator or transporter, or both, of material to the Site, with a volume of less than or equal to 100,000 gallons.

6. Any breach, whether by omission or commission, whether intentional or non-intentional, of a Settling Party's representation and warranty that, it neither possesses, or has a right to possess, nor is aware of any information which indicates that it is responsible for additional or greater volume than is set forth in the Volume Report attached to the Agreement, which has not been included in the documentation provided to ARCO in support of

its offer to enter the Agreement, renders the Agreement null and void.

7. In the event that the Agreement is or becomes null and void, this Judgment along with all orders entered in conjunction with the Agreement shall be vacated nunc pro tunc, the settlement reflected in the Agreement shall be terminated pursuant to its terms and the parties to the vacated Agreement shall be deemed to have reverted to their respective status and position in the Action as of the date immediately prior to the execution of the Agreement.

8. Nothing contained in this Judgment and Order shall be construed to affect the rights of the Plaintiff ARCO or Richard Lloyd Jones, Jr., Airport with respect to claims which are preserved by the settlements.

9. There being no just reason to delay the entry of this Judgment, this Court hereby directs entry of this final Judgment and Order of Dismissal pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

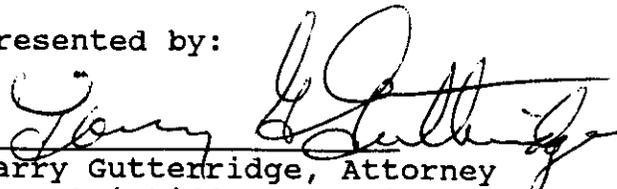
Dated: Nov. 25, 1992

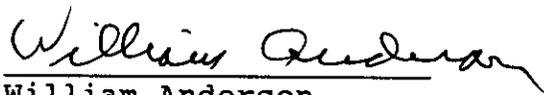
**S/ THOMAS R. BRETT**

---

Thomas R. Brett  
United States District Court Judge

Presented by:

  
Larry Gutteridge, Attorney  
for Plaintiff, Atlantic  
Richfield Company

  
William Anderson,  
Liaison Counsel

ENTERED ON DOCKET  
DATE NOV 27 1992

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

FILED  
NOV 3 1992  
Richard M. [unclear] Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

F. E. BUCK COOK, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CRAIG D. CORGAN, D.A., et al, )  
 )  
 Defendants. )

91-C-929-B

ORDER

This order pertains to plaintiff's Motion to Amend or Alter Judgement [sic] (Docket #20)<sup>1</sup> and his "Writ of Habeas Corpus Ad Testificandum" (#21). Plaintiff asks the court to amend its order filed October 29, 1992 (#19), dismissing Craig Corgan ("Corgan"), District Attorney for Washington County, from this case and to allow him to give oral argument concerning his position before the court.

In its Order of October 29, 1992, the court dismissed Corgan for the reason that prosecutors are entitled to absolute immunity from suits for civil damages under § 1983 when such suits are predicated upon the prosecutor's performance of functions in "initiating a prosecution and in presenting the State's case." Imbler v. Pachtman, 424 U.S. 409, 431 (1976). The Tenth Circuit Court of Appeals held that the decision of a prosecutor not to file criminal charges is within the set of core functions which is protected by absolute immunity. Dohaish v. Tooley, 670 F.2d 934, 938 (10th Cir.), cert. denied, 459 U.S. 826 (1982). The purpose of this absolute immunity is to guarantee the prosecutor unlimited independence in the discharge of his duties. Id. at 938.

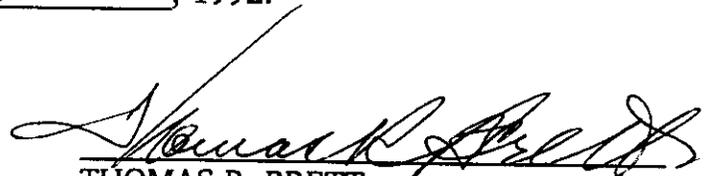
<sup>1</sup> "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared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

22

Petitioner refers to the argument he made in his response to Corgan's Motion to Dismiss, claiming once more that he has shown that Corgan's failure to prosecute certain persons violated his rights of due process and equal protection. However, he has presented no evidence to support his claims, other than his own self-serving statements. He cites case law saying that the civil rights statute was enacted to deter illegal conduct by government employees, that a prosecutor is absolutely immune from suit for malicious prosecution, and that no one can sue a prosecutor for an erroneous decision not to prosecute. He cites no law that supports his position that Corgan is liable under the civil rights statute for failing to file charges based on his accusations.

Plaintiff's Motion to Amend or Alter Judgement [sic] (#20) and his "Writ of Habeas Corpus Ad Testificandum" (#21) are denied.

Dated this 23<sup>rd</sup> day of Nov., 1992.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET  
NOV 25 1992  
DATE \_\_\_\_\_

AO 450 (Rev. 5/85) Judgment in a Civil Case ⑥

# United States District Court

NORTHERN

DISTRICT OF

OKLAHOMA

DANNY L. WOLFE,

## JUDGMENT IN A CIVIL CASE

v.

CITY OF TULSA, OKLAHOMA,  
OFFICER PERRY LEWIS and  
OFFICER ROBERT BISKUP,

CASE NUMBER: 91-C-982-B

- Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment be entered in favor of the defendants and against the plaintiff, and that the plaintiff take nothing.

Date

Nov 23, 1991

Clerk

Richard M. Lawrence

(By) Deputy Clerk

23

IN THE UNITED STATES DISTRICT COURT FOR  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

NOV 24 1992

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

AMERICAN HOME ASSURANCE )  
COMPANY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
LAWRENCE L. BAILEY; )  
TERRY L. NISSON; and, )  
PSYCHOLOGICAL ASSOCIATES, )  
a partnership, )  
 )  
Defendants. )

Case No: 92-C-1014B

DISMISSAL WITHOUT PREJUDICE

COMES NOW the plaintiff, American Home Assurance Company, and dismisses this cause of action without prejudice to the filing of any other action herein for the same cause against defendant, Psychological Associates, a partnership.

Dated this 23rd day of November, 1992.

Respectfully submitted,

*Richard M. Glasgow*

TOM L. KING OBA #5040  
RICHARD M. GLASGOW OBA #13135

KING, ROBERTS & BEELER  
15 N. Robinson, Suite 600  
Oklahoma City, OK 73102  
(405) 239-6143

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF MAILING

This is to certify that on this 23rd day of November, 1992, a true and correct copy of the above and foregoing instrument was mailed with postage prepaid thereon to the following counsel of record:

Steven M. Harris, Esq.  
Attorney At Law  
2431 E. 61st Street, #260  
Tulsa, Oklahoma 74136

Mark Rains, Esq.  
Rosenstein, Fist & Ringold  
Attorneys At Law  
525 S. Main, Suite 300  
Tulsa, Oklahoma 74103-4520

James F. Self, Jr., Esq.  
Attorney At Law  
8720 S. Pennsylvania, Suite B  
Oklahoma City, Oklahoma 73159

  
Richard M. Glasgow

c:\rmg\american.dwp\mlm\921124

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

IN RE: )  
 )  
 FRONTIER ENERGY RESOURCES, )  
 INC., )  
 )  
 Debtor. )  
 )  
 JO CHAMBERS, )  
 )  
 Plaintiff/Appellant, )  
 )  
 v. )  
 )  
 WILLIAM M. GRAY, TRUSTEE OF )  
 FRONTIER ENERGY RESOURCES, )  
 INC., )  
 )  
 Defendant/Appellee. )

Bky. No. 90-2637-W  
Chapter 11

**FILED**  
 NOV 24 1992  
 Richard M. Lawrence, Clerk  
 U. S. DISTRICT COURT  
 NORTHERN DISTRICT OF OKLAHOMA

Case No. 92-C-367-B

ORDER

This order pertains to the appeal of Jo Chambers ("Chambers"), a party-in-interest, of the Order of the Bankruptcy Court for the Northern District of Oklahoma, filed on April 20, 1992, denying Chambers' Motion to Reconsider its Order entered on April 13, 1992 (Docket #1)<sup>1</sup>, Appellee Trustee's Motion to Dismiss Appeal (#6), and Appellant Chambers' Response in Opposition to Appellee Trustee's Motion to Dismiss Appeal (#10).

In its April 13, 1992 Order, the Bankruptcy Court approved the Trustee's motion to abandon the lease covering the USA #20-1 Well ("well"). Paragraph #2 in the order provided that "[w]ithin fifteen days of the entry of this order the Trustee may remove and salvage all equipment thereon for the benefit of the working interest owners, SAVE AND

<sup>1</sup> "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.

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EXCEPT the casing. The Trustee shall not plug the borehole." (emphasis in original) Several days before the expiration of the fifteen day deadline imposed by the court, all equipment located on the lease was removed by the estate's operator, NM&O Operating Company.

