

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

**FILED**  
APR 9 1993

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

THE GUARDIAN LIFE INSURANCE )  
COMPANY OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
WILLIAM R. HOUCHIN, )  
 )  
Defendant. )

Case No. 92-C-1094E

ENTERED ON DOCKET  
DATE APR 9 1993

**JUDGMENT**

This matter comes on for hearing this 8<sup>th</sup> day of April, 1993, upon Application and Affidavit of the Plaintiff The Guardian Life Insurance Company of America ("Guardian") duly made for judgment by default. It appears that the Defendant William R. Houchin ("Defendant") herein is in default and that the Clerk of the United States District Court has previously searched the records and entered the default of the Defendant. It further appears upon Plaintiff's Affidavit that Plaintiff prays for a declaratory judgment that Insurance Policy No. G-256005-HG and any all coverage thereunder is void from its inception, invalid and rescinded and that Guardian is under no duty or obligation to pay any obligations incurred by Defendant William R. Houchin; that default has been entered against Defendant for failure to appear, and that Defendant is not an infant or incompetent person, and is not in the military service of the United States. The Court having heard the argument of counsel and being fully advised, finds that declaratory judgment should be entered for the Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Insurance Policy No. G-256005-HG and any all coverage thereunder is void from its inception, invalid and rescinded and that Guardian is under no duty or obligation to pay any obligations incurred by Defendant

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William R. Houchin; that default has been entered against Defendant for failure to appear, and that Defendant is not an infant or incompetent person, and is not in the military service of the United States; and, that Guardian shall be entitled to recover its costs in the sum of \$203.38, and a reasonable attorney's fee in the sum of \$1,227.50, for all of which let execution issue.

Judgment rendered this 8<sup>th</sup> day of April, 1993.

  
\_\_\_\_\_  
Judge of the District Court

APPROVED:

\_\_\_\_\_  
Counsel for Plaintiff

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

**FILED**

APR 9 1993

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

JENNIFER L. CAMPBELL,  
Plaintiff,

vs.

THOMAS DEE FRASIER,  
an individual, TOMY FRASIER,  
P.C., an Oklahoma Corporation  
and FRASIER & FRASIER, an  
Oklahoma Partnership,

Defendants.

Case No. 92-C-1123-E

ENTERED ON DOCKET  
DATE APR 9 1993

**PROTECTIVE ORDER AND PERMANENT INJUNCTION**

The Court, upon stipulation of the parties and their counsel and for good cause shown, hereby orders as follows:

The record in this case is permanently sealed. The parties and their counsel are hereby permanently and forever enjoined from:

1. Disclosing any portion of the record in this case to third parties;
2. Disclosing, communicating or revealing in any manner any information regarding the facts of this case, the claims or defenses of the parties, or the settlement agreement entered into by the parties and the terms thereof.

This Order shall not prohibit the parties or their counsel from disclosing such matters to the extent required by law. This Order and Injunction shall remain in effect on a permanent basis and the Court hereby retains jurisdiction over the case to enforce any violations of this Order and any claims by the parties or their counsel, including claims for damages, arising from any violation hereof. In the event such a claim is made, the parties, their counsel and the Court shall have access to the sealed record, which

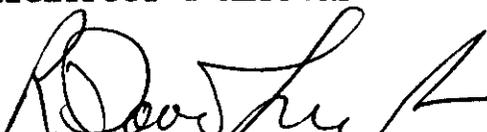
shall remain sealed to the extent required by the Court.

SO ORDERED.

  
THE HONORABLE JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

APPROVED:

LIGHTFOOT & MEDFORD

  
R. David Lightfoot [OBA # 13136]  
David L. Medford [OBA # 13951]  
Lightfoot & Medford  
8104 N.W. 122nd  
Oklahoma City, Oklahoma 73162  
(405) 721-8298  
ATTORNEYS FOR PLAINTIFF

HUGHES, WHITE, ADAMS & GRANT

  
Carl Hughes [OBA # 4463]  
5801 N. Broadway Extension  
Suite 302  
Oklahoma City, Oklahoma 73118  
(405) 848-0111  
ATTORNEY FOR DEFENDANTS

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

APR 9 1993

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

LEONARD A. O'NEIL, ET AL, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 VALLEY FEEDS, INC., ET AL, )  
 )  
 Defendants. )

86-C-1064-E

ENTERED ON DOCKET  
DATE APR 9 1993

**ORDER**

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed March 1, 1993 in which the Magistrate Judge recommended that the case file be **administratively closed**, all matters being completed in the case.

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 **case file** is **administratively closed**, all matters now being completed in the case.

SO ORDERED THIS 8<sup>th</sup> day of April, 1993.

  
JAMES O. ELLISON, CHIEF JUDGE  
UNITED STATES DISTRICT COURT

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

FEDERAL DEPOSIT INSURANCE )  
CORPORATION, in its corporate )  
capacity, as Successor in )  
Interest to Miami National )  
Bank, Miami, Oklahoma, )

Plaintiff, )

v. )

No. 91-C-691-B

DAVID A. ROBINSON, )  
individually; and JOHN E. )  
STANSELL, individually; STATE )  
OF OKLAHOMA ex rel. OKLAHOMA )  
TAX COMMISSION; BOARD OF )  
COUNTY COMMISSIONERS OF )  
DELAWARE COUNTY; COUNTY )  
TREASURER; and UNITED STATES )  
OF AMERICA ex rel. INTERNAL )  
REVENUE SERVICE, )

Defendants, )

and )

LAURIE ROBINSON, wife of )  
David A. Robinson; LOLA M. )  
MARTIN and if married, JOHN )  
DOE MARTIN; RONALD W. MARTIN )  
and N. JEANNE MARTIN, husband )  
and wife; NOLAN L. MARTIN and )  
CONNIE Y. MARTIN, husband and )  
wife; JAMES H. HATLEY and )  
ANITA K. HATLEY, husband )  
and wife; ARLIE C. PYNE and )  
ROSALIE M. PYNE, husband and )  
wife; GEORGE L. OVERTON and )  
MARY FRANCES OVERTON, husband )  
and wife; BOYD T. KEIRSEY and )  
MARILYN J. KEIRSEY, husband )  
and wife; CLARENCE A. GRAY and )  
BILLIE OLETA GRAY a/k/a BILLY )  
O. GRAY, husband and wife; )  
BUDDY C. KEIRSEY a/k/a BUDDY )  
C. KIERSEY and PATSY L. )  
KEIRSEY, husband and wife; )  
FIRST STATE BANK OF COMMERCE, )  
OKLAHOMA; CHARLES L. PYNE and )  
A.C. PYNE, TRUSTEES OF THE )  
ROSALIE M. PYNE REVOCABLE )

**FILED**

APR 5 1993

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

TRUST DATED JUNE 18, 1981; )  
 RAY V. PADLEY and MAMIE )  
 M. PADLEY, husband and wife; )  
 FORREST A. DOTY and PATRICIA )  
 E. HIGGINS-DOTY, husband and )  
 wife; and IF ANY OF THE ABOVE )  
 NAMED DEFENDANTS BE DEAD, )  
 THEN THE HEIRS, EXECUTORS, )  
 ADMINISTRATORS, TRUSTEES, )  
 DEVISEES, LEGATEES AND )  
 ASSIGNEES, IMMEDIATE OR )  
 REMOTE, WHETHER KNOWN OR )  
 UNKNOWN, )  
 )  
 Additional Party )  
 Defendants. )

**ORDER DISMISSING DEFENDANT, UNITED STATES OF AMERICA  
 EX REL. INTERNAL REVENUE SERVICE, WITHOUT PREJUDICE**

This cause comes on for hearing this 5 day of April, 1993, pursuant to the Motion to Dismiss Defendant, United States of America ex rel. Internal Revenue Service, Without Prejudice, filed herein by the Plaintiff, FDIC; for good cause shown, and this Court being advised in the premises, the Court determines that such Motion should be and therefore is granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that FDIC's claim against United States of America ex rel. Internal Revenue Service is dismissed without prejudice to the refiling of a future action.

S/ THOMAS B. BRETHERTON  
 UNITED STATES DISTRICT JUDGE

APPROVED:

R. Pope Van Cleef, Jr./OBA 9176  
 Attorney for Federal Deposit  
 Insurance Corporation

BUSH & UNDERWOOD  
Jamestown Office Park, Suite 200-W  
3037 N. W. 63rd Street  
Oklahoma City, OK 73116  
Telephone: (405) 848-2600

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

MARVIN DAVID BROWN; DEBRA BROWN;  
COUNTY TREASURER, Ottawa County,  
Oklahoma; BOARD OF COUNTY  
COMMISSIONERS, Ottawa County,  
Oklahoma; and General Motors  
Acceptance Corp.,

Defendants.

**FILED**

APR 9 1993

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

EOD 4/8/93

CIVIL ACTION NO. 91-C-726-E

DEFICIENCY JUDGMENT

This matter comes on for consideration this 7 day  
of April, 1993 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 Kathleen Bliss Adams,  
Assistant United States Attorney, and the Defendants, Marvin  
David Brown and Debra Brown, appear 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 Marvin David Brown and Debra Brown, Route 3,  
Box 193, Miami, OK 74354, and to all answering parties and/or  
counsel of record.

The Court further finds that the amount of the Judgment  
rendered on January 15, 1992, in favor of the Plaintiff United  
States of America, and against the Defendants, Marvin David Brown

NOTICE TO DEFENDANTS AND  
COUNSEL: YOU MUST FILE AND  
PAY YOUR ANSWERS IMMEDIATELY  
UPON RECEIPT.

and Debra Brown, with interest and costs to date of sale is \$38,165.84.

The Court further finds that the appraised value of the real property at the time of sale was \$14,500.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered January 15, 1992, for the sum of \$12,447.00 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 April 5, 1993.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Marvin David Brown and Debra Brown, as follows:

Principal Balance plus pre-Judgment Interest as of 1-15-92	\$	35,703.88
Interest From Date of Judgment to Sale		1,098.04
Late Charges to Date of Judgment		393.08
Appraisal by Agency		300.00
Abstracting		79.00
Publication Fees of Notice of Sale		125.24
1991 Ad Valorem Taxes		241.60
Court Appraisers' Fees		<u>225.00</u>
TOTAL	\$	38,165.84
Less Credit of Appraised Value	-	<u>14,500.00</u>
DEFICIENCY	\$	23,665.84

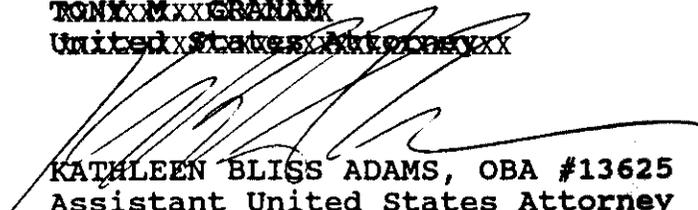
plus interest on said deficiency judgment at the legal rate of \_\_\_\_\_ percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, Marvin David Brown and Debra Brown, a deficiency judgment in the amount of \$23,665.84, plus interest at the legal rate of 3.67 percent per annum on said deficiency judgment from date of judgment until paid.

S/ ~~JAMES G. ELISON~~  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

~~TONY M. GRAHAM~~  
~~United States Attorney~~

  
KATHLEEN BLISS ADAMS, OBA #13625  
Assistant United States Attorney  
3600 U.S. Courthouse  
Tulsa, Oklahoma 74103  
(918) 581-7463

KBA/esr

FILED IN DOCKET  
APR 5 1993

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 GREGORY C. NORRIS; SHELIA ANN )  
 NORRIS; COUNTY TREASURER, Tulsa )  
 County, Oklahoma; BOARD OF )  
 COUNTY COMMISSIONERS, Tulsa )  
 County, Oklahoma; and STATE OF )  
 OKLAHOMA ex rel. OKLAHOMA TAX )  
 COMMISSION, )  
 )  
 Defendants. )

**FILED**

APR 5 1993

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

CIVIL ACTION NO. 92-C-402-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 5 day  
of April, 1993. The Plaintiff appears by Tony M.  
Graham, United States Attorney for the Northern District of  
Oklahoma, through Wyn Dee Baker, Assistant United States  
Attorney; the Defendants, County Treasurer, Tulsa County,  
Oklahoma, and Board of County Commissioners, Tulsa County,  
Oklahoma, appear by J. Dennis Semler, Assistant District  
Attorney, Tulsa County, Oklahoma; the Defendant, State of  
Oklahoma ex rel. Oklahoma Tax Commission, appears by its attorney  
M. Diane Allbaugh; and the Defendants, Gregory C. Norris and  
Shelia Ann Norris, appear not, but make default.

