

ENTERED ON DOCKET

DATE 12-30-92

**FILED**

DEC 30 1992

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

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

CONOCO INC.,  
a Delaware corporation,  
  
Plaintiff,

vs.

Case No. 92-C-014-B

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

Defendants.

O R D E R

This Court entered an Order March 16, 1992, in the above styled action granting a motion to dismiss for lack of subject matter jurisdiction filed on behalf of Anthony Arkeketa, Phyllis Dailey, Christi Simpson and Watson Management Group, Inc. (the Tribal Defendants). Although the motion to dismiss was not filed on behalf of all Defendants, the Court's Order was dispositive of all claims as to all Defendants. For this reason, Plaintiff's claims are hereby DISMISSED without prejudice as to all remaining Defendants.

IT IS SO ORDERED THIS 30<sup>th</sup> DAY OF DECEMBER, 1992.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE





Margaret McMorrow-Love, OBA #5538

FELLERS, SNIDER, BLANKENSHIP,

BAILEY & TIPPENS, P.C.

120 North Robinson Avenue

2400 First National Center

Oklahoma City, Oklahoma 73102-7875

(405) 232-0621

Attorneys for Defendant,  
The Evans Co., Inc.

FILED

AUG 24 1992

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA  
Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SYLVESTER EUGENE GAY, )  
 )  
 Defendant. )

ENTERED ON DOCKET

No. 89-CR-20-E

~~DEC 30 1992~~

92-C-108 E

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DATE AUG 25 1992

ORDER

Before the Court are Defendant-Petitioner's Motion to Vacate, Motion to Clarify Pleadings and Motion to Amend Pleadings. The two latter motions will be granted. The Motion to Vacate will be denied for the reasons delineated below.

In his Motion to Clarify Pleadings, Defendant-Petitioner alleges that his sentence herein was erroneously enhanced by former state convictions which were obtained in violation of his Fifth, Sixth and Fourteenth Amendment rights. Specifically, he asserts that:

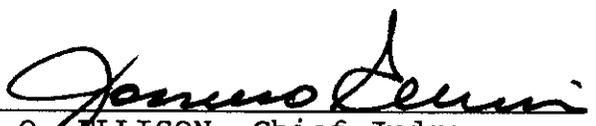
1. In case #CRF-73-126 he was not advised of his various Constitutional rights at his Change of Plea hearing;
2. In case #CRF-77-1750 he was coerced into entering a plea because the State improperly used a prior conviction to enhance his sentence;
3. In case #CRF-80-59 he did not understand the charges against him; he was not advised of his rights; he was innocent of the crime charged; his counsel was ineffective.

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Pursuant to 28 U.S.C. §2255, Defendant-Petitioner must support his claims in a Motion to Vacate Sentence by a preponderance of the evidence. United States v. Kastenbaum, 613 F.2d 86 (5th Cir. 1980). No evidentiary hearing is required where the record shows conclusively that Defendant-Petitioner's motion must fail. Wilson v. United States, 534 F.2d 130 (9th Cir. 1974).

In the instant case, the record reveals that in each of the state cases cited, Defendant-Petitioner applied for but was denied Post-Conviction Relief. See, Exhibits "C", "E", "G", "H" and "I" attached to Government's Supplemental Response. The record also reflects that during the sentencing hearing in this case the issue of the validity and use of prior convictions was discussed. See, Exhibit "J" to Government's Supplemental Response. The record indicates that Defendant-Petitioner's contentions were investigated and considered by the Court. See, this Court's Order dated April 25, 1990. On direct appeal to the Tenth Circuit, this Court's sentence was affirmed. The Court can find no basis for relitigating issues already considered. Therefore Defendant-Petitioner's Motion to Vacate will be denied.

So ORDERED this 24<sup>th</sup> day of August, 1992.

  
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

DATE 12-30-92

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CAROLYN S. DUMAS a/k/a )  
 CAROLYN S. JACOBS a/k/a )  
 CAROLYN S. RICHARDSON n/k/a )  
 CAROLYN S. EDWARDS; SPOUSE OF )  
 CAROLYN S. DUMAS a/k/a )  
 CAROLYN S. JACOBS a/k/a )  
 CAROLYN S. RICHARDSON n/k/a )  
 CAROLYN S. EDWARDS; COUNTY )  
 TREASURER, Tulsa County, )  
 Oklahoma; BOARD OF COUNTY )  
 COMMISSIONERS, Tulsa County, )  
 Oklahoma, )  
 Defendants. )

**FILED**

DEC 29 1992

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

CIVIL ACTION NO. 92-C-286-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28 day  
of Dec, 1992. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Peter Bernhardt, Assistant United States  
Attorney; the Defendant, Carolyn S. Dumas a/k/a Carolyn S. Jacobs  
a/k/a Carolyn Richardson n/k/a Carolyn S. Edwards, appears  
through her attorneys, N. Franklyn Casey and Bruce A. McKenna;  
the Defendants, County Treasurer, Tulsa County, Oklahoma, and  
Board of County Commissioners, Tulsa County, Oklahoma, appear  
not, having previously disclaimed any right, title or interest in  
the subject property; and the Defendant, Spouse of Carolyn S.  
Dumas a/k/a Carolyn S. Jacobs a/k/a Carolyn Richardson n/k/a  
Carolyn S. Edwards, appears not, and should be dismissed from  
this action.

The Court, being fully advised and having examined the court file, finds that the Defendant, Carolyn S. Dumas a/k/a Carolyn S. Jacobs a/k/a Carolyn Richardson n/k/a Carolyn S. Edwards, acknowledged receipt of Summons and Complaint on or about July 23, 1992; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on April 8, 1992; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on April 9, 1992.

The Court further finds that Defendant, Spouse of Carolyn S. Dumas a/k/a Carolyn S. Jacobs a/k/a Carolyn Richardson n/k/a Carolyn S. Edwards has not been served herein, as such person does not exist, and should therefore be dismissed as a Defendant herein.

It appears that the Defendant, Carolyn S. Dumas a/k/a Carolyn S. Jacobs a/k/a Carolyn Richardson n/k/a Carolyn S. Edwards, filed her Answer on July 1, 1992; that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed his Answer on April 29, 1992, disclaiming any right, title or interest in the subject property; and that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on April 29, 1992, disclaiming any right, title or interest in the subject property.

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 FOUR (4), BLOCK THREE (3), Scottsdale Addition, an addition in Tulsa County, State of Oklahoma; according to the recorded plat thereof.

The Court further finds that on September 22, 1977, Donald E. Dumas and Carolyn S. Dumas, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$22,900.00, payable in monthly installments, with interest thereon at the rate of 8 percent (8%) per annum.

The Court further finds that as security for the payment of the above-described note, Donald E. Dumas and Carolyn S. Dumas, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated September 22, 1977, covering the above-described property. Said mortgage was recorded on September 22, 1977, in Book 4285, Page 363, in the records of Tulsa County, Oklahoma.

The Court further finds that on May 14, 1981, the United States of America, acting through the Farmers Home Administration, executed a Release From Personal Liability for Donald E. Dumas.

The Court further finds that the Defendant, Carolyn S. Dumas a/k/a Carolyn S. Jacobs a/k/a Carolyn Richardson n/k/a Carolyn S. Edwards, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that

by reason thereof the Defendant, Carolyn S. Dumas a/k/a Carolyn S. Jacobs a/k/a Carolyn Richardson n/k/a Carolyn S. Edwards, is indebted to the Plaintiff in the principal sum of \$20,941.29, plus accrued interest in the amount of \$3,920.96 as of November 12, 1991, plus interest accruing thereafter at the rate of 8 percent per annum or \$4.5899 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Carolyn S. Dumas a/k/a Carolyn S. Jacobs a/k/a Carolyn Richardson n/k/a Carolyn S. Edwards, in the principal sum of \$20,941.29, plus accrued interest in the amount of \$3,920.96 as of November 12, 1991, plus interest accruing thereafter at the rate of 8 percent per annum or \$4.5899 per day until judgment, plus interest thereafter at the current legal rate of 3.72 percent per annum until paid, 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, and that the Defendant, Spouse of Carolyn S. Dumas a/k/a Carolyn S. Jacobs a/k/a Carolyn Richardson n/k/a Carolyn S. Edwards, is hereby dismissed as a Defendant herein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Carolyn S. Dumas a/k/a Carolyn S. Jacobs a/k/a Carolyn Richardson n/k/a Carolyn S. Edwards, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, according to Plaintiff's election with or without appraisal, the real property involved herein and apply the proceeds of the sale as follows:

**First:**

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

**Second:**

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

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any

right, title, interest or claim in or to the subject real property or any part thereof.

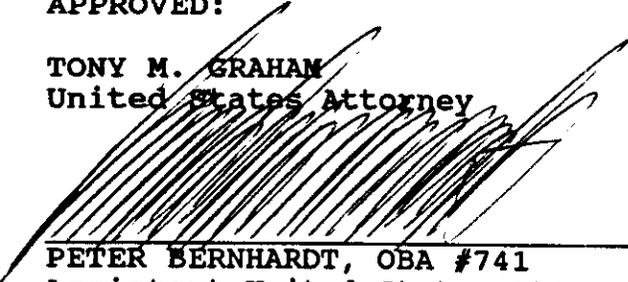
**S/ THOMAS R. BRETT**  

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**UNITED STATES DISTRICT JUDGE**

APPROVED:

TONY M. GRAHAM  
United States Attorney



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PETER BERNHARDT, OBA #741  
Assistant United States Attorney  
3900 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

---

N. FRANKLYN CASEY, OBA #1547  
BRUCE A. MCKENNA, OBA #6021  
Attorneys for Defendant,  
Carolyn S. Dumas a/k/a Carolyn S. Jacobs  
a/k/a Carolyn Richardson n/k/a Carolyn S. Edwards

Judgment of Foreclosure  
Civil Action No. 92-C-286-B

PB/esr

ENTERED ON DOCKET

DATE 12-30-92

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

FILED

DEC 29 1992

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

AMERISTAR FENCE PRODUCTS, INC.,	)
an Oklahoma Corporation,	)
	)
Plaintiff,	)
	)
v.	)
	)
CHASE TOOL AND DIE CO., INC.,	)
a Texas Corporation,	)
	)
Defendant.	)

Case No. 92-C-633-B

ORDER

Before the Court is Defendant's Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2), or in the alternative, to Transfer, pursuant to 28 U.S.C. §1404(a), or for a More Definite Statement.

Plaintiff, Ameristar Fence Products, Inc. ("Ameristar"), filed suit, alleging that Defendant, Chase Tool & Die, Inc. ("Chase"), infringed upon a patent held by Ameristar, asking this Court to enjoin further infringement by Chase, and to award damages to Ameristar. Specifically, as made clear in pleadings subsequent to the Complaint, Ameristar charges that Chase's Extended Gravity Latch, also known as the EGL-250, infringes upon Ameristar's U.S. Patent No. 4,871,203. In its motion, Chase contends that this Court lacks personal jurisdiction over it. In the alternative, Chase argues that venue in this court is improper pursuant to 28 U.S.C. 1400(b), and that if this Court has jurisdiction over Chase, and venue is proper, then this Court, under the doctrine of *forum non*

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*conveniens*, should transfer the case to the Northern District of Texas pursuant to 28 U.S.C. 1404(a).<sup>1</sup> For the reasons set out below, this Court finds that it lacks personal jurisdiction over the Defendant, and therefore, finds it unnecessary to reach Defendant's other propositions.

***Factual Background***

Once a 12(b)(2) motion has been filed with supporting affidavits, a plaintiff must respond with counter-affidavits or appropriate proofs to establish the necessary contact with the forum to support *in personam* jurisdiction. Stranahan Gear Co. v. NL Industries, Inc., 800 F.2d 53, 58 (3rd Cir. 1986).

In Behagen v. Amateur Basketball Ass'n of the United States, 744 F.2d 731, 733 (10th Cir. 1984), *cert. denied*, 471 U.S. 1010 (1985), the Court stated:

"The plaintiff bears the burden of establishing personal jurisdiction over the defendant. Prior to trial, however, when a motion to dismiss for lack of jurisdiction is decided on the basis of affidavits and other written materials, the plaintiff need only make a *prima facie* showing. The allegations in the complaint must be taken as true to the extent they are uncontroverted by the defendant's affidavits. If the parties present conflicting affidavits, all factual disputes are resolved in plaintiff's favor,

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<sup>1</sup>Chase also argues that Ameristar's complaint is too vague to require Chase to frame a responsive pleading, in that Ameristar fails to specifically allege which of Chase's products infringes on the patent-in-suit. In Ameristar's response brief and declarations, and in Chase's reply brief and declarations, Ameristar states, and Chase acknowledges that it is Chase's Extended Gravity Latch, identified as the EGL-250 Gate Latch, about which Ameristar complains.

and the plaintiff's *prima facie* showing is sufficient notwithstanding the contrary presentation of the moving party."

Construing all factual disputes in plaintiff's favor, the Court finds the following facts to be true.

Ameristar is an Oklahoma Corporation with its principal place of business in Tulsa, Oklahoma. On June 25, 1990, J & J Hardware was forced into bankruptcy in the Northern District of Texas. On October 30, 1990, Ameristar entered into an agreement, subject to the approval of the Bankruptcy Court, to purchase the assets of J & J Hardware, including the patent-in-suit. This sale was approved on March 13, 1991.<sup>2</sup>

Chase is a Texas corporation with its principal place of business in Texas, and is engaged in the business of manufacturing fence parts. Chase manufactures its products in Texas, and ships them directly to its customers. Chase does not employ or use any sales representative at a location other than its offices in Texas. Chase does not now, nor has it ever had any property (real or personal) in Oklahoma, nor has it had any bank account, telephone number or listing, business office, director, officer, employee, sales representative, or agent in the State of Oklahoma. No director, officer, employee, sales representative, or agent of Chase has ever entered Oklahoma for the purpose of procuring or attempting to procure any contract or order for or on behalf of Chase. Chase has never advertised or solicited business in the

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<sup>2</sup> Chase had also unsuccessfully attempted to purchase the assets of J & J.