The third paragraph of the order provided that:

In exchange for the Trustee not plugging the borehole (which non-plugging was specifically requested by Jo Chambers), Jo Chambers shall hold the Trustee and the Debtor's estate harmless against any and all liabilities of whatsoever nature, including the Trustee's reasonable attorneys fees in defending against any such liability, which may or might arise from any claim or cause of action asserted against either the Trustee or the Debtor's estate as a result of the Trustee not plugging the Well or salvaging the casing. This shall include, but in no way be limited to, any environmental or surface damage claims of any sort, type or nature. Jo Chambers shall sign that Hold Harmless Agreement attached hereto as Exhibit A within fifteen days after the entry hereof, and shall furnish same to the Trustee. Within sixty days after the entry hereof, Jo Chambers shall also procure the signature of her successor oil and gas lessee to a Hold Harmless Agreement in the form of Exhibit A, and shall furnish same to the Trustee. If Jo Chambers does not do so, the Trustee is authorized to salvage the Well casing and plug the Well. (emphasis added)

Chambers does not claim that the court erred in requiring her to execute the Hold Harmless Agreement.

During the next sixty days Chambers filed this appeal, but she did not file a motion with the court to stay the operation of the order pending that appeal. The sixty day time frame provided in the order expired and Chambers failed to tender to the Trustee either of the Hold Harmless Agreements required by paragraph 3 of the order. In accordance with the order, the Trustee directed the Estate's operator to pull the casing from the wellbore and to plug the well, and this was done. The casing was sold to the party plugging the well to offset plugging costs.

Appellee asks the court to dismiss Chambers' appeal, claiming that Chambers' failure to obtain a stay of the bankruptcy court's order to protect its property during this appeal allowed the plugging of the wellbore, which in essence forecloses any opportunity of recompleting the well to a deeper zone or of using the wellbore for any other purpose, and thus the appeal is moot. Chambers contends that the appeal is not moot, because it does not relate to a bankruptcy order expressly ordering a sale of estate property, the Trustee can replace the equipment removed and sold and drill another borehole on the lease, the lease should not have been claimed as part of the bankruptcy estate because it expired in 1985, and she has made a claim in the appeal for attorney's fees because the Trustee's conduct in forcing her to litigate the abandonment of the lease was vexatious. The latter two issues should have been raised to the bankruptcy court at the evidentiary hearing held on March 16, 1992 prior to the court entering the order which is on appeal and were not presented at that time.

Under Bankruptcy Rule 8005<sup>2</sup>, a stay of a Bankruptcy Court's order is required upon appeal. Chambers did not seek a stay of the order being appealed and the wellbore has been plugged, making the appeal moot. The mootness doctrine provides that an appeal should be dismissed when events occur that prevent the reviewing court from granting a litigant any effective relief. Colorado Interstate Gas Co. v. Federal Energy Regulatory Comm'n, 890 F.2d 1121, 1126 (10th Cir. 1989).

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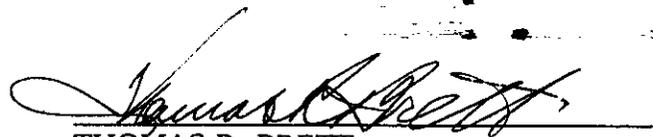
<sup>2</sup> Bankruptcy Rule 8005 states in part that "[a] motion for a stay of the judgment, order, or decree of a bankruptcy judge, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be presented to the bankruptcy judge in the first instance.... [T]he bankruptcy judge may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest."

The mootness principle derived from Rule 8005 has been found to extend "to any appeal for which effective relief is precluded by the sale of the debtor's property". In re Bel Air Associates, Ltd., 706 F.2d 301, 305 (10th Cir. 1983). The only effective relief for the appeal would be to require the Trustee to replace the equipment removed and sold and to drill and case another borehole on the lease, which would be extraordinary relief unmerited by the situation. Chambers has represented that the lease never produced in paying quantities after the well was completed.

A separate and independent ground for dismissal has also been established because Chambers failed and neglected diligently to pursue her available remedy to obtain a stay of the bankruptcy court's objectionable order and permitted such a comprehensive change of circumstances to occur as to render it inequitable for the court to consider the merits of the appeal. In re Roberts Farms, Inc., 652 F.2d 793, 797 (9th Cir. 1981). The failure to seek a stay coupled with the substantial change of circumstances justify dismissal of the appeal for lack of equity.

Appellee Trustee's Motion to Dismiss Appeal (#6) is granted.

Dated this 24 day of Nov., 1992.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

DATE NOV 25 1992

**FILED**

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

NOV 25 1992

*OK*

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

MARTHA MARTINSEN, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 SAMISSA HEALTH CARE CORPORATION )  
 )  
 Defendant. )

Case No. 92-C-145-B

JUDGMENT

In accord with the Order filed November 24, 1992, granting the Defendant's Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56, the Court hereby enters judgment in favor of the Defendant, Samissa Health Care Corporation, and against the Plaintiff, Martha Martinsen, on all claims. Costs are assessed against Plaintiff if timely applied for under Local Rule 6. Parties are to pay their own respective attorneys fees.

DATED THIS 24<sup>th</sup> DAY OF NOVEMBER, 1992.

*Thomas R. Brett*

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET  
NOV 25 1992  
DATE \_\_\_\_\_

**FILED**  
NOV 2 1992

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

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

MARTHA MARTINSEN, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SAMISSA HEALTH CARE CORPORATION )  
 )  
 Defendant. )

Case No. 92-C-145-B ✓

O R D E R

Before the Court for decision is the Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56 filed on behalf of Defendant, Samissa Health Care Corporation (hereinafter "Samissa"). Plaintiff, Martha Martinsen (hereinafter "Martinsen"), alleges a single claim in her complaint, retaliatory employment discharge for filing a workers' compensation claim.

The following facts are undisputed and are established by competent evidence in the record.

1. Willow Crest, a hospital located in Miami, Oklahoma, is licensed for 50 beds and is operated by Samissa.
2. Martinsen was hired as a registered nurse in December of 1985.
3. In September of 1987, Martinsen was made acting Director of Nursing.
4. In July of 1990, Martinsen sustained an on-the-job injury to her shoulder, had surgery on the shoulder on January 3, 1991, and was absent from her employment from the date of her surgery

until January 21, 1991.

5. On January 3, 1991, Johnny Cupit (hereinafter "Cupit") became the new Administrator of Willow Crest and spent the first several weeks reviewing hospital records to determine if the hospital was in compliance with its accreditation standards.

6. As part of this review, Cupit determined that Martinsen did not have the requisite education to be Director of Nursing. Cupit sought assistance from Samissa's corporate office and it was concluded that the Director of Nursing must have a masters degree in nursing or other appropriate postgraduate degree.

7. The Accreditation Manual for Hospitals of the Joint Commission on Accreditation of Health Care Organizations states, in part, that the educational requirement for a Director of Nursing is "the knowledge and skills associated with a master's degree in nursing or related field or another appropriate postgraduate degree."

8. Martinsen lacked a masters degree in nursing or another appropriate postgraduate degree.

9. On January 14, 1991, Martinsen was released to return to work at Willow Creek effective January 21, 1991.

11. On January 21, 1991, Martinsen was informed by Cupit that she was relieved of her position as Director of Nursing because she lacked the requisite education to be Director of Nursing.

12. Martinsen was thereupon demoted to the position of registered nurse. Cupit informed Martinsen that due to the extremely low patient census figures there were no registered nurse

positions available; therefore, she was laid off.

13. Willow Crest is census driven which in turn determines layoffs. By January 1991, it had a 14 bed occupancy average, an exceptionally low patient census.<sup>1</sup>

14. Martinsen testified she has no evidence, exclusive of her feeling about the layoff, to support her allegation that she was terminated as a result of filing a Workers' Compensation Claim.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Widon Third Oil & Gas v. FDIC, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

"The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

Samissa's Motion for Summary Judgment argues that Martinsen

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<sup>1</sup> In January 1990, the census showed 26 and, in January 1989, the census showed 48.

has failed to present any facts to support her claim of retaliatory discharge. To make a prima facie case of retaliatory discharge, the discharged employee must show employment, on-the-job injury, receipt of treatment under circumstances which put the employer on notice that treatment had been rendered for a work-related injury,<sup>2</sup> or that the employee in good faith instituted, or caused to be instituted, proceedings under the Act, and subsequent termination of employment. Buckner v. General Motors Corp., 760 P.2d 803, 806 (Okla. 1988). Following a prima facie showing, the employer has the burden of producing relevant and credible evidence supporting a legitimate reason for the action. Id., at 807. If done, the burden shifts back to the employee who must then offer evidence that would establish circumstances giving rise to a legal inference that the discharge was significantly motivated by retaliation for filing a workers' compensation claim. Id. at 810.

While evidence relied upon by the employee must generally be circumstantial in nature, the mere coincidence in time of the employees' return from medical leave and the termination is alone insufficient evidence to support a legal inference of retaliatory intent. Thompson v. Medley Material Handling Inc., 732 P.2d 461, 464 (Okla.1987). Further, the worker's own unsupported speculation is insufficient to even put the employer's motives into issue.