The Court being fully advised and having examined the  
court file finds that Defendant, County Treasurer, Tulsa County,  
Oklahoma, acknowledged receipt of Summons and Complaint on  
May 20, 1992; and that Defendant, Board of County Commissioners,

Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on May 13, 1992.

The Court further finds that the Defendants, Gregory C. Norris and Shelia Ann Norris, were served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning September 3, 1992, and continuing through October 8, 1992, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Gregory C. Norris and Shelia Ann Norris, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Gregory C. Norris and Shelia Ann Norris. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through

Wyn Dee Baker, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on June 2, 1992; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer, Counterclaim and Cross-Claim on June 18, 1992; and that the Defendants, Gregory C. Norris and Shelia Ann Norris, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Four (4) of the Subdivision of Tract Eleven (11), TULSA GARDEN ACRES, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on November 30, 1987, the Defendants, Gregory C. Norris and Shelia Ann Norris, executed and delivered to the United States of America, acting on behalf of

the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$14,500.00, payable in monthly installments, with interest thereon at the rate of 10.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Gregory C. Norris and Shelia Ann Norris, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated November 30, 1987, covering the above-described property. Said mortgage was recorded on December 4, 1987, in Book 5068, Page 058, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Gregory C. Norris and Shelia Ann Norris, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Gregory C. Norris and Shelia Ann Norris, are indebted to the Plaintiff in the principal sum of \$13,770.88, plus interest at the rate of 10.5 percent per annum from December 1, 1990 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$242.30 for publication fees.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the

property which is the subject matter of this action in the amount of \$388.50, together with interest and penalty according to law, by virtue of a Certificate of Tax Indebtedness No. ITI9101250200, dated December 10, 1991, and recorded on December 12, 1991, in Book 5367, Page 1137 in the records of Tulsa County, Oklahoma. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, County Treasurer, Tulsa County, Oklahoma, 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 in rem against Defendants, Gregory C. Norris and Shelia Ann Norris, in the principal sum of \$13,770.88, plus interest at the rate of 10.5 percent per annum from December 1, 1990 until judgment, plus interest thereafter at the current legal rate of 3.21 percent per annum until paid, plus the costs of this action in the amount of \$242.30 for publication fees, 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 Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover judgment in the amount of \$388.50, together with

interest and penalty according to law, by virtue of a Certificate of Tax Indebtedness No. ITI9101250200, dated December 10, 1991, and recorded on December 12, 1991, in Book 5367, Page 1137 in the records of Tulsa County, Oklahoma.

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

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that upon the failure of said Defendants, Gregory C. Norris and Shelia Ann Norris, to satisfy the in rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

**First:**

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

**Second:**

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

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

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

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

S/ THOMAS B. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM  
United States Attorney

*Paul Powell*

for

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

*J. Dennis Seuler*

J. DENNIS SEULER, OBA #8076  
Assistant District Attorney  
406 Tulsa County Courthouse  
Tulsa, Oklahoma 74103  
(918) 584-0440  
Attorney for Defendants,  
County Treasurer and  
Board of County Commissioners,  
Tulsa County, Oklahoma

*M. Diane Allbaugh* for

M. DIANE ALLBAUGH, OBA #14667  
Assistant General Counsel  
P.O. Box 53248  
Oklahoma City, Oklahoma 73152-3248  
(405) 521-3141  
Attorney for Defendant,  
State of Oklahoma ex rel.  
Oklahoma Tax Commission

Judgment of Foreclosure  
Civil Action No. 92-C-402-B

APR - 8 1993

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
Edwin C. Bell,  
Defendant.

Civil Action No. 91-C-874-B

**FILED**

APR 5 1993

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

DEFAULT JUDGMENT

This matter comes on for consideration this 5 day of April, 1993, 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, Edwin C. Bell, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Edwin C. Bell, was served with Summons and Complaint on March 3, 1993. 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, Edwin C. Bell, for the principal amount of \$2,318.69, plus accrued interest of \$322.44, plus interest thereafter at the rate of 5 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 of 3.21 percent per annum until paid, plus costs of this action.

S/ THOMAS R. BRETT

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United States District Judge

Submitted By:

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

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

**FILED**

**APR - 7 1993**

W. Ward M. Lawrence, Court Clerk  
U.S. DISTRICT COURT

THE CONTINENTAL INSURANCE )  
COMPANY, a corporation, )

Plaintiff, )

vs. )

No. 91-C-803-B

WILLIAM L. MOORE, III; JERRY E. )  
WELLS; KAY WELLS; KENNETH R. )  
STEELE; JANICE STEELE; JAMES W. )  
RUSSELL; and GALE RUSSELL; all )  
individuals, )

Defendants. )

**JUDGMENT**

This case was scheduled for non-jury trial on April 6, 1993, at which time the parties, except for William L. Moore, III, who has been dismissed, appeared both in person and by their respective counsel of record. Counsel for The Continental Insurance Company announced that the parties had reached a compromise which contemplated the entry of a judgment. Following announcement of the terms and conditions of the compromise the Court inquired of all counsel and their clients to confirm the accuracy of the statement. Having confirmed that the parties were in full accord and fully understood the terms, the Court agreed to enter the requested judgment and incorporate the settlement terms.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff, The Continental Insurance Company, is granted a joint and several judgment against the defendants, Jerry E. Wells, Kay Wells, Kenneth R. Steele, Janice Steele and James W. Russell in the principal amount of Three Hundred Five Thousand Eight Hundred Twenty-Nine Dollars and Thirty-Nine

Cents (\$305,829.39). The Continental Insurance Company is also granted a judgment against Gale Russell for ~~one-third~~ (1/3) of that amount (\$305,829.39), or One Hundred One Thousand Nine **Hundred** Forty Dollars and Thirteen Cents (\$101,940.13), with her liability to be **joint and** several with that of Jerry E. Wells, Kay Wells, Kenneth R. Steele, Janice **Steele** and James W. Russell. However, no amount collected by The Continental Insurance Company from the other judgment debtors shall be credited to the \$101,940.13 judgment against Gale Russell except (a) payments made by Gale Russell **with** her own funds, and (b) payments made by or on behalf of the other judgment debtors which exceed two thirds (2/3) of the \$305,829.39 judgment plus accrued post-judgment interest. The principal amount of \$305,829.39 (which includes the \$101,940.13) shall bear post-judgment interest from and after the date hereof at 3.67% per annum.

2. The joint and several judgment against Jerry E. Wells, Kenneth R. Steele and James W. Russell is being **entered** on two separate legal grounds or theories: (a) their contractual liability **under** a bond application containing an indemnity agreement and separate indemnity agreements; and (b) their tort liability for conduct which prevents the judgment indebtedness from being discharged in bankruptcy under 11 U.S.C. § 523.

3. The joint and several judgment against Kay Wells, Janice Steele and Gale Russell is based upon their contractual liability pursuant to a bond application containing an indemnity agreement and separate indemnity agreements.

IT IS FURTHER ORDERED, **ADJUDGED** AND DECREED as follows:

4. The judgment debtors **have** agreed and the Court orders that if the Compromise Payment (as hereinafter **defined**) is not made, the right of contribution

shall exist among all judgment debtors even though Jerry E. Wells, Kenneth R. Steele and James W. Russell are being held liable to The Continental Insurance Company in tort as well as in contract. Pursuant to the agreement of the judgment debtors, there shall be three units for contribution purposes: (a) Jerry E. Wells and Kay Wells; (b) Kenneth R. Steele and Janice Steele; and (c) James W. Russell and Gale Russell. Should either unit be required to pay The Continental Insurance Company more than one-third (1/3) of the \$305,829.39 joint and several judgment (plus accrued interest), then such unit shall be entitled to a contribution from the non-paying parties, all in accord with common law principles of contribution.

5. Pursuant to the agreement of all parties the foregoing Judgment in favor of The Continental Insurance Company shall be deemed final, binding and unappealable, and The Continental Insurance Company shall be entitled to register the same in any other jurisdiction or United States judicial district if it so desires, and may take whatever action it deems appropriate to collect the same, subject to the agreement of the parties set forth below.

The following is the AGREEMENT of the parties with respect to payment or satisfaction of the judgment entered in favor of The Continental Insurance Company, as well as the agreement between the judgment debtors concerning payment of the judgment and contribution among the judgment debtors.

6. The Continental Insurance Company has agreed to release and discharge the \$305,829.39 judgment, which includes the \$101,940.13 judgment against Gale Russell, provided the judgment debtors pay a total of \$230,000.00 within a specified time. The judgment debtors are to pay \$65,000.00 by April 8, 1993 and

pay an additional \$165,000.00 by July 5, 1993. Should the judgment debtors fail to timely pay the \$65,000.00, they shall have only until June 5, 1993, within which to pay the full \$230,000.00 (the "Compromise Payment") (the aforesaid dates shall be collectively defined herein as the "Compromise Payment Date"). The Continental Insurance Company has agreed to refrain from issuing execution on the judgment until such time as the judgment debtors fail to meet one of the payment deadlines. However, nothing herein shall prevent The Continental Insurance Company from filing this judgment as a lien against any real or personal property owned by the judgment debtors in any jurisdiction. If the judgment debtors fail to meet one or more of the payment deadlines The Continental Insurance Company is entitled to collect its judgments in full.

7. The judgment debtors have agreed not to transfer any of their real or personal property, except for ordinary and necessary living expenses, until such time as The Continental Insurance Company has had a reasonable opportunity within which to (a) register this judgment in those jurisdictions where the judgment debtors may own property and (b) file the same as a lien or encumbrance against the real or personal property belonging to the judgment debtors, all as provided by applicable law.

8. Although of no import to The Continental Insurance Company, the Compromise Payment shall be paid from contributions made by the judgment debtors (the "Compromise Contribution") in the following particulars:

A. Kenneth R. and Janice Steele (the "Steeles") shall pay a total of \$108,333.33 (the "Steele Payment").

i. Fifty Thousand Dollars (\$50,000.00) of the Steele Payment may be paid on or before 5:00 o'clock p.m., C.D.T., on April 8, 1993.

ii. Any balance due on the Steele Payment shall be paid on or prior to the Compromise Payment Date.

iii. Steele shall also advance Thirty Thousand Dollars (\$30,000.00) in the form of a loan prior to the Compromise Payment Date to the Wells, which will be used by the Wells as part of the Wells Payment (as defined infra) (the "Wells Loan").

B. James W. and Gale Russell (the "Russells") shall pay a total of Eighty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$83,333.33) (the "Russell Payment").

i. Fifteen Thousand Dollars (\$15,000.00) of the Russell Payment may be paid on or before 5:00 o'clock p.m. C.D.T., on April 8, 1993.

ii. At the further option of the Russells, Fifty Thousand Dollars (\$50,000.00) of the Russell Payment may be paid on or before 5:00 o'clock p.m. C.D.T., on June 30, 1993 provided the Russells have paid the aforesaid Fifteen Thousand Dollars (\$15,000.00) and the Steeles have paid the aforesaid Fifty Thousand Dollars (\$50,000.00) on or before April 8, 1993; provided further, however, that the payment or non-payment of the Fifty Thousand Dollars (\$50,000.00) referenced herein shall not affect in any manner whatsoever the stay of execution provisions provided for herein.

iii. Any balance remaining to be paid as part of the Russell Payment shall be paid on or prior to the Compromise Payment Date.

