

ENTERED ON DOCKET

DATE 6-30-93

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

FILED

JUN 30 1993

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

BANK OF TULSA,
Successor in interest to
NORTHSIDE STATE BANK,

Plaintiff,

vs.

CAESAR LATIMER a/k/a CAESAR C.)
LATIMER, et al.,

Defendants.

No. 91-C-626-E

ORDER AND JUDGMENT

This cause came on for consideration on Defendant United States of America's motion(s) for summary judgment. The Court entered partial summary judgment (docket #61) on September 15, 1992 against Caesar C. Latimer in the amount of \$10,295.51 plus statutory additions for tax liens.

After a review of the motions and all of the papers submitted, the Court finds,

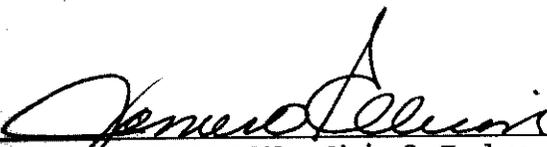
IT IS THEREFORE ORDERED that summary judgment is hereby entered in favor of the United States, determining that the United States is entitled to priority over the interpleaded fund in the total amount¹ of \$9,023.68, plus statutory additions with respect to tax liens pertaining to Emily L. Latimer.

Further, the Court hereby dismisses all claims against Maria Latimer. Defendants' motion (docket #64) to have summary judgment

¹Amount does not include interest and additions accruing after the respective dates of assessment.

certified as a final order under Fed.R.Civ.P. 54(b) is therefore
DENIED as MOOT.

ORDERED this 30th day of June, 1993.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

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

FILED

JUN 29 1993

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

ANTHONY J. HARRIS, et al.,)
)
 Petitioners,)
)
 vs.)
)
 RON CHAMPION, et al.,)
)
 Respondents.)

No. 90-C-448-B, formerly
No. 90-C-448-C,
No. 90-C-475-C, etc., as
consolidated.

ORDER

This matter comes on for consideration of Plaintiffs' Motion For Attorneys Fees and Expenses (#141) filed herein on May 4, 1993. Also for consideration is R. Thomas Seymour's Application And Authority For Attorney Fees For Prosecuting Petitioners' Attorney Fee Application (#176).

On January 2, 1992, the United States District Court for the Northern District of Oklahoma, pursuant to the order of remand in Harris v. Champion, 938 F.2d 1062 (10th Cir. 1991), appointed David Booth to represent Plaintiffs in a group of collectively remanded cases which included, among others, Harris, Hill v. Reynolds, 942 F.2d 1494 (10th Cir.1991) and Richards v. Bellmon, 941 F.2d 1015 (10th Cir.1991). The appointment was made pursuant to 28 U.S.C. §1915(d).

On May 29, 1992, Booth submitted to the Court a standardized form entitled "Appointment of and Authority to Pay Court Appointed Counsel" (voucher). This voucher is frequently used by court-

appointed attorneys for indigent criminal defendants to collect their fees for services and expenses pursuant to 18 U.S.C. §3006A (1988), the Criminal Justice Act (CJA). Judge H. Dale Cook approved the voucher on August 5, 1992, with Tenth Circuit Court of Appeals approval occurring August 18, 1992. This voucher, covering the period from January 2, 1992 to May 26, 1992, was for the total amount of \$27,677.76, being \$24,127.50 for attorneys fees (321.70 hours @ \$75.00 per hour) and \$3,475.26 expenses.

On December 9, 1992, a second payment was sought by Booth on a CJA appointment and approval voucher. Judge Cook approved same on December 17, 1992, with Tenth Circuit approval occurring December 22, 1992. This second claim was for \$12,010.46, being \$8,706.00 for attorneys fees, (4.5 hrs. of court time @ \$60 per hr. & 210.9 hrs. of out-of-court time @ \$40 per hr.) plus \$3,304.46 expenses)¹. The period covered was from June 2, 1992 to November 30, 1992.

A third CJA payment to counsel Booth was approved March 4, 8 and 10, 1993, by the three-judge panel members herein and by the Tenth Circuit Court of Appeals on March 15, 1993, in the amount of \$8,280.69, being \$5,384.00 attorneys fees (134.6 hrs. of out-of-court time @ \$40) plus \$2,896.69 expenses, which covered the period from December 1, 1992 to February 28, 1993.

Plaintiffs' May 4, 1993 Motion For Attorneys Fees and Expenses

¹ Booth asked for \$75 per hr. but the Tenth Circuit Court of Appeals reduced it to \$60 & \$40, respectively. Plaintiffs' counsel had earlier stated in a letter to the District Court that he applied for the higher rate of \$75 per hour knowing same would not be granted so that he would not be equitably estopped to claim that higher amount at a later date.

covers the period from December 19, 1991 to and including April 30, 1993, and requests attorneys fees of \$193,600.00 (968 hours at \$200 per hour) plus \$4,746.50 paralegal fees (86.3 hours at \$55 per hour) plus \$11,327.33 expenses incurred, for a grand total of \$209,673.83. Plaintiffs' counsel seeks an award of attorneys fees for the same time period (except those charges from March 2, 1993 to April 30, 1993, totalling 371.70 hours for \$74,340) already paid to him under CJA payments discussed above. Further, Plaintiffs' counsel now seeks payment at the rate of \$200 per hour. This apparent double duplication, (seeking compensation for charges already billed and paid for and at rates 3 & 1/3 to 5 times the established rate), is partially explained by counsel Booth who states the total amounts paid under the CJA will be repaid to the United States if his present request is granted.

Plaintiffs' current Motion appears to be predicated on prevailing party status for civil rights claims under 42 U.S.C. §1983 (attorneys fees would be awarded pursuant to 42 U.S.C. §1988) as well as language in Harris, Hill and Richards. Thus, it appears Plaintiffs' counsel is attempting to receive an award of attorneys fees on an issue, i.e. the §1983 bifurcated civil rights claims, that has not yet been tried. In the panel's view, this makes it impossible to determine prevailing party status under §1983 at this time.

Plaintiffs' counsel suggests that since Plaintiffs were the catalyst in the habeas corpus matter this, somehow, confers prevailing party status on them for attorneys fees under 42 U.S.C.

§1988. The case law is otherwise. Larsen v. Sielaff and Israel, 702 F.2d 116 (7th Cir.1983). However, Larsen does not hold that appointment and payment under CJA precludes later attorney fee recovery, if appropriate, under §1988. In Larsen, the plaintiff nominally sued under §1983. However, the Court concluded that the consent decree entered therein actually provided relief only available in a habeas corpus proceeding, thereby casting the suit as functionally a habeas corpus action, and making §1988 inapplicable.

The instant case has both habeas and §1983 issues. See, Plaintiffs' Supplemental and Amended Complaint filed July 13, 1992. However, this panel is presently precluded from addressing the §1983 issue under the narrow constraints of the appointing order.² Further, one of the panel members, Honorable Thomas R. Brett, has recused on issues relating to §1983 claims.

In its response to Plaintiffs' Motion, the Oklahoma Court of Criminal Appeals (OCCA) claims that Plaintiffs cannot be prevailing parties against it because, on the issues involving OCCA (use of summary opinions, granting an injunction against OCCA regarding extensions of time, and civil liability under §1983), it has prevailed on the former, the middle issue has been withdrawn as moot and the latter issue is still unresolved.

The Oklahoma Indigent Defense System (OIDS) responds to

² The panel was appointed and authorized "to adjudicate the common habeas corpus issues of law and fact in said case and all other cases pending in said districts involving common issues of alleged delay in perfecting and adjudicating appeals from Oklahoma trial court criminal case convictions".

Plaintiffs' Motion by arguing it is a non-party to the habeas issues because it is not the custodian of Plaintiffs; that Plaintiffs have not, as of yet, secured any relief against OIDS under §1983 and may never. OIDS further urges that unless Plaintiffs prevail under §1983 they cannot obtain attorneys fees under §1988 and that Plaintiffs are not catalysts under the Nadeau test (Nadeau v. Helgemoe, 581 F.2d 275-1st. Cir. 1978) since recent Supreme Court cases have undercut the Nadeau test, requiring that Plaintiffs must achieve an enforceable judgment or comparable relief through a consent decree or settlement in order to obtain attorneys fees under §1988.

OIDS argues that Plaintiffs' counsel has already claimed and been paid for most of his hours by the Federal Government under the Criminal Justice Act and that when the Tenth Circuit Court of Appeals certified the payments to Booth (three in all) this amounted to a certification that the payments were "fair compensation" and therefore Booth has agreed to accept same as fair compensation.

The Attorney General (AG) argues there is no authority for awarding attorneys fees in a habeas corpus case, citing Lowe v. Letsinger, 772 F.2d 308 (7th Cir.1985) and that Plaintiffs have sought no relief under §1983 against the Wardens so there could be no attorney fee award against the Wardens based on §1988. The AG further argues that under Booth's §1915(d) appointment there is no provision for payment of attorneys fees, citing Ray v. Robinson, 640 F.2d 474 (3rd Cir.1981). Lastly, the AG argues that Plaintiffs

request for attorneys fees is outside the scope of the three-judge panel's appointment and authority because only the habeas issues are before it and the attorneys fees request is predicated upon §§1983 and 1988.

The panel recognizes that Plaintiffs' counsel Booth was initially appointed under 28 U.S.C. §1915(d). However, the panel is of the view that this does not preclude appointment under additional statutory authority which provides for compensation to appointed attorneys notably lacking under §1915(d). Therefore, the panel concludes that Plaintiffs' counsel was additionally appointed under the CJA by Judge Cook on August 5, 1992,³ later approved by the Tenth Circuit Court of Appeals on August 18, 1992. The panel further concludes that authority exists for such appointment as provided in 18 U.S.C. §3006A(a)(2) which states, in part, as follows:

"(2) Whenever the . . . court determines that the interests of justice so require, representation may be provided for any financially eligible person who . . .

(B) is seeking relief under section 2241, 2254, or 2255 of title 28"

§3006A(d) provides, in part, as follows:

"(d) Payment for representation --
(1) Hourly rate -- Any attorney appointed pursuant to this section . . . shall . . . be compensated at a rate not exceeding \$60 per hour for time expended in court . . . and \$40 per hour for time reasonably expended out of court, unless the Judicial Conference determines that a higher rate of not in excess of \$75 per hour is justified for a circuit or for particular

³ the date Judge Cook signed the first CJA appointment and approval voucher.

districts within a circuit, for time expended in court . . ."

(2) Maximum amounts -- " . . . For any other representation required or authorized by this section, the compensation shall not exceed \$750 for each attorney in each proceeding."

Such higher rate (\$75) has been approved by the Tenth Circuit Court of Appeals subject to availability of funds.

This panel further concludes that the maximum amount of attorneys fees available in the instant matter under the CJA would be \$750 multiplied by the number of Plaintiffs, now approximately 255, for a total of \$191,250. The panel also notes that Plaintiffs' counsel has already received a total amount of attorneys fees and expenses of \$47,968.91 for charges through February 28, 1993.

The panel concludes Plaintiffs' Motion For Attorneys Fees (#141), as stated, is herewith DENIED because it is based upon a premise of prevailing party status under 42 U.S.C. §1983, a premature bifurcated issue. The panel further concludes that attorneys fees payment herein shall not exceed, under CJA, the limits set forth by the Tenth Circuit Court of Appeals.