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<sup>2</sup> The Court observes that Martinsen has not pled Samissa's awareness of her intent to file a workers' compensation claim. As Samissa has not challenged the sufficiency of Martinsen's prima facie case, the Court determines that Samissa was aware of such intent and therefore, concludes that the prima facie case requirement is not in issue.

Thompson at 464; Bishop v. Hale-Halsell Co.Inc., 800 P.2d 232, 234 (Okla. 1990).

Martinsen's Complaint and Samissa's Answer establish a prima facie case of retaliatory discharge. In its Motion for Summary Judgment, Samissa presented relevant and credible evidence that Martinsen was demoted from Director of Nursing because she lacked the requisite education, and was subsequently terminated as there were no nursing positions open in the hospital. The Court finds that Samissa produced evidence rebutting Martinsen's prima facie case of retaliatory discharge.

At this point, factual inquiry requires a new level of specificity and Martinsen must offer evidence that would give rise to a legal inference that her discharge was significantly motivated by retaliation. Buckner v. General Motors Corp., 760 P.2d at 810. Martinsen has presented no evidence to support such legal inference. In her deposition, she admitted that exclusive of her feeling about the layoff, she has no evidence to support that she was terminated as a result of her workers' compensation claim.

Martinsen argues that Cupit had no information as to her skills or knowledge to make the determination that she did not possess "the knowledge and skills associated with a master's degree in nursing or related field...". Martinsen further argues that the Willow Crest Employee Handbook contains a policy that

"[i]f an employee's former position is unavailable when he/she is ready to return from an approved leave, every effort will be made to place the employee in a comparable position for which he/she is qualified. If such a position is not available, the

employee will be offered the next suitable position for which he/she is qualified that becomes available. (p.22)

...

If layoffs are determined to be necessary, employees shall be selected for layoff carefully to ensure fairness. All personnel policies, including prohibition discrimination shall be followed. When selecting employees for lay offs in a classification ... the personnel department in coordination with the department heads shall choose employees based upon a combination of factors including, but not limited to, qualifications, productivity, and general performance. In cases were all other factors are deemed equal, employees with greater seniority shall be retained.... In those cases, in which seniority becomes a factor, seniority shall normally be determined from an employee's first day of employment. In cases of re-employment, however, the most recent employment date shall be the date used to determine the seniority." (p.38)

Both the Employee Handbook and the fact that Cupit made no factual inquiry as to Martinsen's knowledge and skill level may arguably support either a contractual breach or a Burk tort.<sup>3</sup> Neither has been pled herein.

Based upon the evidence submitted herein, the Court concludes that as a matter of law, Plaintiff has not set forth sufficient evidence to support a finding that her discharge was significantly motivated by retaliation. Accordingly, Summary Judgment is appropriate.

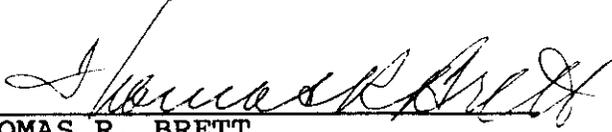
Summary Judgment is hereby GRANTED for Defendant, Samissa. A separate Judgment in accord with this Order shall be filed this

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<sup>3</sup> See: Burk v. K-Mart, 770 P.2d 24 (Okla. 1989), which recognizes as tortious the wrongful discharge of a terminable-at-will employee in violation of public policy.

date.

IT IS SO ORDERED This 24 day of November, 1992.

  
\_\_\_\_\_  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

**FILED**

NOV 24 1992

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

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

STEPHEN WAYNE THOMPSON, )  
MITCHELL WAYNE THOMPSON, )  
and SALLY THOMPSON, )

Plaintiffs, )

vs. )

CHRISTIAN FIDELITY LIFE )  
INSURANCE COMPANY, a )  
Corporation, )

Defendant. )

Case No. 91-C-722-B

EDD 11/25/92

ORDER

Before the Court for decision is defendant, Christian Fidelity Life Insurance Company's (Christian Fidelity), Motion for Partial Summary Judgment pursuant to Fed.R.Civ.P. 56(c). Christian Fidelity asserts that Mitchell Wayne Thompson (Mr. Thompson) and his wife, Sally Thompson (Mrs. Thompson) lack standing to sue and should, therefore, be dismissed from this case. Alternatively, Christian Fidelity requests that this Court certify the issue of standing to the Oklahoma Supreme Court for resolution pursuant to Okla.Stat. §§ 1601 et seq. (1991).

I. FACTS

Mr. Thompson was insured under a policy issued by Christian Fidelity to the Northern Missouri District Council of the Assemblies of God (the Policy). Mrs. Thompson was insured under the Policy as a dependent spouse. The Thompsons' son, Stephen Wayne Thompson (Stephen), was insured under the Policy as a dependent child until he reached the age of nineteen and after age

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nineteen if he continued to be a full time student in an accredited school.

In March of 1990 Stephen was twenty years of age and was a full time student at the Devry Institute in Dallas. On March 23, 1990 he fell from a second floor balcony and injured his head. He was hospitalized in Dallas for approximately ten days and he incurred medical expenses. He then returned to his parent's home in Oklahoma where he incurred additional medical expenses.

A demand for benefits under the Policy relating to Stephen's accident was made. However, it was denied by Christian Fidelity in September of 1990. The Thompsons filed this suit in 1991 claiming that Christian Fidelity breached the insurance contract and breached its duty of good faith and fair dealing in handling Stephen's claim.

In November of 1991, before filing an answer, Christian Fidelity tendered full benefits to the Thompsons. The Thompsons accepted the benefits as full settlement of their breach of contract cause of action. Therefore, the only issue that remains in this case is whether Christian Fidelity breached its implied covenant of good faith and fair dealing when it denied coverage for Stephen's accident. Christian Fidelity claims that Mr. and Mrs. Thompson lack standing to sue on the good faith claim because no duty was owed to them in connection with Stephen's claim.

## II. CERTIFICATION OF THE ISSUE OF STANDING TO THE OKLAHOMA SUPREME COURT

Christian Fidelity argues that Mr. and Mrs. Thompson are requesting that "this Court extend controlling Oklahoma law and create a duty of good faith and fair dealing in favor of persons who have no contractual or statutory relationship with the insurer as to the claim at issue." (Defendant's Reply Brief at 8.) It asserts that the Court should not broaden Oklahoma law to allow Mr. and Mrs. Thompson to pursue a breach of good faith and fair dealing claim in this case. Thus, it maintains that the issue relating to standing should be certified to the Supreme Court of Oklahoma for resolution.

Certification is a discretionary function of the Court and must be utilized with restraint. Ormsbee Dev. Co. v. Grace, 668 F.2d 1140, 1149 (10th Cir. 1982). cert. denied 459 U.S. 838 (1982). The Court will certify only legal questions which are both unsettled and dispositive. Id. As will be discussed in detail below, a careful review of Oklahoma case law on the issue of standing in cases such as this one reveals that the controlling law in Oklahoma is not unsettled. Christian Fidelity's request that the issue relating to standing be certified to the Oklahoma Supreme Court for disposition is, therefore, denied.

## II. STANDING TO SUE

Pursuant to Fed.R.Civ.P. 56, summary judgment is appropriate when "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552,

91 L.Ed.2d 265 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986); Widon Third Oil and Gas v. Fed. Deposit Ins. corp., 805 F.2d 342, 345 (10th Cir. 1986). cert. denied 480 U.S. 947 (1987). In Celotex it is stated:

"[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

477 U.S. at 322.

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material fact ..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to material facts." Matsushita v. Zenith, 475 U.S. 574, 585-86, 106 S.Ct. 1348, 1355, 89 L.Ed.2d 538 (1986).

A party opposing a properly supported motion for summary judgment may not rest upon mere allegations or denials of his pleadings, but affirmatively prove specific facts showing there is a genuine issue of material fact for trial. In Anderson v. Liberty Lobby, Inc., supra the Court stated that:

"The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff."

Anderson, 477 U.S. at 252.

The Tenth Circuit requires "more than pure speculation to defeat a motion for summary judgment" under the standards set by Celotex and Anderson. Setliff v. Memorial Hosp. of Sheridan County, 850 F.2d 1384, 1393 (10th Cir. 1988).

In the instant case there is no factual dispute with regard to Mr. and Mrs. Thompsons' and Stephen's respective relationships to the Policy. Accordingly, the Court is able to decide as a matter of law whether Mr. and Mrs. Thompson have standing to maintain an action against Christian Fidelity for breach of duty of good faith and fair dealing in handling Stephen's claim for benefits.

Under Oklahoma law an insurer is under a legal duty to act in good faith and deal fairly with its insured. Buzzard v. Farmers Ins. Co., Inc., 824 P.2d 1105 (Okl. 1991); Roach v. Atlas Life Ins. Co., 769 P.2d 158 (Okl. 1989); Allstate Ins. Co. v. Amick, 680 P.2d 362 (1984). Christian v. American Home Assur. Co., 577 P.2d 899 (Okl. 1977). In Amick the Oklahoma Supreme Court stated:

"This single duty of dealing fairly and in good faith with the insured arises from the contractual relationship. In the absence of a contractual or statutory relationship there is no duty which can be breached."