C. Jerry E. Wells and Kay Wells (the "Wells") shall pay a total of Thirty-Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$38,333.33) (the "Wells Payment") on or prior to the Compromise Payment Date.

i. The Wells shall execute a deed of trust granting a security interest in the real property owned by the Wells that is commonly described as:

333 West Fifth Street, Joplin, Missouri,

to the Steeles to serve as collateral for the Wells Loan (the "Wells Deed of Trust"); provided, however, that the Wells Deed of Trust shall be subordinate to the judgment lien which will result from The Continental Insurance Company obtaining this judgment.

ii. The Wells will further consent to the Steeles' assigning the promissory note evidencing the Wells' Loan and the Wells Deed of Trust to the Russells to facilitate the Steeles' agreement set forth in paragraph 9, infra.

9. As an inducement for the Steeles, Russells and Wells to agree to the Compromise Contribution each of the judgment debtors have agreed to the following:

A. Steeles shall execute an assignment and pledge of the promissory note evidencing the Wells Loan and the Wells Deed of Trust to the Russells granting the Russells a security interest in the aforesaid promissory note and Wells Deed of Trust (the "Steele Assignment and Pledge").

B. Russells shall execute Deed(s) of Trust in favor of the Steeles granting the Steeles a security interest in all of the rental property they own (the "Russell Deed(s) of Trust") provided, however, the Russell Deed(s) of Trust shall

be subordinate to the judgment lien which will result from The Continental Insurance Company obtaining this judgment herein.

C. Both the Steele Assignment and Pledge and the Russell Deed(s) of Trust shall be released upon payment by either or both of the Russells and Steeles of their portion of the Compromise Payment respectively.

D. The security interest provided for in the Steele Assignment and Pledge and the Russell Deed(s) of Trust shall be permitted to be foreclosed upon should the respective obligors granting the said security interest default in paying their portion of the Compromise Payment, and the other obligors pay their portion and the defaulting obligors' portion of the Compromise Payment. Any funds in excess of the defaulting obligors' portion of the Compromise Payment shall be remitted to the defaulting obligor.

E. Should either the Steeles, the Russells and/or the Wells fail to make their Compromise Contribution when required and one of the other judgment debtors pay that party's portion of the Compromise Contribution, should the Compromise Payment be paid in full, the judgment debtors making the payment shall have a joint and several judgment in their favor as against the judgment debtor failing to make his/her portion of the Compromise Contribution in that amount of money that was advanced by those judgment debtors paying the other judgment debtors' portion of the Compromise Payment and not satisfied by foreclosure under subparagraph D, above.

10. The parties have agreed that the Court shall retain jurisdiction of this case to enforce the terms of the compromise, described above.

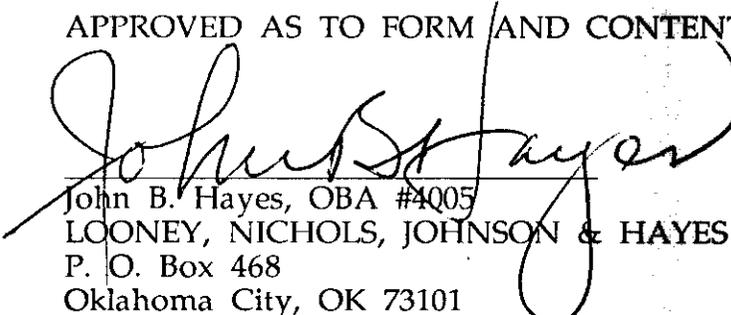
ENTERED: April 7, 1993.

S/ THOMAS R. BRETT

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Thomas R. Brett, United States District Judge

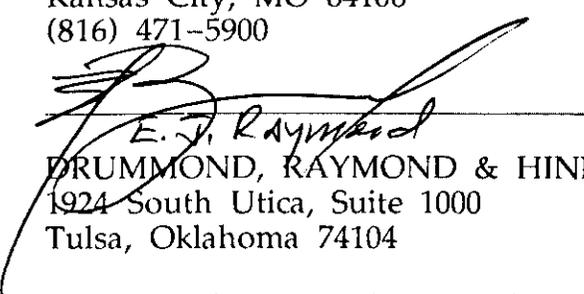
APPROVED AS TO FORM AND CONTENT:



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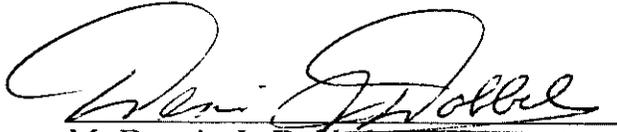
Attorney for Continental Insurance Company

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(816) 471-5900



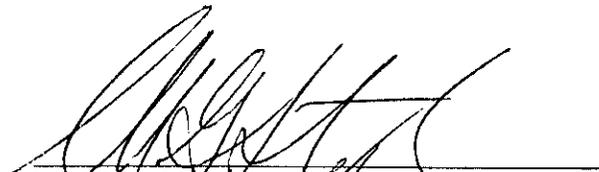
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Attorneys for James W. Russell and **Gale Russell**



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(816) 474-7400

Attorneys for Jerry E. Wells and **Kay Wells**

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

MOUNTAIN STATES FINANCIAL  
RESOURCES, CORP.,

Plaintiff,

vs.

Case No. 92-C-928-E

BARTLESVILLE MARINELAND, an  
Oklahoma corporation, CALVIN  
HILL, individually, and  
CALVIN R. HILL and JERRY LOU  
HILL, a/k/a JERRI L. HILL,  
a/k/a JERRIE L. HILL, husband  
and wife, TIM HILL, THE BOARD  
OF COUNTY COMMISSIONERS OF  
OSAGE COUNTY, STATE OF OKLAHOMA,  
and THE COUNTY TREASURER OF  
OSAGE COUNTY, STATE OF  
OKLAHOMA,

Defendants.

**FILE**

APR 10 1993

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

EDD 4/7/93

ORDER OF DISMISSAL

NOW ON THIS 5 day of April, 1993, pursuant to  
the Stipulated Dismissal Without Prejudice filed herein by the  
plaintiff and defendants, The Board of County Commissioners of  
Osage County, State of Oklahoma, and the County Treasurer of Osage  
County, State of Oklahoma,

IT IS ORDERED, ADJUDGED AND DECREED that the cause of action  
filed herein be dismissed without prejudice to refileing against the  
said defendants, the Board of County Commissioners of Osage County,  
State of Oklahoma, and the County Treasurer of Osage County, State  
of Oklahoma, only, provided, however, the plaintiff's causes of  
action against Bartlesville Marineland, an Oklahoma corporation,  
Calvin Hill, individually, and Calvin R. Hill and Jerry Lou Hill,

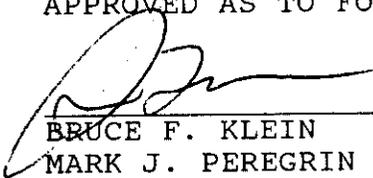
a/k/a Jerri L. Hill, a/k/a Jerrie L. Hill, husband and wife, and Tim Hill, shall remain in full force and effect. The parties shall each bear their own attorney fees and costs.

S/ JAMES O. ELLISON

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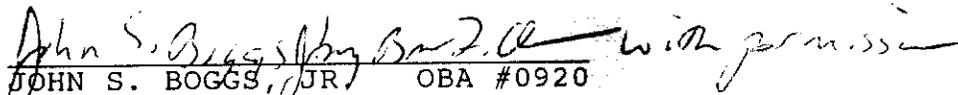
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:



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MARK J. PEREGRIN OBA #12438  
Attorney for Plaintiff  
205 N.W. 63rd, Suite 160  
Oklahoma City, Oklahoma 73116  
(405) 848-8842



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JOHN S. BOGGS, JR. OBA #0920  
Assistant District Attorney  
Attorney for Defendants,  
Board of County Commissioners of  
Osage County and Osage County  
Treasurer  
Osage County Courthouse  
Pawhuska, Oklahoma 74056  
(918) 287-1510

lrw: hill2.ord  
d/lrw8

ENTERED ON DOCKET  
DATE APR 7 1993

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

**FILED**

APR 06 1993

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

WILLIAM CRAIG BUIS and  
MIKALEAN JANE BUIS,  
  
Plaintiffs,  
  
vs.  
  
THE CITY OF TULSA, OKLAHOMA,  
a municipal corporation,  
et al.,  
  
Defendants.

No. 91-C-992-E

ORDER

Comes now before the Court for its consideration Defendant Bradford Powers, Defendant Jerry Perigo, Defendant Jerry Pearson, Defendant Neal McNeill, Defendant Mark Newbold, Defendant Larry Simmons, Defendant Ann Thompson, Defendant City of Tulsa's ("Defendants'") motion to dismiss, and alternative, motion for summary judgment (docket #27).

The Court notes that in connection with this motion the Court has reviewed matters outside the pleadings. The federal rules provide that under such circumstances, the Court should convert the 12(b)(6) motion to a summary judgment under Fed.R.Civ.P. 56. Therefore, the Court will deal with Defendant's 12(b)(6) motion as a Rule 56 summary judgment motion. Initially, the Court takes note of well settled law regarding summary judgments. The Federal Rules of Civil Procedure provide that summary judgment shall be rendered if the pleadings and other documents on file with the Court show that there is no genuine issue as to any material fact and that the

moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). While it is the duty of the Court to grant a motion for summary judgment in an appropriate case, the relief contemplated by Fed.R.Civ.P. 56 is drastic and should be applied with caution so that litigants will have an opportunity for trial on bona fide factual disputes. Redhouse v. Quality Ford Sales, Inc., 511 F.2d 230, 234 (Tenth Cir. 1975); Jones v. Nelson, 484 F.2d 1165, 1168 (Tenth Cir. 1973); Machinery Center, Inc. v. Anchor National Life Insurance Co., 434 F.2d 1, 6 (Tenth Cir. 1970).

Factually, Plaintiff was issued four citations by Defendant officer Jerry Pearson ("Defendant Pearson") on May 6, 1989. Each citation was signed by Defendant Pearson at the time of issuance; however, Defendant Pearson's signature was not verified.

Plaintiff alleges Defendants violated his constitutional due process rights, in that, the four citations issued to Plaintiff were facially defective absent a proper verification (Jurat requirement) required by Title II Okl.Stat. §28-113<sup>1</sup> (Laws 1984). Consequently, Plaintiff brings this cause of action claiming 42

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<sup>1</sup>"§28-113. Commencement of prosecution-Style-Procedure

A. All prosecutions commenced in a municipal criminal court of record shall be by information, pursuant to Section 16-108 of Title 47 of the Oklahoma Statutes, for traffic offenses ... which shall be subscribed by the person making complaint and shall be verified before a judge, the court clerk, or a deputy court clerk. ...

B. A traffic ticket or complaint that is certified by the arresting officer, the complainant, or the municipal attorney, shall constitute an information against the person arrested and served with the traffic ticket or complaint. The ticket or complaint shall be endorsed by the municipal attorney before it is filed with the court clerk; ..."

U.S.C. §1983 violations. After review of the record, the Court enters the following order:

42 U.S.C. §1983 is a federal supplemental remedy designed to redress violations of clearly established constitutional rights and rights created by federal laws. However, absent the showing by Plaintiff of a direct correlation between a federal right or a federal law, the Court finds 42 U.S.C. §1983 inapplicable as a remedy for state law issues.<sup>2</sup>

Initially, the Court finds Plaintiff's complaint fails to state an actionable §1983 claim against Defendant City of Tulsa ("Defendant City"). Defendant City is not vicariously responsible for the conduct of its employees associated with the prosecution of Plaintiff on four citations. Monnel v. New York Department of Social Services, 436 U.S. 658, 56 L.Ed.2d 611, 98 S.Ct. 2018 (1978). Plaintiff has also failed to show evidence of any customs or practice by Defendant City. City of Oklahoma City v. Tuttle, 471 U.S. 808, 85 L.Ed.2d 791, 105 S.Ct. 2427 (1985). Therefore, Count I of Plaintiff's complaint should be dismissed with prejudice.