State of Oklahoma other than advertisements in trade journals which are circulated nationally. Chase has made three sales in Oklahoma, none of which were solicited by Chase, but rather were initiated by the customers. Chase has never sold its Extended Gravity Latch in Oklahoma. Chase did send one Extended Gravity Latch to a fence customer in Oklahoma, but from the record, there is no indication that the latch was sold to that customer, nor even why it was sent to him.

***Standard for Establishing Personal Jurisdiction***

"Due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice' (citations omitted)." International Shoe Co. v. State of Washington, et al., 326 U.S. 310, 316 (1945).

It is critical to due process that "defendant's conduct and connection with the forum state are such that he would reasonably anticipate being haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S.Ct. 559 (1980); Burger King v. Rudzewicz, 471 U.S. 462 (1985).

A minimum contacts inquiry must focus on the totality of the relationship between the Defendant and the forum state. Colwell Realty Investments v. Triple T Inns of Arizona, 785 F.2d 1330 (5th Cir. 1986); All American Car Wash v. National Pride Equipment, 550 F.Supp. 166 (W.D.Okla. 1981). The Plaintiff has the burden of

establishing that the nonresident defendant has the necessary minimum contacts with the forum so that maintenance of the suit "does not offend traditional notions of fair play and substantial justice." Ten Mile Indus. Park v. Western Plains Service Corp., 810 F.2d 1518, 1524 (10th Cir. 1987); Hanson v. Denckla, 357 U.S. 235 (1958); International Shoe, 326 U.S. at 316.

The Defendant in this case is a foreign corporation. Jurisdiction over corporations may be either general or specific. Rambo v. American Southern Ins., 839 F.2d 1415, 1418 (10th Cir. 1988). Jurisdiction over a defendant in a case arising out of or related to the defendant's contacts with the forum state is "specific jurisdiction." When the case does not arise from or relate to the defendant's contacts with the forum and jurisdiction is based on the defendant's presence or accumulated contacts with the forum, the court exercises "general jurisdiction."

Plaintiff's claims are based on 35 U.S.C. §271 which provides that:

(a) Except as otherwise provided in this title, whoever without authority makes, uses or sells any patented invention, within the United States during the term of the patent therefor, infringes the patent.

(b) Whoever actively induces infringement of a patent shall be liable as an infringer.

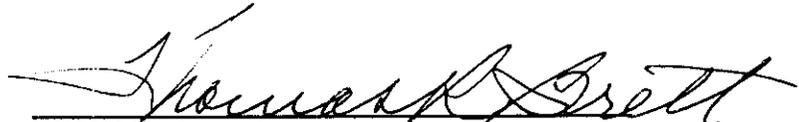
Although Ameristar alleged in its complaint that Chase has been and is still "making, using, or selling products" within this judicial district which infringe on the patent-in-suit, Chase, in its motion to dismiss, denied that it has committed any of these acts in Oklahoma, and submitted affidavits in support of this

denial. Ameristar did not submit any evidence indicating that Chase has made, used, or sold the EGL-250 in the State of Oklahoma, nor is there any allegation or evidence that Chase actively induced anyone to make, use, or sell the latch in Oklahoma. Because there is no evidence that Chase committed any act in Oklahoma which serves as a basis for Ameristar's claims, this Court can not have specific jurisdiction over Chase.

"While *in personam* jurisdiction can be based on contacts with the forum state that are either related to the cause of action or are unrelated to it, the 'minimum contacts' doctrine requires contacts in the latter case to be more substantial." Fidelity and Casualty Co. of New York v. Philadelphia Resins Corporation, 766 F.2d 440, 447 (10th Cir. 1985) (citations omitted). For a court to have general jurisdiction, the defendant must have "continuous and systematic" business contacts with the forum state. Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437, 438, 445 (1952); Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408, 415-16 (1983). The only business contacts which Chase may have with Oklahoma, as alleged by Ameristar, are the advertisement of its products, including the Extended Gravity Latch, in a national trade journal, and responding to requests for catalogs and products by Oklahoma residents. These contacts are not enough to support general jurisdiction of this Court over Chase. Philadelphia Resins, 766 F.2d at 447 (advertising in national trade publication and isolated sales of other products were insufficient contacts to support *in personam* jurisdiction in products liability action).

For the reasons set out above, this Court finds that it lacks personal jurisdiction over the Defendant, Chase Tool & Die Co., Inc., and that Defendant's Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(2) is GRANTED.

IT IS SO ORDERED, this 29<sup>th</sup> day of December, 1992.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

DEC 29 1992  
Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

HARLAN MYERS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 DAN REYNOLDS, et al, )  
 )  
 Defendants. )

92-C-659-E

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed December 1, 1992 in which the Magistrate Judge recommended that Defendant's Motion to Dismiss be granted without prejudice.

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

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

It is, therefore, Ordered that the recommendations of the Magistrate Judge are hereby adopted as set forth above.

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

  
JAMES O. ELLISON, CHIEF JUDGE  
UNITED STATES DISTRICT COURT

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ENTERED ON DOCKET

DATE 12-30-92

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

ATLANTIC RICHFIELD COMPANY, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
American Airlines, Inc., et al. )  
 )  
Defendants. )

Consolidated Case Nos.

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

**FILED**

DEC 28 1992

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

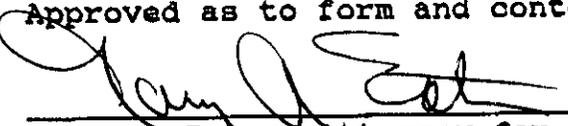
ORDER FOR DISMISSAL WITHOUT PREJUDICE

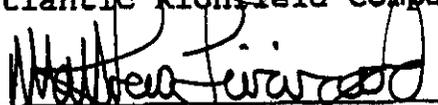
Now on this 28 day of December, 1992, upon presentation of the Stipulation for Dismissal Without Prejudice executed by Plaintiff Atlantic Richfield Company and Defendant Sullivan Trucking Company, Inc., the Court finds and adjudges that all claims of Atlantic Richfield Company set forth herein against Sullivan Trucking Company, Inc. should be and are hereby dismissed without prejudice to any future action upon such claims; the Court also finds and adjudges that all claims of Sullivan Trucking Company, Inc. against Atlantic Richfield Company 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.

S/ THOMAS R. BRETT

Judge

Approved as to form and content

  
\_\_\_\_\_  
Gary A. Eaton, Attorney for  
Atlantic Richfield Company

  
\_\_\_\_\_  
Matthew G. Livingood, Esq.  
Hall, Estill, Harwick, Gable, Golden & Nelson, P.C.  
Attorneys for Sullivan Trucking Company

DATE 12-30-92

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

ATLANTIC RICHFIELD COMPANY, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
American Airlines, Inc., et al. )  
 )  
Defendants. )

Consolidated Case Nos.

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

**F I L E D**

DEC 28 1992

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

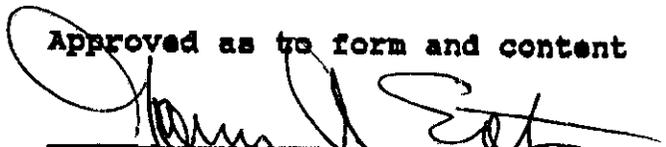
ORDER FOR DISMISSAL WITHOUT PREJUDICE

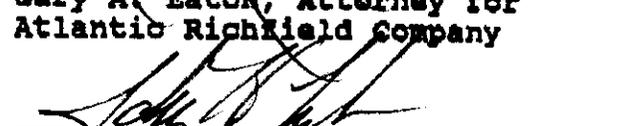
Now on this 28 day of December, 1992, upon presentation of the Stipulation for Dismissal Without Prejudice executed by Plaintiff Atlantic Richfield Company and Defendant The Zeligson Company, the Court finds and adjudges that all claims of Atlantic Richfield Company set forth herein against The Zeligson Company 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.

S/ THOMAS R. BRETT

Judge

Approved as to form and content

  
\_\_\_\_\_  
Gary A. Eaton, Attorney for  
Atlantic Richfield Company

  
\_\_\_\_\_  
John Tucker, Attorney for  
The Zeligson Company

DATE 12-30-92

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

ATLANTIC RICHFIELD COMPANY,

Plaintiff,

v.

American Airlines, Inc., et al.

Defendants.

Consolidated Case Nos.

89-C-868-B

89-C-869-B

90-C-859-B

**FILED**

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

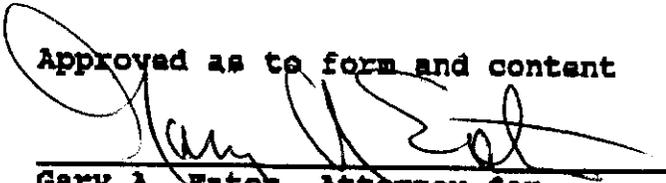
ORDER FOR DISMISSAL WITHOUT PREJUDICE

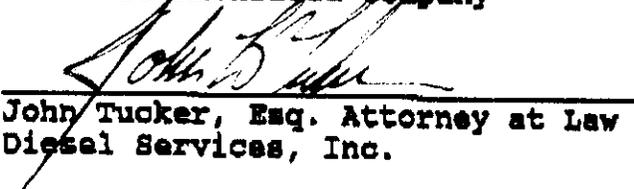
Now on this 28 day of December, 1992, upon presentation of the Stipulation for Dismissal Without Prejudice executed by Plaintiff Atlantic Richfield Company and Defendant Diesel Services, Inc., the Court finds and adjudges that all claims of Atlantic Richfield Company set forth herein against Diesel Services, Inc. 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.

S/ THOMAS R. BRETT

Judge

Approved as to form and content

  
\_\_\_\_\_  
Gary A. Eaton, Attorney for  
Atlantic Richfield Company

  
\_\_\_\_\_  
John Tucker, Esq. Attorney at Law for  
Diesel Services, Inc.

ENTERED ON DOCKET

DATE 12-30-92

**FILED**

DEC 28 1992

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

REBA MOSES; GENERAL MOTORS  
ACCEPTANCE CORPORATION;  
MOUNTAIN STATES FINANCIAL  
RESOURCES CORPORATION; COUNTY  
TREASURER, Tulsa County,  
Oklahoma; and BOARD OF COUNTY  
COMMISSIONERS, Tulsa County,  
Oklahoma,

Defendants.

CIVIL ACTION NO. 90-C-869-B

**DEFICIENCY JUDGMENT**

This matter comes on for consideration this 28<sup>th</sup> day  
of Dec, 1992, upon the Motion of the Plaintiff,  
United States of America, acting on behalf of the Secretary of  
Veterans Affairs, for leave to enter a Deficiency Judgment. The  
Plaintiff appears by Tony M. Graham, United States Attorney for  
the Northern District of Oklahoma, through Phil Pinnell,  
Assistant United States Attorney, and the Defendant, Reba Moses,  
appears neither in person nor by counsel.

The Court being fully advised and having examined the  
court file finds that a copy of Plaintiff's Motion was mailed by  
certified return receipt addressee restricted mail to Reba Moses,  
4849 North Garrison Place, Tulsa, Oklahoma 74126, and by first-  
class mail to all answering parties and/or counsel of record. On  
October 8, 1992, a copy of Plaintiff's Motion was mailed by  
first-class mail to Reba Moses, 4831 North Garrison Place, Tulsa,  
Oklahoma 74126.

The Court further finds that the amount of the Judgment rendered on April 2, 1992, in favor of the Plaintiff United States of America, and against the Defendant, Reba Moses, with interest and costs to date of sale is \$17,272.69.

The Court further finds that the appraised value of the real property at the time of sale was \$6,500.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered April 2, 1992, for the sum of \$5,789.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on the 25th day of November, 1992.

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

Principal Balance Plus Pre-Judgment Interest as of April 2, 1992	\$16,276.16
Interest From Date of Judgment to Sale	226.08
Late Charges to Date of Judgment	229.12
Appraisal by Agency	50.00
Abstracting	115.00
Publication Fees of Notice of Sale	151.33
Court Appraisers' Fees	<u>225.00</u>
TOTAL	\$17,272.69
Less Credit of Appraised Value	- <u>6,500.00</u>
<b>DEFICIENCY</b>	<b>\$10,772.69</b>

plus interest on said deficiency judgment at the legal rate of 3.72 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendant, **Reba Moses**, a deficiency judgment in the amount of \$10,772.69, plus interest at the legal rate of 3.72 percent per annum on said deficiency judgment from date of judgment until paid.

S/ THOMAS R. BRETT

---

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM  
United States Attorney

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

PP/css

ENTERED ON DOCKET

DATE 12-30-92

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

DEC 28 1992

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DELMAR MACK; SHERRY MACK; )  
 SECURITY PACIFIC FINANCE CORP. )  
 OF IOWA, an Iowa Corporation; )  
 STATE OF OKLAHOMA *ex rel.* )  
 OKLAHOMA TAX COMMISSION; )  
 LONGVIEW LAKE ASSOCIATION, INC.; )  
 COUNTY TREASURER, Tulsa County, )  
 Oklahoma; and BOARD OF COUNTY )  
 COMMISSIONERS, Tulsa County, )  
 Oklahoma, )  
 )  
 Defendants. )

CIVIL ACTION NO. 91-C-687-B

**DEFICIENCY JUDGMENT**

This matter comes on for consideration this 28<sup>th</sup> day  
of Dec, 1992, upon the Motion of the Plaintiff,  
United States of America, acting on behalf of the Secretary of  
Veterans Affairs, for leave to enter a Deficiency Judgment. The  
Plaintiff appears by Tony M. Graham, United States Attorney for  
the Northern District of Oklahoma, through Wyn Dee Baker,  
Assistant United States Attorney, and the Defendant, Sherry Mack,  
appears neither in person nor by counsel.