Amick, 680 P.2d at 364; See also Roach, 769 P.2d at 161.

Christian Fidelity begins its argument with the proposition that parents have no legal obligation to support and maintain an adult child. It, therefore, asserts that no duty of good faith and fair dealing arose in favor of Mr. and Mrs. Thompson because they had no legal duty to pay Stephen's medical bills. This assertion is without merit. For the reasons set out below, the Court finds that regardless of whether Mr. and Mrs. Thompson are legally obligated to pay Stephen's medical expenses, a duty of good faith and fair dealing on the part of Christian Fidelity arose in favor of Mr. Thompson but not in favor of Mrs. Thompson.

Christian Fidelity argues that Stephen is the only person with a valid claim for benefits under the Policy. It asserts that the duty of good faith and fair dealing arises only in favor of a person who has a contractual or statutory relationship with the insurer and who incurs a covered loss. It maintains that because Mr. and Mrs. Thompson themselves are not injured claimants they are owed no duty of good faith and fair dealing. Christian Fidelity cites Amick, supra, and Buzzard, supra, for this proposition.<sup>1</sup> These cases, however, did not hold that only an injured claimant may bring a bad faith tort action for refusal to pay benefits.

As to Mr. Thompson the Amick case cited by Christian Fidelity is inapposite because there the court held the insurer had no duty to deal fairly and in good faith with plaintiffs because they were strangers to the insurance contract. Amick, 680 P.2d at 365. Here, Mr. Thompson is not a stranger to the insurance contract. He is the employee qualified for coverage and he is the named insured with Mrs. Thompson and Stephen listed as dependents.

Christian Fidelity focuses on some dicta in the Buzzard case which speaks of the delicate position of an insured after he incurs loss. It argues that disability and strait financial

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<sup>1</sup> Christian Fidelity also relies on a case decided in the Supreme Court of Oregon, Denton v. Internat'l Health and Life Ins. Co., 528 P.2d 546 (Ore. 1974). In Denton the court held that the injured dependent minor child of the policy holder was the only person entitled to bring an action on the policy. The case, however, is factually distinguishable in that the "the language of the policy clearly indicate[d] that the parties intended that the "insured person" could only be the one who suffered actual physical injury, thereby necessitating medical treatment." Denton, 528 P.2d at 550.

circumstances of an insured are the only justification for imputing the good faith and fair dealing duty on insurers. This argument is unconvincing. The good faith duty of insurers arises for many reasons. Most importantly it arises because an insured contracts for prompt payment of valid claims. In Roach, supra, the court stated:

"The failure to afford a cause of action for bad faith to the beneficiary of a life insurance policy would negate a substantial reason for the insured's purchase of the policy -- the peace of mind and security which it provides in the event of loss."

Roach, 769 P.2d at 162.

Similarly in Christian, supra, the court found:

"This statutory duty imposed upon insurance companies to pay claims immediately, recognizes that a substantial part of the right purchased by an insured is the right to receive policy benefits promptly. Unwarranted delay precipitates the precise economic hardship the insured sought to avoid by purchase of the policy."

Christian, 577 P.2d at 903.

The Supreme Court of Nebraska has explained:

"Tort actions for breach of covenants implied in certain types of contractual relationships are most often recognized where the type of contract involved is one in which the plaintiff seeks something more than commercial advantage or profit from the defendant. When dealing with an innkeeper, a common carrier, a lawyer, a doctor or an insurer, the client/customer seeks service, security, peace of mind, protection or some other intangible. These types of contracts create special, partly noncommercial relationships, and when the provider of the service fails to provide the very item which was the implicit objective of the making of the contract, then contract damages are seldom adequate ...."

Braesch v. Union Ins. Co., 464 N.W.2d 769 (Neb. 1991).

In the instant case Mr. Thompson is a party to the insurance

contract. He clearly included Stephen as a dependant on the Policy and paid the premiums because Stephen relied on him for support. He contracted to protect himself from financial burdens he would incur if Stephen required medical care. In fact, he guaranteed payment and did pay for some of the expenses prior to receiving the benefits from Christian Fidelity. The insurance proceeds were payable for his benefit. Therefore, if Christian Fidelity unreasonably withheld coverage for Stephen's claim it failed to act in good faith and deal fairly with both Stephen and Mr. Thompson. Accordingly, Mr. Thompson has standing to bring this bad faith tort action.<sup>2</sup>

In contrast, the relationship between Christian Fidelity and Mrs. Thompson will not support tort liability. She was merely listed as a dependent on Mr. Thompson's policy. She was neither a contracting party nor an injured claimant. As discussed above, when there is no contractual or statutory relationship there can be no recovery for bad faith refusal to pay benefits. Amick, 680 P.2d at 364; Roach 769 P.2d at 161. Therefore, Mrs. Thompson must be dismissed as a party to this lawsuit.

#### CONCLUSION

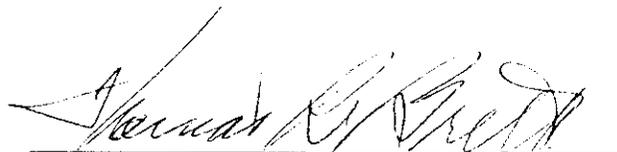
Defendant, Christian Fidelity's motion to certify the question of standing to the Supreme Court of Oklahoma for resolution is

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<sup>2</sup> The mere fact that Mr. Thompson has standing to bring this lawsuit obviously does not decide whether under these facts a prima facie case of bad faith can be established.

hereby DENIED. Its motion for partial summary judgment for the reason that Mr. and Mrs. Thompson lack standing is GRANTED as to Mrs. Thompson and DENIED as to Mr. Thompson.

IT IS SO ORDERED this 24 day of November, 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

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

**FILED**

NOV 24 1992

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

STEPHEN WAYNE THOMPSON,  
MITCHELL WAYNE THOMPSON,  
and SALLY THOMPSON,

Plaintiffs,

v.

CHRISTIAN FIDELITY LIFE  
INSURANCE COMPANY,  
a Corporation,

Defendant.

CASE NO. 91-C-722-B

O R D E R

This matter comes on for consideration of Motions In Limine filed by both Plaintiffs and Defendant. Also for consideration is the Plaintiffs' Motion For Partial Summary Judgment<sup>1</sup> which relates to essentially the same issues raised by their Motion In Limine.

The facts herein have been substantially set forth in the Court's Order, filed simultaneously herewith, sustaining in part and denying in part Defendant's Motion For Partial Summary Judgment on the issue of the parents' (Mitchell Wayne Thompson and Sally Thompson) standing to sue Defendant on a theory of breach of good faith and fair dealing in handling the insurance claim herein.<sup>2</sup>

The essence of the parties' current motions is whether Defendant can raise, in its defense of Plaintiffs' bad faith claim,

<sup>1</sup> Filed the same date as Plaintiffs' Motion in Limine.

<sup>2</sup> The Order denied Mrs. Thompson's standing to sue but recognized Mr. Thompson's standing.

EOD 11/25/92

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various defenses that were or potentially could have been raised in opposition to Plaintiffs' initial claim for insurance benefits under the policy herein.

Plaintiffs rely principally on two cases (Buzzard I<sup>3</sup> and Buzzard II<sup>4</sup>) for the proposition that, in a bad faith claim case, the insurer's actions must be assessed in light of all the facts known and knowable concerning the claim at the time the insured requested the insurer to perform its contractual obligations. Plaintiffs argue that it is not a question of whether the insured would be legally entitled to recover which is the controlling issue but whether the insurer, at the time the insured made his claim, was in possession of information to establish that its refusal to pay was in good faith.

Defendant argues the claim was initially denied in July, 1990, following Stephen Thompson's injury in March, 1990, pending investigation of the status of Stephen Thompson as a dependent under the age of 25 but a full time student in an accredited school.<sup>5</sup> Further, Defendant argues claim payment was also declined in September, 1990, based upon its interpretation that the "narcotic" exclusion in the policy included alcohol.<sup>6</sup>

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<sup>3</sup> Buzzard v. McDaniel, 736 P.2d 157 (Okla.1987).

<sup>4</sup> Buzzard v. Farmers Ins. Co., Inc., 824 P.2d 1105 (Okla.1991).

<sup>5</sup> Defendant apparently had initial questions regarding the status of DeVry Institute as an accredited school but later accepted the accreditation of DeVry.

<sup>6</sup> At the time of the accident Stephen Thompson's blood alcohol content registered .219.

In their Motion in Limine Plaintiffs seek to exclude all evidence or testimony at trial and any comment upon:

1. The lack of accreditation of DeVry Institute of Technology.

2. Use of alcohol by Stephen Thompson immediately prior to the accident as well as the alleged status of alcohol as a narcotic.

3. Any purported lapse in coverage on Stephen Thompson's nineteenth birthday or failure thereafter to reinstate coverage.

4. Stephen Thompson's experience with alcohol before March 23, 1990, the date of the accident.

5. Any difficulties which Sally Thompson or Wayne Thompson had in obtaining information about their son, Stephen Thompson, from medical doctors or the police.