As to Count II, Plaintiff fails to state an actionable §1983 claim against Defendant city attorney Neal McNeill (Defendant McNeill). Here, Plaintiff has failed to show that Defendant

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<sup>2</sup>Plaintiff's traffic citation "verification" issue is currently the subject of on-going post conviction proceedings involving plaintiff William Buis and the City of Tulsa before the Oklahoma Court of Criminal Appeals addressing the identical state law issue which plaintiffs are herein concurrently seeking to adjudicate in this federal forum. See, Buis v. City of Tulsa, Oklahoma, Case No. M-90-082.

McNeill: (1) had actual or **constructive** notice of all records filed; (2) actively participated in Plaintiff's prosecution, Polk County v. Dodson, 454 U.S. 312, 70 L.Ed. 509, 102 S.Ct. 445 (1981); or (3) is a policy-making official of Defendant city. Accordingly, Count II of Plaintiff's **complaint** should be dismissed with prejudice.

As to Counts III, IV and V of Plaintiff's complaint, the Court finds the Defendants' assistant city prosecutors Newbold and Simmons and court clerk Thompson are entitled to absolute immunity. Imbler v. Pachtman, 424 U.S. 409, 47 L.Ed.2d 128, 96 S.Ct. 984 (1976); Wiggins v. New Mexico Supreme Court Clerk, 664 F.2d 812 (10th Cir. 1981). Therefore, Counts III, IV and V should be dismissed with prejudice.

In Counts VI - XIV Plaintiff identifies Defendants Powers and Perigo as judges of the Municipal Criminal Court of the Defendant City. In §1983 actions, it is well-settled that judges are entitled to absolute judicial immunity from civil liability for acts occurring within their judicial roles or committed within the scope of their jurisdiction. Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213 (1967). Moreover, judges are immune from civil liability even where their acts exceed their jurisdiction, so long as their conduct does not occur in the absence of all jurisdiction. Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978).

Plaintiff's complaint **alleges** Defendants Powers and Perigo lack the power to adjudicate **all** issues related to the prosecution

of the citations issued to Plaintiff consequential to a jurat defect. Upon review, the Court finds this argument unpersuasive based on the fact that a municipal judge does have the authority to preside over a court of municipal jurisdiction. See Title 11, Okl.Stat. §§28-102 and 28-104. Further, Defendants Powers and Perigo have the power to both "hear and determine" all issues relating to or arising from said prosecution, and are entitled to absolute immunity. Forrester v. White, 484 U.S. 219, 98 L.Ed.2d 555, 108 S.Ct. 538 (1988). Consequently, the Court finds Counts VI - XIV should be dismissed with prejudice.

Notwithstanding the compelling authority Defendants' rely on for their motion, the Court further finds Defendants' are entitled to qualified good faith immunity for all Counts I - VIX based on Defendants' conduct and lack of consistent law regarding the jurat defect at the time of Plaintiff's prosecution.<sup>3</sup> The record unequivocally reveals Defendant Judge Powers was handicapped during the prosecution of Plaintiff for two reasons: (1) the inconsistent case law regarding the jurat defect, as expounded in the appellate court's subsequent Buis opinion, and (2) the decisions of the Oklahoma Criminal Court of Appeals.

The Court further concludes that Plaintiff was not denied appointment of counsel, but, rather refused appointment of counsel and proceeded in representing himself. A portion of the Court transcript shows the municipal court raised the issue sua sponte at the motion docket hearing on June 15, 1989:

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<sup>3</sup>See Buis v. State, 792 P.2d 427.

**"The Court:** All right. Now, before we go on, I know that in this one motion filed on May 18, regarding 9222802, 03, 04 and 05 that you're asking for the appointment of counsel. Are you still requesting that or ---

**Mr. Buis:** Well, Your Honor, I filed that accidentally at this time and I would reserve to file that after affidavit for counsel at a later time depending on what the Court should do with the motion to set aside and the demur.

**The Court:** Well, Mr. Buis, if you can't afford counsel, you're wanting to have an attorney, we need to make that determination at this point before we proceed with any type of motions on your case. That's what I'm asking, but we need to take care of that first, one way or the other.

**Mr. Buis:** Well, Your Honor, with all respect, I'd rather reserve that and not cost the Court any further time unless it's necessary.

**The Court:** So what you're telling me is you want to represent yourself at this time?

**Mr. Buis:** At this time, Your Honor, I'd like to be." (Exhibit 9 at pp. 013-014).

Plaintiff's allegation regarding his incarceration is baseless. The Court finds Plaintiff was not jailed based on his indigent status; rather, Plaintiff was jailed to serve two consecutive thirty-day jail sentences imposed by a jury. The Court notes that the Oklahoma Court of Criminal Appeals adjudicated and denied Plaintiff's petition for habeas corpus based on the Court record establishing Plaintiff was not indigent, nor was Plaintiff incarcerated for same. Counts VII, VIII, IX, XII and XIII as presented in Plaintiff's complaint should be dismissed with prejudice.

Counts X and XI of Plaintiff's complaint concerning the

improper jury panel of prospective jurors and the impanelment of a jury prejudice are without merit. The record clearly demonstrates the jury panel and jury pulls were in accordance with the pertinent law Tit. 38 Okl.Stat. §§18, et seq. In fact, the record establishes Plaintiff failed to properly challenge the jury panel in compliance with Tit. 22 Okl.Stat. §634. As a result, Counts X and XI should be dismissed with prejudice.

Lastly, the Court finds Plaintiff's lack of consortium claim fails to state a constitutional claim and Count XIV should be dismissed with prejudice. Litchie v. U.S. Home Corp., 655 F.Supp. 1026 (Utah 1987); Fritts v. Niehouse, 604 F.Supp. 823 (W.D. Mo. 1984); Lopez v. Ruth, 584 F.Supp. 639 (W.D. Mich. 1984). Accordingly, Count XIV should be dismissed with prejudice.

Bearing in mind the standards to be applied, and having carefully reviewed the entire record in this case, the Court is of the opinion that this is an appropriate case in which to grant Defendants' motion for summary judgment.

IT IS THEREFORE ORDERED that Defendants' motion for summary judgment on all Counts alleged in Plaintiff's complaint is hereby GRANTED with prejudice.

So ORDERED this 6<sup>TH</sup> April day of ~~March~~, 1993.

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

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

**CHANCE MICHAEL BEAN, a minor,** )  
**by and through his mother and next** )  
**friend, LAURA JO BEAN LEACH,** )  
**and JOSEPH F. CLARK, JR.,** )  
**Guardian Ad Litem for CHANCE** )  
**MICHAEL BEAN, a minor, and** )  
**LAURA JO BEAN LEACH,** )  
**individually,** )

**Plaintiffs,** )

**vs.** )

**UNITED STATES OF AMERICA,** )

**Defendant.** )

**FILED**

**APR 06 1993**

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

**CIVIL ACTION NO. 92-C-327-E**

**ORDER**

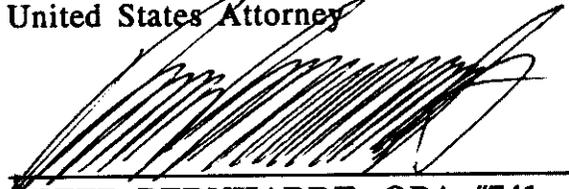
This matter comes on before the court upon the stipulation of all parties and the court being fully advised in the premises, orders, adjudges and decrees that all claims asserted herein by plaintiffs, Chance Michael Bean, a minor, by and through his mother and next friend, Laura Jo Bean Leach, and Joseph F. Clark, Jr., Guardian Ad Litem for Chance Michael Bean, a minor, and Laura Jo Bean Leach, individually, against the United States of America are hereby dismissed with prejudice.

Dated this 1<sup>st</sup> day of April, 1993.

  
JAMES O. ELLISON, CHIEF  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO CONTENT AND FORM:

TONY M. GRAHAM  
United States Attorney



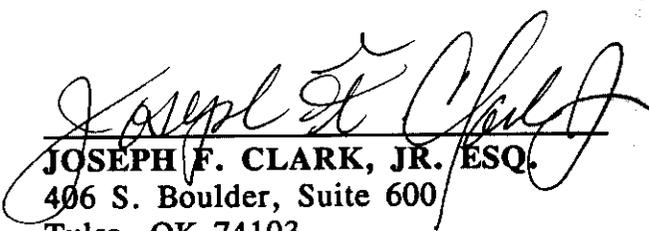
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Attorney for the Defendant



---

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Stephen C. Wolfe & Associates  
Attorney at Law  
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Tulsa, OK 74119  
(918) 583-8574  
Attorney for Plaintiffs



---

**JOSEPH F. CLARK, JR. ESQ.**  
406 S. Boulder, Suite 600  
Tulsa, OK 74103  
(918)  
Guardian Ad Litem

90-0515.001

FILED ON DOCKET  
APR 7 1993

**FILED**

APR 06 1993

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

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

FEDERAL DEPOSIT INSURANCE  
CORPORATION,

Plaintiff,

v.

JAMES F. CLARK, JERRY F. MCKAY,  
JOHN J. STOIA, JOHN A. BAKER,  
ROBERT E. HENDERSON, JR.,  
ROBERT E. KERSHAW, JAMES K. RUSSELL,  
ATHOL SAYRE, JIMMY R. BOZE and  
SCOTT SCHERER,

Defendants.

Civil Action 91-C-676-E

ORDER OF DISMISSAL WITH PREJUDICE

Written stipulation having been signed by plaintiff Federal Deposit Insurance Corporation and defendants John J. Stoia, John A. Baker, Robert E. Henderson Jr., James K. Russell, Athol Sayre, Jimmy R. Boze and Scott Scherer providing for dismissal with prejudice of plaintiff's Second Amended Complaint as against these defendants only, and GOOD CAUSE APPEARING THEREFORE, it is hereby ORDERED as follows:

1. Plaintiff Federal Deposit Insurance Corporation's Second Amended Complaint is hereby dismissed with prejudice as against defendants John J. Stoia, John A. Baker, Robert E. Henderson Jr., James K. Russell, Athol Sayre, Jimmy R. Boze and Scott Scherer.

2. All parties shall bear their own costs and attorneys' fees.

120

3. Nothing stated herein shall affect plaintiff's right to pursue its action against defendants James F. Clark and Jerry F. McKay. Plaintiff is entitled to continue to prosecute this action as against defendants Clark and McKay.

IT IS SO ORDERED.

Dated this 6<sup>th</sup> day of March, 1993 at Tulsa, Oklahoma.

  
\_\_\_\_\_  
CHIEF JUDGE  
UNITED STATES DISTRICT COURT



declaratory judgment that any lien the Association had against the subject property was inferior to the lien asserted by Cimarron Federal.

On December 6, 1989 the Association filed its answer claiming the Whiteheads owed \$349.08 in unpaid property owner's association dues which was a lien on the subject property duly filed of record in Delaware County, Oklahoma.

Resolution Trust Corporation (RTC) was later substituted as party plaintiff as conservator for Cimarron. On September 13, 1990 plaintiff filed a motion for summary judgment against the Whiteheads and the Association on its in rem claim for foreclosure. On October 9, 1990 the Association responded to plaintiff's motion and filed a cross motion against the Whiteheads seeking summary judgment both as to its lien claim and additionally seeking a personal judgment as to the outstanding indebtedness. The following day, on October 10, 1990 the Association motioned the Court for leave to file an amended answer setting forth the cross claim against the Whiteheads. Leave was granted and the Association filed its amended answer on November 5, 1990 seeking both a personal judgment and foreclosure of its lien. The Whiteheads did not file a response to the Association's cross motion for summary judgment prior to the Association seeking leave to amend its answer. Until the amended answer was filed the record did not contain a cross claim to support the Association's outstanding motion against the Whiteheads. On December 3, 1990 the Whiteheads filed a general denial to the Association's cross claim. The Association did not re-urge its cross motion for summary judgment.

after filing its amended answer.

On June 26, 1991 the Court entered an order granting RTC's motion for summary judgment. The closing paragraph of the order states that the order renders all other outstanding motions moot. The Association did not move the Court at that time to consider its October 9, 1990 cross motion for judgment against the Whiteheads.