Further, in view of the above, if Plaintiffs desire to submit interim attorneys fees requests under CJA voucher, covering the period from February 28, 1993, forward, the panel will favorably consider same.

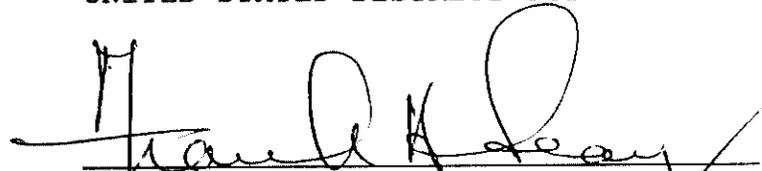
Lastly, the panel DENIES R. Thomas Seymour's Application And Authority For Attorney Fees For Prosecuting Petitioners' Attorney Fee Application (#176) on the ground that the better practice is to avoid all suggestion of impropriety, Mr. Seymour's spouse

(Honorable Stephanie Seymour, Tenth Circuit Court of Appeals) having served on the Harris panel.⁴

Any attorneys fees claim as prevailing party under the 42 U.S.C. §1983 claims must await another day.

IT IS SO ORDERED this 29th day of June, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE


FRANK H. SEAY
CHIEF UNITED STATES DISTRICT JUDGE


WAYNE E. ALLEY
UNITED STATES DISTRICT JUDGE

⁴ Plaintiffs' counsel stated at the recent attorneys fees hearing that Judge Seymour recused in all Harris matters prior to R. Thomas Seymour making his appearance herein. The panel further notes that Attorney Seymour suggested that the panel might, in an abundance of caution, deny his attorneys fee request on the ground of avoidance of all appearance of impropriety which the panel deems an acceptable proposal.

ENTERED IN DOCKET
DATE JUN 30 1993

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

JUN 29 1993

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

PATRICK LESTER,

Plaintiff,

vs.

MEDICAL DOCTOR ASSOCIATES, INC.,
d/b/a MDA, INC.,

Defendant.

Case No. 92-C-1070-B ✓

STIPULATION OF DISMISSAL

COMES NOW the Plaintiff, Patrick Lester, and the Defendant, Medical Doctor Associates, Inc., d/b/a MDA, Inc., through their counsel, pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, and stipulate that this action may be and it is hereby dismissed with prejudice.

DATED this 29th day of ~~May~~ ^{June}, 1993.

Respectfully submitted,

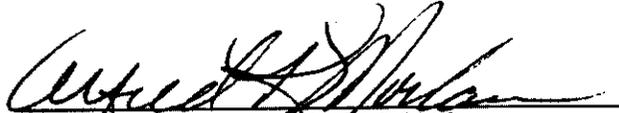
MOYERS, MARTIN, SANTEE, IMEL & TETRICK

By: Patrick O'Connor

Patrick O'Connor, OBA #6743
320 South Boston Building
Suite 920
Tulsa, Oklahoma 74103
(918) 582-5281

ATTORNEYS FOR PLAINTIFF
Patrick Lester

10



Alfred K. Morlan, OBA #6412
MORLAN & ASSOCIATES, P.C.
P. O. Box 52940
Tulsa, Oklahoma 74152

Robert G. Brazier
GAMBRELL & STOLZ
2 Peachtree Street, N.W.
Suite 3600
Atlanta, Georgia 30383

ATTORNEYS FOR DEFENDANT
Medical Doctor Associates, Inc.,
d/b/a MDA, Inc.

ENTERED ON DOCKET

DATE 6-30-93

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 PERRY L. WILDEN; TAMMY McHENRY,)
 Tenant; MICHAEL McHENRY, Tenant;)
 COUNTY TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

FILED

JUN 29 1993

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

CIVIL ACTION NO. 90-C-944-E

ORDER

Upon the Motion of the United States of America, acting on behalf of the Secretary of Veterans Affairs, by F.L. Dunn, III, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and for good cause shown it is hereby ORDERED that this action shall be dismissed without prejudice.

Dated this 28th day of June, 1993.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

F.L. DUNN, III
United States Attorney

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

PB/esr

ENTERED ON DOCKET

DATE 6-29-93

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

FILED

DON MARLOW, et al.)
)
 Plaintiffs,)
)
 v.)
)
 AMERSHAM CORPORATION,)
)
 Defendant.)

No. 93-C-464-E

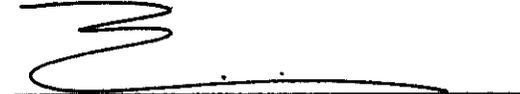
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

Pursuant to Rule 41 of the Federal Rules of Civil Procedure,
and by stipulation of all parties, plaintiffs hereby dismiss the
above styled case without prejudice to future action.

LAMPKIN, McCAFFREY & TAWWATER

By

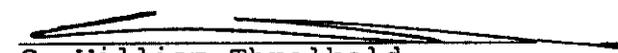


Bob Behlen
Attorney No: 11222
Bank of Oklahoma Plaza
201 Robert S. Kerr, # 1100
Oklahoma City, OK 73102

ATTORNEYS FOR PLAINTIFFS

FENTON FENTON SMITH RENEAU &
MOON

By



C. William Threlkeld
One Leadership Square
211 N. Robinson, #800
Oklahoma City, OK 73102

ATTORNEYS FOR DEFENDANT

ENTERED ON DOCKET

DATE 6-27-93

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

SHELTER INSURANCE COMPANIES,)
a Missouri corporation,)

Plaintiff,)

v.)

HAMILTON BEACH/PROCTOR-SILEX,)
INC., a Delaware corporation,)

Defendant.)

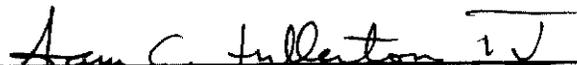
F I L E D

JUN 22 1993

No. 92-C-~~100~~ Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

STIPULATION OF DISMISSAL WITH PREJUDICE

The Plaintiff and Defendant, pursuant to Rule 41(a)(1)(i), stipulate to a Dismissal With Prejudice of the above styled and numbered cause of action, each party to bear their own costs.



Sam C. Fullerton, IV, attorney for Plaintiff



John R. Woodard, III, attorney for Defendant

DATE JUN 25 1993

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

LORETTA BARTON, as next of kin)
of Warren Bethel, Deceased,)
)
Plaintiff,)
)
vs.)
)
MAGUIRE IRON, INC., a South)
Dakota Corporation doing business)
in the State of Oklahoma,)
)
Defendant.)

Case No. ~~CX~~ 93-C-460 -B

FILED

JUN 24 1993

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

ORDER

On the 24 day of June, 1993, came on to be considered Plaintiff's Motion to Dismiss without Prejudice.

The Defendant, Maguire Iron, Inc. has produced evidence that it had a worker's compensation insurance policy in effect on the date of the accident the subject of this suit. Absent controverting evidence, Plaintiff's sole remedy is the Worker's Compensation Court of Oklahoma.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Dismiss Without Prejudice is granted.

S/ THOMAS R. BRETT

JUDGE

THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 24 1993

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

92-C-458-B

KENNETH DUGLAS,
Petitioner,

v. ION,
ROY Respondent .

ORDER

This order pertains to Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Docket #1)¹, Respondent's Motion to Dismiss (#3), and Petitioner's response to Respondent's Motion to Dismiss (#5). Petitioner was convicted in Tulsa County District Court, Case No. CRF-86-2758, of Second Degree Burglary, Assault With a Dangerous Weapon, and Escape from Lawful Custody, all after former conviction of two or more felonies, and sentenced to twenty-five (25) years imprisonment on Count I, forty (40) years imprisonment on Count II, and twenty-five (25) years imprisonment on Count III.

The petitioner appealed his convictions to the Oklahoma Court of Criminal Appeals in Case No. F-88-282. The convictions were affirmed with the sentences modified to 20 years, 30 years, and 20 years. In the appeal, petitioner raised the following grounds: that the trial court erred in allowing an in-court identification of him by Ms. Kelly, that there was insufficient evidence presented to support the charge of an assault with a dangerous weapon, that the trial court erred in giving a flight instruction, that certain comments by

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

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the prosecution denied him a fair trial, that the conviction for Escape from Lawful Custody should not have been enhanced by his prior felony convictions, that the trial court erred in refusing to give his requested instructions on the lesser included offenses of Illegal Entry and Assault Upon a Police Officer, that the trial court erred in allowing improper character evidence to be introduced during the second stage of trial, and that the sentences were excessive.

Petitioner now seeks federal habeas corpus relief pursuant to 28 U.S.C. § 2254 on the following alleged grounds:

- (1) that there is an absence of available state post-conviction corrective judicial process to protect his rights;
- (2) that his sentence was improperly enhanced by prior invalid convictions; and
- (3) that he was denied due process through counsel's ineffective assistance by his failure to subject the prosecution's case to a meaningful adversarial testing as defined in U.S. v. Cronin, 466 U.S. 648 (1984).

Respondents' Motion to Dismiss was filed June 19, 1992 and alleges petitioner has failed to exhaust his state remedies in regard to all of the grounds for relief raised by him.

Title 28 U.S.C. § 2254 provides in part:

(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under law of the State to raise, by any available procedure, the question presented.

The Advisory Committee Note to Rule 5 of the Rules Governing § 2254 Cases in the

United States District Courts states: "An alleged failure to exhaust state remedies as to any ground in the petition may be raised by a motion by the attorney general, thus avoiding the necessity of a formal answer as to that ground."

In Rose v. Lundy, 455 U.S. 509, 510 (1982), the United States Supreme Court held that a federal habeas corpus petition which contained exhausted and unexhausted claims was required to be dismissed by the federal habeas corpus court. The Court stated:

In this case we consider whether the exhaustion rule in 28 U.S.C. §§ 2254(b), (c) requires a federal district court to dismiss a petition for a writ of habeas corpus containing any claims that have not been exhausted in the state courts. Because a rule requiring exhaustion of all claims furthers the purposes underlying the habeas statutes, we hold that a district court must dismiss such 'mixed petitions,' leaving the prisoner with the choice of returning to state court to exhaust his claims or of amending or resubmitting the habeas petition to present only exhausted claims to the district court. (emphasis added).

A federal habeas petitioner must have fairly presented to the state courts the substance of his federal claim. In Anderson v. Harless, 459 U.S. 4, 6 (1982), the Supreme Court reversed the granting of a federal habeas petition and said:

... 28 U.S.C. § 2254 requires a federal habeas petitioner to provide the state courts with a 'fair opportunity' to apply controlling legal principles to the facts bearing upon his constitutional claim. It is not enough that all the facts necessary to support the federal claim were before the state courts ... or that a somewhat similar state-law claim was made. In addition, the habeas petitioner must have 'fairly presented' to the state courts the 'substance' of his federal habeas corpus claim. (citations omitted) (emphasis added).

The Tenth Circuit has noted that a "rigorously enforced" exhaustion policy is necessary to serve the end of protecting and promoting the State's role in resolving the constitutional issues raised in federal habeas petitions. Naranjo v. Ricketts, 696 F.2d 83, 87 (10th Cir. 1982).

The court finds that claims two and three raised in petitioner's petition for a writ of habeas corpus have not been exhausted in the state courts. The court determines that petitioner has an available state remedy for these claims under the Post-Conviction Relief Act of Oklahoma, 22 O.S. §§ 1080-1088.

Respondent's Motion to Dismiss (#3) is granted and petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is dismissed.