6. Any insurance claims made by the Plaintiffs on the Defendant prior to the date of the accident.

7. A letter addressed to "Ms. Kirk" from Sally Thompson (a copy of which was attached thereto as Exhibit "A") in which Mrs. Thompson states she cannot recommend the hospital where Stephen was treated to anyone.

The Court denies Plaintiffs' Motion in Limine, at this time, as to 4, 5 and 7, above, on the ground that while these issues may not be relevant to the bad faith issue now before the Court they could, as Defendant argues, impact the emotional distress alleged to have been suffered by Plaintiffs. Item 3, above, is not set out as an issue in the Agreed Pre-Trial Order and is therefore denied

as moot.

The Court sustains Plaintiffs' Motion in Limine as to item 6 above because Defendant concurs in such exclusion. However, Defendant seeks, and the Court grants, leave to introduce evidence of its prior handling of other Plaintiffs' claims in the event Plaintiffs introduce evidence of such claims.

Plaintiffs' Motion in Limine as to Items 1 and 2 is denied. The Court does not read Buzzards I and II as preventing an insurer, in defending a bad faith claim case, from offering evidence, even if later proven legally insufficient to successfully deny payment of a claim, which tends to explain any delay in the ultimate payment of that claim.<sup>7</sup> The Court views the Buzzard line of authority as holding that an insurer cannot, after the fact, unearth reasons to justify its delay in or denial of claim payment which were not current reasons for denial or delay when such denial or delay occurred. In this matter both the accreditation issues and the narcotic exclusion were, arguably, the reasons Defendant delayed or denied claim payment. Buzzards I and II militate against excluding evidence relating to items 1 and 2 since these issues are relevant to Defendant's alleged unreasonable delay in claim payment.

Plaintiffs argue that 36 O.S. § 1219 is an integral part of the bad faith cause of action under Oklahoma law. No cases support this. That section relates to delay in the payment of claims,

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<sup>7</sup> The claim payment occurred in this case after suit was filed but before answer.

notice of the cause of delay, interest accruing on unpaid claims after 60 days, and attorneys fees to the prevailing party. That section does provide that it shall be an "unfair trade practice for any insurer to fail to notify a policyholder in writing of the cause for delay in payment of any claim where said claim is not paid within thirty (30) days after receipt of proof of loss". However, no cases have extrapolated "unfair trade practice" onto bad faith denial or delay of claims and this Court is disinclined to do so.

The Court deems as a factual issue for the jury whether Defendant timely advised Plaintiffs of any delay of or denial of the payment of a legitimate claim. In this regard the Court means "timely" in a good faith/bad faith sense, i.e. whether Defendant unreasonably delayed in the payment of a claim, considering both time and reason.

Plaintiffs' Motion For Partial Summary Judgment is denied as moot because of the Court's ruling on their Motion in Limine.

Defendant's Motion in Limine seeks to exclude the testimony of Plaintiffs' named expert pharmacologist, Virgil R. VanDusen, on the ground his proposed testimony will not assist the trier of fact. Defendant argues that Plaintiffs have retained VanDusen to testify as an expert regarding the definition of "narcotic" and whether alcohol falls within that definition. The Court concludes, at this time, that VanDusen's testimony should not be excluded if he otherwise qualifies as an expert. In the Court's view it is a question of fact for the jury whether Defendant was reasonable in

its alleged belief that alcohol use by Stephen Thompson implicated the policy's "narcotic" exclusion.

In summary, the Court denies Plaintiffs' Motion for Partial Summary Judgment as moot. Further the Court denies Plaintiffs' Motion in Limine as to items 1, 2, 3, 4, 5 and 7 and sustains Plaintiffs' Motion in Limine as to item 6 at this time. The Court also denies Defendant's Motion in Limine.

IT IS SO ORDERED this 24 day of November, 1992.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET  
DATE NOV 25 1992

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 24 1992

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

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

TERRY LEE JACKSON a/k/a TERRY L.  
JACKSON; COUNTY TREASURER, Tulsa  
County, Oklahoma; and BOARD OF  
COUNTY COMMISSIONERS, Tulsa  
County, Oklahoma,

Defendants.

CIVIL ACTION NO. 92-C-76-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 23<sup>rd</sup> day  
of Nov., 1992. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Wyn Dee Baker, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by J. Dennis Semler, Assistant District  
Attorney, Tulsa County, Oklahoma; and the Defendant, Terry Lee  
Jackson a/k/a Terry L. Jackson, appears not, but makes default.

The Court being fully advised and having examined the  
court file finds that the Defendant, Terry Lee Jackson a/k/a  
Terry L. Jackson, acknowledged receipt of Summons and Complaint  
on February 1, 1992; that Defendant, County Treasurer, Tulsa  
County, Oklahoma, acknowledged receipt of Summons and Complaint  
on January 31, 1992; and that Defendant, Board of County

Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 30, 1992.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on February 13, 1992; that the Defendant, Terry Lee Jackson a/k/a Terry L. Jackson, has failed to answer and his default has therefore been entered by the Clerk of this Court.

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

Lot Six (6), Block Ten (10), Woodland Glen Fourth, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on June 16, 1986, Terry Lee Jackson executed and delivered to FirstTier Mortgage Co. his mortgage note in the amount of \$67,150.00, payable in monthly installments, with interest thereon at the rate of 9.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, Terry Lee Jackson executed and delivered to FirstTier Mortgage Co. a real estate mortgage dated June 16, 1986, covering the above-described property. Said

mortgage was recorded on June 24, 1986, in Book 4950, Page 2155, in the records of Tulsa County, Oklahoma.

The Court further finds that on August 31, 1987, FirstTier Mortgage Co. assigned the above-described mortgage to Leader Federal Savings & Loan Association. This Assignment of Mortgage was recorded on October 12, 1987, in Book 5057, Page 1059, in the records of Tulsa County, Oklahoma.

The Court further finds that on October 7, 1989, Leader Federal Bank for Savings f/k/a Leader Federal Savings & Loan Association assigned the above-described mortgage to the Secretary of Veterans Affairs. This Assignment of Real Estate Mortgage was recorded on February 14, 1990, in Book 5236, Page 927, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Terry Lee Jackson a/k/a Terry L. Jackson, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Terry Lee Jackson a/k/a Terry L. Jackson, is indebted to the Plaintiff in the principal sum of \$71,183.94, plus interest at the rate of 9.5 percent per annum from September 10, 1992, until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Internal Revenue Service no longer has a lien upon the property by virtue of a

Notice of Federal Tax Lien dated October 12, 1990, and recorded on October 19, 1990 in Book 5283, Page 2058 in the records of the Tulsa County Clerk, Tulsa County, Oklahoma. This lien was released by Certificate of Release of Federal Tax Lien dated March 21, 1991, and recorded on April 4, 1991 in Book 5313, Page 0120, in the records of the Tulsa County Clerk, Tulsa County, Oklahoma.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the Plaintiff have and recover judgment against Defendant, Terry Lee Jackson a/k/a Terry L. Jackson, in the principal sum of \$71,183.94, plus interest at the rate of 9.5 percent per annum from September 10, 1992, until judgment, plus interest thereafter at the current legal rate of 3.76 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

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

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that upon the failure of said Defendant, Terry Lee Jackson a/k/a Terry L. Jackson, to satisfy the money judgment of the Plaintiff herein,

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

**First:**

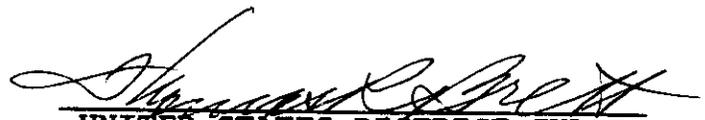
In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

**Second:**

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

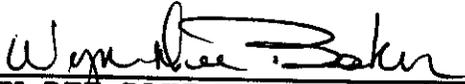
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

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

  
UNITED STATES DISTRICT JUDGE  
for JOE

APPROVED:

TONY M. GRAHAM  
United States Attorney



WYN DEE BAKER, OBA #465  
Assistant United States Attorney  
3900 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463



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

Judgment of Foreclosure  
Civil Action No. 92-C-76-E

WDB/css

ENTERED ON DOCKET  
NOV 25 1992  
DATE \_\_\_\_\_

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

DANNY L. WOLFE, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CITY OF TULSA, OKLAHOMA, )  
 OFFICER PERRY LEWIS and )  
 OFFICER ROBERT BISKUP, )  
 )  
 Defendants. )

No. 91-C-982-B ✓

**FILED**  
NOV 24 1992  
Richard M. Lawrance, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT

This cause having come before the Court for trial by jury, the Court having reviewed the verdict entered by the jury, now, therefore, in conformity with the jury's verdict, it is hereby  
ORDERED, ADJUDGED AND DECREED that Defendants City of Tulsa, Perry Lewis and Robert Biskup shall have judgment on the claims set forth in Plaintiff's Complaint together with their costs, and it is further  
ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint should be, and hereby is, dismissed with prejudice.

  
UNITED STATES DISTRICT JUDGE

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Execution on the remaining items listed on attachment "A" to the plaintiff's application for writ of execution is denied at this time pending a further investigation by the parties into the ownership thereof.