The Court being fully advised and having examined the  
court file finds that a copy of Plaintiff's Motion was mailed by  
first-class mail to Sherry Mack, 11032 East 14th Court, Tulsa,  
Oklahoma 74128-4850, and to all answering parties and/or counsel  
of record.

The Court further finds that the amount of the Judgment rendered on April 2, 1992, in favor of the Plaintiff United States of America, and against the Defendant, Sherry Mack, with interest and costs to date of sale is \$73,778.70.

The Court further finds that the appraised value of the real property at the time of sale was \$45,500.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered April 2, 1992, for the sum of \$40,522.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on the 25th day of November, 1992.

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

Principal Balance Plus Pre-Judgment Interest as of April 2, 1992	\$71,450.98
Interest From Date of Judgment to Sale	992.47
Appraisal by Agency	300.00
Abstracting	645.00
Publication Fees of Notice of Sale	165.25
Court Appraisers' Fees	<u>225.00</u>
TOTAL	\$73,778.70
Less Credit of Appraised Value	- <u>45,500.00</u>
DEFICIENCY	\$28,278.70

plus interest on said deficiency judgment at the legal rate of 3.72 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendant, Sherry Mack, a deficiency judgment in the amount of \$28,278.70, plus interest at the legal rate of 3.72 percent per annum on said deficiency judgment from date of judgment until paid.

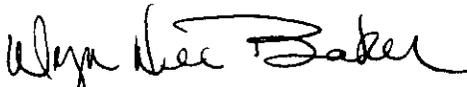
S/ THOMAS R. BRETT

---

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM  
United States Attorney



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

WDB/css

ENTERED ON DOCKET

DATE 12-29-92

**FILED**

DEC 28 1992

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

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

DAVID WEAVER and HAZEL WEAVER, )  
)  
Plaintiffs, )

v. )

No. 92-C-736-B

PROTECTIVE LIFE INSURANCE )  
COMPANY, f/n/a UNITED FOUNDERS )  
LIFE INSURANCE COMPANY, )  
)  
Defendant. )

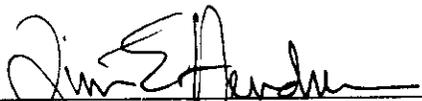
ORDER OF DISMISSAL WITH PREJUDICE

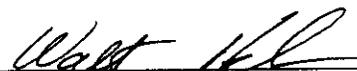
NOW ON this 28<sup>th</sup> day of Dec, 1992, it  
appearing to the Court that this matter has been compromised and  
settled, this case is herewith dismissed with prejudice to the  
refiling of a future action.

**S/ THOMAS R. BRETT**

United States District Judge

APPROVED AS TO FORM AND CONTENT:

  
\_\_\_\_\_  
Tim E. Hendren  
Attorney for Plaintiffs

  
\_\_\_\_\_  
Walter D. Haskins  
Attorney for Defendant

ENTERED ON DOCKET

DATE 12-29-92

**FILED**

DEC 28 1992

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

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

CHESTER ZEIGLER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	92-C-303-B
	)	
BILL THOMPSON, T.C.S.O.,	)	
	)	
Defendant.	)	

ORDER

This order pertains to Plaintiff's Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 (Docket #2)<sup>1</sup>, Defendant's Motion to Dismiss, Or In The Alternative Summary Judgment (Docket #7), and the Special Report (Docket #9). On September 4, 1992, Plaintiff was given an additional thirty days to respond to Defendant's motion, but he has not responded. Pursuant to Local Rule 15A of the Northern District of Oklahoma, his failure to respond constitutes a waiver of objection to the motion.

Plaintiff claims that on January 15, 1992, Defendant ordered a shakedown of his cell. Some hacksaw blades were found in the cell, and he was singled out as guilty for their presence and moved to a cell in medical segregation without a hearing. As a result, he contends he has been denied visitation, phone calls, mail, and commissary privileges. He claims his property has been confiscated and that letters he writes are opened and returned to him, instead of being mailed. He asks that all his privileges be re-instated, that he be tried for any crime he has committed, that he be moved out of medical segregation and given a complete physical, and that his letters and photographs be returned to him.

<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.

Defendant seeks dismissal on the grounds that Plaintiff's complaint fails to state a claim upon which relief may be granted, because Plaintiff is no longer in Defendant's custody, so he cannot be transferred out of medical segregation or granted privileges.

Pro se complaints are held to less stringent standards than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 510 (1972). The district court may dismiss the complaint if "the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id. at 521 (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). Thus, "if the [district] court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements." Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991).

The court can read Plaintiff's complaint to state a claim for violation of his rights under the United States Constitution and therefore should not grant Defendant's Motion to Dismiss. The court should consider in the alternative Defendant's Motion for Summary Judgment.

"[T]he plain language of Rule 56(c) [Fed.R.Civ.P.] 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." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). If there is a complete failure of proof concerning an essential element of the non-movant's case, there can be no genuine issue of material fact because all other facts are necessarily rendered immaterial. Id. at 323.

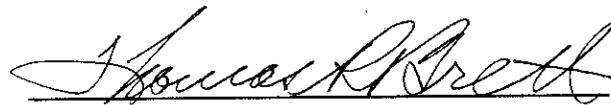
A party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must affirmatively prove specific facts showing that there is a genuine issue of material fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). The 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." Id. at 252.

Defendant has submitted a Special Report containing prison records and officers' statements in support of his Motion for Summary Judgment. The Special Report shows that on May 5, 1992, the Plaintiff was transferred to the custody of the United States Marshal to be transported to the Federal Corrections Facility at El Reno, Oklahoma. Mr. Zeigler will be serving a four hundred month sentence concurrently with several life sentences received in state court.

Since Mr. Zeigler is no longer an inmate of the Tulsa County Jail, it would be impossible for the Tulsa County Sheriff's Office to grant the Plaintiff's requests to receive privileges and be transferred to the general population of the Tulsa County Jail. Mr. Zeigler's prayer for the return of his property is also beyond the capability of the Tulsa County Sheriff's Office, because all of his property in the possession of the Tulsa County Jail was transferred to the possession of the U.S. Marshal when Mr. Zeigler was transported. (See Exhibit #1 to the Brief in Support of Motion to Dismiss Or In The Alternative Motion for Summary Judgment, Affidavit of Sgt. Patrick).

Plaintiff's complaint fails to state a claim upon which relief can be granted. Defendant's Motion for Summary Judgment (Docket #7) is granted.

Dated this 28<sup>th</sup> day of Dec., 1992.

A handwritten signature in cursive script, reading "Thomas R. Brett". The signature is written in dark ink and is positioned above a horizontal line.

THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 12-29-92

**FILED**

DEC 28 1992

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

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

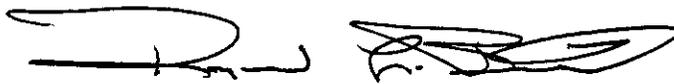
RAYMOND L. BECK, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CROWN BUICK, INC., d/b/a )  
 CROWN AUTO WORLD, an )  
 Oklahoma corporation, and )  
 DONOVAN ARNEY, individually )  
 )  
 Defendants.)

No. 91-C-968-B

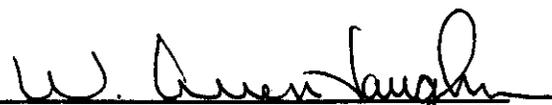
STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a) and by consent of all parties, it is herewith stipulated and agreed that the above styled and numbered cause of action be, and the same is, hereby dismissed with prejudice.

Dated this 24<sup>th</sup> day of December, 1992.

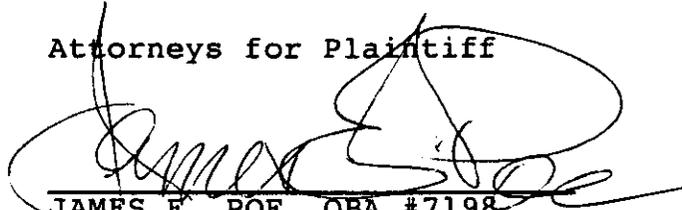


RAYMOND L. BECK, Plaintiff



FRED M. SCHRAEDER, OBA #7981  
W. ALLEN VAUGHN, OBA #14434  
2021 South Lewis, Suite 470  
Tulsa, Oklahoma 74104  
(918) 744-7440

Attorneys for Plaintiff



JAMES E. POE, OBA #7198  
Suite 740, Grantson Bldg.  
Tulsa, Oklahoma 74103-4267  
(918) 585-5537

Attorney for Defendants

RELEASE OF ALL CLAIMS

In consideration of a sum of Six Thousand Five Hundred Dollars (\$6,500.00) herewith paid by Crown Buick, Inc., d/b/a Crown Auto World, and Universal Underwriters Insurance Company on behalf of Crown and Donovan Arney, the receipt of which the undersigned does now acknowledge, it is understood and agreed:

1. The undersigned, Raymond L. Beck, does now fully and completely release and discharge Crown Buick, Inc., d/b/a Crown Auto World, a corporation, and Donovan Arney, together with any directors, officers, agents, servants, or employees of either, from any and all claims, demands, losses, damages, costs, expenses, including attorney fees, if any, whether now accrued, accruing, or unaccrued and whether fixed and certain or uncertain, arising from or because of any act, event, omission, occurring from contract or tort at any time heretofore and through the date of this release.

2. The undersigned further agrees to execute any appropriate document or documents necessary to dismiss with prejudice that certain lawsuit claim now asserted as cause number 91-C-968-B of the United States District Court for the Northern District of Oklahoma.

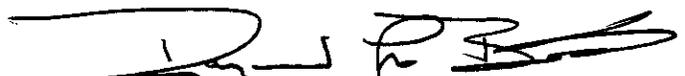
3. The undersigned states that he understands the referenced payment is made by the said Payors in order to compromise disputed claims and said payment shall not constitute any admission of fault or liability whatsoever as to any allegations appearing in the subject lawsuit or otherwise. Rather, said payment results from a desire to resolve pending and possible controversies and to avoid further losses of time and expense of litigation.

4. The undersigned acknowledges that except for the payment of the sum herein shown no other representations or promises of any type have been made by the referenced payors and this release is being freely given by the undersigned after advice of counsel and solely for the consideration hereinabove recited.

Dated this 24<sup>th</sup> day of December, 1992.

WITNESSED:

  
FRED M. SCHRAEDER or  
W. ALLEN VAUGHN

  
RAYMOND L. BECK

RELEASE OF ALL CLAIMS

In consideration of a sum of Six Thousand Five Hundred Dollars (\$6,500.00) herewith paid by Crown Buick, Inc., d/b/a Crown Auto World, and Universal Underwriters Insurance Company on behalf of Crown and Donovan Arney, the receipt of which the undersigned does now acknowledge, it is understood and agreed:

1. The undersigned, Raymond L. Beck, does now fully and completely release and discharge Crown Buick, Inc., d/b/a Crown Auto World, a corporation, and Donovan Arney, together with any directors, officers, agents, servants, or employees of either, from any and all claims, demands, losses, damages, costs, expenses, including attorney fees, if any, whether now accrued, accruing, or unaccrued and whether fixed and certain or uncertain, arising from or because of any act, event, omission, occurring from contract or tort at any time heretofore and through the date of this release.

2. The undersigned further agrees to execute any appropriate document or documents necessary to dismiss with prejudice that certain lawsuit claim now asserted as cause number 91-C-968-B of the United States District Court for the Northern District of Oklahoma.

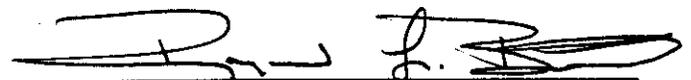
3. The undersigned states that he understands the referenced payment is made by the said Payors in order to compromise disputed claims and said payment shall not constitute any admission of fault or liability whatsoever as to any allegations appearing in the subject lawsuit or otherwise. Rather, said payment results from a desire to resolve pending and possible controversies and to avoid further losses of time and expense of litigation.

4. The undersigned acknowledges that except for the payment of the sum herein shown no other representations or promises of any type have been made by the referenced payors and this release is being freely given by the undersigned after advice of counsel and solely for the consideration hereinabove recited.

Dated this 24<sup>th</sup> day of December, 1992.

WITNESSED:

  
FRED M. SCHRAEDER or  
W. ALLEN VAUGHN

  
RAYMOND L. BECK

COVINGTON & POE

*Attorneys at Law*

TULSA, OKLAHOMA 74103

A.M. COVINGTON (RETIRED)  
JAMES E. POE, P.C.