On August 29, 1991 the RTC renewed its motion for summary judgment against the Association seeking a judicial determination that its lien was superior to that of the Association's. On November 11, 1991 the Court granted RTC's motion. At that time, the Association did not renew its cross motion against the Whiteheads.

The Court entered an in rem judgment on December 18, 1991 in favor of the plaintiff granting foreclosure against the property and declaring plaintiff's lien superior to the Association's. The order confirming sheriff's sale was filed on August 15, 1992. Plaintiff's motion for deficiency judgment was filed on July 17, 1992. The Association did not file a motion for deficiency judgment. The Court was advised that the disputed deficiency judgment was settled as between the RTC and the Whiteheads on March 25, 1993.

On September 3, 1992, after the order confirming the sheriff's sale of the subject property, the Association for the first time filed a pleading requesting the Court to consider its October 9, 1990 cross motion for personal judgment against the Whiteheads on the outstanding property owner's dues. The Association's request for judgment against the Whiteheads is untimely and accordingly

denied.

Procedurally the cross motion is moot in that the Association failed to re-urge its motion after amending its answer setting forth the cross claim. The Association's lien claim was included in the judgment entered by the Court on December 18, 1991 and prior to entry of the judgment the Association did not urge its cross claim for personal judgment against the Whiteheads. The subject property was sold and the Association's lien claim was not satisfied by the sale. The Association failed to file a deficiency claim within the time limits proscribed by 12 O.S. §686.

The Court finds and concludes that any claim asserted by the Association against the Whiteheads in this action was merged in the judgment entered by this Court on December 18, 1991 since the Association failed to prosecute its secondary claim for personal judgment against the Whitehead. The Association has waived its right to proceed separately against the Whiteheads by its failure to follow the procedural requirements of section 686.

Accordingly the motion of the defendant Megan Covas Association, Inc. for the Court to consider its October 9, 1990 cross motion for summary judgment is denied.

IT IS SO ORDERED this 5<sup>th</sup> day of April, 1993.

  
H. Dale Cook  
United States District Judge

ENTERED ON DOCKET  
DATE ~~APR 7 1993~~

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

PETER J. McMAHON, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 GARY MAYNARD, Warden, et al., )  
 )  
 Respondents. )

No. 87-C-491-E

**FILED**

APR 06 1993

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter was before the Court for evidentiary hearing held April 16, 1992 pursuant to the Mandate of the Tenth Circuit. Petitioner had previously challenged his December 16, 1981 state court convictions in a petition for habeas relief in this Court on two bases: 1) that the trial court improperly considered his felony under the Youth Offenders Act in computing his sentence and 2) that he was denied effective assistance of counsel when his counsel failed to perfect his appeal. This Court agreed with Petitioner on the first issue but referred the second issue to the Magistrate for fact-finding. Before the issue was considered by the Magistrate, Petitioner was released from custody and the matter was dismissed as moot. However, because the second issue involved a challenge to the underlying convictions, the Circuit - citing Carafas v. LaVallee, 391 U.S. 234, 236-38 (1968) - reversed on the basis that because adverse consequences continue to flow from the conviction, the issue is not moot. In response, the Court heard the matter at the aforesaid evidentiary hearing in order to determine whether Petitioner was denied effective assistance of

counsel in failing to effect his appeal on the grounds that his plea agreement was breached; therefore his plea of guilty was not voluntary. The following constitute the Court's factual findings and legal conclusions on the matter.

#### FINDINGS OF FACT

1. The testimony of Mr. Terry Malloy, trial counsel for Petitioner, that Petitioner did not wish to appeal is credible.
2. The testimony of Mr. Terry Malloy and other evidence adduced at the hearing indicates that Mr. Malloy was competent and responsible in his representation of the Petitioner.
3. It is undisputed that Petitioner entered a plea of guilty in CRF-81-40.

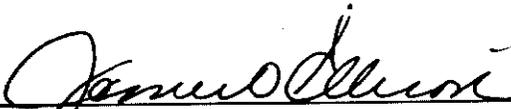
#### CONCLUSIONS OF LAW

1. Petitioner made an informed decision not to pursue an appeal. Thus, he is procedurally barred from raising these issues initially in this Court. Rose v. Lundy, 102 S.Ct. 1198 (1982).
2. Petitioner has failed to carry his burden of proof, pursuant to Strickland v. Washington, 104 S.Ct. 2052 (1984) either that counsel's representation was legally deficient or that he was prejudiced by counsel's representation.
3. A plea of guilty waives all non-jurisdictional defects in a sentence. Tollett v. Henderson, 93 S.Ct. 1602 (1973);

Long v. McCotter, 792 F.2d 1338 (5th Cir. 1986).

The Court has, therefore, concluded that Petitioner's Habeas Petitions should be dismissed.

So ORDERED this 6<sup>th</sup> day of April, 1993.

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

ENTERED ON DOCKET

DATE APR 7 1993

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

TENA HOUGHTON, as personal  
representative of the Estate  
of Michael William Houghton,

Plaintiff,

vs.

THE AETNA CASUALTY AND SURETY  
COMPANY,

Defendant.

No. 88-C-189-E

**FILED**

APR 06 1993

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

JUDGMENT

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

IT IS THEREFORE ORDERED that the Plaintiff take nothing from the Defendant, that the action be dismissed on the merits, and that both parties shall bear their respective costs of action.

ORDERED this 6<sup>TH</sup> day of April, 1993.

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

131

ENTERED ON DOCKET  
APR 7 1993  
DATE

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

FILED  
APR - 6 1993

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

JOHN S. ATHENS and CARL R. WEBB, )  
Co-Trustees of The Berget H. )  
Blocksom Revocable Trust and The )  
Marjorie J. Blocksom Living Trust, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
SHEARSON LEHMAN HUTTON INC. )  
and JOSEPH W. McCOY, )  
 )  
Defendants. )

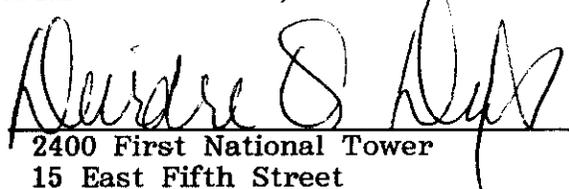
Case No. 90-C-402-E

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(ii) of the Federal Rules of Civil Procedures, Plaintiffs John S. Athens and Carl R. Webb, Co-Trustees of The Berget H. Blocksom Revocable Trust and The Marjorie J. Blocksom Living Trust, and Defendants Shearson Lehman Hutton Inc. and Joseph W. McCoy hereby stipulate that this case be dismissed with prejudice to the filing of future actions.

P. DAVID NEWSOME, JR., OBA #6652  
JOHN W. INGRAHAM, OBA #4547  
DEIRDRE O. DEXTER, OBA #10780

By:



2400 First National Tower  
15 East Fifth Street  
Tulsa, Oklahoma 74103-4391  
(918) 586-5711

Attorneys for Plaintiffs

JOHN S. ATHENS and CARL R. WEBB  
OF COUNSEL:

CONNER & WINTERS  
2400 First National Tower  
15 East Fifth Street  
Tulsa, Oklahoma 74103-4391  
(918) 586-5711

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

By: Claire V Eagan  
Claire V. Eagan, OBA #554  
J. Patrick Cremin, OBA #2013  
4100 Bank of Oklahoma Tower  
One Williams Center  
Tulsa, Oklahoma 74172  
(918) 588-2700

ATTORNEYS FOR DEFENDANTS

ENTERED IN CLERK'S OFFICE  
DATE APR 5 1993

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

THE WILLIAMS COMPANIES EMPLOYEES'  
INVESTMENT PLAN, THE WILLIAMS  
COMPANIES BONUS EMPLOYEE STOCK  
OWNERSHIP PLAN, and THE WILLIAMS  
COMPANIES EMPLOYEE STOCK OWNER-  
SHIP PLAN,

Plaintiffs,

vs.

DONALD BERNARD WEESE, Executor and  
personal representative of the ESTATE OF  
DEWAYNE DUDLEY WEESE; SHANNON  
SUZANNE WEESE, a minor; JENNIFER LYNN  
WEESE, a minor; JAMIE LEANN WEESE, a  
minor; and SPENCER DALTON WEESE, a  
minor,

Defendants.

**FILED**

**APR - 5 1993**

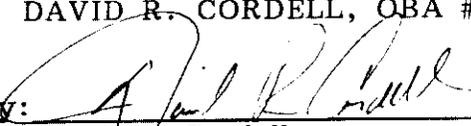
Richard M. Lawrence, Court Clerk:  
U.S. DISTRICT COURT

No. 93-C-155-B

**NOTICE OF DISMISSAL**

Plaintiffs, The Williams Companies Employees' Investment Plan, The Williams Companies Bonus Employee Stock Ownership Plan and The Williams Companies Employee Stock Ownership Plan, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, dismiss the captioned case, without prejudice.

STEVEN W. McGRATH, OBA #12055  
DAVID R. CORDELL, OBA #11272

By: 

David R. Cordell  
CONNER & WINTERS  
2400 First National Tower  
15 E. Fifth Street  
Tulsa, Oklahoma 74103-4391  
(918) 586-5711

Attorneys for Plaintiffs,  
THE WILLIAMS COMPANIES  
EMPLOYEES' INVESTMENT PLAN,  
THE WILLIAMS COMPANIES BONUS  
EMPLOYEE STOCK OWNERSHIP  
PLAN, and THE WILLIAMS  
COMPANIES EMPLOYEE STOCK  
OWNERSHIP PLAN

OF COUNSEL:

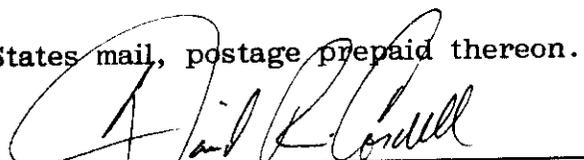
Betty Stilwell, Esq.  
THE WILLIAMS COMPANIES  
One Williams Center (36-6)  
Tulsa, Oklahoma 74172

**CERTIFICATE OF SERVICE**

I, David R. Cordell, hereby certify that on the 5<sup>th</sup> day of April, 1993,  
I mailed a true and correct copy of the above and foregoing instrument to:

Gerald W. Wright, Esq.  
WRIGHT & WRIGHT  
406 South Boulder  
Suite 701  
Tulsa, OK 74103

by depositing said copy in the United States mail, postage prepaid thereon.

  
\_\_\_\_\_  
David R. Cordell

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

**FILED**

APR - 5 1993

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

HOBERT GREEN,

Plaintiff,

vs.

TULSA TRIBUNE, et al.,

Defendants.

No. 92-C-288-E

ENTERED ON DOCKET  
DATE APR 6 1993

ORDER OF DISMISSAL

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge (docket #48) that this case be dismissed. The Court has reviewed the entire record in light of the relevant law and finds that the Report and Recommendation should be affirmed. Title 42 U.S.C. §1983 will not lie for a state law slander claim. Defendants' Motion to Dismiss is, therefore, granted.

ORDERED this 5<sup>th</sup> day of April, 1993.

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

66

**FILED**

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

APR - 5 1993

ROBERT G. TILTON,  
Plaintiff,

vs.

GARY L. RICHARDSON, et al.,  
Defendants.

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

No. 92-C-424-E

**FILED**

APR 05 1993

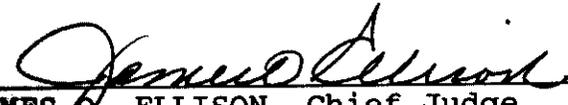
ORDER

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

Two matters remain for the Court's consideration in the above-captioned case: Defendants' Application for Leave to Dismiss Counterclaim (docket #108) which will be granted; and Plaintiff's Request for a Preliminary Injunction (docket #1) which is denied.

ORDERED this 5<sup>th</sup> day of April, 1993.