⑧/ THOMAS R. BRETT

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UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT

TONY M. GRAHAM  
United States Attorney



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PHIL PINNELL, OBA# 7169  
Assistant United States Attorney  
3900 US Courthouse  
Tulsa, OK 74103

ENTERED ON DOCKET  
NOV 24 1992  
DATE

**FILED**

NOV 18 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

CHARLES EDWARD CUNNIGAN, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 RON CHAMPION, et al., )  
 )  
 Defendants. )

Case No. 91-C-873-B

O R D E R

Before the Court for consideration is the Plaintiff's Motion For Order Extending Time For Appeal filed pursuant to Federal Rule of Appellate Procedure 4.

This Court entered an Order August 6, 1992, granting the Defendant's motion to dismiss for failure to state a claim upon which relief can be granted.<sup>1</sup> The deadline for filing a notice of appeal with the clerk of the district court is set forth in Fed.R.App.P. 4(a), which provides:

In a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 shall be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from ....

Pursuant to this Rule, the Plaintiff was required to file a Notice of Appeal by September 8. Plaintiff asks that this deadline be extended because he did not learn of the Court's Order until

<sup>1</sup> The Court affirmed the Magistrate Judge's Report and Recommendation (R&R) after reviewing the record and the issues. The Defendant did not file any objection to the Magistrate's R&R.

NOV 20 1992 c/m

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September 12, 1992.<sup>2</sup>

The Rules of Appellate Procedure provide for extensions of time to file a notice of appeal:

The district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this Rule 4(a).

Fed.R.App.P. 4(a)(5). According to this rule, Plaintiff had until October 8, 1992, to file a request for extension of time to file an appeal. Thus, Plaintiff had almost 4 weeks after he learned of the Order to file a request for extension of time. Plaintiff's motion was not filed until November 2, 1992, and therefore, is untimely.

For these reasons, the Plaintiff's motion for order extending time for appeal should be and is hereby DENIED.

IT IS SO ORDERED THIS 18 DAY OF NOVEMBER, 1992.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> Plaintiff also contends he should be granted an extension of time because:

- 1) the Plaintiff is unschooled in the procedures of the Federal Courts;
- 2) the Plaintiff has transferred from the Connors Correctional Center to the Lexington Correctional Center, and due to the overcrowded conditions of said institution cannot properly prepare his jurisdictional papers;
- 3) plaintiff was unable to obtain the services of an attorney;
- 4) the present litigation presents complex and significant legal issues, the outcome of which may have wide impact;
- 5) the interest of justice require that this Court grant said motion for extension to file his appeal.

ENTERED ON DOCKET  
NOV 24 1992  
DATE ~~FILE~~  
NOV 18 1992

IN THE UNITED STATES DISTRICT COURT OKLAHOMA  
NORTHERN DISTRICT OF OKLAHOMA

JAMES F. QUINLAN )  
Plaintiff, )  
 )  
vs. )  
 )  
KOCH OIL COMPANY, a division of )  
Koch Industries, Inc. )  
Defendant. )

Case No. 90-C-295-B

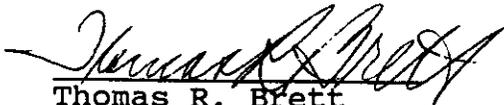
Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Upon motion of defendant Koch Oil Company ("Koch") for stay of execution, pending appeal, upon the stipulation of counsel for Koch and plaintiff James F. Quinlan ("Quinlan") and the Court being fully advised in the premises, it is

**ORDERED AND ADJUDGED** that execution and levy on the Amended Judgment entered on October 2, 1992, in favor of Quinlan shall be stayed under F.R.Civ.P. 62(d) during appeal of this action upon Koch's filing by Nov. 30<sup>th</sup>, 1992, of good and sufficient supersedeas bond in the amount of \$375,000. The bond shall be conditioned that if Koch shall well and truly satisfy the Amended Judgment including interest in the event that the appeal shall be dismissed or the Amended Judgment affirmed, the obligation of the bond shall be voided, but otherwise the bond shall remain in full force and effect and shall become due in the event that the appeal shall be dismissed or the Amended Judgment affirmed.

Dated: Nov. 18, 1992.

  
Thomas R. Brett  
Clerk, United States  
District Court

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ENTERED  
DATE NOV 24 1992

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

DAVID A. WHITE, )  
 )  
 Plaintiff, )  
 )  
 V. )  
 )  
 THE UNIVERSITY OF TULSA - )  
 COLLEGE OF LAW, THE )  
 UNIVERSITY OF TULSA; )  
 PROFESSORS CHAPMAN, HAGER, )  
 LIMAS, TANAKA, CLARK, ADAMS )  
 and SHEILA POWERS, )  
 )  
 Defendants. )

CASE NO. 90-C-421-B

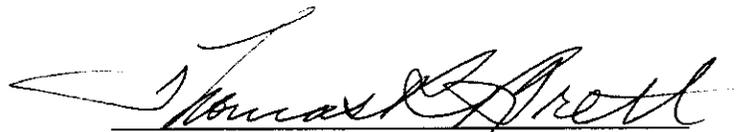
**FILED**  
NOV 18 1992  
Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT ON DECISION BY THE COURT

This action came on for hearing before the Court, Honorable Thomas R. Brett, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered, as set forth in the Court's Findings of Fact and Conclusions of Law,

IT IS ORDERED AND ADJUDGED that Defendants recover of and from the Plaintiff, David A. White, the sum of \$149,201.00, with interest thereon from and after date of Judgment at the rate of 3.76 per cent per annum, as provided by law, and all costs of this action.

IT IS SO ORDERED AND ADJUDGED this 18<sup>th</sup> day of Nov., 1992.

  
THOMAS R. BRETT  
U. S. DISTRICT JUDGE

ENTERED IN CLERK'S OFFICE  
NOV 24 1992  
DATE FILED

NOV 19 1992

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

# United States District Court

NORTHERN DISTRICT OF OKLAHOMA

JUDY G. TAYLOR

JUDGMENT IN A CIVIL CASE

v.

DILLARDS DEPARTMENT STORES

CASE NUMBER: 90-C-330-B

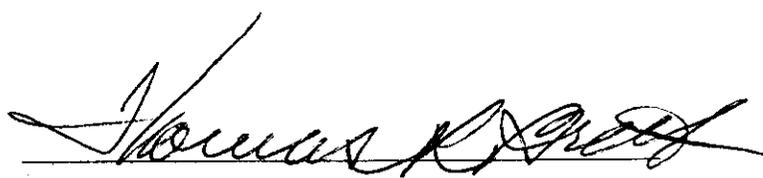
**Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

**Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT JUDGMENT IS ENTERED IN FAVOR OF THE DEFENDANT, DILLARDS DEPARTMENT STORES AND AGAINST THE PLAINTIFF, JUDY G. TAYLOR AND THE PLAINTIFF TAKE NOTHING. COSTS ARE ASSESSED AGAINST THE PLAINTIFF, IF TIMELY APPLIED FOR, AND PARTIES ARE TO PAY THEIR OWN ATTORNEYS FEES.

11-19-92

Date



THOMAS R. BRETT, JUDGE

(By) Deputy Clerk



**CLOSED**  
**E D**

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

NOV 24 1992

Richard J. ...  
U.S. DISTRICT COURT

MARK SHIELDS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 OKLAHOMA DEPARTMENT OF )  
 CORRECTIONS, ET AL., )  
 Defendants. )

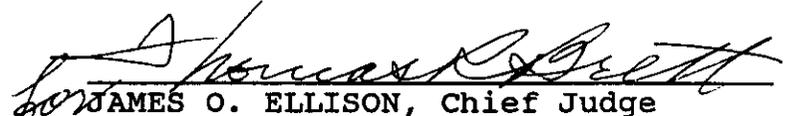
No. 92-C-1045-E

EOD 11/24/92

ORDER

Plaintiff's motion for leave to proceed in forma pauperis reveals that he has \$224.70 in his inmate savings account. Okla. Stat. tit. 57, § 563.2A(5) states that funds from an inmate's savings account may be used for fees or costs in filing a civil action. Plaintiff's motion for leave to proceed in forma pauperis is therefore denied. His complaint is accordingly dismissed at this time without prejudice for failure to pay the required filing fee. See Local Rule 6. The court will reinstate this action only if Plaintiff submits to the court the proper \$120.00 filing fee within thirty (30) days from the date this order is entered.

SO ORDERED THIS 23<sup>rd</sup> day of Nov., 1992.

*for*   
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

**CLOSED**

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

NOV 24 1992

Richard L. Thompson, Clerk  
U.S. DISTRICT COURT

No. 92-C-1015-EL

NOV 24 1992

Richard L. Thompson, Clerk  
U.S. DISTRICT COURT

JOSEPH CLOUD,  
Petitioner,  
vs.  
RON CHAMPION, ET AL.,  
Respondents.