STEPHEN R. CLOUSER  
EMILY D. POE

5TH & BOULDER  
740 GRANTSON BUILDING  
TELEPHONE (918) 585-5537

December 24, 1992

Fred M. Schraeder  
W. Allen Vaughn  
Attorneys at Law  
2021 South Lewis, Suite 470  
Tulsa, Oklahoma 74104

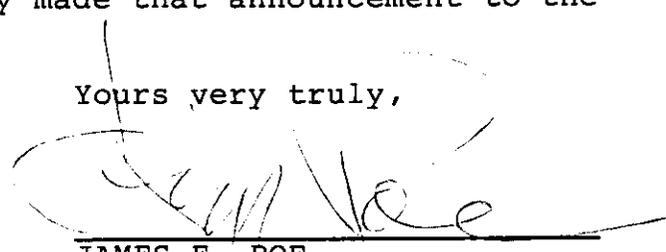
Re: Beck v. Crown Buick, et al.  
U.S. District Court No. 91-C-968-B

Counsellors:

I'm herewith handing to you the draft of Universal Underwriters Insurance Company in the amount of \$5,750.00, and the check of Crown Buick, Inc., in the amount of \$750.00, representing full payment of sums per our settlement agreement. Also enclosed please find original and copies of a proposed "Stipulation of Dismissal With Prejudice" and a "General Release".

Please have these documents fully executed and returned to me prior to releasing or negotiating the draft and check. If additional attendance before the Court is required of counsel for announcing the settlement, I would request that you retain the checks until such time as we have officially made that announcement to the Court.

Yours very truly,



JAMES E. POE

JEP/jd  
Enclosures

ENTERED ON DOCKET  
DEC 29 1992  
FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OKLAHOMA

DEC 28 1992

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

ROBERT M. BODILY, Individually, )  
and SHARON G. BODILY, )  
Individually, and as Husband )  
and Wife, )

Plaintiffs, )

vs. )

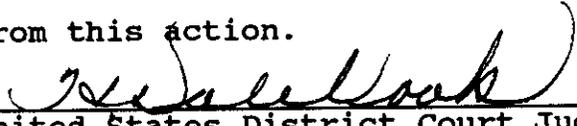
Case No. 92-C-908-C

TIM MAHAFFEY, LANNA MAHAFFEY )  
and OXY PETROLEUM, INC., )

Defendants )

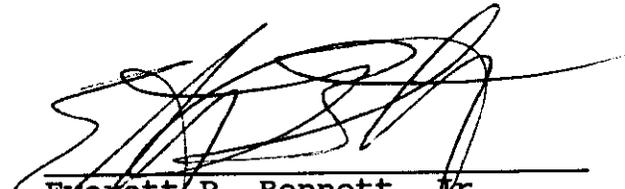
ORDER OF DISMISSAL

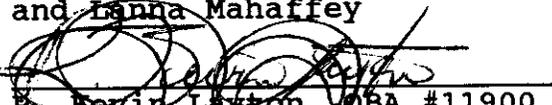
This matter comes on before the Court this 28<sup>th</sup> day of Dec., 1992. The Court after review of the matter and pursuant to the stipulation of the parties herein, dismisses the Defendant Oxy Petroleum, Inc. from this action.

  
United States District Court Judge

APPROVED:

  
Thomas Baker,  
WILLIAMS, BAKER, HOWARD &  
EARL  
1605 S DENVER  
TULSA OK 74119  
Attorney for Defendants Tim  
and Lanna Mahaffey

  
Everett R. Bennett, Jr.  
FRASIER & FRASIER  
1700 S W BLVD  
TULSA OK  
Attorney for Plaintiffs  
Robert M. and Sharon G. Bodily

  
R. Kevin Layton, OBA #11900  
OF BOESCHE, MODERMOTT &  
ESKRIDGE  
100 W 5TH STE 800  
TULSA OK 74103-4216  
Attorney for Defendant  
Oxy Petroleum

1

ENTERED ON DOCKET

DATE 12-29-92

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

**FILED**

DEC 24 1992

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

UNIT DRILLING AND EXPLORATION )  
COMPANY, a Delaware )  
Corporation, and UNIT )  
PETROLEUM COMPANY, an )  
Oklahoma corporation, )

Plaintiffs, )

vs. )

UNITED STATES OF AMERICA, )

Defendant. )

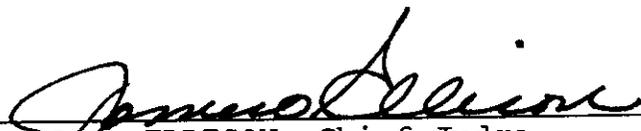
No. 92-C-794-E ✓

AMENDED ORDER

Comes now before the Court for its consideration the motion of Defendant United States of America to vacate and/or reconsider the Court's Order entered September 9, 1992. After review of the pleadings and Plaintiff having no objection, the Court finds said Order staying all proceedings in the above-styled case should be vacated.

IT IS THEREFORE ORDERED that the Court's previous Order dated September 9, 1992 is hereby VACATED; Defendant is hereby granted thirty (30) days to file its motion to dismiss.

ORDERED this 24<sup>th</sup> day of December, 1992.

  
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

8

DATE 12-29-92

**FILED**  
DEC 22 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 Nos. )  
89-C-868-B )  
89-C-869-B )  
90-C-859-B )

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

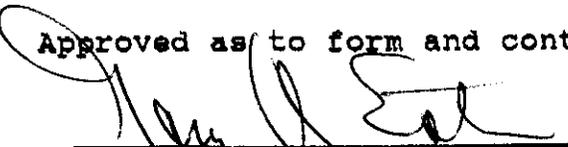
**ORDER FOR DISMISSAL WITHOUT PREJUDICE**

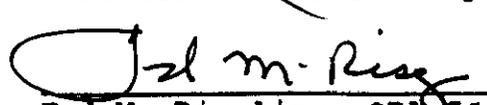
Now on this 27 day of December, 1992, upon presentation of the Stipulation for Dismissal Without Prejudice executed by Plaintiff Atlantic Richfield Company and Defendants McPherson Fuels & Asphalts, Inc., Sally Neas, and John Neas, the Court finds and adjudges that all claims of Atlantic Richfield Company set forth herein against McPherson Fuels & Asphalts, Inc., Sally Neas, and John Neas 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.

**S/ THOMAS R. BRETT**

\_\_\_\_\_  
Judge

Approved as to form and content

  
\_\_\_\_\_  
Gary A. Eaton, Attorney for  
Atlantic Richfield Company

  
\_\_\_\_\_  
Ted M. Riseling, OBA 7600  
Attorney at Law for McPherson Fuels  
& Asphalts, Inc., Sally Neas, and John Neas

ENTERED ON DOCKET

DATE 12-29-92

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

**FILED**

DEC 28 1992

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

ATLANTIC RICHFIELD COMPANY,	)	
	)	
Plaintiff,	)	Consolidated Case
	)	
v.	)	89-C-868-B
	)	89-C-869-B
AMERICAN AIRLINES, INC., Et. Al.,	)	90-C-859-B
	)	
Defendants.	)	

FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

Now on this 22<sup>nd</sup> day of December, 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. 515) filed herein on November 17, 1992. The Plaintiff ARCO appears by its attorney, Larry Gutterridge, 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. 515) in the above captioned action between the Plaintiff ARCO and Defendant Shipley Motor Equipment Company is found to be in good faith, and a final judgment barring all claims against Defendant Shipley Motor Equipment Company 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 Shipley Motor Equipment Company 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 Shipley Motor Equipment Company 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 Shipley Motor Equipment Company 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 Defendant Shipley Motor Equipment Company 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.

S/ THOMAS R. BRETT

Dated: 12-22-92

\_\_\_\_\_  
Thomas R. Brett  
United States District Court Judge

Presented by:

\_\_\_\_\_  
Gary A. Eaton, Attorney  
for Plaintiff, Atlantic  
Richfield Company

\_\_\_\_\_  
William Anderson, Esq.  
Liaison Counsel

ENTERED ON DOCKET

DATE 12-29-92

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

**FILED**

DEC 22 1992

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

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

Consolidated Cases

89-C-868-B

89-C-869-B

90-C-859-B

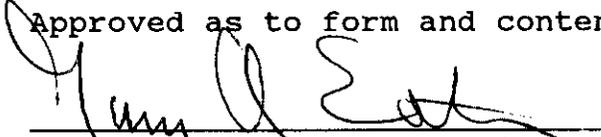
ORDER FOR DISMISSAL WITHOUT PREJUDICE  
OF DEFENDANTS MAX McCLANAHAN AND JOHN A. MORTON

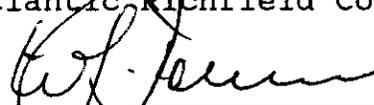
Now on this 22 day of December, 1992, upon presentation of the Stipulation for Dismissal Without Prejudice executed by Plaintiff Atlantic Richfield Company and Defendants Max McClanahan and John A. Morton, the Court finds and adjudges that all claims of Atlantic Richfield Company set forth herein against Defendants Max McClanahan and John A. Morton 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.

S/ THOMAS R. BRETT

\_\_\_\_\_  
Judge

Approved as to form and content:

  
\_\_\_\_\_  
Gary A. Eaton, Attorney for  
Atlantic Richfield Company

  
\_\_\_\_\_  
William F. Powers, Attorney for  
Max McClanahan and John A. Morton

ENTERED ON DOCKET  
DATE DEC 28 1992

IN THE UNITED STATES DISTRICT COURT FOR  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

DEC 22 1992

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
vs	)	91-C-948-E
	)	
MARILYN COLBERT,	)	
	)	
Defendant.	)	

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

PAYMENT AGREEMENT

Plaintiff, the United States of America, having obtained its judgment herein, and the defendant, having consented to this Payment Agreement, hereby agree as follows:

1. Plaintiff's consent to this Payment Agreement is based upon certain financial information which defendant has provided it and the defendant's express representation to Plaintiff that she is unable to presently pay the amount of indebtedness in full and the further representation of the defendant that she will willingly and truly honor and comply with the Payment Agreement entered herein which provides terms and conditions for the defendant's payment of the Judgment, together with costs and accrued interest, in regular monthly installment payments, as follows:

(a) Beginning on or before the 15th day of January, 1993, the defendant shall tender to the United States a check or money order payable to the "U. S. Department of Justice", in the amount of \$363.18 and a like sum on or before the 15th day of each following month until the entire amount of the Judgment, together with costs and accrued post judgment interest, is paid in full.

NOTE: THIS ORDER IS TO BE MAILED  
BY COUNSEL OR PRO SE LITIGANT'S IMMEDIATELY  
UPON RECEIPT.

(b) The defendant shall mail each monthly installment payment to: United States Attorney's Office, Debt Collection Unit, 333 West 4th, 3900 U. S. Courthouse, Tulsa, OK 74103.

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

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

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

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

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

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

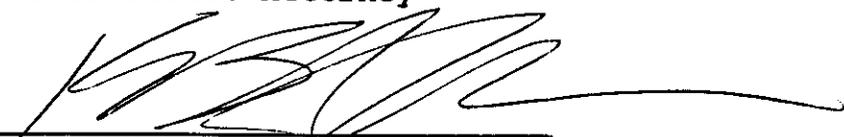
should the parties fail to agree upon the terms of a new stipulated Order of Payment, the Court may, after examination of the defendant, enter a supplemental Order of Payment.

S/ JAMES O. ELLISON

United States District Judge

APPROVED AS TO FORM:

TONY M. GRAHAM  
United States Attorney

  
KATHLEEN BLISS ADAMS  
Assistant U. S. Attorney  
Attorney for Plaintiff

  
MARILYN COLBERT, Debtor

ENTERED ON DOCKET  
DEC 28 1992

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

**FILED**

DEC 22 1992

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

RONDA K. GAYNOR,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

CIVIL ACTION NO. 92-C-230-E

ORDER

This matter comes on before the court upon the stipulation of all parties and the court being fully advised in the premises, orders, adjudges and decrees that all claims asserted herein by plaintiff, Ronda K. Gaynor, against the United States of America are hereby dismissed with prejudice.

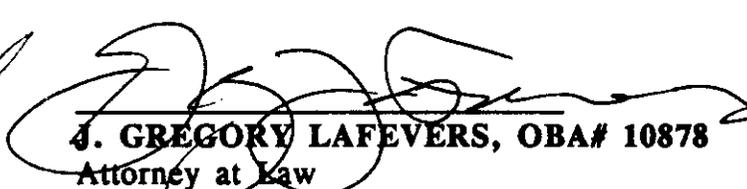
Dated this 22 day of Dec, 1992.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO CONTENT AND FORM:

  
**PHIL PINNELL, OBA # 7169**  
Assistant United States Attorney  
3900 U.S. Courthouse  
333 West 4th Street  
Tulsa, OK 74103  
(918) 581-7463  
Attorney for the Defendant

  
**J. GREGORY LAFEVERS, OBA# 10878**  
Attorney at Law  
2021 S. Lewis  
Suite 250  
Tulsa, OK 74104  
(918) 749-5749  
Attorney for Plaintiff



DATE DEC 28 1992

**FILED**

DEC 22 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

JOHN E. TYLER,	)
	)
Petitioner,	)
	)
v.	)
	)
STEPHEN KAISER, WARDEN,	)
	)
Respondent.	)

Case No. 91-C-863-E

ORDER

This order pertains to Petitioner's Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (Docket #1)<sup>1</sup>, the Supplemental Response to Petition for Writ of Habeas Corpus (Docket #8), and Petitioner's Response to Respondent's Supplemental Response (Docket #9).

Petitioner was convicted in Tulsa County District Court, Case No. CRF-85-4502, of Attempted Escape from Lawful Custody and sentenced to twenty (20) years imprisonment. The conviction was affirmed on appeal to the Oklahoma Court of Criminal Appeals. See Tyler v. State, 777 P.2d 1352 (Okla. Crim. App. 1989). Petitioner seeks federal habeas relief on the grounds that: (1) his sentence violated the ex post facto clause of the Oklahoma and federal constitutions, (2) there was insufficient evidence to support his conviction, and (3) the district court did not have jurisdiction to try his case because the information was incomplete.