Dated this 24 day of June, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE 6-25-93

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

FILED

JUN 25 1993

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 -vs-)
)
 GARY L. JACKSON,)
 521-98-1269)
)
 Defendant,)

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

CIVIL NUMBER 93-C-559 E

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, United States of America, by and through its attorney, Clifton R. Byrd, District Counsel, Department of Veterans Affairs, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

Respectfully submitted,
UNITED STATES OF AMERICA

Clifton R. Byrd
District Counsel
Department of Veterans Affairs
125 South Main Street
Muskogee, OK 74401
Phone: (918) 687-2191

By: 
LISA A. SETTLE, Attorney

CERTIFICATE OF MAILING

This is to certify that on the _____ day of _____, 1993, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: GARY L. JACKSON, at 13706 23rd Place, Tulsa, OK 74136-1616.


GLORIA J. HIGHERS
Paralegal Specialist

ENTERED ON RECORD

DATE 6-25-93

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

FILED

JUN 25 1993

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

UNITED STATES OF AMERICA,)

Plaintiff,)

-vs-)

CIVIL NUMBER 93-C-366 E

JACK G. FRIEND,
556-15-1640

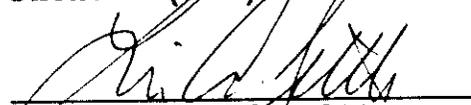
Defendant,)

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, United States of America, by and through its attorney, Clifton R. Byrd, District Counsel, Department of Veterans Affairs, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

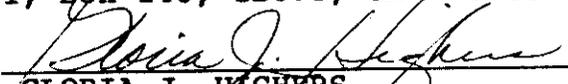
Respectfully submitted,
UNITED STATES OF AMERICA

Clifton R. Byrd
District Counsel
Department of Veterans Affairs
125 South Main Street
Muskogee, OK 74401
Phone: (918) 687-2191

By: 
LISA A. SETTEE, Attorney

CERTIFICATE OF MAILING

This is to certify that on the _____ day of _____, 1993, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: JACK G. FRIEND, at Route 1, Box 140, Grove, OK 74344.


GLORIA J. HIGHERS
Paralegal Specialist

ENTERED ON DOCKET

DATE 6-25-93

FILED

JUN 25 1993

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

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

BETTY GLENN,

Plaintiff,

v.

SHEARSON LEHMAN BROTHERS, INC.
and CLAUDIA HOLLIMAN,

Defendants.

Case No. 91-C-319-E

STIPULATION OF
DISMISSAL WITH PREJUDICE

Plaintiff, Betty Glenn, and Defendants, Shearson Lehman Brothers, Inc. and Claudia Holliman, pursuant to Fed. R. Civ. P. 41(a), hereby stipulate to the dismissal of this action with prejudice.

CONNER & WINTERS

By: David Newsome
P. David Newsome, Jr., OBA #6652
2400 First National Tower
Tulsa, Oklahoma 74103

ATTORNEYS FOR PLAINTIFF

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

By: Claire V Eagan
Claire V. Eagan, OBA #554
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172

ATTORNEYS FOR DEFENDANTS

DATE: 2-5-1993

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

FILED

JUN 24 1993

INTERNATIONAL ASSOCIATION OF)
MACHINISTS & AEROSPACE WORKERS,)
ARROW LODGE 1461,)

Plaintiff,)

v.)

PACCAR, INC.,)

Defendant,)

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

Case No. 92-C-556-B

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

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

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

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

IT IS SO ORDERED this 24 day of June, 1993.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

JUN 24 1993

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

WALTER RANDALL DIETZEL and)
LYNN DIETZEL)
)
Plaintiffs,)
)
vs.)
)
GILBERT WOODRUFF, an individual,)
and ALLIED PROPERTY AND CASUALTY)
INSURANCE COMPANY, a foreign)
insurance corporation,)
)
Defendants.)

Case No. 92-C-536-B /

F I L E D

JUN 24 1993

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

O R D E R

The Court has for consideration Defendant Allied Property and Casualty Insurance Company's (Allied) Motion For Summary Judgment (Docket #20) and Defendant Gilbert Woodruff's (Woodruff) Motion for Partial Summary Judgment (Docket #22).

I. STATEMENT OF THE CASE

This action is brought by Plaintiffs Walter and Lynn Dietzel against Allied Property and Casualty Insurance Company and Gilbert Woodruff for injuries allegedly sustained in an automobile collision which occurred on December 11, 1989, in Creek County, Oklahoma. Ms. Dietzel brings a cause of action not only for loss of her husband's services, contribution and consortium, but also for severe emotional and mental distress.

Plaintiffs allege that Mr. Woodruff's negligence caused the accident. Specifically, Plaintiffs allege that on or about

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December 11, 1989 at 5:20 p.m., Mr. Woodruff had stopped his vehicle in the right hand lane of the Turner Turnpike in Creek County, Oklahoma. Plaintiffs allege that at the time of Woodruff's actions it was dark outside. Plaintiffs further allege that Woodruff did not have any lights illuminated on his vehicle.

Plaintiff was travelling in the right hand lane as he approached the stopped vehicle. Plaintiff Lynn Dietzel was not involved in the accident nor did she witness the accident. To avoid a direct collision with the rear of Woodruff's car, Plaintiff Walter Dietzel swerved and clipped the rear bumper of Woodruff's car with the right front bumper of Plaintiff's car, causing the Plaintiff's vehicle to flip several times before coming to rest.

Plaintiffs had insurance policies with Allied which provided for uninsured motorist coverage, but not underinsured motorist coverage. The policies, under the section entitled "Uninsured Motorist Coverage", provide as follows:

We will pay damages which an "insured" is legally entitled to recover from the owner or operator of an insured motor vehicle because of bodily injury. . . .

* * *

Uninsured motor vehicle means a land motor vehicle or trailer of any type:

- 1: To which no bodily injury liability bond or policy applies at the time of the accident.
- 2: To which a bodily injury liability bond or policy applies at the time of the accident. In this case, its limit for bodily injury liability must be less than the minimum limit for bodily injury liability specified by the financial responsibility law of this state in which "your covered auto" is principally garaged.

The policies do not provide coverage for underinsured motorist. See, Deposition Transcript of Lynn Dietzel, p. 12, lines 24-25; and

p. 13, lines 1-3.

Plaintiffs purchased their insurance policies while residents of Columbia, Missouri. The Allied policies were purchased from an agency, The Insurance Group, Inc., also located in Columbia, Missouri, and were thereby entered into in Columbia, Missouri.

Defendant, Woodruff had liability insurance in place at the time of the accident applicable to Plaintiff's alleged damages. Woodruff's liability insurer was County Casualty Insurance Company. The limits on the Woodruff insurance policy were \$250,000.00 per person and \$500,000.00 per accident. See Defendant Woodruff's Answers to Allied's First Interrogatory.

In moving for Summary Judgment, Allied asserts that the Missouri insurance contracts between Allied and Plaintiffs do not provide for underinsured motorist coverage. Defendant, Woodruff asserts that he is entitled to judgment as a matter of law in his favor on the issue of his liability to Plaintiffs for property damage and to Plaintiff Lynn Dietzel for her alleged emotional and mental distress.

II. The Standard of Fed. R. Civ. P. 56 Motion for Summary Judgment

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Widon Third Oil and Gas v.

Federal Deposit Ins. Corp., 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

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

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

Additionally, under Federal Rule of Civil Procedure 56(d), a court may grant partial summary judgment to narrow the issues for trial when there is no genuine issue as to any material fact. Partial summary judgment is "merely a determination before the trial that certain issues shall be established in advance" of the impending trial. Luria Steel & Trading Corp. v. Ford, 9 F.R.D. 479, 481 (D. Neb. 1949). aff'd 192 F.2d 880 (8th Cir. 1951).

III.

Allied asserts that Missouri law should apply to the insurance policies at issue. The conflict of law rules for the forum state should apply to determine if the law of Missouri or the law of Oklahoma will be used to interpret the insurance policies issued to Plaintiffs. Oklahoma's choice of law statute, Okla. Stat. tit. 15, §162, provides:

A contract is to be interpreted according to

the law and usage of the place where it is to be performed, or, if it does not indicate a place of performance, according to the law and usage of the place it is made.

Thus, the general rule in the State of Oklahoma is that the law of the place where the contract is made will govern the contract's interpretation. In support for its position that the lex loci contractus rule should apply to this case, Allied cites Telex Corp. v. Hamilton, 576 P.2d 767, 768 (Okla. 1978). In Telex, the Court stated:

Even in the absence of an agreement stating what law would apply, the general rule of law is that the law where the contract is made or entered into governs with respect to its nature, validity, and interpretation. See, Clark v. First Nat. Bank of Marseilles, Ill., 59 Okl. 2, 157 P. 96 (1916).

Id. at 768.

The long standing lex loci rule of §162 and Telix, has recently been affirmed in Bohannan v. Allstate Ins. Co., 820 P.2d 787 (Okla. 1991). To determine the proper choice of law rules in motor vehicle insurance cases in Oklahoma, the court in Bohannan reviewed two cases, Rhody v. State Farm Mut. Ins. Co., 771 F.2d 1416 (10th Cir. 1985) and Pate v. MFA Mut. Ins. Co., 649 P.2d 809 (Okla. App. 1982). In analyzing the two cases, the Bohannan Court recognized that when the law of the place of contracting conflicted with the public policy of the State of Oklahoma, the public policy of Oklahoma would prevail. Thus, Oklahoma public policy plays a unique role in determining what law should apply to an insurance contract. Additionally, in adopting the lex loci rule, the Bohannan Court refused to adopt the significant relationship test

as set forth in the Restatement (Second) Conflicts of Laws at §§ 6, 188, and 193. The Bohannan Court stated:

The Restatement rules do not give paramount recognition to the statutory directives regarding uninsured/underinsured motorist insurance coverage. Thus, we must remain aligned with those states that continue to follow the lex loci contractus rule. However, the lex loci contractus rule must allow consideration for the public policy of the forum and interests of the conflicting states. Therefore, we adopt the following choice of laws rule to be applied in motor vehicle insurance cases involving conflicting state laws: The validity, interpretation, application and effect of the provisions of a motor vehicle insurance contract should be determined in accordance with the laws of the state in which the contract was made, unless those provisions are contrary to the public policy of Oklahoma, or unless the facts demonstrate that another jurisdiction has the most significant relationship with the subject matter and the parties.

Bohannan, 820 P.2d at 797.

In reaching its decision in Bohannan, the court determined that a California insurance policy which denied UM insurance benefits contracted for and paid for in Oklahoma was offensive to public policy. 820 P.2d at 793. However, the Bohannan court stated that a set-off as against liability benefits was not offensive to public policy. Id. The liability set-off was permissible because it was not prohibited under the Oklahoma statutes. Thus what offended Oklahoma public policy was the California provision that would deprive the injured party of uninsured motorist coverage contracted and paid for under Oklahoma law.

In the instant case, the Court concludes that the law of the place where the contracts were made should govern the interpretation of the insurance policies, provided that such law

does not offend the public policy of Oklahoma. Okla. tit. 15 § 162; Bohannan, 820 P.2d at 797.

This Court further finds that application of the Missouri law to the Missouri insurance policies, which limits Plaintiff's coverage to uninsured coverage only, does not offend Oklahoma public policy. Application of Missouri law does not deprive Plaintiffs of any benefit of any insurance policy which would be governed under Oklahoma law. Additionally, Okla. Stat. tit. 36 § 3636 which requires UM coverage in Oklahoma, only applies to insurance policies which are "issued, delivered, renewed or extended in [Oklahoma]." The Missouri policy does not deny UM insurance benefits contracted and paid for, pursuant to Oklahoma law. Thus, application of Missouri law is not offensive to Oklahoma's public policy.