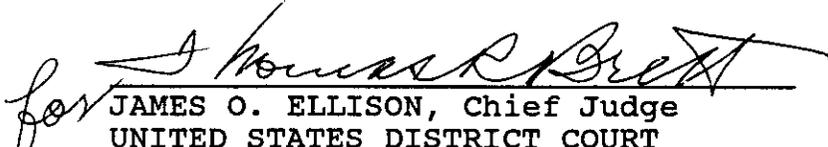
ORDER

EOD 11/24/92.

Petitioner has filed an application for a writ of habeas corpus, but has not submitted the proper filing fee or a motion for leave to proceed in forma pauperis. Therefore, his petition shall be dismissed without prejudice at this time. See Local Rule 6(A).

The court may reinstate this action if Petitioner submits to the court either the proper filing fee or a motion for leave to proceed in forma pauperis within twenty (20) days from the date this order is entered.

SO ORDERED THIS 29<sup>th</sup> day of Nov., 1992.

*for*   
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

RECEIVED ON E-BOOKET  
DATE NOV 24 1992

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

VOICE SYSTEMS AND SERVICES, INC., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 VMX, INC., )  
 )  
 Defendant and )  
 Counterclaim-Plaintiff, )  
 )  
 v. )  
 )  
 VOICE SYSTEMS AND SERVICES, INC. )  
 and PETER ZUYUS, )  
 )  
 Counterclaim-Defendants.)

No. 91-C-88-B ✓

**FILED**

NOV 26 1992

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

PRELIMINARY INJUNCTION

The motion of Counter-Claim Plaintiff, VMX, Inc., for a preliminary injunction, pursuant to Fed.R.Civ.P. 65, having come on for hearing on September 20, October 5 and 6, 1992, and the Court having entered its Findings of Fact and Conclusions of Law thereon on November 5, 1992, setting forth the reasons for issuance of this order;

NOW, THEREFORE, pending trial of this action and until judgment is entered, Counterclaim-Defendants, Voice Systems and Services, Inc. and Peter Zuyus, and their respective officers, agents, servants, employees, and attorneys and all those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, are hereby restrained and enjoined from making, selling using or reconstructing:

1. Voice mail and automated attendant products, or enhancements thereto, which fall within the scope of any of paragraphs 2 through 6 below and which have been, heretofore advertised and sold under the names "Communicator", "Communicator Series", "Communicator, Jr.", "Quick-Call", or "Emergency Notification", except to the extent the same may be hereafter modified to be noninfringing after first being determined by this Court as noninfringing.

2. Any product that infringes U. S. Patent No. 4,371,752, U.S. Patent No. 4,783,796, or U.S. Patent No. 4,747,124, true copies of which patents are attached hereto and incorporated herein for all purposes.

3. Any voice mail system that infringes claims 1 and 21 of U.S. Patent No. 4,371,752.

4. Any automated attendant system that infringes claim 1 of U.S. Patent No. 4,371,752.

5. Any automated attendant system that infringes claim 1 of U.S. Patent No. 4,747,124.

6. Any automated attendant product that infringes claim 5 of U.S. Patent No. 4,783,796.

7. Notwithstanding the foregoing, the effect of this Preliminary Injunction shall be delayed for a period of thirty (30) days with respect only to the single Communicator System presently in use at Suite 2530 of the Fourth National Bank Building, Tulsa, Oklahoma, thereby permitting Valley National Bank to foreclose on such system and enter into a limited license agreement with VMX, Inc., provided that such thirty-day period may be extended upon

motion by VMC, Inc. or Valley National Bank for good cause shown.

This Preliminary Injunction shall take effect upon the giving of security, in the form of an undertaking by The Federal Insurance Company or other reputable bonding company approved to issue bonds in the State of Oklahoma, in the sum of One Hundred Thousand Dollars (\$100,000.00), for the payment of such costs and damages as may be incurred by any party who is found to have been wrongfully enjoined.

IT IS SO ORDERED this 20th day of November, 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

ENTERED ON DOCKET  
DATE NOV 24 1992

IN THE UNITED STATES DISTRICT COURT FOR  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**  
NOV 10 1992

JOSEPH Q. ADAMS, TRUSTEE,

Plaintiff,

-vs-

JANICE L. STONE,  
Clerk of the District Court  
in and for Atchison County,  
State of Kansas,

Defendant.

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

Case No. 92-C-875-B ✓

**ORDER DISMISSING APPEAL**

NOW, on this 10<sup>th</sup> day of November, 1992, this matter comes on before this Court upon Plaintiff's Motion to Dismiss Appeal, and upon review of said Motion and the file, the Court finds that said Motion to Dismiss Appeal should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above-captioned case No. 92-C-875-B be and the same is hereby dismissed as moot.

  
\_\_\_\_\_  
Judge of the United States District Court

Submitted by:

**MORREL, WEST, SAFFA, CRAIGE & HICKS, INC.**  
Mark A. Craige  
9th Floor City Plaza West  
5310 East 31st Street  
Tulsa, OK 74135  
(918) 664-0800 (Telephone)  
(918) 663-1383 (Fax)

3

*Handwritten notes*

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

DAVID A. WHITE,  
Plaintiff,

v.

THE UNIVERSITY OF TULSA -  
COLLEGE OF LAW, THE  
UNIVERSITY OF TULSA;  
PROFESSORS CHAPMAN, HAGER,  
LIMAS, TANAKA, CLARK, ADAMS  
and SHEILA POWERS,

Defendants.

CASE NO. 90-C-421-B

EDD 11/24/92

**FILED**

NOV 18 1992

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes on before the Court for hearing on November 10, 1992, pursuant to the Court's October 15, 1992 Order. The sole issue before the Court at this hearing is the amount of attorney fees to be awarded to Defendants, pursuant to title 28 U.S.C. §1927 and title 23 Okla. Stat. §103.

After considering the pleadings, exhibits admitted, briefs, testimony of the Defendants' expert, Terry M. Thomas, Esq., and arguments presented by counsel for Defendants, and being fully advised in the premises, the Court enters the following findings of fact and conclusions of law, pursuant to Federal Rule of Civil Procedure 52.

FINDINGS OF FACT

1. Defendants filed their Motion for Sanctions and Attorney Fees, Brief, and Appendix in support of said Motion on March 12, 1992. The Appendix contained, as Exhibit 12, the Affidavit of Leslie Zieren, counsel for all Defendants, as to the reasonableness

of the amount of time incurred representing the Defendants and the hourly rates employed by the firm of Boesche, McDermott & Eskridge. The Appendix also contained, as Exhibit 14, the Affidavit of Scott Taylor, co-counsel for Professor Winona Tanaka, as to the reasonableness of the amount of time incurred as co-counsel for Defendant Tanaka and the hourly rates employed by the firm of Wilburn, Masterson, & Smiling. The total of the two firms' fees is \$149,201.00.

2. By Order of July 29, 1992, this Court sanctioned Mr. White by enjoining him from pursuing in any state or federal trial court any action based upon the claims involved in the instant suit. In that Order, the Court specifically allowed Defendants the opportunity to present a timely application for fees, if appropriate.

3. Defendants timely filed their Application and Brief for Attorney Fees on August 10, 1992, seeking an award of same against Plaintiff White, pursuant to title 28 U.S.C. §1927 and title 23 Okla. Stat. §103.

4. By Order of October 15, 1992, this Court found David A. White, a licensed attorney and the non-prevailing party, had engaged in conduct throughout this litigation that was unreasonable, vexatious, frivolous, in bad faith, and which multiplied the proceedings, causing excess attorney fees. Eight of the ten claims brought by White were found to be for "damages for personal injury" or for "damages to personal rights" pursuant to title 23 O.S. §103. Thus, the Court found that the statutory

requirements necessary to impose attorney fees upon White were met under both 28 U.S.C. §1927 and 23 Okla. Stat. §103. In the October 15, 1992 Order, the Court set a hearing date on the amount of fees to be awarded for November 10, 1992, at 9:15 a.m.

5. The matter was called on the docket at approximately 9:30 a.m. Mr. White, a licensed attorney in the State of Texas, who appeared pro se in this lawsuit, was not present, although a copy of the October 15, 1992 Order had been sent by the Clerk of the Court to his current address in Illinois. No person or attorney appeared on Mr. White's behalf.

6. No evidence of Mr. White's present indigence was presented to the Court.

7. All findings of the Court as to Mr. White's conduct with reference to this litigation, set forth in its October 15, 1992 Order, are reaffirmed and restated by the Court herein by reference, as if fully set forth.

8. The hourly rates charged and the services rendered were reasonable and necessary to adequately defend against the claims of Mr. White.

9. Defendants' counsels' affidavits and supporting time records (Exhibits 12 and 14 to the March 12, 1992 Appendix and Brief in Support of Defendants' Motion for Sanctions and Attorney Fees) were reaffirmed by counsel, admitted into evidence, and appended as a part of the record of this hearing.

9. In addition to the evidence presented, the Court considered the factors pertaining to attorney fee awards set forth

in State ex rel. Burk v. City of Oklahoma City, 598 P.2d 659 (Okla. 1979); Oliver's Sports Center, Inc. v. National Standard Ins. Co., 615 P.2d 291 (Okla. 1980); Ramos v. Lamm, 713 F.2d 546 (10th Cir. 1983); Battle v. Anderson, 614 F.2d 251 (10th Cir. 1980) and Hensley v. Eckerhart, 461 U.S. 424, 103 S. Ct. 1933 (1983), as applied to this matter.