There is no merit to petitioner's first contention that his sentence violates the ex post facto clause of the Oklahoma and federal constitutions because the State was allowed

<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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to enhance his conviction with prior felony convictions. Petitioner's sentence was properly enhanced, as no law prohibited such enhancement.

The basis of the petitioner's claim is that the law allowing enhancement of a sentence for escape was not enacted until July 1, 1988, three years after he was convicted of escape and received an enhanced sentence. Petitioner's claim would be correct had he been convicted of escape from a penal institution under Okla. Stat. tit. 21, § 443 (1981). However, he was tried and convicted under § 444 of Title 21, which concerns escape from arrest or detention. A conviction for a § 444 escape was not subject to the holding that it could not be enhanced under the habitual criminal statute, a holding applicable to the crime of escape under § 443, as discussed in Moore v. State, 736 P.2d 996, 999 (Okla. Crim. App. 1987). The reason for this was that a prior conviction was not an element of an escape from arrest or detention, as it was for an escape from a penal institution.<sup>2</sup>

Petitioner points out that footnote one in the opinion by the Court of Criminal Appeals affirming his conviction stated that his argument was weakened by the fact that the law was changed in 1988 to allow enhancement of § 443 cases with prior convictions other than the one for which the defendant was incarcerated. Tyler, 777 P.2d at 1354, n.1. Petitioner seems to believe that this is proof that the appellate court used the 1988 statute against him in a retrospective manner, but this is not the case. The court was discussing petitioner's claim that the difference between the punishments of § 443 and § 444 constituted cruel and unusual punishment. The footnote makes it clear that the amendment allowing enhancement of § 443 ended the disparity between the punishment

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<sup>2</sup> This same claim was raised by the appellant in Douglas v. State, 795 P.2d 1070, 1074 (Okla. Crim. App. 1990), and found to have no merit.

for the two crimes. However, this is irrelevant, since petitioner was not convicted under § 443.

The elements required to prove a violation of § 444 are: (1) escape, (2) from a peace officer, (3) after being lawfully detained or arrested by such officer. Id. at 1353. A prior conviction is not an element. Therefore, the Oklahoma felony enhancement statute, Okla. Stat. tit. 21, § 51, may be used to increase a sentence following a conviction for escape from lawful arrest.

Federal courts must accept a state court's interpretation and application of a state's laws by its highest court and application unless that interpretation is inconsistent with fundamental principles of liberty and justice. Ewing v. Winans, 749 F.2d 607, 609 (10th Cir. 1984).

As the Oklahoma Court of Criminal Appeals noted in Tyler, the statute under which petitioner was convicted, § 444<sup>3</sup>, has three parts. The Court of Criminal Appeals concluded that the legislature intended paragraph (A) to designate the crime and paragraphs (B) and (C) to designate the punishment. Tyler, 777 P.2d at 1353. Therefore, the only elements which were to be proven by the State in the first stage of trial were escape or attempted escape from a peace officer after being lawfully detained or arrested

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<sup>3</sup>Title 21 of the Oklahoma Statutes, § 444, reads as follows:

- A. It is unlawful for any person, after being lawfully arrested or detained by a peace officer, to escape or attempt to escape from such peace officer.
- B. Such person who escapes or attempts to escape after being lawfully arrested or detained for custody for a misdemeanor offense shall be guilty of a misdemeanor.
- C. Such person who escapes or attempts to escape after being lawfully arrested or detained for custody for a felony offense shall be guilty of a felony.

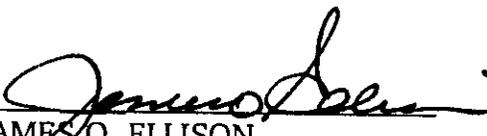
by such officer. The State was only required to allege these elements in the Information, and petitioner does not contend that it did not. It was not necessary to allege whether petitioner was arrested for a felony charge or a misdemeanor charge, as he argues.

Petitioner's claim that the State failed to present sufficient evidence on each element of the charged crime to support his conviction is based on his argument that the State did not prove he was arrested for a "felony." As already discussed, the State was not required to present any evidence as to whether he was arrested for a felony or misdemeanor during the first stage of trial. The State was only required to show he was lawfully arrested or detained. The Court of Criminal Appeals determined that "[t]he record is replete with evidence that appellant was lawfully arrested." Under 28 U.S.C. § 2254(d), a federal court must presume that a state court's findings of fact are correct. Moran v. Burbine, 475 U.S. 412 (1986); Summer v. Mata, 449 U.S. 539 (1981). The Court of Criminal Appeals' conclusion was based on a review of the record. Petitioner does not argue that there was insufficient evidence to show his lawful arrest for burglary. There is no misdemeanor for burglary in Oklahoma, so when the State presented the facts surrounding the arrest, there was no question that subsection paragraph (c) of the statute would designate his punishment.

There is no merit to plaintiff's claim that there was insufficient evidence to support his conviction because the State failed to prove he was wanted on a felony warrant, so failed to show his escape was a felony escape. There is also no merit to his claim that the information used to charge him was incomplete because it did not state that the crime for which petitioner was in custody was a felony.

There is no merit to petitioner's claims. Petitioner's Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (Docket #1) is denied.

Dated this 22<sup>o</sup> day of December, 1992.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET  
DATE DEC 24 1992

**FILED**

DEC 22 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

JUDY MATTINGLY, an individual,	)
JAMES MATTINGLY, an individual,	)
and LINDA NORWOOD, an individual,	)
	)
Plaintiffs,	)
	)
v.	)
	)
SUN REFINING AND MARKETING	)
COMPANY,	)
	)
Defendant.	)

Case No. 90-C-307-E

ORDER OF DISMISSAL

This matter is before the Court on the parties' Stipulation for Dismissal as to James Mattingly Only. The Court, having reviewed said stipulation and being fully advised in the premises, finds that James Mattingly's claim should be dismissed with prejudice.

IT IS THEREFORE ORDERED that James Mattingly's claim in the referenced case is hereby dismissed with prejudice.

  
 UNITED STATES DISTRICT JUDGE

209

ENTERED ON DOCKET  
DATE DEC 24 1992

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

**FILED**

DEC 21 1992

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

AMOS EUGENE TAYLOR and )  
BARBARA L. TAYLOR, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
CHUBB GROUP OF INSURANCE )  
COMPANIES and NORTHWESTERN )  
PACIFIC INDEMNITY COMPANY, )  
 )  
Defendant. )

No. 90-C-762-E

ORDER AND AMENDED JUDGMENT

COMES NOW FOR CONSIDERATION BY THE COURT Defendant's Motion for Judgment as a Matter of Law (docket #75) and Brief in Support (docket #76), and Plaintiff's Application for Pre-judgment Interest and Attorney Fees (docket #73).

(1) **Motion for Judgment as a Matter of Law**

On June 2nd, 1992, a seven person jury returned a verdict in favor of Plaintiffs. On Plaintiffs' breach of contract claims, the jury award was \$214, 266.90, and on Plaintiffs' claim for negligent infliction of emotional distress the jury award was \$600,000.00. However, the jury found against Plaintiffs on their claim of bad faith. On June 17, 1992, this Court entered judgment in accordance with the verdict of the jury. Within the 10 day period required by Federal Rule of Civil Procedure 50(b), Defendants renewed their motion made at trial for judgment as a matter of law with respect to Plaintiff's claim for negligent infliction of emotional distress.

The Court notes that Defendant failed in its renewed motion to

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file in the alternative a motion for new trial as required by both Rule 50(b) and 60(b) of the Federal Rules of Civil Procedure. The Court therefore had no opportunity to address the option of remittitur. Although in late August of 1992, Defendant did file a "Supplement" to its timely Rule 50(b) motion which requested a new trial in the alternative, relation back of this "Supplement" to the date of the original motion was inappropriate in light of the strict construction of the 10 day time restriction. Therefore, neither remittitur nor a new trial are available options at this juncture.

Nevertheless, the Court has reviewed the jury award in light of applicable authority and finds, as a matter of law, that the award must be reduced. Under Oklahoma law, a distinction has been drawn between negligent and intentional infliction of emotional distress. Proof of physical injury resulting from the emotional distress is required in the former, though not in the latter. The distinction was elaborated upon by the Oklahoma Court of Appeals in Coble v. Bowers, 809 P.2d 69, 73 (Okla. App. 1990) (Citations omitted) when the Court explained:

We agree that emotional distress caused by a willful, actionable tort is recoverable, even absent physical injury, if it is the natural and probable consequence of the tortious act. Mental distress is recognized as an ordinary and natural result of a failure of insurance. **Emotional distress as a consequence of an intentional tort is distinguishable from distress resulting from breach of contract or negligence, which requires a showing of physical injury.** [Emphasis added].

Where, as in the case at bar, no proof of physical injury is put on by Plaintiff, no recovery for negligent infliction of emotional

distress may be had. The award of the jury and the judgment of the Court are hereby ordered amended to reflect this ruling.

**(2) Application for Pre-Judgment Interest**

In actions on insurance policies, the Supreme Court of Oklahoma has adopted the rules for awarding pre-judgment interest as set forth at 46 C.J.S. Insurance §1391, page 692, which provides:

In accordance with the general rule, sometimes by reason of statute, unless the policy provides otherwise, interest on the amount to which plaintiff is entitled should be allowed from the time when, under the terms of the policy, it was due and payable but not before.

Fidelity-Phenix Fire Insurance Co. v. Board of Education of Rosendale, 201 Okl. 250, 204 P.2d 982 (1948).

The parties to the instant action were operating under the terms of an insurance policy which included the following "Loss Payment" provision:

Loss Payment. We will adjust losses with you or your representative. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss and (a) we reach agreement with you or your representative, (b) there is an entry of final judgment; or (c) there is a filing of an appraisal award with us.

This type of provision has been construed in Oklahoma as rendering an insured's loss payable only when both the proof of loss has been filed, and ascertainment of the loss has been made. Horn v. State Farm Fire and Casualty Company, 437 F.Supp. 63 (E.D.Okla. 1977).

In the instant case, the amount of loss was not ascertained until the day on which the judgment of this Court was entered. Consequently, Plaintiff has no right to recover pre-judgment

interest.

**(3) Recovery of Paralegal Fees**

The Court has carefully reviewed the arguments and authority on the issue of whether Plaintiffs are entitled to recover the fees of a paralegal as a part of their right to recover "reasonable attorney's fees". This issue involves a question concerning the policy and law of the State of Oklahoma, and there appears to be no clear, controlling precedent in the reported decisions of the Supreme Court of the State of Oklahoma.

Accordingly, the Court finds that this question of law is ripe for certification to the Supreme Court of the State of Oklahoma. This Court will therefore reserve ruling on Plaintiff's Application until such time as the Judgment of the Supreme Court of the State of Oklahoma is rendered.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's Rule 50(b) Motion is granted and, in accord therewith, the Judgment of this court as entered on the 18th day of June, 1992 (docket #77), is reopened and Judgment is entered as a matter of law in favor of Defendant on Plaintiff's claim for negligent infliction of emotional distress. Plaintiff is accordingly ORDERED to submit an Amended Application for Attorney Fees which does not include time and costs relating to Plaintiff's claim for negligent infliction for emotional distress within twenty (20) days of receipt of this Order.

IT IS ALSO ORDERED that Plaintiffs Application for pre-judgment interest is hereby denied.

IT IS FURTHER ORDERED that the parties are to submit the  
aforementioned issue concerning recovery of paralegal fees within  
twenty (20) days of receipt of this Order for certification to the  
Supreme Court of the State of Oklahoma.

ORDERED this 21<sup>st</sup> day of December, 1992.

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

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

DARRELL A. DUNAWAY, et al, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 MASADA JEWISH CONGREGATION, et al, )  
 )  
 Defendants. )

91-C-919-E

**FILED**  
DEC 21 1992  
Richard M. Lawrence, Court Clerk  
U.S. DISTRICT COURT

ORDER

The Court Clerk is ordered to administratively close Case No. 91-C-919-E (Dunaway  
v. Masada Jewish Congregation, et al.

SO ORDERED THIS 21<sup>st</sup> day of Dec., 1992.

  
JEFFREY S. WOLFE  
UNITED STATES MAGISTRATE JUDGE

23

ENTERED  
DATE DEC 24 1992

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

ATLANTIC RICHFIELD COMPANY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MANUEL LUJAN, JR., SECRETARY, )  
 DEPARTMENT OF THE INTERIOR, )  
 et al., )  
 )  
 Defendants. )

DEC 22 1992  
No. 89-C-892-B ✓

J U D G M E N T

In accord with the Order filed this date sustaining the Plaintiff's Motion for partial Summary Judgment, the Court hereby enters judgment in favor of the Plaintiff, Atlantic Richfield Company, and against the Defendants, Manuel Lujan, Jr., Secretary of the Department of Interior, Barry A. Williamson, Director of the Minerals Management Service, and Nick L. Kelly, Area Manager of the Dallas Area Compliance Office, and declares all claims for money damages arising from royalty payments on Lease No. 601-006438-0 to be barred by the applicable statute of limitations. The parties are to pay their own respective costs<sup>and</sup> attorneys' fees.

Dated, this 22<sup>nd</sup> day of December, 1992.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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cm

ENTERED ON DOCKET

DATE DEC 24 1992

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

BERNICE R. OGANS, et al,	)
	)
Plaintiffs,	)
	)
v.	)
	)
TED SANDERS,	)
	)
Defendant.	)

92-C-187-E

**F I L E D**

DEC 21 1992

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

ORDER

Now before this Court are cross-motions for summary judgment. The facts are undisputed. The issue, however, is whether 20 U.S.C. §1091a(a) allows the Defendant to collect Plaintiff Bernice R. Ogans' \$2,693.56 student loan debt.<sup>1</sup> Ogans claims that the statute of limitations on collecting the debt has expired; the Secretary for the Department of Education disagrees.