Having determined that the Missouri insurance policies do not offend the public policy of Oklahoma, this Court further concludes, that the insurance policies at issue herein were "made" in the State of Missouri and subject to that states laws. The insurance policies were purchased from an insurance agent in Columbia, Missouri. Furthermore, the insurance policies were purchased by Plaintiffs as residents of Missouri. Therefore, the Court concludes the place of contracting was Missouri and law of Missouri should apply. Bohannan, 820 P.2d at 797.

The State of Missouri does not mandate that motorists and vehicle owners carry underinsured motorist coverage. Mo. Ann. Stat. §379.203.1 (Vernon 1992); Gilchrist v. Defoe, 594 SO.2d 513,

514 (5th Cir. 1992); Rodriguez v. General Acc. Ins. Co., 808 S.W.2d 379 (Mo. banc 1991). Nor does Missouri public policy require the inclusion of underinsured motorist coverage in insurance policies. Geneser v. State Farm Mut. Automobile Ins. Co., 787 S.W.2d 288 (Mo.App. 1989). Thus, there is no requirement for underinsured motorist coverage in Missouri.

Upon review of the insurance policies between Allied and Plaintiffs, this Court concludes that no underinsured motorist coverage existed in the policies. However, if Defendant Woodruff had maintained liability insurance below the requirements of the Missouri Safety Responsibility Law, then Plaintiffs would be entitled to recover the "difference between the tortfeasor's liability insurance and the minimum liability requirements." Id. at 290. However, this is not the situation the Court finds. Defendant Woodruff's liability insurance of \$250,000.00 is well above the Missouri minimum. Thus according to Missouri law, there is no question that Plaintiffs would not be entitled to recovery under their uninsured motorist coverage.

IV.

Defendant Woodruff asserts that he is entitled to partial summary judgment as to two elements of Plaintiff's claimed damages. First, Woodruff asserts that Plaintiffs are not the real parties in interest as to any property damage to the vehicle Walter Dietzel was driving at the time of the accident. Secondly, as to Plaintiff Lynn Dietzel's alleged damages for emotional distress, Woodruff asserts that he is entitled to summary judgment because Plaintiff

Lynn Dietzel was not directly involved in the accident and she makes no claim for personal injuries.

Federal Rule of Civil Procedure 17(a) states that "[e]very action shall be prosecuted in the name of the real party in interest." see also Okla. Stat. tit. 12, § 2017. As explained in the comments to Federal Rule of Civil Procedure 17(a), the purpose of the "real party in interest" rule is "to protect the defendant against a subsequent action by the party actually entitled to recover, and to insure generally that the judgment will have its proper effect as res judicata." The question of who is the real party in interest for an action brought in federal court, is a question of federal law. To determine who is the "real party in interest" under federal law, a court must "first ascertain who has the substantive right of action" according to the law of the state where the action arose. American Fidelity & Casualty Co. v. All American Bus Lines Inc., 179 F.2d 7, 10 (10th Cir. 1949).

In Oklahoma, the real party in interest is the party who is legally entitled to the proceeds of a claim in litigation. Aetna Casualty & Sur. Co. v. Assoc. Transports, Inc., 512 P.2d 137, 140 (1973). When a suit is brought by a nominal plaintiff, unless a judgment for or against the defendant would protect the defendant from further action by the real party in interest, the defendant has a right to have the real party in interest prosecute the suit. Oklahoma Wildlife Federation, Inc. v. Nigh, 513 P.2d 310, 314 (Okla. 1973).

Non-party Andy Dietzel, who was the true owner of the vehicle

driven by Walter Dietzel in the accident, could arguably obtain a judgment against Woodruff as the real party in interest. See Deposition of Walter Dietzel, P. 67, L4-9. In this Court's opinion, Defendant Woodruff's dual exposure is a situation that both the federal and Oklahoma real party in interest rules were designed to address.

Federal Rule of Civil Procedure 17(a) also states that "[n]o action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed." Defendant Woodruff filed his Motion for Partial Summary Judgment on May 14, 1993, and this Court has yet to receive a response from the Plaintiffs. Local Rule 15 for the Northern District of Oklahoma mandates that "memoranda in opposition" to motions "shall be filed within fifteen (15) days in a civil case." Thus, not only has a reasonable amount of time passed but the allowable amount of time has also passed for Plaintiff to respond and correct the deficiency in the named parties.

V.

Defendant Woodruff also asserts that he is entitled to summary judgment as to Plaintiff Lynn Dietzel's claim for emotional distress because she was not directly involved in the accident nor does she make a claim for personal injuries.

In Oklahoma, no recovery may be had for "mental suffering which is not produced by, connected with or the result of physical suffering or injury to the person enduring the mental anguish." Ellington v. Coca-Cola Bottling Co. of Tulsa, Inc., 717 P.2d 109,

111 (Okla. 1986), citing St. Louis & S.F. Ry. Co. v. Keiffer, 150 P. 1026 (Okla. 1915). However, where the negligence is directed toward the person claiming the mental suffering and a connection exists between the physical injury and mental suffering, recovery would be allowed whether or not the physical injury preceded the mental suffering. Ellington, 717 P.2d at 111. Thus, recovery is possible for mental anguish, whether it was caused by physical injury or whether it caused physical suffering. Id.

This Court concludes that to recover on her emotional distress claim, Plaintiff Lynn Dietzel would either have to prove physical injuries in connection with her emotional distress or demonstrate that her emotional distress caused physical injuries. Id. at 111. Although Plaintiff Lynn Dietzel was not present nor did she witness the accident, it is arguable that Lynn Dietzel may have suffered some mental pain and anguish by reason of the fact that her husband had been severely injured. However, from the record presented, Lynn Dietzel appears to have suffered no physical suffering or injury. In fact, allegations of injuries to Lynn Dietzel were not part of Plaintiff's original petition¹, nor has an amended complaint been filed which includes such damages. Thus, as a matter of law, Plaintiff Lynn Dietzel, without claiming physical injuries, cannot recover for emotional distress.

VI.

The Court concludes that Plaintiffs, as to motions for summary

¹ This case was originally filed in The District Court for Creek County, Oklahoma.

judgment filed by both Defendant Allied and Defendant Woodruff, failed to comply with Rule 15 of the Local Rules for the Northern District of Oklahoma. Rule 15(a) states in part that:

Each motion, application and objection filed in every civil and criminal case shall set out in the specific point or points upon which the motion is brought and shall be accompanied by a concise brief. Memoranda in opposition to such motion and objection shall be filed within fifteen (15) days in a civil case [f]ailure to comply with this paragraph will constitute waiver of objection by the party not complying, and such failure to comply will constitute a confession of the matters raised by such pleadings.

This Court finds that Plaintiffs have failed to respond in a timely manner to either of the motions for summary judgment and as a result this Court must take such failure as a confession of matters asserted in the Allied and Woodruff motions.

For the reasons set out above, Defendant Allied's Motion for Summary Judgment should be and is hereby **GRANTED** and Allied is herewith dismissed from this action. Defendant Woodruff's Motion for Summary Judgment as to the property damage claim is hereby **GRANTED** and Defendant Woodruff's Motion for Summary Judgment as it relates to Plaintiff Lynn Dietzel's claim for emotional distress is hereby **GRANTED**.

IT IS SO ORDERED this 24 day of June, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 6-24-93

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

FILED

JUN 24 1993

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

SIGGI GRIMM MOTORS, INC., et al.,)

Plaintiffs,)

vs.)

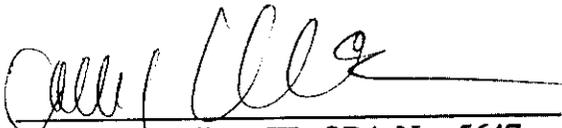
NISSAN MOTOR ACCEPTANCE)
CORPORATION,)

Defendant.)

Case No. 92-C-1079-E

STIPULATION OF DISMISSAL WITH PREJUDICE

Patrick J. Malloy, III, in his capacity as Trustee for Chapter 11 debtor Siggie Grimm Motors, Inc., plaintiff, and Nissan Motor Acceptance Corporation, defendant, hereby stipulate and agree that the claims and causes of action asserted by and between each of the parties hereto shall be dismissed, with prejudice, with each party to bear their own costs. The parties to this adversary proceeding through counsel of record have executed this stipulation of dismissal in accordance with Fed.R.Bankr.P. 7041 and Fed.R.Civ.P. 41.



Patrick J. Malloy, III, OBA No. 5647
1924 South Utica, Suite 810
Tulsa, Oklahoma 74104
(918) 747-3493

ATTORNEYS FOR PLAINTIFF



Carol Wood, OBA No. 10532
15 West Sixth Street, Suite 1700
Tulsa, Oklahoma 74119-5466
(918) 582-1564

ATTORNEY FOR DEFENDANT

SECRET
JUN 24 1993

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

CHRIS BADGWELL,
Petitioner,
vs.
WARDEN, MICHAEL CODY,
Respondent.

)
)
)
)
)
)
)
)
)
)

No. 93-C-336-Barnard M. Lawrence, C. J. X
U.S. DISTRICT COURT

JUL 24 1993
[Signature]

ORDER

Petitioner was convicted of first-degree murder on April 25, 1989. Over four years have elapsed, and no appeal has been perfected before the Oklahoma Court of Criminal Appeals. Petitioner alleges that he has been denied his constitutional right to a direct appeal through no fault of his own. Neither Petitioner nor Respondent has submitted evidence regarding the reason no appeal has been filed.

In the interests of comity, the court shall allow the State to explore this issue. This case shall be stayed, and Petitioner shall be required to request an appeal out of time with the District Court of Tulsa County if he wishes to further pursue this matter.

IT IS, THEREFORE, HEREBY ORDERED that:

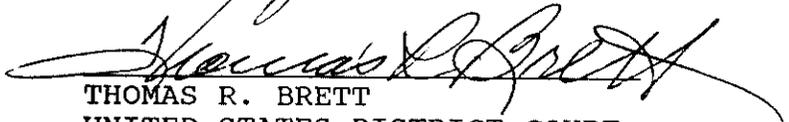
1. This case is stayed;
2. Petitioner shall file a request to file an appeal out of time with the District Court of Tulsa County within thirty (30) days if he wishes to continue to pursue this matter. Petitioner shall file a notice with this court if he files such a request. If no

[Handwritten mark]

notice is received by the court within thirty (30) days, the court shall proceed to dismiss this case.

3. Either party may move to lift the stay in this case after Petitioner's request to file an appeal out of time has been decided.

SO ORDERED THIS 24 day of June, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT COURT

JUN 24 1993

FILED

JUN 24 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

DANIEL RESOURCE DEVELOPMENT, INC.,)
)
Plaintiff,)
)
v.)
)
PAX PETROLEUM CORPORATION,)
)
Defendant.)

Case No. 92-C-586-B

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

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

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

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

IT IS SO ORDERED this 24th day of June, 1993.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

JUN 24 1993

FILED

JUN 24 1993

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

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

WILBURN ROLLO MANSFIELD,)
)
 Plaintiff,)
)
 vs.)
)
 RON CHAMPION, et al.,)
)
 Defendants.)