ENTERED ON DOCKET  
DATE APR 6 1993

  
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

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

**FILED**

APR - 5 1993

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

IN RE:

LBK CONSTRUCTION CO.,

Debtor,

LBK CONSTRUCTION CO.,

Plaintiff,

vs.

BOB H. JOHNSON, INC., et al.,

Defendants.

Case No. 90-02550  
(Ch. 11)

Adversary No. 92-0147-W

No. 92-C-484-E

ENTERED ON DOCKET  
DATE APR 6 1993

**ORDER DENYING WITHDRAWAL OF REFERENCE**

It appearing that the matters contained herein are core proceedings, the Motion for Withdrawal of Reference filed by the Defendants is denied.

ORDERED this 5<sup>th</sup> day of April, 1993.



JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

6

ENTERED ON DOCKET  
DATE APR 6 1993

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

**FILED**

APR - 5 1993

MARVIN R. WASHINGTON,  
Plaintiff,  
vs.  
RON CHAMPION, et al.,  
Defendants.

No. 92-C-507-

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

ORDER OF DISMISSAL

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge (docket #13) and the Plaintiff's response thereto. The Court has reviewed the record in light of the relevant law and finds the Report and Recommendation should be adopted by the Court. The Magistrate Judge found that the transfer of inmates to other facilities within the prison system does not, in itself, implicate Due Process protections because such transfers are within the discretion of prison officials. Citing, Montanye v. Haynes, 96 S.Ct. 2543 (1976). The Magistrate found that, in the instant case, the exercise of that discretion was motivated either by security concerns or by overcrowding problems, well within the range of permissible justifications for transfer. The Court concurs; therefore Defendant's Motion to Dismiss (docket #7) will be granted.

ORDERED this 5<sup>TH</sup> day of April, 1993.

  
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

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

HELEN GREY TRIPPET; HELEN GREY  
TRIPPET, CUSTODIAN FOR LESLIE S.  
MURPHY AND MARK MURPHY; ROBERT S.  
TRIPPET; GUARDIAN OF VIRGINIA  
TRIPPET; MARY SUSAN TRIPPET;  
CONSTANCE S. TRIPPET; FLO HEDLEY  
NORVELL AND RUSSEL SIMPSON  
NORVELL, EXECUTORS OF THE ESTATE  
OF ALBERTA SIMPSON MATTERSON,

Plaintiffs,

v.

TRI TEXAS, INC. (a Florida  
Corporation); CHARLES S.  
CHRISTOPHER; THE HOME-STAKE  
OIL AND GAS COMPANY AND THE  
HOME-STAKE ROYALTY CORPORATION;  
JARRELL B. ORMAND; PAINWEBBER  
INCORPORATED,

Defendants.

Case No. 92-C-192-E

FILED

APR 5 1993

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

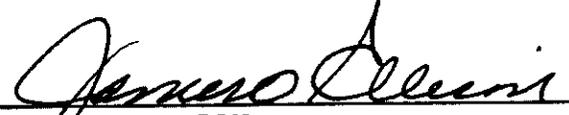
ENTERED ON DOCKET  
DATE APR 5 1993

ORDER OF DISMISSAL

This matter comes before the Court on the Stipulation of Dismissal among all parties to this action for the dismissal with prejudice of all claims by or against PaineWebber Incorporated. The Court finds good cause to order all claims by or against PaineWebber, Inc. dismissed.

IT IS THEREFORE ORDERED that all claims by or against PaineWebber be and are hereby dismissed with prejudice.

ENTERED this 5<sup>th</sup> day of April, 1993.

  
JAMES O. ELLISON  
CHIEF UNITED STATES DISTRICT JUDGE

FILED

APR 05 1993

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

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

GRAY B. HOBBS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 LIMESTONE NATIONAL BANK OF )  
 SAND SPRINGS, OKLAHOMA; )  
 LIMESTONE BANCSHARES, INC.; )  
 TERRY G. GARTSIDE; TERRY )  
 GARTSIDE INVESTMENTS, INC.; )  
 et al., )  
 )  
 Defendants. )

No. 93-C-0058-E

ENTERED ON DOCKET  
DATE APR 5 1993

ORDER OF DISMISSAL WITHOUT PREJUDICE

NOW, on this 5<sup>th</sup> day of April, 1993, the motion of the plaintiff to dismiss the above entitled case as to all the defendants therein comes on for hearing. The Court being fully advised in the premises and the defendants having no objection to said motion being granted, FINDS, and IT IS HEREBY ORDERED, ADJUDGED and DECREED by the Court that plaintiff's motion to dismiss is hereby sustained and the above entitled case is hereby dismissed without prejudice.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

8



**FILED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA **APR 05 1993**

*[Handwritten signature]*

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

JEAN F. TRIGALET, et al.,  
Plaintiffs,  
vs.  
CITY OF TULSA, et al.,  
Defendants.

Nos. 92-C-368-E  
92-C-369-E  
92-C-370-E  
(Consolidated)

ENTERED ON DOCKET

DATE APR 5 1993

**JUDGMENT**

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

IT IS THEREFORE ORDERED that the Plaintiffs take nothing from the Defendants, that the action be dismissed on the merits, and that the parties bear their respective costs herein.

ORDERED this 5<sup>th</sup> day of April, 1993.

*[Handwritten signature: James O. Ellison]*  
JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

*[Handwritten mark]*



4/5/93

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

NINA JEAN HALLFORD, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 HUGHES LUMBER COMPANY, an )  
 Oklahoma corporation, )  
 and as Sponsor for its )  
 EMPLOYEE BENEFIT PLAN )  
 known as HUGHES LUMBER )  
 HEALTH PROTECTION PLAN, )  
 )  
 Defendant. )

No. 92-C-748 B

**FILED**  
APR 2 1993  
Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL WITH PREJUDICE

The Court, having before it the written Stipulation for Dismissal with Prejudice signed by all parties to this litigation, finds that based upon the agreement of the parties the Stipulation for Dismissal with Prejudice should be granted, and

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the litigation captioned herein, including all complaints, counterclaims, cross-complaints and causes of action of any type by any party, should be and the same are hereby dismissed with prejudice to the refiling thereof. This Order is entered this 2nd day of April, 1993.

\_\_\_\_\_  
THOMAS R. BRETT  
Judge of the U.S. District Court

JAD/bjo-77-373  
C:\WORD\HALLFORD\DIS.ORD

ENTERED ON DOCKET

APR 2 1993  
FILED

APR -1 1993

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

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

BIZJET INTERNATIONAL SALES AND )  
 SUPPORT, INC., an Oklahoma )  
 corporation, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CONTINENTAL AIRCRAFT MARKETING, )  
 a California corporation, and )  
 PACIFIC COAST BUILDING PRODUCTS, )  
 INC., d/b/a PACIFIC JET CHARTER, )  
 a California corporation, )  
 )  
 Defendant. )

No. 92-C-923-C

JOINT STIPULATION OF DISMISSAL

COME NOW the Plaintiff, Bizjet International Sales and Support, Inc., ("BIZJET"), and the Defendants, Continental Aircraft Marketing ("CAM") and Pacific Coast Building Products, Inc., d/b/a Pacific Jet Charter ("PACIFIC JET") and file this Joint Stipulation requesting dismissal of the instant action in its entirety, reciting to the Court that final settlement has been reached as to all claims and counter-claims stated therein,

each party to bear its own attorneys' fees and costs in this matter.

RIGGS, ABNEY, NEAL  
& TURPEN

By Curtis W. Fisher  
Don M. Bingham, OBA #794  
Curtis W. Fisher, OBA #2934  
502 West Sixth Street  
Tulsa, Oklahoma 74119-1010  
(918) 587-3161  
Attorneys for Defendants

MOYERS, MARTIN, SANTEE,  
IMEL & TETICK

By Terry M. Thomas  
Terry M. Thomas, OBA No. 8951  
Frank V. Cooper, OBA No. 11795  
320 South Boston, Suite 920  
Tulsa, Oklahoma 74103  
Attorneys for Plaintiff

APR 1 1993

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

WILLA B. WARNER,

Plaintiff,

v.

No. 92-C-1064E

HARTFORD ACCIDENT AND  
INDEMNITY COMPANY,  
a corporation,

Defendant.

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

MAR 31 1993

FILED

**STIPULATION OF DISMISSAL AND  
DISMISSAL WITH PREJUDICE**

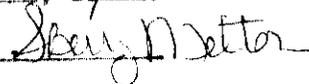
Plaintiff, Willa B. Warner, and the Defendant, Hartford Accident and Indemnity Company, pursuant to Fed.R.Civ.P. 41(a)(1) hereby stipulate to the dismissal of the above captioned matter with prejudice, each party to bear its own costs.

  
Bill V. Wilkinson, One of the  
Attorneys for Plaintiff

  
John R. Woodard, III, One of the  
Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing stipulation was served on each of the parties to this case on the \_\_\_\_\_ day of \_\_\_\_\_, 1993.

31 March 1993.  
John R. Woodard III by 

**FILED**

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

**MAR 31 1993**

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

**FILED**

**MAR 31 1993**

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

**PHILLIP LEE HULL, a minor,  
by his natural parents, guardians,  
and personal representatives,  
PHILLIP GENE HULL and TANYA LEE  
HULL, husband and wife, and  
PHILLIP GENE HULL, individually,  
and TANYA LEE HULL, individually,**

**Plaintiffs,**

**vs.**

**UNITED STATES OF AMERICA,**

**Defendant.**

**) CASE NO. 88-C-1645-E**

**ENTERED ON DOCKET  
DATE APR 1 1993**

**JUDGMENT**

This matter comes on before the court upon the motion of the United States pursuant to Fed. R. Civ. P. 54(b) for entry of a final judgment as to the claims of the plaintiff parents, Phillip Gene Hull and Tanya Lee Hull. Upon review of the record, the court finds that it has previously awarded to plaintiff Tanya Lee Hull the amount of \$150,000.00 and to the plaintiff Phillip Gene Hull the amount of \$100,000.00.

The court further finds that there is no just reason for delay and expressly directs that entry of judgment should be had pursuant to Fed. R. Civ. P. 54(b).

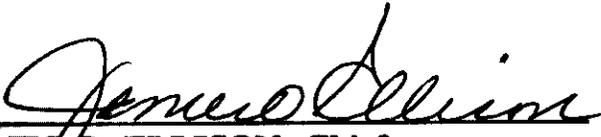
**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that separate judgment shall be and hereby is entered in favor of plaintiff Tanya Lee Hull and against

731

the United States in the amount of \$150,000.00, plus postjudgment interest at the rate of 6.09 percent per annum from June 5, 1991 until October 21, 1992, and in favor of plaintiff Phillip Gene Hull and against the United States in the amount of \$100,000.00, plus postjudgment interest at the rate of 6.09 percent per annum from June 5, 1991 until October 21, 1992.

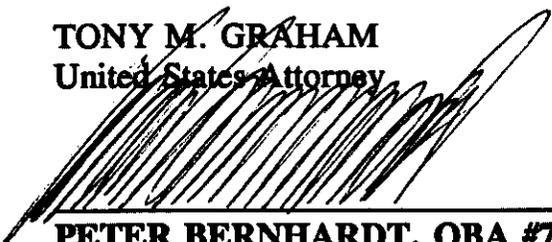
The court by awarding the postjudgment interest in this judgment for the period indicated does not in any way rule upon the motion of the United States pending before it regarding the court's power to award postjudgment interest past October 21, 1992 until the date of payment. That issue is reserved for further ruling by this court.

DATED this 31<sup>st</sup> day of March, 1993.