10. Title 28 U.S.C. §1927 provides for an award of the "excess" fees caused by Mr. White's bad faith conduct. The Court finds that all fees were "excess" and caused by Mr. White's conduct in that the lawsuit was not well grounded in fact, not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and was conducted vexatiously and unreasonably by White, a licensed attorney.

11. Title 23 O.S. §103 provides for an award of a maximum of \$10,000.00 per claim to the prevailing party upon a finding by the Court that the claim was asserted in bad faith, was not well grounded in fact, not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. As the Court found in its October 15, 1992 Order, eight of Plaintiff's claims were for damages to "personal injury...or...to personal rights." As such, a maximum award of \$80,000.00 under the statute exists. This Court finds, that in consideration of the attorney fee factors considered in the above-cited cases, an added sum is appropriate to equal a total fee award of \$149,201.00 under this statute by reason of the egregious, malicious behavior of the Plaintiff and the resulting fees incurred by reason of such

behavior. The fee is reasonable as a sanction and as an appropriate fee to Defendants as the prevailing party.

12. Based upon the Court's review of the evidence presented, the statutory language of both title 28 U.S.C. §1927 and 23 O.S. §103, and its consideration of the factors set forth in the above-cited case law as further justification of the Court's award, the total sum of reasonable and necessary fees that should be awarded, pursuant to either statute, is \$149,201.00. This represents the total fees claimed by Boesche McDermott & Eskridge in the amount of \$128,700.00 and the total fees claimed by Wilburn Masterson & Smiling in the amount of \$20,501.00.

#### CONCLUSIONS OF LAW

1. Due process is satisfied if a party against whom a motion or request for sanctions has been asked is given an opportunity to respond. Braley v. Campbell, 832 F.2d 1504 (10th Cir. 1987). Plaintiff was sent notice of the hearing by the Clerk of the Court at his current address and did not appear. Due process has been afforded Plaintiff. The Court has jurisdiction over these parties and the subject matter of this hearing. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384; 110 S.Ct. 2447, 100 L.Ed.2d 359 (1990).

2. Although this lawsuit was brought by Plaintiff White as a pro se litigant, his conduct with regard to this lawsuit, should not be adjudicated under the standards applicable to a lay pro se litigant, but rather he should be held accountable under standards imposed upon all licensed attorneys.

3. Based upon the findings of the Court in this Order and in its October 15, 1992 Order, the Court concludes that Mr. White's bringing and handling of his multiple claims against the named multiple defendants is conduct that is clearly frivolous, vexatious, willful, wanton, malicious, in bad faith, and without any reasonable basis in fact or law. The Court further concludes that this conduct injured the Defendants by causing them to incur needless attorney fees.

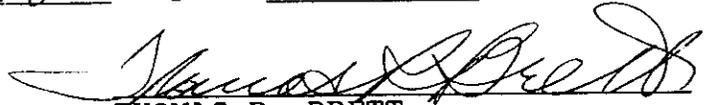
4. The Court further concludes that all fees incurred by Defendants were excess pursuant to title 28 U.S.C. §1927 by reason of Mr. White's conduct in that the lawsuit was not well grounded in fact, not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and was conducted vexatiously and unreasonably by White, a licensed attorney.

5. The Court further concludes that eight of Plaintiff's claims were for damages to "personal injury...or...to personal rights." As such, a maximum award of \$80,000.00 under the statute exists. This Court concludes, that in consideration of the factors cited in the above-referenced cases, a sum in addition to the \$80,000 cap award is appropriate to equal a total fee award of \$149,201.00 under this statute by reason of the egregious, malicious behavior of the Plaintiff and the resulting fees incurred by reason of such behavior. The fee is reasonable as a sanction and as an appropriate fee to Defendants as the prevailing party. Defendants were the prevailing parties in this action by reason of

the Court's Judgment and Order of Dismissal with Prejudice, filed on February 26, 1992.

6. The Attorney Fee Application of the Defendants was timely filed and the hourly rates charged and the services rendered were reasonable and necessary to adequately defend against the claims of Mr. White.

IT IS SO ORDERED this 18<sup>th</sup> day of Nov., 1992.

  
THOMAS R. BRET  
U.S. DISTRICT COURT JUDGE

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

ENTERED ON DOCKET  
DATE NOV 24 1992

HOMER L. MOORE, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MULTI-COLOR COMPANY, INC., )  
 )  
Defendant. )

Case No. 92-C-457-E

**FILED**

NOV 23 1992

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

STIPULATION OF DISMISSAL WITH PREJUDICE

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Plaintiff, Homer L. Moore, by and through his attorney of record, pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, files this Stipulation moving to dismiss with prejudice all the claims and causes of action against the Defendant, Multi-Color Company, Inc., and in support would show that the Plaintiff and Defendant have agreed to settle and compromise all matters and issues between them.

WHEREFORE, Plaintiff and Defendant pray that suit be dismissed with prejudice as against the Defendant, Multi-Color Company, Inc.

Respectfully submitted,

SMOLEN & SMITH

By: Bryan J. Smith  
Attorneys for Plaintiff

SANDERS & CARPENTER

By: J. Thomas Mason  
J. Thomas Mason, OBA 5758

Attorneys for Defendant

ENTERED CIVIL DOCKET

DATE NOV 24 1992.

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

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

Plaintiff,

vs.

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

Defendants.

**FILED**

NOV 18 1992

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

CIVIL ACTION NO. 91-C-496-B ✓

REPORT AND RECOMMENDATION

This matter came on to be heard November 10, 1992 upon the application for writ of execution filed by the plaintiff and upon the request of the individually named defendant, William W. Kinzie. Present on behalf of the plaintiff was Phil Pinnell, Assistant United States Attorney, and on behalf of the defendants, William W. Kinzie. Based upon the arguments and authorities presented at the hearing by the parties the court reports and recommends as follows:

1. The United States, for and on behalf of the Osage Tribe of Indians, has a judgment in this case, previously rendered by the court in the sum of \$530,245.61, plus interest at 4.21% per annum. This entire judgment amount remains unsatisfied at this time. The United States has sought a writ of execution on certain property described on an equipment list marked as attachment "A" and attached to its application for writ of execution.

c:USF

2. That the plaintiff be permitted to enter the subject property located in the Osage Industrial Park, Highway 99, Hominy, Oklahoma, and take possession of certain items of personal property located therein with or without the assistance of the United States Marshal. The plaintiff is permitted to take possession of and sell in partial satisfaction of its judgment against William W. Kinzie the following described items of personal property:

- A. Electric motors and fittings;
- B. Assembly line for forming beams;
- C. Large paint booth (1); and
- D. Electric Overhead hoist (2).

3. Execution on the remaining items of equipment listed on attachment "A" to plaintiff's application for writ of execution is denied at this time pending the parties' further investigation as to ownership of the equipment. If, after further investigation, it is determined that the plaintiff is entitled to execute on the remaining items of equipment listed on attachment "A" an additional application for writ of execution on such property must be made to this court.

  
UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM AND CONTENT

TONY M. GRAHAM  
United States Attorney



PHIL PINNELL, OBA# 7169  
Assistant United States Attorney  
3900 US Courthouse  
Tulsa, OK 74103

DATE NOV 23 1992

**FILED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA NOV 23 1992

LEAH LOWDER MILLS,

Plaintiff,

v.

AETNA LIFE INSURANCE COMPANY,  
a Connecticut corporation,

Defendant.

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

Case No. 92-C-525-B

**STIPULATION FOR DISMISSAL WITH PREJUDICE**

Plaintiff, Leah Lowder Mills, and defendant, Aetna Life Insurance Company, a Connecticut corporation, by and through their respective counsel of record, pursuant to Rule 41(a)(1)(ii), hereby stipulate to the dismissal with prejudice of this action, with each party to bear her or its respective attorneys' fees and costs incurred herein.

DATED this 19<sup>th</sup> day of November, 1992.

LEAH LOWDER MILLS  
Plaintiff

By: Brent L. Mills  
Brent L. Mills  
JONES, GIVENS, GOTCHER & BOGAN  
3800 First National Tower  
15 East Fifth Street  
Tulsa, OK 74103-4309  
(918) 581-8200

AETNA LIFE INSURANCE COMPANY  
a Connecticut corporation

By: W. Kyle Tresch by Jeff Dunlevy  
W. Kyle Tresch  
CROWE & DUNLEVY  
500 Kennedy Building  
Tulsa, OK 74103  
(918) 592-9800

CERTIFICATE OF MAILING

The undersigned does hereby certify that on this 19<sup>th</sup> day of November, 1992, a true and correct copy of the above and foregoing was mailed, by United States mail, postage prepaid, to:

Jimmy Goodman  
Mark D. Spencer  
Crowe & Dunlevy  
1800 Mid-America Tower  
Oklahoma City, OK 73102

  
Brent L. Mills