No. 90-C-683-B ✓

ORDER

Pursuant to the opinion of the Court of Appeals for the Tenth Circuit filed May 3, 1993, IT IS HEREBY ORDERED that Count II (Two) of the Judgment and Sentence rendered on October 12, 1984, in Tulsa County, Oklahoma, Case No. CRF-84-2645, for robbery with a firearm, after former conviction of two or more felonies, is hereby vacated and set aside. IT IS FURTHER ORDERED the Judgment and Sentence regarding Count I (One) rendered on October 12, 1984, in Tulsa County, Oklahoma, Case No. CRF-84-2645, for robbery with a firearm, after former conviction of two or more felonies, remains in force and effect.

DATED this 24th day of June, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

75-

DATE JUN 24 1993

FILED

JUN 23 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

WALTER RANDALL DIETZEL and
LYNN DIETZEL

Plaintiffs,

vs.

GILBERT WOODRUFF, an individual,
and ALLIED PROPERTY AND CASUALTY
INSURANCE COMPANY,
a foreign insurance corporation,

Defendants.

No. 92-C-536-E

B /

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 23rd day of June the above cause comes on before me the District Judge on the Plaintiffs' Stipulation for Order of Dismissal With Prejudice. After review of the statements and allegations contained in Plaintiffs' Stipulation for Order of Dismissal, the Court finds the matter to be at issue and hereby allows Plaintiff to dismiss any and all claims against Allied Property and Casualty Insurance Company, a foreign insurance corporation.

IT IS SO ORDERED.

Thomas R. Brett
Judge of the District Court
for Thomas R. Brett,

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ENTERED ON DOCKET
DATE JUN 23 1993

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

FILED

JUN 22 1993

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

EUGENE TILMAN,

Plaintiff,

vs.

STATE FARM FIRE AND CASUALTY
COMPANY,

Defendant.

Case No. 91-C-211-C

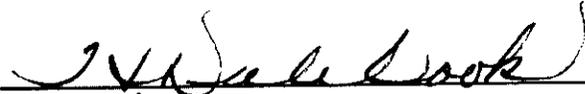
ORDER

The Court has before it plaintiff's application for attorney fees and the objections filed by the defendant. Plaintiff is allowed by statute a recovery of reasonable and proper attorney fees as prevailing party on his claim for breach of contract. However, since the plaintiff did not prevail on his claim for bad faith, the defendant is entitled to have that portion of the time pursuing the bad faith claim removed from the overall fee award.

The Court has considered defendant's objection to plaintiff's attorney's time records, in particular, the lack of specificity. In view of the objection, the Court directs plaintiff's attorney to amend his application for fees by setting forth his determination of a reasonable fee associated with his time and expense in pursuing plaintiff's claim of breach of contract, including providing detailed time records in order that defense counsel may review the same. In the event the parties are unable to stipulate as to a reasonable fee, the Court will make the determination from review of plaintiff's detailed time records and defendant's itemized objections.

The plaintiff is granted fifteen days to amend his application for attorney fees and the defendant is granted ten days thereafter to file any objections.

IT IS SO ORDERED this 22nd day of June, 1993.



H. DALE COOK
UNITED STATES DISTRICT JUDGE

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

FILED

JUN 22 1993

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

EUGENE TILMAN,)
)
 Plaintiff,)
)
 vs.)
)
 STATE FARM FIRE AND)
 CASUALTY COMPANY,)
)
 Defendant.)

No. 91-C-211-C

J U D G M E N T

This matter coming on for Jury Trial, on the 2nd day of November, 1992, and the Plaintiff appearing in person and with his attorneys of record, Gregory G. Meier and Fred Stoops, and the Defendant appearing through its attorneys, Jerry Fraley and William Cathcart.

The jury returned a unanimous verdict on November 6, 1992, finding in favor of plaintiff, Eugene Tilman, on his claim for breach of insurance contract and found the amount of damages as to Plaintiff's dwelling in the sum \$61,800.00 and as to Plaintiff's personal property in the sum of \$13,000.00. The jury found in favor of the defendant, State Farm Fire and Casualty on Plaintiff's claim for bad faith.

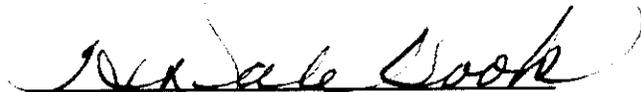
Pursuant to the agreement of the parties, the Court adjusted this verdict by set off for the amount paid to the mortgagee, ITT Financial Services, in the sum of \$29,677.41, as well as the amount advanced to the Plaintiff by the Defendant in the sum of \$2,855.82 and the deductible amount of \$250.00. Applying the set offs as aforesaid, Plaintiff received

04

judgment against the Defendant in the sum of \$42,016.77. Pursuant to the provisions of Title 36 O.S. §3629(B), the Court finds that pre-judgment interest in the sum of \$11,066.27 shall be awarded to Plaintiff and against the Defendant.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED by the Court that Judgment is entered in favor of the Plaintiff Eugene Tilman and against the Defendant State Farm Fire and Casualty in the sum of \$42,016.77 plus pre-judgment interest of \$11,066.27.

IT IS ORDERED this 22nd day of June, 1993.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

JUN 23 1993

DATE _____

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

FILED

JUN 22 1993

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

EUGENE TILMAN,)
)
Plaintiff,)
)
vs.)
)
STATE FARM FIRE AND CASUALTY)
COMPANY,)
)
Defendant.)

No. 91-C-211-C

ORDER

The Court has before it plaintiff's March 4, 1993 "Motion to Settle Journal Entry of Judgment." The disagreement between the parties on the wording of the proposed judgment is whether plaintiff prevailed on his claim of bad faith. The jury was provided with a separate verdict form for each of plaintiff's claims. Verdict Form 1 was used to determine plaintiff's claim for breach of contract, Verdict Form 2 for bad faith and Verdict Form 3 for punitive damages. Although each form had a blank next to the party's name to allow the jury to mark its unanimous finding as to the prevailing party, the jury either deliberately or through inadvertence did not make its determination by this method. Instead, the jury indicated its verdict in favor of the plaintiff on Verdict Form 1 as to the breach of contract claim by filling in the blank supplied for the amount of contract damages awarded plaintiff. Verdict Form 1 directed the jury to proceed to consider Verdict Form 2 only if it found in favor of the plaintiff on Verdict Form 1. Consistently, on Verdict Form 2, the jury placed a zero under plaintiff's name in the blank for damages. Verdict

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Form 3 indicated that the jury was to consider plaintiff's claim for punitive damages only if the jury found in favor of plaintiff as to Verdict Form 2. The jury did not place any marks on Verdict Form 3.

It is clear to the Court that the jury found in favor of the defendant on plaintiff's claim for bad faith. It is reasonable to conclude that the jury placed a zero on Verdict Form 2 in compliance with the Court's instruction to proceed to consider Verdict Form 2 if the jury found in favor of the plaintiff on his claim for breach of contract contained in Verdict Form 1. Further, an award of damages is a necessary element of recovery under plaintiff's claim for bad faith and by a unanimous verdict of zero damages the defendant has prevailed on that claim as a matter of law.

Thus the Court has modified the judgment proposed by the parties to reflect the findings of the jury and has simultaneously filed the judgment with entry of this order.

IT IS SO ORDERED this 21st day of June, 1993.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 6-23-93

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

FILED

JUN 23 1993

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

GARY B. HOBBS,

Plaintiff,

vs.

SECURITY NATIONAL BANK OF
SAPULPA, OKLAHOMA, et al.,

Defendants.

No. 93-C-59-E

ORDER

Plaintiff is an inmate incarcerated within the Federal Bureau of Prisons. He filed this civil RICO action pursuant to 28 U.S.C. § 1964. The court finds this entire action should be dismissed pursuant to 28 U.S.C. § 1915(d) and Fed. R. Civ. P. 12(b)(6).

Plaintiff initiated this action in forma pauperis pursuant to 28 U.S.C. § 1915. In Neitzke v. Williams, 490 U.S. 319 (1989), the Supreme Court recognized that a court is faced with two somewhat opposing responsibilities when determining which actions shall proceed with a plaintiff who is being allowed to commence an in forma pauperis action. First, a court must be sure that it complies with the "over-arching goal [of] the in forma pauperis statute: 'to assure equality of consideration for all litigants.'" Id. at 329, quoting Coppedge v. United States, 369 U.S. 438, 447 (1962). Commensurate with that responsibility, however, is the realization that § 1915(d) "is designed largely to discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants generally do not initiate because of the costs of bringing suit and because of the threat of sanctions for

bringing vexatious suits under Federal Rule of Civil Procedure 11." Id. at 327.

Consequently, courts have the responsibility to dismiss lawsuits which are frivolous or malicious. A complaint is frivolous where it lacks an arguable basis either in law or in fact. Id. at 325. The Supreme Court recently revisited Neitzke v. Williams in Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728 (1992). Denton emphasizes that a court is not bound to accept without question the truth of a plaintiff's allegations. Id. at 1733. The Court held that a dismissal under § 1915(d) is entrusted to the discretion of the court entertaining the in forma pauperis action, and should only be reviewed for an abuse of discretion. Id. at 1734.

Applying Neitzke and Denton to the case at hand, this court finds that Plaintiff's complaint lacks an arguable basis in fact, and should be dismissed as frivolous. In doing so, the court takes judicial notice of the record in the criminal actions against Plaintiff before this court.

Regarding the legal merits of Plaintiff's RICO claims, the court finds them frivolous, and also finds they do not state a claim upon which relief can be granted. To state a civil RICO claim, Plaintiffs must allege "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985) (footnote omitted). Plaintiffs' complaint is deficient in many aspects.

The predicate acts which may constitute "racketeering activity" are set forth in 18 U.S.C. § 1961(1). Plaintiff does not

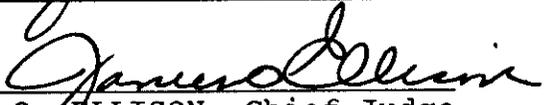
sufficiently allege facts to constitute any racketeering activity under § 1961(1). There is no allegation of wire fraud or mail fraud or any other proper predicate act made with particularity as to time, place, content and how any communication furthered a fraudulent scheme as required by Fed. R. Civ. P. 9(b). See Cayman Exploration Inc. v. United Gas Pipeline Co., 873 F.2d 1357, 1362 (10th Cir. 1989); Farlow v. Peat, Marwick, Mitchell & Co., 956 F.2d 982,989-90 (10th Cir. 1992).

Plaintiff has also failed to adequately allege a pattern of racketeering activity. Plaintiff cannot show the necessary continuity required by decisional law, such as continued fraud beyond the transaction in question, criminal activities of a continuing nature as part of the defendants' business, other alleged victims, a regular way of doing business through criminal activities, a long term association that exists for criminal purposes, or long time fraudulent activities. See Kehr Packages, Inc. v. Fidelcor Inc., 926 F.2d 1406, 1417 (3d Cir. 1991); Feinstein v. RTC, 942 F.2d 34 (1st Cir. 1991).

Other deficiencies include Plaintiff's failure to identify a proper enterprise, and failure to adequately allege a direct injury caused by racketeering. Plaintiff simply cannot state a valid RICO claim within the context of his claims. Because Plaintiff's federal RICO claims fail, his state claims can be dismissed as well. Plaintiff's state claims also have various defects, including the failure to state a claim, frivolity, and the statute of limitations bar.