  
**JAMES O. ELLISON, Chief**  
United States District Judge

**UNITED STATES OF AMERICA**

**TONY M. GRAHAM**  
United States Attorney

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

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

ENTERED ON DOCKET  
DATE APR 1 1993

IN THE MATTER OF THE WILL OF )  
MYRTLE C. MONCRAVIE, OSAGE )  
ALLOTTEE NO. 917, Deceased, )  
 )  
ANNETTE GORE, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
MANUEL LUJAN; JOHN T. )  
MONCRAVIE, JR.; MARY KATHRYN )  
MONCRAVIE LEWIS; FIRST )  
NATIONAL BANK OF BERRYVILLE, )  
ARKANSAS; CLEMENTINE S. )  
MONCRAVIE; and CHRIS ALEC )  
MONCRAVIE; )  
 )  
Defendants. )

No. 92-C-13-E

**FILED**

MAR 31 1993

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

ORDER AND JUDGMENT

COMES NOW BEFORE THE COURT for consideration the appeal of Annette Gore from the decision of the Regional Solicitor reversing the validation of the Will of the Decedent by the Superintendent of the Osage Indian Agency. Complainant seeks reversal of the decision of the Regional Solicitor, and an Order invalidating the Will of the Decedent. Defendants have requested oral arguments, however, the Court finds that the briefs and the file herein are sufficient for appropriate resolution of this matter. For the reasons stated herein, the Court finds the Decedent's Will to be valid and affirms the decision of the Regional Solicitor.

Myrtle Moncravie, while domiciled in the State of Arkansas, executed a Will, dated November 3, 1987, in accordance with the laws of the State of Arkansas. The Will purports to distribute the Decedent's 1.16666 Osage Indian headright interest proportionately

to two of her grandchildren, Mary Kathryn Moncravie Lewis and John T. Moncravie, Jr. Jurisdiction is vested in this Court by virtue of 5 U.S.C. §701, et seq.; 28 U.S.C. §1331; Section 8 of the Act of Congress of April 18, 1912, 37 Stat. 86, 88, as amended by Section 5(a) of the Act of October 21, 1978, 92 Stat. 1660-61 and the Osage Tribe of Indians Technical Correction Act of 1984, 98 Stat. 3163 and the Regulations of the Secretary of the Interior, 25 C.F.R. §17.1, 17.14.

The distribution of Osage Indian headright by will is governed by Section 8 of the Act of Congress of April 18, 1912, 37 Stat. 86, 88, as amended by Section 5(a) of the Act of October 21, 1978, 92 Stat. 1660-61, which provides in pertinent part:

Any person of Osage Indian blood, eighteen years of age or older, may dispose of his Osage headright or mineral interest and the remainder of his estate (real, person, and mixed, including trust funds) from which restrictions against alienation have not been removed by will executed in accordance with the laws of the State of Oklahoma....

The question presented to this Court is whether the will in question, which was executed according to the requirements and laws of Arkansas and which purports to dispose of an Osage Indian headright interest, was "executed in accordance with the laws of the State of Oklahoma" as contemplated by the above Act of Congress. Because no legislative history exists to give insight to the Congressional intent, this Court must construe the Act in question in accordance with its plain meaning.

This Court finds the plain meaning of the Statute to be clear. The will in question must have been executed in accordance with the

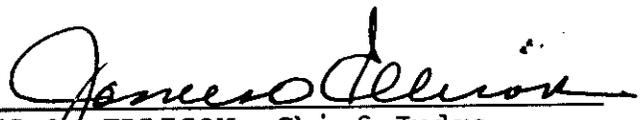
laws of the State of Oklahoma. The Decedent's Will was executed in accordance with 84 O.S. §71:

A will...made out of this State by a person not having domicile in this State is valid when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it were made in this state, and according to the provisions of this Article.

The Court accordingly finds that the Decedent's will was executed "in accordance with the laws of the State of Oklahoma", as contemplated by the Act of Congress, supra.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the decision of the Regional Solicitor, and the Department of the Interior, validating the Will of Myrtle Moncravie is hereby affirmed. Accordingly, Annette Gore's complaint is hereby dismissed on the merits.

ORDERED this 30<sup>th</sup> day of March, 1993.

  
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JAMES O. ELLISON, Chief Judge  
UNITED STATES DISTRICT COURT

ENTERED IN DOCKET  
DATE APR 31 1993

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

HELEN ISRAEL,  
Plaintiff,

vs.

AVIS RENT-A-CAR SYSTEM, INC.  
a corporation

Defendant and  
Third Party Plaintiff,

vs.

MID-CONTINENT CASUALTY COMPANY

Intervenor,

and

SWINSON CHEVROLET, INC.,  
a corporation,

Third Party Defendant.

Case No. 92-C-446-B

**FILED**

MAR 30 1993

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

ORDER

Before the Court for decision is the Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6) or in the alternative, Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56 (Docket #31) filed by Third-Party Defendant, Swinson Chevrolet, Inc. (hereinafter "Swinson Chevrolet"). The Court concludes it is not necessary to go beyond the pleadings and therefore, will treat Swinson Chevrolet's motion as a motion to dismiss.

Swinson Chevrolet seeks dismissal from the above-styled action, wherein Plaintiff, Helen Israel (hereinafter "Israel"), filed a complaint against Defendant, Avis Rent-A-Car (hereinafter

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"Avis"), based on an injury she allegedly received due to the negligence of an Avis employee. Plaintiff, a Swinson Chevrolet employee, alleges that on July 3, 1991, she was "run over" by an Avis employee while such employee was driving an Avis owned Chevrolet Astro Van through the service area of Swinson Chevrolet. After commencement of the lawsuit, Avis was granted leave to assert a third-party complaint pursuant to Fed.R.Civ.P. 14(a) against Swinson Chevrolet.

In its Third-Party Complaint, Avis alleges that Swinson Chevrolet performed maintenance on the Astro Van on or about July 2, 1991. Further, Avis alleges that on July 3, 1991, its employee was attempting to drive the Astro Van off of the Swinson Chevrolet premises when Plaintiff was injured. The Third-Party Complaint specifically alleges that the negligence, breach of duty and breach of contract by Swinson Chevrolet, in failing to properly repair the Astro Van, was the proximate cause of the underlying incident and injuries upon which Plaintiff's claims are based. Avis demands judgment against Swinson Chevrolet for all sums that may be adjudged against Avis in favor of Plaintiff Israel.

Swinson Chevrolet argues that dismissal for failure to state a claim upon which relief can be granted is appropriate in light of the "exclusive remedy" provision of the Oklahoma Workers' Compensation Act.<sup>1</sup> Swinson Chevrolet contends that it has

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<sup>1</sup> Plaintiff, Helen Israel, was injured during the scope of her employment with Swinson Chevrolet. Intervenor, Mid-Continent Casualty Company, paid Plaintiff Israel \$52,900.00 for such injuries pursuant to the workers' compensation insurance policy it issued to Swinson Chevrolet. Further, Mid-Continent reasonably

satisfied its obligation to Plaintiff under the Oklahoma Workers' Compensation Act and therefore, cannot be held responsible again, either directly or indirectly, for Plaintiff's injuries. Swinson Chevrolet further argues that the gravamen of the Third Party Complaint is that Swinson Chevrolet is directly and solely liable to the Plaintiff Israel.

To dismiss a complaint and action for failure to state a claim upon which relief can be granted it must appear beyond doubt that Plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41 (1957). Motions to Dismiss under Fed.R.Civ.P. 12(b) admit all well-pleaded facts. Jones v. Hopper, 410 F.2d 1323 (10th Cir. 1969), *cert. denied*, 397 U.S. 991 (1970). The allegations of the Complaint must be taken as true and all reasonable inferences from them must be indulged in favor of complaint. Olpin v. Ideal National Ins. Co., 419 F.2d 1250 (10th Cir. 1969), *cert. denied*, 397 U.S. 1074 (1970).

The issue before the Court is whether or not an employer who has satisfied its obligations to an employee under the Oklahoma Workers' Compensation Act may be joined as a defendant in a third-party complaint and thus required to respond a second time to the employee.

Third-party practice neither creates nor enlarges upon the substantive rights of the parties, but merely provides the  

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anticipates that is will be required to pay additional sums of money pursuant to this policy.

procedure for the assertion of those rights under applicable Oklahoma law. Peak Drilling Co. v. Halliburton, 215 F.2d 368, 369 (10th Cir. 1954).

The Oklahoma Workers' Compensation Act provides, in pertinent part, that liability prescribed therein "shall be exclusive and in place of all other liability of the employer and any of his employees, at common law or otherwise, for such injury, loss of services or death, to the employee...". See: 85 O.S. §12. Further, the Oklahoma Supreme Court stated that:

"Worker's compensation legislation was enacted to provide a substitute remedy to an employee for accidental injuries received during covered employment without the burden of his proving negligence. In exchange for this exposure the employer is protected from any other liability to the employee. To be equitable as well as effective, this protection must be extended to all liability either directly or indirectly derived from the employee's injuries". (Emphasis supplied).

Harter Concrete Products, Inc. v. Harris, 592 P.2d 526, 528 (Okla. 1979).

Oklahoma law provides an exception to the Workers' Compensation Act wherein a defendant may have a right to bring a third-party complaint against an employer for indemnity if such right arises from an independent legal relationship between the employer and third-party plaintiff. Harter at 528; adopting, Peak, 215 F.2d 368, 369 (10th Cir. 1954); also see, Burrell v. T & C Construction Company, 441 F.Supp. 275 (W.D.Okla. 1977). This independent legal relationship must, however, exist between the employer and third-party plaintiff creating liability apart from a

duty owed by both to keep the employee free from harm. Harter at 528. The Court finds that the gravamen of the Third-Party Complaint in this case is one for indemnity and therefore, must determine whether a basis for such indemnity arises out of an independent legal relationship between Swinson Chevrolet and Avis.

Avis expressly states that it relies upon an independent legal relationship under which Swinson Chevrolet owed a duty to Avis to make sure the Astro Van was in proper working condition upon delivery and to further deliver the van to the Avis employee in a safe manner. Avis argues that Swinson Chevrolet breached such duties.

The right of indemnity may arise out of an express (contractual) or implied (noncontractual) liability. National Union Fire Insurance Co. v. A.A.R. Western Skyways, Inc., 784 P.2d 52, 54 (Okla. 1989). Further, indemnity may be based upon a statutory right. Travelers Insurance Co. v. L.V. French Truck Service, Inc., 770 P.2d 551 (Okla. 1989) (Oklahoma Workers' Compensation Act did not bar insurance carrier from seeking indemnity from worker's employer on theory that employer violated an Oklahoma statute which expressly created a duty to indemnify).

Indemnity arising out of a contract is where one engages to save another from a legal consequence of conduct of one of the parties, or of some other person. National Union Fire Insurance at 54, citing, Travelers Insurance Co., and 15 O.S. § 421. Noncontractual indemnity does not arise unless it falls within the "lenient exception" rule. This exception gives "the right to

indemnity to one constructively or vicariously liable to a party whose injuries were caused by the primary or active negligence of another, as where for example under the doctrine of respondeat superior, a master is liable for the negligence of his servant, or a municipality is liable to a member of the public for failure to discover and correct a nuisance created by the negligence of an abutting property owner." Peak at 339; also see, Burrell at 276.<sup>2</sup> In the instant case, Avis has failed to state a sufficient basis for a statutory, express or implied duty of Swinson Chevrolet to indemnify Avis and therefore, the Court finds that the third party complaint is facially deficient.

While there may be a contract between Avis and Swinson Chevrolet, whereby the latter agreed to repair the Astro Van, the Court concludes that there is not a sufficient independent legal relationship between Avis and Swinson Chevrolet so as to require Swinson Chevrolet to pay any sum adjudged against Avis in favor of Plaintiff Israel. Avis will only be held liable to Israel, however, if the finder of fact concludes that Avis was negligent.

For the above stated reasons, the Court concludes that there is no basis in law for Avis' third-party complaint and Swinson Chevrolet's Motion to Dismiss (Docket #31) should be and the same is hereby GRANTED. Costs shall be assessed against Avis and in favor of Swinson Chevrolet if timely applied for under Local Rule

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<sup>2</sup> Avis argues that there can be a right to indemnity without an express contract, citing Travelers. However, Avis has not provided the Court with a statutory basis for its claim of indemnity.

6. Each party is to pay their own respective attorney's fees.

IT IS SO ORDERED THIS 30<sup>th</sup> DAY OF MARCH, 1993.



THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

**FILED**

MAR 30 1993

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

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

DANIEL RESOURCE DEVELOPMENT, )  
 INC., a Texas corporation, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 PAX PETROLEUM CORPORATION, )  
 a California corporation, )  
 )  
 Defendant. )

Case No. 92-C-586 B

**ORDER**

Now before the Court for decision is the Motion for Change of Venue, pursuant to 28 U.S.C. § 1404(a), of the defendant, Pax Petroleum Corporation ("Pax") against the plaintiff, Daniel Resource Development, Inc. ("DRD"). For the reasons set forth hereafter, the Court concludes that the defendant's motion should be denied.

In an Order issued January 4, 1993 this Court determined that Pax has adequate minimum contacts with the State of Oklahoma so that the Court can exercise personal jurisdiction over it. However, review of the allegations in the plaintiff's complaint<sup>1</sup>, led the Court to consider whether another forum might have a stronger interest in the litigation and be more convenient to both

<sup>1</sup> The complaint alleges:

- 1) DRD is a Texas corporation with its principal place of business in Texas;
- 2) Pax is a California corporation with its principal place of business in California;
- 3) Pax breached an agreement pertaining to the drilling of two oil and gas test wells in Cheyenne County, Colorado;
- 4) DRD requests a determination of its rights and legal status as to agreements concerning oil and gas wells located in Oklahoma, Louisiana, Colorado, and Texas.

of the parties. The Court, therefore, requested that the parties submit briefs on the propriety of a transfer of this law suit.

Pax has submitted briefs requesting that the case be transferred to the Central District of California. DRD asks the Court to allow the action to be maintained here or, in the alternative, to transfer it to the Southern District of Texas.<sup>2</sup>

Section 1404(a) provides:

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

The objective of this section is the avoidance of wasting time, energy, and money. Van Dusen v. Barrack, 376 U.S. 612, 616, 84 S.Ct. 805, 809, 11 L.Ed.2d 945 (1964). This section is also intended to shield litigants, witnesses, and the public against unwarranted inconvenience and cost. Id.

The decision to transfer venue is within the District Court's discretion. Wm. A. Smith Contracting Co., Inc. v. Travelers Indem. Co., 467 F.2d 662, 664 (10th Cir. 1972). The party requesting that the case be transferred has the burden of proof on the issue. Id. "Unless the balance is strongly in favor" of transfer, "the plaintiff's choice of forum should rarely be disturbed." Id. quoting Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508, 67 S.Ct. 839,

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<sup>2</sup> DRD initiated this action in this Court and it is clear that it wishes to keep the action in this Court. Pax does not believe that litigation in Texas would be more convenient to it or to DRD. (Defendant's Reply Brief in Support of Motion for Change of Venue at 2). Thus the Court will determine whether to keep the case here or transfer it to the Central District of California.

843, 91 L.Ed. 1055 (1947).

Pursuant to § 1404(a) the first factor to be examined by the Court is the convenience of the parties. Pax is a California corporation with its principal place of business in San Clemente, California. It contends that its documents, evidence, and witnesses are located in California and if it must defend this action in Oklahoma its expenses will be elevated.

DRD currently has its offices in Texas and its offices were located in Tulsa, Oklahoma until 1990. It argues that it has no connection whatsoever to California. It maintains that Pax does business in both Oklahoma and Texas and Pax will, therefore, not be inconvenienced by either of these forums.

The Court finds that in the instant case, whether the forum is Oklahoma or California, one of the parties will be inconvenienced to some extent. If a transfer will only shift inconvenience from one party to another, a transfer should be denied. ROC, Inc. v Progress Drillers, Inc., 481 F.Supp. 147, 152 (W.D. Okl. 1979) citing Crossroads State Bank v. Savage, 436 F.Supp. 743 (W.D. Okl. 1977); Vasquez v. Falcon Coach Co., 376 F.Supp. 815 (D. N.D. 1974); Residex v. Farrow, 374 F.Supp. 715 (E.D. Pa. 1974), aff'd mem., 556 F.2d 568 (3rd Cir. 1977).

The next factor that the Court must consider pursuant to § 1404(a) is the location and convenience of the witnesses needed at or before trial. Convenience of witnesses is measured by "consideration of the nature or materiality of the testimony to be offered by prospective witnesses." National Sur. Corp. v. Robert

M. Barton Corp., 484 F.Supp. 222, 225 (W.D. Okl. 1979) citing Chicago Rock Island & Pac. R.R. Co. v. Hugh Breeding, Inc., 232 F.2d 584, 588 (10th Cir. 1956). The party wishing to change venue must specifically identify its key witnesses and give at least a summarized account of what their testimony will include. Factors Etc., Inc. v. Pro Arts, Inc., 579 F.2d 215, 218 (2nd Cir. 1978) cert. denied, 440 U.S. 908, 102 S.Ct. 1973, 59 L.Ed.2d 455 (1979); Chicago Rock Island, supra, at 588; United Companies Life Ins. Co. v. Butler-Phillips Management Services, Inc., 741 F.Supp. 1244, 1246 (M.D. La. 1990); Schieffelin & Co. v. Jack Co. of Boca, Inc., 725 F.Supp. 1314, 1321 (S.D. N.Y. 1989); Houk v. Kimberly-Clark Corp., 613 F.Supp. 923, 928 (W.D. Mo. 1985).

In its initial brief concerning change of venue Pax states that its seven potential witnesses all reside in California. (Motion for Change of Venue and Brief in Support at 2). Pax merely names these witnesses and parenthetically describes their alleged interest in the lawsuit. Id. Pax tells the Court only that its necessary witnesses are the president of Pax, Pax's corporate legal counsel, a general partner of a partnership which owns an interest in an oil and gas well located in Oklahoma (the "Umbach well"), and four investors in a partnership which owns an interest in the Umbach well.

Subsequently, Pax states that the only issues before the Court in this lawsuit will be issues of contract interpretation. (Defendant's Reply Brief in Support of Motion for Change of Venue at 10). It asserts that most or all of the lawsuit will likely be

decided by summary judgment. Id. It argues that if the Court determines that any of the agreements in question contain ambiguities "some evidence might be submitted relating to the intent of the parties." Id. It maintains that the "issues presented should not require testimony from any witnesses other than the parties or their immediate representatives." Id.

Pax has stated nothing in its brief nor has it submitted any affidavits indicating the quality, materiality, or relevancy of its witnesses' testimony. Pax has failed to supply the Court with adequate details to allow the Court to conclude that this district is inconvenient to the witnesses.

The third and final factor to be weighed pursuant to § 1404(a) is the interest of justice. The Court considers "the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling witnesses; the cost of obtaining attendance of willing witnesses; and all other practical problems that make trial of a case easy, expeditious and inexpensive." Jacobs v. Lancaster, 526 F.Supp. 767, 770 (W.D. Okl. 1981) citing Gulf Oil Corp., 330 U.S. at 508, 67 S.Ct. 843; Chicago, Rock Island and Pac. R.R. v. Igoe, 220 F.2d 299, 303 (7th Cir. 1955) cert. denied, 350 U.S. 822, 76 S.Ct. 49, 100 L.Ed. 735 (1955).

Pax maintains that the location of its documents and evidence favor the transfer of this case to California. It, however, has failed to identify any necessary document or evidence that is too burdensome or expensive to transport and produce. Further, Pax has

not argued that its necessary witnesses are unwilling to come to Oklahoma or that compulsory process is not possible. In addition, it has not asserted that obtaining attendance of willing witnesses would be unreasonably expensive or that the use of deposition testimony would be unacceptable at trial.

Pax has failed to make an adequate showing that in this case a transfer would best serve the convenience of the parties, the witnesses, or the interest of justice. Accordingly, the case will not be transferred. Defendant's Motion for Change of Venue is hereby DENIED.

This case is set for a Status Conference on June 6, 1993 at 9:30 A.M. A Settlement Conference in this matter shall be held before United States Magistrate Wolfe on April 16, 1993 at 10:00 A.M. The discovery deadline for this case is hereby set at July 25, 1993.

IT IS SO ORDERED this 30<sup>th</sup> day of March, 1993.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT COURT JUDGE

DATE ~~APR 01 1993~~

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

MUSEUM STEPS MUSIC; AGE TO AGE )  
MUSIC, INC.; EDWARD GRANT, INC.; )  
YELLOW ELEPHANT MUSIC; REALSONGS )  
LEOSUN MUSIC; EMI APRIL MUSIC, INC.; )  
THRILLER MILLER MUSIC; UNCLE RONNIE'S )  
MUSIC COMPANY, INC.; MCA, INC.; )  
JOBETE MUSIC CO., INC.; BILLY )  
STEINBERG MUSIC; DENISE BARRY MUSIC; )  
HIDEOUT RECORDS AND DISTRIBUTORS, )  
INC.; NEBRASKA MUSIC; CASS COUNTY )  
MUSIC COMPANY; RED CLOUD MUSIC )  
COMPANY; SHAPIRO, BERNSTEIN & CO., )  
INC.; MEADOWGREEN MUSIC COMPANY; )  
BUG AND BEAR MUSIC; GRAND ILLUSION )  
MUSIC; and HICKORY GROVE MUSIC, )

Plaintiffs, )

v. )

LEEMAY BROADCASTING SERVICES, )  
INC.; and JACK D. LEE, )

Defendants. )

No. 92-C-610-B ✓

**FILED**

MAR 30 1993

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

ORDER OF DISMISSAL WITHOUT PREJUDICE  
OF SINGLE CAUSE OF ACTION

NOW on this 29 day of Mar, 1993, the above  
styled and numbered cause comes before the Court pursuant to the  
plaintiffs' Application for Dismissal without Prejudice of Single  
Cause of Action. Upon review of the plaintiffs' written applica-  
tion, and for good cause shown, the Court finds that the plain-  
tiffs' application should be sustained.

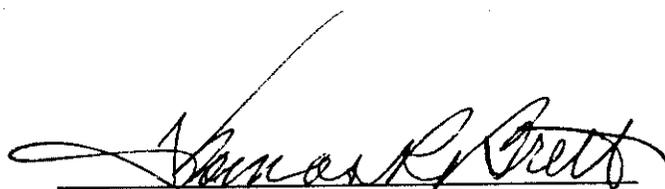
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the  
cause of action asserted by plaintiff Hideout Records and Distribu-  
tors, Inc. for an alleged infringement of its copyrighted musical

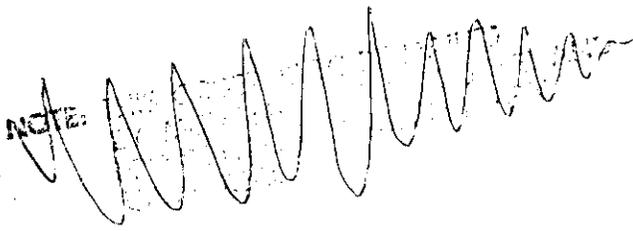
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composition entitled "We've Got Tonite" (a/k/a "We've Got Tonight") written by Bob Seger is hereby dismissed without prejudice, with each party to bear their own costs. This dismissal shall not affect any of the other remaining counts of infringement asserted herein by the other named plaintiffs.

IT IS SO ORDERED this 29 day of Mar.,  
1993.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

NOTE 

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

**FILED**

MAR 26 1993

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

GLENN ROYAL,

Plaintiff,

vs.

No. 93-C-107-E

NIKE, CORPORATION,

Defendant.

ENTERED ON DOCKET  
DATE APR 1 1993

**ORDER**

In its last order, the court found Plaintiff's complaint to be deficient in several aspects. In particular, Plaintiff's complaint failed to allege any facts. The court dismissed Plaintiff's complaint, but granted Plaintiff twenty days to submit an amended complaint attempting to overcome the deficiencies noted in the court's order. Plaintiff has now submitted an amended complaint. It too is defective and fails to allege any facts.

IT IS, THEREFORE, HEREBY ORDERED that the Clerk shall file Plaintiff's amended complaint. IT IS FURTHER ORDERED that Plaintiff's amended complaint is dismissed. The Clerk shall enter judgment accordingly.

SO ORDERED THIS 25<sup>th</sup> day of March, 1993.

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

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