Following oral argument, the undersigned ruled that the Government's collection efforts were time-barred by reason of the fact that it had not proceeded with judicial collection proceedings prior to expiration of the limitations period in effect before the passage of the Higher Educational Technical Amendments Act of 1991. After careful reconsideration, the undersigned finds that the earlier ruling was error, and that the Higher Education Technical Amendments Act of 1991 does operate to revive otherwise time-barred claims for repayment of student loans.

<sup>1</sup> This amount does not include accrued interest.

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*[Handwritten signature]*

## I. The Facts

On November 20, 1972, Ogans executed a promissory note ("Note") to McKenzie College in Chattanooga, Tennessee in exchange for \$2,362.25 in student loans.<sup>2</sup> The Note was guaranteed by the Defendant ("Secretary") under the National Defense Student Loan Program.<sup>3</sup>

On July 3, 1975, Ogans defaulted on the Note while still owing McKenzie College \$1,930.99. Four years later, McKenzie College assigned the Note to the Secretary. The Secretary apparently made little, if any, effort to collect the Note until 1991.

On September 14, 1991, Ogans received written notice about the Secretary's plan to offset the unpaid Note balance of \$2,569.46 against any income tax refunds that might be owed to Ogans by the United States Treasury Department or Internal Revenue Service.

Two weeks after receiving the notice, Ogans protested in writing to the Secretary. On November 11, 1991, the Secretary denied the protest. That denial led to Ogans filing the instant Complaint.

## II. Legal Analysis

At the time the Note was assigned to the Secretary, claims to collect delinquent student loans guaranteed by the Defendant were subject to 6- and 10-year statute of limitations. *See, 20 U.S.C. §1901a(a)(4)(c) and Treasury Regulation, 26 C.F.R. §301.6402-6(T)(b)(2), 31 U.S.C. §3720(a)(d), 26 U.S.C. §6402(d).* Under those statute of limitations, Defendant would have been barred from collecting the debt after May 8, 1985 -- which

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<sup>2</sup> On November 20, 1972, Ogans borrowed \$1,144. On January 2, 1973, she borrowed \$30.25 and an additional \$1,188 on June 12, 1974.

<sup>3</sup> Section 464, Title IV, Part E, of the Higher Education Act of 1965, as amended, 20 U.S.C. §1087dd.

was six years after the Note was assigned to the Secretary.

However, in 1991, the Higher Education Technical Amendments Act of 1991 ("HETA") was passed by Congress. The Act became effective April 7, 1986 by order of Congress. The pertinent part of that amendment ("HETA") reads:

**(1) It is the purpose of this subsection to ensure that obligations to repay loans and grant overpayment are enforced without regard to any Federal or State statutory, regulatory, or administrative limitation on the period within which debts may be enforced.**

**(2) Notwithstanding any other provision of statute, regulation, or administrative limitation, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken by -**

**(D) the Secretary, the Attorney General, or the administrative head of another Federal agency, as the case may be, for payment of a refund due from a student on a grant made under this title, or for the repayment of the amount due from a borrower on a loan made under this title that has been assigned to the Secretary under this title. 20 U.S.C. §1091a(a)(D).**

Plaintiff Ogans contends that HETA does not revive claims on delinquent student loans prior to April 7, 1986 -- the date Congress chose for HETA to become effective. Since Ogans' debt would have expired under the old statute of limitations on May 8, 1985, Ogans argues that Defendant is now time-barred from collecting the debt. Defendant, however, asserts that HETA allows it to collect any student loans that were previously barred by any statute of limitations.

The issue, therefore, is whether HETA allows Defendant to collect its previously time-barred debt against Ogans. No mandatory authority exists on this question as neither the United States Supreme Court or the Tenth Circuit has examined the issue. This Court, however, is guided by a series of federal district court decisions.

The case most similar to the one at bar is *United States v. Davis*, a case decided by the Middle District of Alabama.<sup>4</sup> In that case, Davis executed a promissory note to a California bank to secure a student loan in December of 1972. That note, which also was guaranteed by the High Education Act of 1965, became due in 1973. In 1978, the bank assigned the loan to the Department of Education. Collection efforts were apparently unsuccessful, prompting the Department to file a lawsuit in 1992.

The court in *Davis* interpreted the HETA language as preventing Davis from using a statute of limitations defense. The court rejected an argument by Davis, also raised by Plaintiff in the instant case, that HETA revives only those claims for which the statute of limitations had run after April 7, 1986. After discussion of that issue, the court wrote:

**The court concludes, first, that the 1991 Amendments [HETA] eliminating statutes of limitations for collection of defaulted student loans apply retroactively to revive claims time-barred under previous statutes of limitations and; second and more specifically, that, because of the 1991 Amendments, the government's efforts to collect Davis's defaulted loan through judicial means are not time-barred. *Id. at page 8.***

Another case examining the issue is *United States v. Waszak*, a case from the Western District of Missouri.<sup>5</sup> In this case, Waszak executed promissory notes in 1969, 1970, 1971 and 1972 to an Illinois bank. The loans also were guaranteed by the Department of Education. The facts are different from those in the instant case in that the delinquent loan was not assigned to the Department of Education until May 14, 1990, but the courts stated:

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<sup>4</sup> 801 F.Supp. 581 (M.D. Ala. 1992) Also, see attachment to Reply To Plaintiff's Response And Memorandum In Support (docket #14).

<sup>5</sup> Order, No. 91-0422-CV-W-6 (July 16, 1992).



The court also finds that regardless of the 1985 limitations period, [HETA applies] retroactively to eliminate any statute of limitations on the collection of student loans. By its terms the amendments [HETA] apply "notwithstanding any other provision of statute, regulation, or administrative limitation..." The amendments also expressly state that the purpose is to enforce student loan obligations "without regard to Federal or State statutory, regulatory, or administrative limitation..." It is therefore clear that the amendments were enacted in order to abrogate any limitations period on collecting delinquent student loans. *Id.* at 5-6.

A third case is from a federal district court in Oregon. In *United States v. Wall*, a bank made four federally insured loans to Wall from 1977 to 1979.<sup>6</sup> In 1981, after Wall had made no payments on the loans, the loans were assigned to the United States. After some unsuccessful collection efforts, the United States filed suit in 1991. After examining the HETA language and the legislative history, the court wrote:

**I find that Congress intended to retroactively abolish all limitations on the collection of student loans, so that all possible funds could be collected from student loan defaulters.** *Id.* at 8.

A fourth persuasive case comes from this Court. In *United States v. Walker, Walker*, 795 F.Supp. 1073 (N.D. Okla. 1992), executed promissory notes for student loans from 1965 to 1974. In 1984, Oklahoma State University assigned the loan to the Department of Education. After seven years, the United States sued to collect the debt. This Court found that the United States could collect the debt: "The new law, the Higher Education Technical Amendments of 1991, abrogated all limitation periods affecting collection of defaulted student loans." *Id.* at 2.<sup>7</sup>

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<sup>6</sup> 794 F.Supp. 350 (D. Ore. 1992).

<sup>7</sup> Several other courts have made similar rulings: *United States v. Coggins*, CV-F-91-601-OWW (E.D. Cal. May 11, 1992) ("Congressional intent to revive otherwise expired causes of action to collect federally guaranteed student loans is clear in the 1991 technical amendments to the Higher Education Act."); *United States v. Smith*, 91-1152-CV-W-6 (W.D. Mo. July 16, 1992) ("Court finds that the HETA [is] applicable to the defendant's debt thereby defeating her statute of limitations defense."); *United States v. Friedenberg*, 1991 WL 352884 (E.D.N.Y. Sept. 20, 1991) (No bar under federal statute to the plaintiff United States maintaining its action against defendant); and *United States v. Davis*, 142

In this case, Ogans makes the same argument advanced in the above cases. She argues that her debt was no longer legally or administratively enforceable after May 8, 1985 because Congress selected April 7, 1986 as the starting date for HETA.

This Court finds Ogans' arguments without merit for the same reasons discussed above: (1) the language of HETA clearly states that the student loan debts can be collected "notwithstanding any other provision of statute, regulation, or administrative limitation...; (2) The intent of Congress was clearly to eliminate all statute of limitations in collection of student loan debts;<sup>8</sup> and (3) Courts have held that statute of limitations are procedural rules that can be established, modified or enlarged by the jurisdiction under which a debt can be enforced. *See United States v. Hunter*, 700 F.Supp. 26, 27 (M.D. Fla. 1988).

### III. Conclusion

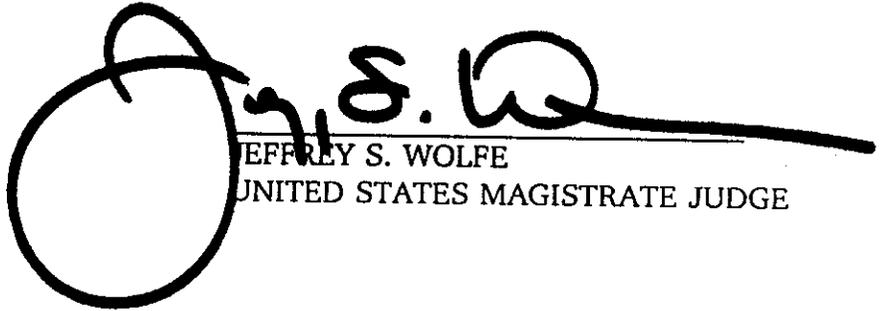
Had HETA not been passed, Ogans would have a successful statute of limitations defense against Defendant. However, upon careful reconsideration of the cases, this Court finds that, notwithstanding the circumstances of this case, that Plaintiff's statute of limitation defense is invalid. Therefore, Defendant's Motion For Summary Judgment is **GRANTED** and Plaintiff's Motion For Summary Judgment is **DENIED**. Judgment is to be entered for Defendant in the amount requested.

---

B.R. 293, 296 (S.D.Ind. 1992) ("the Court concludes that §1091a applies retroactively to actions pending on or after April 9, 1991 that have been or will be brought before November 15, 1992, regardless of whether the previous six-year statute of limitations had run prior to April 7, 1986.")

<sup>8</sup> During the debate on HETA in the House of Representatives, Congressman William F. Goodling stated: "Some questions have arisen regarding the running of the statute of limitations. The amendment would lift the statute of limitations for all time, would apply it retroactively, and would sunset this provision on November 15, 1992, in line with the reauthorization of the Higher Education Act" 131 Cong.Rec H1810 (daily ed. March 19, 1991). *See, also, Response and Cross Motion for Summary Judgment* at pages 8-9 (docket #8).

SO ORDERED THIS 21<sup>st</sup> day of Dec, 1992.

  
JEFFREY S. WOLFE  
UNITED STATES MAGISTRATE JUDGE



ENTERED ON DOCKET  
DATE DEC 23 1992

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

D. H. MILLER,  
Plaintiff,

vs.

W.T. JEFFERS, individually,  
et al.,

Defendants.

: CASE NO. 92-C-494 E  
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:  
:  
:  
:

**FILED**

DEC 21 1992

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

DISMISSAL AND DISCLAIMER BY  
BY TWENTY FIRST PROPERTIES, INC.

COMES NOW defendant, **TWENTY FIRST PROPERTIES, INC.**, an Oklahoma corporation, and hereby dismisses its Counterclaim and Crossclaim and disclaims any interest in or to the subject properties.

THORNTON and THORNTON,  
a Professional Corporation  
525 South Main, Suite 660  
Tulsa, Oklahoma 74103  
Telephone: (918) 587-2544  
Fax No.: (918) 582-0551

By:   
David M. (Mike) Thornton, Jr.  
O.B.A. No. 9000

ATTORNEYS FOR DEFENDANT, **TWENTY  
FIRST PROPERTIES, INC.**, an  
Oklahoma corporation

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing Dismissal and Disclaimer by Twenty First Properties, Inc., was served upon all parties to the above cause by depositing said copy in the United States Mail, postage prepaid, on this 21 day of December 1992, addressed to all counsel of record at their respective addresses as shown on the service list attached hereto.

  
David M. (Mike) Thornton, Jr.

TFP-MILL.vs\007

**SERVICE LIST**

MICHAEL J. EDWARDS  
320 South Boston, Suite 1119  
Tulsa, Oklahoma 74103

D. H. MILLER

LAWRENCE D. TAYLOR  
3223 East 31st Street, Suite 211  
Tulsa, Oklahoma 74105

W.T. JEFFERS  
WORLD CHANGERS, INC.  
COYOTE HILLS, INC.  
INDIAN POINTE, INC.  
GREAT OAKS ESTATES, INC.  
WORLD CHANGERS INTERNATIONAL  
MINISTRIES, INC.  
WILDEWOODE ESTATES, INC.

TONY M. GRAHAM, U.S. ATTORNEY  
WYN DEE BAKER, ASST. U.S. ATTORNEY  
3900 U.S. Courthouse  
Tulsa, Oklahoma 74103

UNITED STATES OF AMERICA,  
EX REL, DEPT. OF THE  
TREASURY - INTERNAL REVENUE  
SERVICE

M. DIANE ALLBAUGH  
ASST. GENERAL COUNSEL  
P.O. Box 53248  
Oklahoma City, Oklahoma 73152-3248

STATE OF OKLAHOMA, EX REL  
OKLAHOMA TAX COMMISSION

JAMES H. FERRIS  
MOYERS, MARTIN, SANTEE, IMEL &  
TETRICK  
320 South Boston, Suite 920  
Tulsa, Oklahoma 74103

CITIZENS SECURITY BANK AND  
TRUST COMPANY

SCOTT E. COULSON  
P.O. Box 1046  
Tulsa, Oklahoma 74101

BANK OF OKLAHOMA, N.A.