Thus, for all the above reasons, this action is hereby
dismissed.

SO ORDERED THIS 23rd day of June, 1993.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

1915(d) "is designed largely to discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants generally do not initiate because of the costs of bringing suit and because of the threat of sanctions for bringing vexatious suits under Federal Rule of Civil Procedure 11." Id. at 327.

Consequently, courts have the responsibility to dismiss lawsuits which are frivolous or malicious. A complaint is frivolous where it lacks an arguable basis either in law or in fact. Id. at 325. The Supreme Court recently revisited Neitzke v. Williams in Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728 (1992). Denton emphasizes that a court is not bound to accept without question the truth of a plaintiff's allegations. Id. at 1733. The Court held that a dismissal under § 1915(d) is entrusted to the discretion of the court entertaining the in forma pauperis action, and should only be reviewed for an abuse of discretion. Id. at 1734.

Applying Neitzke and Denton to the case at hand, this court finds that Plaintiff's complaint lacks an arguable basis in fact, and should be dismissed as frivolous. In doing so, the court takes judicial notice of the record in the criminal actions against Plaintiff before this court.

Regarding the legal merits of Plaintiff's RICO claims, the court finds them frivolous, and also finds they do not state a claim upon which relief can be granted. To state a civil RICO claim, Plaintiffs must allege "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." Sedima, S.P.R.L.

v. Imrex Co., 473 U.S. 479, 496 (1985) (footnote omitted).
Plaintiffs' complaint is deficient in many aspects.

The predicate acts which may constitute "racketeering activity" are set forth in 18 U.S.C. § 1961(1). Plaintiff does not sufficiently allege facts to constitute any racketeering activity under § 1961(1). There is no allegation of wire fraud or mail fraud or any other proper predicate act made with particularity as to time, place, content and how any communication furthered a fraudulent scheme as required by Fed. R. Civ. P. 9(b). See Cayman Exploration Inc. v. United Gas Pipeline Co., 873 F.2d 1357, 1362 (10th Cir. 1989); Farlow v. Peat Marwick, Mitchell & Co., 956 F.2d 982, 989-90 (10th Cir. 1992).

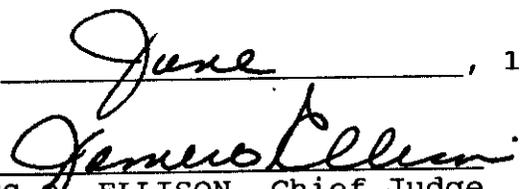
Plaintiff has also failed to adequately allege a pattern of racketeering activity. Plaintiff cannot show the necessary continuity required by decisional law, such as continued fraud beyond the transaction in question, criminal activities of a continuing nature as part of the defendants' business, other alleged victims, a regular way of doing business through criminal activities, a long term association that exists for criminal purposes, or long time fraudulent activities. See Kehr Packages, Inc. v. Fidelcor Inc., 926 F.2d 1406, 1417 (3d Cir. 1991); Feinstein v. RTC, 942 F.2d 34 (1st Cir. 1991).

Other deficiencies include Plaintiff's failure to identify a proper enterprise, and failure to adequately allege a direct injury caused by racketeering. The court finds Plaintiff simply cannot state a valid RICO claim within the context of his numerous claims.

Because Plaintiff's federal RICO claims fail, his state claims can be dismissed as well. Plaintiff's state claims also have various defects which compel dismissal.

Thus, for all the above reasons, this action is hereby dismissed.

SO ORDERED THIS 23rd day of June, 1993.


JAMES C. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 6-23-93

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

Harold Wayne Fisher,)
)
 Plaintiff,)
)
 v.)
)
 United States of America,)
)
 Defendant.)

United States of America,)
)
 Counterclaim Plaintiff,)
)
 v.)
)
 Norma Cook,)
)
 Counterclaim Defendant.)

Case No. 92-C-129-E

FILED

JUN 23 1993

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

JUDGMENT

Pursuant to the agreement of the parties, judgment is entered in favor of the United States and against Norma Cook for the unpaid assessed balance of the penalty assessed pursuant to Section 6672 of the Internal Revenue Code, based on Cook's willful failure to collect, truthfully account for, and pay over to the United States the withheld employee income and FICA taxes due from Wedgewood Golf Corporation for the second through fourth quarters of 1988 in the amount of \$17,454.52, plus interest accruing after the date of assessment, February 5, 1990, pursuant to 26 U.S.C. Sections 6601, 6621, and 6622, and 28 U.S.C. Section 1961(c) until paid.

DATED: June 27, 1993

James O. Quinn
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND SUBSTANCE:



JOHN D. RUSSELL
Trial Attorney, Tax Division
U.S. Department of Justice
P. O. Box 7238, Ben Franklin Station
Washington, D.C. 20044
Telephone (202) 514-8220

Attorney for the United States



NORMA COOK
Post Office Box 184
Sand Springs, OK 74063

Pro Se

ENTERED ON DOCKET

DATE 6-23-93

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 THREE THOUSAND FIVE HUNDRED)
 FIFTY AND NO/100 DOLLARS)
 (\$3,550.00) IN UNITED STATES)
 CURRENCY,)
)
 Defendant.)

CIVIL ACTION NO. 92-C-1049-E

FILED

JUN 23 1993

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

This cause having come before this Court upon Plaintiff's Application filed herein, and being otherwise fully apprised in the premises, the Court finds as follows:

The verified Complaint for Forfeiture In Rem was filed in this action on the 17th day of November 1992; the Complaint alleges that the defendant currency, to-wit:

**THREE THOUSAND FIVE HUNDRED
FIFTY AND NO/100 DOLLARS
(\$3,550.00) IN UNITED STATES
CURRENCY,**

is subject to forfeiture pursuant to 21 U.S.C. § 881.

The Warrant of Arrest and Notice In Rem for the defendant currency was issued on November 30, 1993, by the Clerk of this Court.

The United States Marshals Service personally served a copy of the Complaint for Forfeiture In Rem and the Warrant of

Arrest and Notice In Rem on the defendant currency on December 7, 1992, and on Randy Glover on December 3, 1992.

Form 285 of the United States Marshals Service reflecting service on the defendant currency and Randy Glover is on file herein.

All persons interested in the defendant currency, if any, were required to file their claims herein within ten (10) days after service upon them of the Warrant of Arrest and Notice In Rem, publication of the Notice of Arrest and Seizure, or actual notice of this action, whichever occurred first, and were required to file their answer(s) to the Complaint within twenty (20) days after filing their respective claims.

The defendant currency, upon which personal service was effectuated more than twenty (20) days ago, has failed to file a claim or answer, as directed in the Warrant of Arrest and Notice In Rem on file herein.

No persons or entities have filed a Claim or Answer as to the defendant currency. On January 5, 1993, Randy Wayne Glover and plaintiff, the United States of America, entered into a Stipulation for Stay of Time for Claimant to Respond to Complaint, pending determination by the Asset Forfeiture Office, Washington, D.C., on Randy Wayne Glover's Petition for Remission filed in the administrative action, and which was forwarded to the Asset Forfeiture Office on February 26, 1993, with the

recommendation of the investigating agency and the United States Attorney for the Northern District of Oklahoma. Thereafter, on April 1, 1993, Randy Wayne Glover filed his Withdrawal of Claim in this action, whereby he consented to the forfeiture of the defendant currency. No other persons or entities have plead or otherwise defended in this suit as to the defendant currency, and the time for presenting claims and answers, or other pleadings, regarding the defendant currency has expired; and, therefore, default exists as to the defendant currency and all persons and/or entities interest therein.

The United States Marshals Service gave public notice of this action and arrest to all persons and entities by advertisement in the Tulsa Daily Commerce & Legal News on February 4, 11, and 18, 1993, and Proof of Publication was filed of record on the 12th day of March 1993.

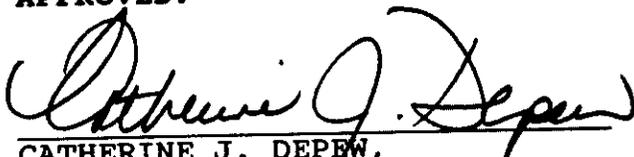
IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that Judgment be entered against the defendant currency and against all persons and/or entities, if any, having an interest in such currency, and that the defendant currency be, and the same is, hereby forfeited to the United States of America for disposition by the United States Marshal according to law, and that no right, title, or interest shall exist in any other party.

Entered this 23 day of June, 1993.

S/ JAMES O. ELLISON

JAMES O. ELLISON, Chief Judge
of the United States District
Court for the Northern District of
Oklahoma

APPROVED:



CATHERINE J. DEPEW,
Assistant United States Attorney

CJD/ch

N: \UDD\CHOOK\FC\GLOVER.R\02969

JUN 23 1993

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

FILED

JUN 22 1993

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

M. IRENE LOOTS,)
)
 Plaintiff,)
)
 vs.)
)
 FARMERS INSURANCE COMPANY, INC.,)
)
 Defendant.)

Case No. 92-C-784-B

ORDER

Now before the Court is Defendant's Appeal (Docket #27) from the Magistrate Judge's Discovery Order of April 30, 1993, granting Plaintiff's Motion for a Protective Order. Defendant, Farmers Insurance Company ("Farmers"), asks the Court to reverse the Magistrate Judge's Order and allow Farmers to depose Plaintiff's trial counsel, Anthony Sutton ("Sutton").

Plaintiff, M. Irene Loots ("Loots"), filed her second amended complaint March 2, 1993, alleging breach of insurance contract and breach of implied covenant of good faith and fair dealing. On April 28, 1993, attorney Sutton received the following Notice from Farmers:

COMES NOW the defendant, Farmers Insurance Company, Inc., and gives notice that this defendant will take the discovery deposition of ... Anthony Sutton on Monday, May 3, 1993 at 2:30 p.m.

Plaintiff immediately filed a motion for a protective order asking that Farmers be prohibited from taking Sutton's deposition. Magistrate Judge Wolfe held an expedited hearing on the motion April 30, 1993, and entered the following Order:

43

Plaintiff's Motion for Protective Order is granted as regards any deposition of Mr. Anthony Sutton, the undersigned finding that he is trial counsel and may not be deposed or made a witness in this action absent further specific order of the court.

Farmers now appeals the Magistrate Judge's ruling. Farmers denies that it has dealt with Plaintiff in bad faith or that its investigation into Plaintiff's claim has been inadequate. Farmers contends that its investigation was and has been severely hampered due to Plaintiff's failure to forward medical records, bills and other information.

Farmers argues it should be allowed to take Sutton's deposition (and call him as a witness) because Plaintiff is alleging "bad faith acts" on the part of Farmers both before and after the filing of the present lawsuit.¹ Farmers asserts that all negotiations since the initiation of this lawsuit have been with Sutton and therefore Sutton is a "necessary, material fact witness as to plaintiff's post-lawsuit 'bad faith' allegations." Farmers states that it desires to depose Sutton to obtain "times, dates, document requests, offers/counteroffers, and medical documents" which were in Sutton's possession or within his knowledge during the course of this litigation.

Plaintiff responds by arguing that "there have been no communications whatsoever between Sutton and Farmers' representatives at any time." Plaintiff further contends that the

¹ The Magistrate Judge permitted the Defendant to take the deposition of William Morris, the attorney who represented Plaintiff in negotiations conducted prior to filing the instant lawsuit.

only negotiations since the filing of this action have been in the form of Plaintiff's written demand letters, Defendant's Offers to Confess Judgment, and a Court-ordered settlement conference. Plaintiff argues that a deposition of Plaintiff's trial counsel regarding these matters is unnecessary and duplicative. Plaintiff also asserts that prior to filing this action, she provided Farmers with a medical authorization form granting Farmers unrestricted access to her medical records and therefore when and how Sutton obtained those same records is irrelevant.

Farmers cites three state court "bad faith" cases in which the Defendant was permitted to depose the Plaintiff's counsel. Fireman's Fund Ins. Co. v. Superior Court, 140 Cal.Rptr. 677, 72 Cal.App.3d 786 (1977); Merit Plan Ins. Co. v. Superior Court, 177 Cal.Rptr. 236, 124 Cal.App.3d 255 (1981); and Riggs v. Schoering, 822 S.W.2d 414 (Ky. 1992). Each of these cases require the Defendant to make a strong showing of need and substantial good cause for taking trial counsel's deposition. In Fireman's Fund, the Court allowed such a deposition where defendant showed "no other means exist[ed] to obtain the information; the information sought [was] relevant and nonprivileged; and the information [was] crucial to the preparation of the case." 140 Cal.Rptr. at 679.

Farmers has failed in the instant case to establish what relevant nonprivileged information Sutton may possess that Farmers cannot obtain elsewhere. Farmers vague reference to a need for "times," "dates" and "medical documents" does not satisfy its obligation to show that the deposition is crucial and needed for

something more than a fishing expedition. Therefore, the Court concludes Farmers has failed to demonstrate sufficient good cause for taking Sutton's deposition.

Pursuant to Local Rule 32(c), a Judge of this Court shall set aside any portion of a Magistrate's order found to be clearly erroneous or contrary to law. This Court does not find the Magistrate Judge's Discovery Order of April 30, 1993, to be clearly erroneous or contrary to law.

For all the above stated reasons, the Magistrate Judge's Discovery Order of April 30, 1993, granting Plaintiff's Motion for a Protective Order should be and the same is hereby AFFIRMED.

IT IS SO ORDERED THIS 27th DAY OF JUNE, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

JUN 21 1993
FILED

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

JUN 21 1993

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

STEPHANIE LINTHICUM)
)
Plaintiff,)
)
vs.)
)
U.S. EXPRESS, INC., a foreign)
corporation, and DAVID EUGENE)
HESSENFLOW,)
)
Defendants.)

Case No. 92-C-844-B

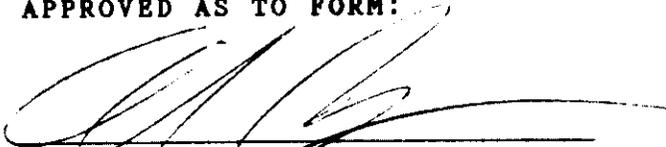
ORDER FOR DISMISSAL WITH PREJUDICE

Now on this 21 day of June, 1993,
upon a Joint Application for Dismissal filed herein by R. Allen
Benningfield, attorney for Plaintiff and Walter D. Haskins,
attorney for Defendants, the Court finds, orders and decrees that
the above entitled cause should be and is hereby dismissed with
prejudice to the bringing of any future action thereon.

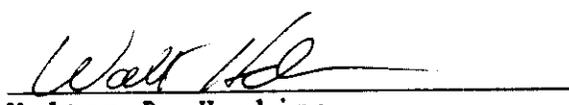
S/ THOMAS BRETT

United States District Judge

APPROVED AS TO FORM:



R. Allen Benningfield
Attorney for Plaintiff



Walter D. Haskins
Attorney for Defendants

ENTERED ON DOCKET

DATE JUN 23 1993

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 TERRY LEE JACKSON a/k/a TERRY L.)
 JACKSON; COUNTY TREASURER, Tulsa)
 County, Oklahoma; and BOARD OF)
 COUNTY COMMISSIONERS, Tulsa)
 County, Oklahoma,)
)
 Defendants.)

FILED

JUN 23 1993

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

CIVIL ACTION NO. 92-C-76-E

DEFICIENCY JUDGMENT

This matter comes on for consideration this 22 day of June, 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 F.L. Dunn, III, United States Attorney for the Northern District of Oklahoma, through Wyn Dee Baker, Assistant United States Attorney, and the Defendant, Terry Lee Jackson a/k/a Terry L. Jackson, appears neither in person nor by counsel.

The Court being fully advised and having examined the court file finds that a copy of Plaintiff's Motion was mailed by first-class mail to Terry Lee Jackson a/k/a Terry L. Jackson, 8905 East 92nd Court, Tulsa, Oklahoma 74133, and to all answering parties and/or counsel of record.

The Court further finds that the amount of the Judgment rendered on November 24, 1992, in favor of the Plaintiff United States of America, and against the Defendant, Terry Lee Jackson a/k/a Terry L. Jackson, with interest and costs to date of sale is \$74,864.98.

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

The Court further finds that the appraised value of the real property at the time of sale was \$55,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered November 24, 1992, for the sum of \$47,212.00 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 May 11, 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 Defendant, Terry Lee Jackson a/k/a Terry L. Jackson, as follows:

Principal Balance plus pre-Judgment Interest as of 11-24-92		\$72,569.69
Interest From Date of Judgment to Sale		730.61
Late Charges to Date of Judgment		546.48
Appraisal by Agency		500.00
Abstracting		154.00
Publication Fees of Notice of Sale		139.20
Court Appraisers' Fees		<u>225.00</u>
TOTAL	\$	74,864.98
Less Credit of Appraised Value	-	<u>55,000.00</u>
DEFICIENCY	\$	19,864.98

plus interest on said deficiency judgment at the legal rate of 3.54 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of

Judgment rendered herein and the appraised value of the property herein.

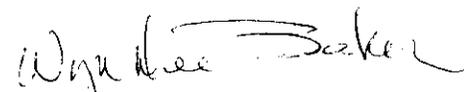
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendant, Terry Lee Jackson a/k/a Terry L. Jackson, a deficiency judgment in the amount of \$19,864.98, plus interest at the legal rate of 3.54 percent per annum on said deficiency judgment from date of judgment until paid.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

F.L. DUNN, III
United States Attorney



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

WDB/esr

ENTERED ON DOCKET

DATE 6-23-93

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

F I L E D

JUN 23 1993

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

TUCKER R. MENDENHALL,

Plaintiff,

vs.

RON CHAMPION, et al.,

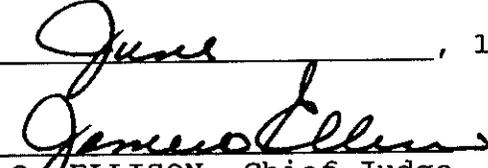
Defendants.

No. 92-C-766-E

ORDER

Defendants filed a motion to dismiss/motion for summary judgment (docket #4). Plaintiff has failed to respond to the motion. Pursuant to Local Rule 15(A), Plaintiff's failure constitutes a waiver of objection and a confession of the matters raised by the motion. Accordingly, Defendants' motion is granted, and Plaintiff's complaint is hereby dismissed.

SO ORDERED THIS 23rd day of June, 1993.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
DATE JUN 23 1993

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

RONALD D. ANDERSON; RUTH S.
ANDERSON; GREAT WESTERN SIDING
AND WINDOWS, INC.;
MIDAMERICA CONSTRUCTION &
SUPPLY; COUNTY TREASURER,
Ottawa County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Ottawa County, Oklahoma,

Defendants.

FILED

JUN 22 1993

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

CIVIL ACTION NO. 92-C-964-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 22 day
of June, 1993. The Plaintiff appears by F.L. Dunn,
III, United States Attorney for the Northern District of
Oklahoma, through Wyn Dee Baker, Assistant United States
Attorney; the Defendants, Ronald D. Anderson and Ruth S. Anderson
appear by Michael C. Howerton, Esq.; the Defendants, County
Treasurer and Board of County Commissioners, Ottawa County,
Oklahoma, appear by Wes Combs, Assistant District Attorney,
Ottawa County, Oklahoma; and the Defendants, Great Western Siding
and Windows, Inc. and MidAmerica Construction & Supply, appear
not, but make default.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Ronald D. Anderson,
acknowledged receipt of Summons and Complaint on November 11,
1992; that the Defendant, Ruth S. Anderson, acknowledged receipt
of Summons and Complaint on November 11, 1992.

NOTICE TO DEFENDANTS AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT

The Court further finds that the Defendants, Great Western Siding and Windows, Inc. and MidAmerica Construction & Supply, were served by publishing notice of this action in the Miami News-Record, a newspaper of general circulation in Ottawa County, Oklahoma, once a week for six (6) consecutive weeks beginning February 11, 1993, and continuing to March 18, 1993, 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, Great Western Siding and Windows, Inc. and MidAmerica Construction & Supply, 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, Great Western Siding and Windows, Inc. and MidAmerica Construction & Supply. 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 and Board of County Commissioners, Ottawa County, Oklahoma, filed their Answer on October 27, 1992; that the Defendants, Ronald D. Anderson and Ruth S. Anderson, filed their Notice of Filing of Bankruptcy and Stay of Proceedings: Consent To In Rem Judgment on November 13, 1993; and that the Defendants, Great Western Siding and Windows, Inc. and MidAmerica Construction & Supply, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on February 3, 1992, Ronald D. Anderson and Ruth S. Anderson, filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Eastern District of Oklahoma, Case No. 92-70142 and were discharged on May 18, 1992.

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 Ottawa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot 19, in Block 1, in WEA ADDITION, Plat No. 1 to the City of Miami, Ottawa County, Oklahoma, according to the official recorded plat thereof.

The Court further finds that on May 23, 1977, the Defendants, Ronald D. Anderson and Ruth S. Anderson, 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 \$23,900.00, payable in monthly installments, with interest thereon at the rate of 8 percent (8%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Ronald D. Anderson and Ruth S. Anderson, 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 May 23, 1977, covering the above-described property. Said mortgage was recorded on May 24, 1977, in Book 369, Page 227, in the records of Ottawa County, Oklahoma.

The Court further finds that the Defendants, Ronald D. Anderson and Ruth S. Anderson, 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, Ronald D. Anderson and Ruth S. Anderson, are indebted to the Plaintiff in the principal sum of \$15,849.14, plus interest at the rate of 8 percent per annum from November 1, 1991 until judgment, plus interest thereafter at the legal rate until fully paid, and the

costs of this action in the amount of \$218.10 (\$210.10 publication fees, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$218.17, plus penalties and interest, for the year of 1992. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, Great Western Siding and Windows, Inc. and MidAmerica Construction & Supply, are in default and have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem with no personal liability against the Defendants, Ronald D. Anderson and Ruth S. Anderson, in the principal sum of \$15,849.14, plus interest at the rate of 8 percent per annum from November 1, 1991 until judgment, plus interest thereafter at the current legal rate of 3.54 percent per annum until paid, plus the costs of this action in the amount of \$218.10 (\$210.10 publication fees, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, have and recover judgment in the amount of \$218.17, plus penalties and interest, for ad valorem taxes for the year 1992, plus the costs of this action.

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

First:

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

Second:

In payment of Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, in the amount of \$218.17, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

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

JUN 22 1993

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 RONNIE D. CORN; DARLENE CORN;)
 ACHIM ZEIDLER; LENA ZEIDLER;)
 COUNTY TREASURER, Tulsa)
 County, Oklahoma; BOARD OF)
 COUNTY COMMISSIONERS, Tulsa)
 County, Oklahoma,)
)
 Defendants.)