KIM D. ASHLEY, OBA #14175  
Assistant General Counsel  
P. O. Box 53248  
Oklahoma City, OK 73152-3248

OK. TAX COMMISSION

ENTERED ON DOCKET

DATE 12-22-92

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

**FILED**

DEC 28 1992  
Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT  
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 DETERMINING GOOD FAITH OF SETTLEMENTS

Now on this 22<sup>nd</sup> day of December, 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. 515) filed herein on November 17, 1992. 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 and ORDERS as follows:

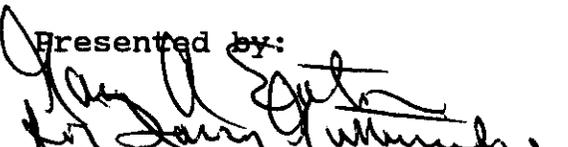
1. The Magistrate's Report and Recommendation pertaining to the hearing on December 2, 1992, should be and is approved.
2. The Settlement encompassed by the Notice of Motion and Motion for Determination of Good Faith Settlement (docket no. 515) in the above captioned action between the Plaintiff ARCO, and Defendant Shipley Motor Equipment Company is found to have

been entered into in good faith, and all claims against the Settling Party for liabilities associated with the Site are barred under state and federal law, except to the extent that such claims are preserved by the Settlements.

Dated: Dec 22<sup>nd</sup>, 1992

  
Thomas R. Brett  
United States District Court Judge

Presented by:

  
Larry Gutteridge, Attorney  
for Plaintiff, Atlantic  
Richfield Company

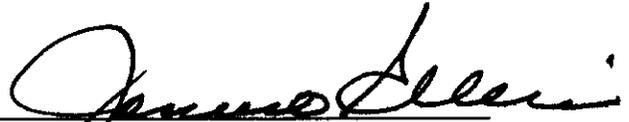
  
William Anderson, Esq.  
Liaison Counsel



1990, 95 L.Ed.2d 539 (1987).

IT IS THEREFORE ORDERED that Johnson's Petition requesting issuance of a writ of habeas corpus is hereby denied.

ORDERED this 24<sup>th</sup> day of December, 1992.



CHIEF JUDGE JAMES O. ELLISON  
UNITED STATES DISTRICT COURT

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

ENTERED ON DOCKET

DATE 12-22-92

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**  
DEC 29 1992  
Richard M. Lawrence, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

Now on this 22<sup>nd</sup> day of Dec., 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<sup>1</sup> (docket no. 387). 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 settlements encompassed by the Notice of Motion and Motion for Determination of Good Faith Settlement (docket no. 387) in the above captioned action between the Plaintiff ARCO

<sup>1</sup> On or about August 10, 1992, ARCO filed its Notice of Motion and Motion for Determination of Good Faith Settlement seeking determinations of good faith settlement and bar orders for settlements with 24 potentially responsible parties ("PRPs") of the Sand Springs Site. At the hearing on August 25, 1992, ARCO deleted Deere & Company from the motion.

and the following Defendants, including related entities

("Settling Parties"):

1. Chemical Express Company; Chemical Express Carriers, Inc.
2. Chevron Industries, Inc.; Chevron Chemical Co.; Chevron U.S.A., Inc.; Gulf Oil Chemicals Co.; Gulf Oil Corp.
3. Chrysler Corporation
4. Concrete Industries of Tulsa Corp.
5. Doenges Bros Ford, Inc.
6. Ellsworth Motor Freight Lines
7. Farmlands Industries, Inc., Gas Plants Division
8. Ford Motor Company
9. Geosource, Inc. (N/K/A G & H Management Co., a Subsidiary of Halliburton Co.)
10. Hamilton Trucking Company of Oklahoma, Inc.
11. Interstate Electric Company
12. Navistar International Transportation Corp.
13. Peterson Industries, Inc.
14. Public Service Company of Oklahoma
15. Ray Peterson
16. Roger Sutterfield
17. Stang Hydronics, Inc.; Stang Enterprises, Inc.
18. Sun Co., Inc.; Sun Oil Co.; Sun Refining & Marketing, Inc.; Sunray DX Oil Co.
19. Swinson Chevrolet, Inc.
20. Texaco, Inc.
21. Union Pacific Resources Company
22. Wat Henry, Inc.; Cherokee, Inc.; Gary W. Henry; Garico, Inc.; Wat Henry Oil

are found to be in good faith, and a final judgment barring all claims against the Settling Parties for liabilities associated

with the Site under state and federal law, except to the extent that such claims are preserved by the settlements, should be and is hereby entered.

2. Each and every claim asserted by the Plaintiff ARCO against the Settling Parties identified hereinabove is dismissed in its entirety on the merits, with prejudice and without costs, except that the claim against Stang Enterprises, Inc., successor to Stang Hydronics, Inc., is not and shall not be dismissed unless and until it provides ARCO with all required documentation.

3. Each and every claim "deemed filed" by or against each of the Settling Parties identified hereinabove, 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 the Settling Parties identified herein above, 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. The terms "Site" and "volume" are as defined in the Agreement and in ARCO's June 8, 1992 Motion.

6. Any breach, whether by omission or commission, whether intentional or non-intentional, of a Settling Party's representa-

tion 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.

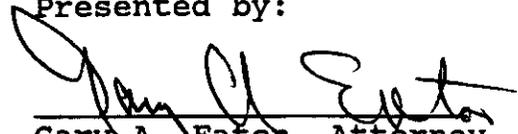
8. Nothing contained in this Judgment and Order shall be construed to affect the rights of the Plaintiff ARCO or the Settling Parties with respect to claims which are preserved by the settlements.

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: Dec. 22<sup>nd</sup> 1992

  
Thomas R. Brett  
United States District Court Judge

Presented by:

  
Gary A. Eaton  
Gary A. Eaton, Attorney  
for Plaintiff, Atlantic  
Richfield Company

  
William Anderson  
William Anderson,  
Liaison Counsel

EOD 12-22-92

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JAMES H. GARDNER a/k/a JAMES )  
 HARVEY GARDNER, et al., )  
 )  
 Defendants. )

FILED

DEC 21 1992

Richard M. Lowrance, Court Clerk  
U.S. DISTRICT COURT

CIVIL ACTION NO. 92-C-097-B

NOTICE OF DISMISSAL

The Plaintiff, the United States of America, on behalf of the Secretary of Veterans Affairs, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, hereby dismisses the Defendant, Indiana Lumbermens Mutual Insurance Company from the above entitled action.

UNITED STATES OF AMERICA

TONY M. GRAHAM  
United States Attorney



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

PP/esr

CERTIFICATE OF SERVICE

This is to certify that on the 21st day of December, 1992, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

Gary House  
P.O. Box 6  
Sedan, KA 67361

Cindy Bates  
a/k/a Cindy Bates Barrett  
Route 1, Box 151B  
Cleveland, OK 74020

Indiana Lumbermens Mutual Insurance Company  
3600 Woodview Trace  
P.O. Box 68600  
Indianapolis, IN 46268

Ronald W. Nunneley  
d/b/a Nunneley Bail Bonds  
815 South Denver, Suite 202  
Tulsa, OK 74119

Thomas H. Galcatcher  
Route 1, Box 197-2  
Chelsea, OK 74016

Patsy Galcatcher  
Route 1, Box 197-2  
Chelsea, OK 74016

Bill M. Shaw  
Assistant District Attorney  
219 S. Missouri, Room 1-111  
Claremore, OK 74017

Jack E. Gordon, Jr., Esq.  
Gordon & Gordon  
P.O. Box 1167  
Claremore, OK 74018

  
Assistant United States Attorney

PP:esr

DATE 12-22-92  
**FILED**

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

DEC 17 1992

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 RALPH M. BIGGS, )  
 )  
 Defendant. )

Civil Action No. 92-C-850-B

DEFAULT JUDGMENT

This matter comes on for consideration this 17 day of December, 1992, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, and the Defendant, Ralph M. Biggs, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Ralph M. Biggs, was served with Summons and Complaint on October 26, 1992. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

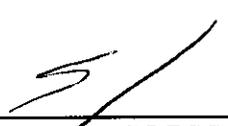
IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Ralph M. Biggs, for the principal amount of \$2,975.62, plus administrative charges in the amount of \$15.00, plus accrued interest in the amount of \$1,270.07 as of August 1, 1992, at the rate of 7 percent

per annum until judgment, a surcharge of 10% of the amount of the debt in connection with the recovery of the debt to cover the cost of processing and handling the litigation and enforcement of the claim for this debt as provided by 28 U.S.C. § 3011, plus interest thereafter at the current legal rate until paid, plus costs of this action and all other relief as the Court deems just.

S/ THOMAS R. BRETT

United States District Judge

Submitted By:

  
KATHLEEN BLISS ADAMS, OBA# 13625  
Assistant United States Attorney  
3900 United States Courthouse  
333 West 4th Street  
Tulsa, Oklahoma 74103  
(918) 581-7463



ENTERED

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

**FILED**

DEC 16 1992

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

NATIONAL ASSOCIATION OF FIREARMS )  
COLLECTORS, INC., an Oklahoma )  
corporation, and COETTA HELTON, )  
 )  
Plaintiffs, )

v. )

TULSA COUNTY PUBLIC FACILITIES )  
AUTHORITY, )  
 )  
Defendants. )

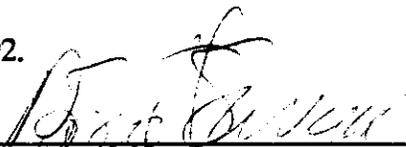
Case No. 91-C-476-E

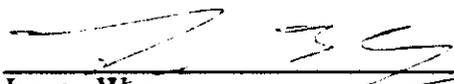
EOD 12/21/92

**STIPULATION OF DISMISSAL**

COME NOW the Plaintiffs, National Association of Firearms Collectors, Inc. and Coetta Helton, and the Defendant, Tulsa County Public Facilities Authority, through their counsel, pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, and stipulate that this action may be and it is hereby dismissed with prejudice.

DATED December 16, 1992.

  
\_\_\_\_\_  
R. Scott Savage, OBA #7926  
Frank V. Cooper, OBA #11795  
Moyers, Martin, Santee, Imel & Tetrick  
320 South Boston, Suite 920  
Tulsa, Oklahoma 74103  
(918) 582-5281  
Attorneys for Plaintiffs,  
National Association of Firearms Collectors, Inc.  
and Coetta Helton

  
\_\_\_\_\_  
James Weger  
Rebecca Brett  
Jones, Givens, Gotcher & Bogan  
3800 First National Tower  
Tulsa, OK 74103  
Attorneys for Defendant,  
Tulsa County Public Facilities Authority

ENTERED ON DOCKET

DATE 12-18-92

**FILED**

**DEC 16 1992**

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

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

NATHANIEL GOODMAN,

Plaintiff,

v.

CHEVRON U.S.A.

Defendant.

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§

CIVIL ACTION NO. 91-C-636-B

**ORDER**

This action is dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2). All costs shall be borne by the parties incurring same.

12/16/92  
Date

/s/ JOHN LEO WAGNER  
UNITED STATES MAGISTRATE JUDGE  

---

UNITED STATES MAGISTRATE

ENTERED ON DOCKET

DATE 12-18-92

**FILED**

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

DEC 17 1992

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

HAROLD DEAN HORNSBY,

Plaintiff,

vs.

K-MART INC., ET AL.,

Defendants.

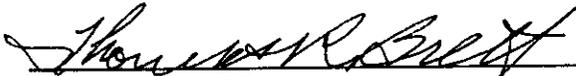
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No. 92-C-824-B

ORDER

Plaintiff's complaint is hereby dismissed for failure to  
comply with the court's last order.

SO ORDERED THIS 17 day of Dec., 1992.

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

ENTERED ON DOCKET

DATE 12-18-92

**FILED**

IN THE UNITED STATES DISTRICT COURT **DEC 17 1992**  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

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

HAROLD DEAN HORNSBY,

Plaintiff,

vs.

CITY OF TULSA, ET AL.,

Defendants.

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No. 92-C-823-B

ORDER

Plaintiff's complaint is hereby dismissed for failure to  
comply with the court's last order.

SO ORDERED THIS 17<sup>th</sup> day of Dec., 1992.



THOMAS R. BRETT  
UNITED STATES DISTRICT COURT

DATE 12-18-92

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

DEC 17 1992

KEVIN DON COLE,  
Plaintiff,  
vs.  
RON CHAMPION, ET AL.,  
Defendants.

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

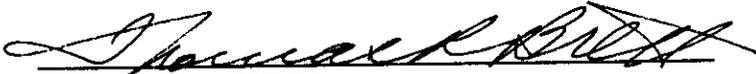
No. 92-C-1145-B

ORDER

Plaintiff has filed a civil rights complaint pursuant to 42 U.S.C. § 1983, but has not submitted the filing fee or a proper court-authorized motion for leave to proceed in forma pauperis. Therefore, his complaint shall be **dismissed** without prejudice at this time.

The court may reinstate this action if Plaintiff submits either the filing fee or a proper motion for leave to proceed in forma pauperis within thirty (30) days from the date this order is entered.

SO ORDERED THIS 17<sup>th</sup> day of dec, 1992.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT COURT

DATE 12-18-92

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

**F I L E D**

DEC 17 1992

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

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

Plaintiff, )

vs. )

Case No. 89-C-473-B

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

Defendant. )

**JOURNAL ENTRY OF JUDGMENT**

This cause came on for hearing pursuant to agreement of the parties on this 17<sup>th</sup> day of December, 1992, at which time Plaintiff was present by and through her attorney, Steven R. Hickman. The Defendant appeared by and through its attorney, Amy E. Kempfert. Both sides in open court waived their right to trial by jury and the parties indicated that they had settled this matter.

Having heard the statements of counsel, the Court makes the findings set out below.

The Court finds that Plaintiff, Rhonda L. Waller, is the surviving spouse of Bobby Ray Waller, Jr., deceased, and that she is the proper party to bring this action pursuant to 12 O.S. §1053. The Court finds that this is an action for wrongful death arising out of an accident occurring in the State of

Oklahoma and that this action was brought under the Oklahoma doctrine of manufacturers products liability. This Court further finds that Plaintiff is a citizen of the State of Oklahoma and that Defendant is a corporation organized and existing under the laws of a state other than the State of Oklahoma with its principal place of business in a state other than the State of Oklahoma and that the amount in controversy exceeds, exclusive of interest and costs, the sum of \$50,000.

The Court finds that the decedent left surviving him his wife, Rhonda Waller, Plaintiff herein; two children, Heather Raylynn Waller, a minor born on the 1st day of February, 1979, and David Paul Waller, a minor born on the 26th day of August, 1981; and his parents, Bob and Bobbie Waller. The Court further finds that Defendant has offered to settle this case for the total sum of \$60,000, which Plaintiff has agreed to accept. The Court finds that said settlement is appropriate and in the best interest of all concerned.

The Court further finds that Frasier & Frasier, the attorneys for Plaintiff, have agreed to reduce their fee to a 40 percent contingency, after payment of expenses, and finds that same is reasonable and should be approved. The Court further finds that the parties have agreed that, after payment of attorneys fees and expenses, the remainder of the settlement should be paid three parts to Rhonda Waller, two parts to each of the minor children and one part total to the two parents. The Court finds that this is a reasonable division under 12 O.S. §1053 of the proceeds of this settlement and same is hereby approved.

The Court further finds that payment of the \$60,000 by the Defendant is in compromise of all claims of Plaintiff or any other party for claim of wrongful death to Bobby Ray Waller, Jr., and that same is paid by the Defendant for the sole purpose of avoiding further expenses or liability

which would necessarily be incurred by trial and/or appeal and the Court finds that this judgment shall not be considered in any way a confession of liability on the part of Defendant. The Court further finds that as part and parcel of the settlement, Plaintiff should execute a release of all claims releasing Defendant of any further liability, as well as releasing the manufacturer of the product sued upon from further liability.

The Court finds that the sums due to each of the minor children should be deposited in the Bank of Southern Oklahoma in Tishomingo, Oklahoma, in revolving certificates of deposit until the respective minor reaches the age of 18 years at which time said bank is directed to turn over all funds on deposit, both principal and interest, to the minor. The Court further finds that said bank should be so directed by delivery to it of a copy of this instrument.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff recover of Defendant the sum of \$60,000, inclusive of all interest and costs, said to be paid immediately forthwith.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff, by and through her attorneys, distribute the \$60,000 as follows:

To Frasier & Frasier for out-of-pocket expenses \$5,005.29;

To Frasier & Frasier for attorney's fee \$21,997.88;

To Rhonda Waller \$12,373.81;

To Bank of Southern Oklahoma, Tishomingo, Oklahoma, for deposit to the benefit of David Paul Waller \$8,249.21;

To Bank of Southern Oklahoma, Tishomingo, Oklahoma, for the benefit of Heather Raylynn Waller \$8,249.21;

To Bob and Bobbie Waller \$4,124.60.

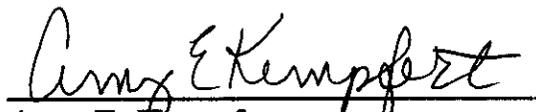
IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the monies hereinabove required to be deposited with the Bank of Southern Oklahoma, Tishomingo, Oklahoma, not be distributed, without further order of this Court, prior to the respective minor child reaching the age of 18 years, at which time said funds shall be released to the minor child.

For all of which let execution issue.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
Steven R. Hickman  
Attorney for Plaintiff

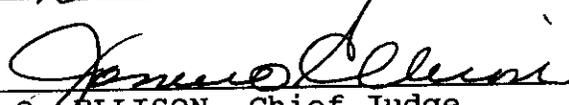
  
Amy E. Kempfert  
Attorney for Defendant



Habeas relief must be brought against the one in whose custody the prisoner is being held. Braden v. 30th Judicial Circuit Court, 410 U.S. 484, 494-95 (1973). In addition, by reviewing the claims in a petition for a writ of habeas corpus, this court can better monitor compliance with the rules of exhaustion and guard against abuse of the writ.

Plaintiff's complaint is therefore dismissed. The Clerk of the Court shall send Plaintiff a petition for a writ of habeas corpus form, motion for leave to proceed in forma pauperis form, and information and instruction sheets. Plaintiff should file a separate petition for a writ of habeas corpus if he wishes to pursue the claims raised in the instant complaint.

SO ORDERED THIS 17<sup>th</sup> day of December, 1992.

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

ENTERED

IN THE UNITED STATES DISTRICT COURT FOR **FILED**  
THE NORTHERN DISTRICT OF OKLAHOMA **NOV 16 1992** A

FEDERAL DEPOSIT INSURANCE )  
CORPORATION, in its corporate )  
capacity and as successor in )  
interest to Miami National )  
Bank, Miami, Oklahoma, )

Plaintiff, )

vs. )

FRANCES K. KISSEE, Personal )  
Representative of the Estate )  
of JACK KISSEE, Decedent, )

Defendant. )

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

Case No. 92-C-183-E ✓

EOD 12/17/92

JOURNAL ENTRY OF JUDGMENT

THIS MATTER came on for hearing upon the Motion For Summary Judgment of the Plaintiff, Federal Deposit Insurance Corporation, in its corporate capacity. The Plaintiff appeared by its attorneys, Lamun, Mock, Featherly, Kuehling & Cunnyngnam, by Mark W. Kuehling. The Defendant, Frances K. Kisse, Personal Representative of the Estate of Jack Kisse, Decedent, appeared by her attorney, Larry E. Rahmeier.

The Court previously entered its order and Judgment on October 27, 1992, wherein the Court reviewed the pleadings and filings in this action and found that no material issues of fact exist to be litigated and that judgment should be entered as a matter of law in favor of the Plaintiff.

The Court further finds that the Plaintiff is the holder of a claim against Jack Kisse, deceased, arising from a certain promissory note executed by the deceased and made payable to the Maimi National Bank, Miami, Oklahoma.

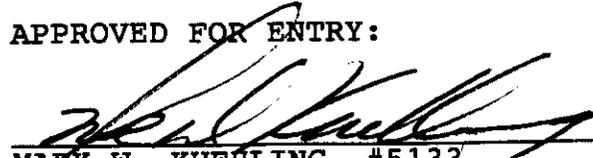
The Court finds that the Plaintiff timely filed and presented a proper claim to the Defendant, Frances K. Kissee, Personal Representative of the Estate of Jack Kissee, deceased. The Personal Representative did not allow the claim and the claim was deemed rejected as provided by law. The Court further finds that the Plaintiff timely filed this action against the Personal Representative.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff, Federal Deposit Insurance Corporation, in its corporate capacity and as successor in interest to Miami National Bank, Miami, Oklahoma, is hereby granted judgment against Francis K. Kissee, Personal Representative of the estate of Jack Kissee, Decedent, establishing and allowing the claim of the Plaintiff against the estate of said Jack Kissee, deceased, in the amount of \$135,147.71, with accrued interest through December 31, 1991, in the amount of \$76,634.82 with interest from January 1, 1992, at the rate of \$77.75 per diem, until paid, together with a reasonable attorneys' fee in the amount of \$4,500.00 and all costs of this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Frances K. Kissee, as the Personal Representative of the estate of Jack Kissee, deceased, shall pay the claim of the Plaintiff as determined herein in the due course of administration.

  
UNITED STATES DISTRICT COURT JUDGE

APPROVED FOR ENTRY:

  
MARK W. KUEHLING #5133  
LAMUN MOCK FEATHERLY KUEHLING  
& CUNNYNGHAM  
5900 N.W. Grand Blvd.  
Oklahoma City, OK 73118-1295  
(405) 840-5900  
Attorneys for Plaintiff

  
LARRY E. RAHMEIER #10448  
BASSMAN, SCARTH & RAHMEIER  
214 South Missouri, P.O. Box 767  
Claremore, OK 74018-0767  
(918) 341-3303  
Attorneys for Defendant

FILED ENTERED

DEC 16 1992

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

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

LINEAR FILMS, INC., )  
an Oklahoma corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
LES EMBALLAGES JEAN CARTIER, )  
INC., )  
 )  
Defendant. )

Case No. 92-C-324-E ✓

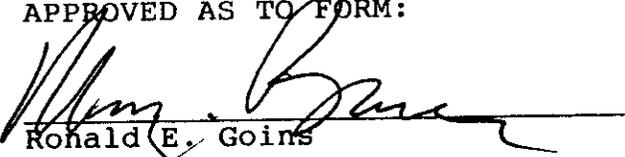
EOD 12/17/92

ORDER

Pursuant to Rule 41 of the Federal Rules of Civil Procedure and the parties Stipulation of Dismissal with Prejudice filed contemporaneously herewith. The Court orders that this action be dismissed with prejudice to the refiling of same.

  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



Ronald E. Goins  
Matthew J. Browne  
HOLLIMAN, LANGHOLZ, RUNNELS & DORWART  
Suite 700 Holarud Building  
Ten East Third Street  
Tulsa, Oklahoma 74103  
Attorneys for Plaintiff, Linear Films, Inc.



John Clayman  
BARKLEY, RODOLF & MCCARTHY  
2700 Mid-Continent Tower  
401 South Boston  
Tulsa, Oklahoma 74103  
Attorneys for Defendant,  
Les Emballages Jean Cartier

ENTERED ON DOCKET

DATE ~~DEC 16 1992~~

**FILED**

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

DEC 15 1992

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

THE AETNA CASUALTY AND SURETY )  
COMPANY, )

Plaintiff, )

vs. )

Case No. C-91-113-

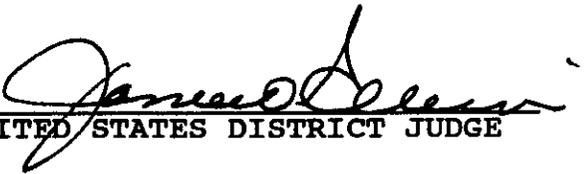
JACK DEAN ERWIN and MARY JANE )  
ERWIN, husband and wife; )  
RANDY JOE NICHOLAS and )  
ALICIA FAYE NICHOLAS, husband )  
and wife, jointly and )  
individually, and as the )  
Natural Guardians of Jerrad )  
Scott Nicholas, a minor male )  
child, )

Defendants. )

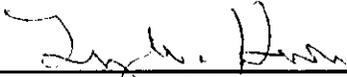
ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 15 day of December, 1992, the above-  
styled and numbered cause coming on for hearing before the  
undersigned Judge of the United States District Court in and for  
the Western District of Oklahoma, upon the Stipulation for  
Dismissal of Plaintiff and Defendants herein; and the Court, having  
examined the pleadings and being well and fully advised in the  
premises, is of the opinion that said cause should be dismissed  
with prejudice to its refiling.

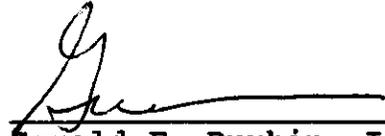
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the  
above-styled and numbered cause be and the same is hereby dismissed  
with prejudice to its refiling.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
Terry A. Hall, Esq. OBA #10668  
7130 S. Lewis, Suite 720  
Tulsa, OK 74136  
Attorneys for Defendants Erwin

  
Tony A. Lyons, Esq. OBA #5591  
P.O. Box 1046  
Pryor, OK 74361  
Attorneys for Defendant Nicholas

  
Gerald E. Durbin, II, OBA #2553  
Durbin, Larimore & Bialick  
920 N. Harvey  
Oklahoma City, OK 73102-2610  
(405) 235-9584  
Attorney for Plaintiff Aetna

ENTERED ON BOOKET

DEC 16 1992  
**FILED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA DEC 15 1992

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

FEDERAL DEPOSIT INSURANCE CORPORATION, )  
as Manager of the Federal Savings )  
and Loan Insurance Corporation )  
Resolution Fund, )

Plaintiff, )

v. )

CASE NO. 91-C-677-E

JAMES P. FAWCETT, VIRGIL S. )  
TILLY, JR., ROBERT S. COPE, )  
R. KENNETH DOSE, and CHARLIE MITCHELL, )  
Individuals, )

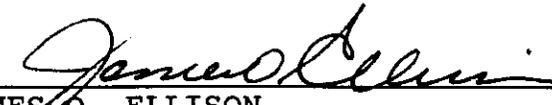
Defendants. )

ORDER OF DISMISSAL WITH PREJUDICE

Upon motion of the parties,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion for Dismissal With Prejudice of plaintiff, Federal Deposit Insurance Corporation, as Manager of the Federal Savings and Loan Insurance Corporation Resolution Fund acting in its corporate capacity, and defendant, James P. Fawcett, be granted and that this action, including all claims, counterclaims and demands which have been asserted or could have been asserted in this cause are dismissed as to James P. Fawcett only, with prejudice to any further action, each party to bear its own attorneys' fees and costs.

DATED this 15<sup>th</sup> day of December, 1992.

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