FILED

JUN 21 1993

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

CIVIL ACTION NO. 92-C-559-B

DEFICIENCY JUDGMENT

This matter comes on for consideration this 21 day
of June, 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 F.L. Dunn, III, United States Attorney for the
Northern District of Oklahoma, through Phil Pinnell, Assistant
United States Attorney, and the Defendants, Ronnie D. Corn and
Darlene Corn, 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 Ronnie D. Corn and Darlene Corn, through
their attorney, Taryk S. Farris, 4815 South Harvard, Suite 534,
Tulsa, Oklahoma 74135, and to all answering parties and/or
counsel of record.

The Court further finds that the amount of the Judgment
rendered on December 2, 1992, in favor of the Plaintiff United
States of America, and against the Defendants, Ronnie D. Corn and

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

Darlene Corn, with interest and costs to date of sale is \$71,042.17.

The Court further finds that the appraised value of the real property at the time of sale was \$68,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered December 2, 1992, for the sum of \$58,371.00 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 May 10, 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, Ronnie D. Corn and Darlene Corn, as follows:

Principal Balance plus pre-Judgment Interest as of 12-2-92	\$	69,170.09
Interest From Date of Judgment to Sale		639.54
Late Charges to Date of Judgment		27.40
Appraisal by Agency		500.00
Abstracting		340.00
Publication Fees of Notice of Sale		140.14
Court Appraisers' Fees		<u>225.00</u>
TOTAL	\$	71,042.17
Less Credit of Appraised Value	-	<u>68,000.00</u>
DEFICIENCY	\$	3,042.17

plus interest on said deficiency judgment at the legal rate of 3.54 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, Ronnie D. Corn and Darlene Corn, a deficiency judgment in the amount of \$3,042.17, plus interest at the legal rate of 3.54 percent per annum on said deficiency judgment from date of judgment until paid.

S/ T. H. Pinnell

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

F.L. DUNN, III
United States Attorney


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

PP/esr

DATE 6-22-93

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

JUN 21 1993

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

HARRY ROBINSON and KAY)
ROBINSON, husband and wife,)
et al.,)
)
Plaintiffs,)
)
vs.)
)
AUDI AKTIENGESELLSCHAFT,)
f/k/a AUDI NSU AUTO UNION)
AKTIENGESELLSCHAFT, a foreign)
corporation, et al.,)
)
Defendants.)

No. 88-C-367-E
(89-C-604-E - Consolidated)

ORDER OF DISMISSAL

Several motions pend herein: Plaintiffs' Motion for Clarification (docket #286); Plaintiffs' Motion for Reconsideration (docket #287); and Plaintiffs' Motion for status conference (docket #288). The motions will be considered ad seriatim.

Motion for Clarification of Court's Administrative Closing Order in Case No. 89-C-604-E or, in the Alternative, Motion to Reopen Case No. 89-C-604-E

On April 25, 1990 the Court consolidated Case No. 89-C-604-E with Case No. 88-C-367-E. On September 17, 1992, the Court administratively closed Case No. 89-C-604-E. Plaintiffs query whether the Order has any impact on Case No. 88-C-367-E. Plaintiffs' concerns are understandable. By way of reassurance, the Court should explain that the Order was entered in an attempt to appease the Court's computerized docketing system. Case No. 88-C-367-E remains open. Plaintiffs' motion is granted in part.

Motion to Reconsider Order of March 21, 1990, and to set for Trial

or in the Alternative to Transfer in the Interest of Justice

Case No. CIV-89-440 TUC RMB, filed in the United States District Court for the District of Arizona has been transferred to this court and has been docketed as 93-C-402-E. It is apparent that Plaintiffs' motion to transfer Case No. 88-C-367-E to the District of Arizona should be denied.

In the alternative, Plaintiffs ask that the Court reconsider its Order of March 31, 1990. Given the awesome procedural history of this case (and its companions: 80-C-85, 89-C-604, 88-C-1435 and, most recently, 93-C-402) a brief stroll down memory lane seems appropriate.

Case No. 88-C-85 is the underlying lawsuit for, inter alia, products liability. That lawsuit ended in a jury verdict for the Defendant in 1981. The case was appealed twice and final judgment by the Court was entered in 1986. Robinson v. Volkswagen of America, Inc., 803 F.2d 572 (10th Cir. 1986).

Case No. 88-C-1435 was a suit by the attorneys who represented Plaintiffs in the original case alleging fraud, fraudulent concealment and negligent misrepresentation by Defendants Myron Shapiro, Herzfeld & Rubin and Volkswagenwerk AG. It was consolidated with this case.

Case No. 89-C-604-E is a suit by Plaintiffs herein petitioning the Court to set aside the judgment in Case No. 80-C-85-E for fraud upon the court. That case was also consolidated with this case, as stated above. The Second Amended Complaint in this case asserts claims for 1) products liability, negligence and breach of warranty

against VWA; 2) fraud against VWAG and Hertzfeld & Rubin and 3) legal malpractice against Plaintiffs' attorneys in the underlying case.

Plaintiff's motion in limine dated July 21, 1989 (docket #113 in 88-C-367-E) is in the nature of a proposal for determining Plaintiffs' claim for damages arising from the fact that certain evidence was excluded from the trial allegedly because of Defendants' acts. Plaintiffs assert that not only did they endure pain and suffering as a consequence of losing the underlying lawsuit because of Defendants' fraud, but they also suffered: 1) the loss of a favorable verdict because of the excluded evidence and 2) the lost value of the likelihood of winning the lawsuit had the evidence been admitted. And proof of these latter two elements of damages could be proved, the Plaintiffs explain, by either a retrial of the underlying case or a trial of expert testimony premised upon the "Loss of Chance Doctrine" espoused by the Oklahoma Supreme Court in a medical malpractice case. McKellips v. Saint Francis Hosp., Inc., 741 P.2d 467 (Okla. 1987). These two theories need not detain us because the Court has previously held that the underlying case would not be retried and the court declines to extend the Loss of Chance Doctrine from a medical malpractice setting to the instant situation which is readily distinguishable. The Court also declines to adopt a hybrid approach also suggested by Plaintiffs.

In any case, and to proceed with the chronology, the Magistrate's Discovery Order filed August 22, 1989 (docket #137)

states in pertinent part:

As to the Motion in Limine (#113) of Plaintiffs relating to a determination of the matter by which damages in Plaintiffs' claims can be determined, this motion will be premature if the Court adopts the Magistrate's recommendation to bifurcate liability and damages. Such motion may be reurged in the event Plaintiffs establish liability ... The Magistrate recommends that these consolidated cases, Robinson v. Audi Volkswagenwerk AG, No. 88-C-367 and Greer and Greer v. Shapiro, No. 88-C-1435-E be bifurcated and that the issue of liability be dealt with first and the issue of damages reserved for future decision ... The Magistrate also recommends that Case No. 88-C-1435 be dismissed by oral stipulation of counsel. Greer and Greer will proceed with their allegations of fraud and fraudulent concealment as a cross-claim in Case No. 88-C-367-E.

On March 21, 1990 the Court entered an Order adopting the Magistrate's report and recommendation and holding Plaintiffs' Motion in Limine in abeyance pending determination of liability.¹

The Court also declared that:

[D]isputed issues of material fact exist regarding representations made to Plaintiffs' attorneys in the first lawsuit which led to the dismissal of Volkswagenwerk AG from the first lawsuit ... This Court already has ruled that the previous products liability action will not be relitigated here. This action concerns only the issue of fraud and other intentional torts.

Then, on April 25, 1990, the Court entered an Order in Case No. 89-C-604-E consolidating its action for fraud with that of Case No. 88-C-367-E. In that Order the Court opined that the allegations of "a scheme by VWAG, its subsidiaries and its

¹On April 25, 1990 this March 21, 1990 Order was amended in particulars not relevant to this discussion.

attorneys, to conceal or obscure the relationship between VWAG and Audi and to thereby prevent any admissions of VWAG from being introduced into evidence against Audi at the previous trial" and the allegations that "the attorneys for Defendants lied about the true relationship between VWAG and, Audi and VWOA to prevent the NHTSA submissions from being admissible against Audi and VWOA" were sufficient to state a claim under Rule 60(b) (citing Bullock v. United States, 763 F.2d 1115 (10th Cir. 1985); Auerbach v. Rival Mfg. Co., 809 F.2d 1016 (3rd Cir. 1987)).

And on January 28, 1991, the Court stated that "the case shall be heard as a Rule 60(b) F.R.C.P. bench trial, wherein it will determine whether the judgment rendered previously should be set aside for fraud upon the Court."

The Circuit, in its Order of August 1, 1991, held that absolute immunity would not preclude Plaintiffs' and Greer and Greer's claims against Defendants' attorneys for allegedly fraudulent statements made during discovery and trial of the underlying case. The Circuit was also asked to consider whether Rule 60(b) provided the "exclusive remedial framework" for this claim and, if so, whether Rule 60(b)(3) barred the action as coming too late. The Circuit declined to make an initial ruling on this nonappealable issue:

Moreover, in light of the pending claims and cross-claims, we think that the Rule 60(b) issues may become clearer once the operative facts are determined. This will require the district court to carefully assess and characterize the evidence concerning the alleged fraudulent scheme to deprive the plaintiffs of discovery information and

damages.

And, finally, in its Order and Judgment of September 17, 1992 (docket #273 at p. 5) this Court stated:

Rule 60(b) provides, in part, for relief from judgment on the grounds of mistake or excusable neglect; newly discovered evidence; fraud, misrepresentation or other misconduct of adverse party if the action is brought within one year after the judgment is entered. .. Based upon the one year rule, this Court's inquiry will not encompass fraud and/or misrepresentation, generally, but will be strictly limited to the savings clause issue of fraud upon the Court.

This brings us full circle to Plaintiffs' Motion to Reconsider (docket #287) wherein Plaintiffs request an address of its Motion in Limine, supra. As previously stated the Court declines to adopt Plaintiffs' suggestions for the reasons set forth above. However given the ambiguous, if not conflicting, language in the Orders quoted above regarding the threshold questions of the applicability of Rule 60(b) Fed.R.Civ.P. to Plaintiffs' claims for common law fraud, the Court finds it appropriate to address those questions. First, the Court finds as a matter of law, that Rule 60(b) is Plaintiffs' only recourse for support of its common law fraud claims. Next, the Court finds as a matter of fact that the common law fraud issues were raised more than one year after the judgment was taken and all appeals were exhausted (supra, at p. 2). Rule 60(b) Fed.R.Civ.P. provides in relevant part that:

On motion and upon such terms as are just, the Court may relieve a part of a party's legal representative from a final judgment ... for the following reasons: ... (3) fraud ... misrepresentation, or other misconduct of an adverse party ... or (6) any other reason

justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2) and (3) not more than one year after the judgment order or proceeding was entered or taken.

Then, subsection (b) provides a savings clause which states, in part:

This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment ... or to set aside a judgment for fraud upon the court.

Clearly, the common law fraud claims come too late if Plaintiffs are bound by the one year rule. Under any reasonable construction of subsection (b) could Plaintiffs' common law fraud claims be maintained under Rule 60(b)(6)? The Court finds that they could not. While not all courts agree that subsections (b)(1) - (b)(6) are mutually exclusive, the Court has found no case which permits a claim specifically barred by the one year rule, that is, subsections (b)(1) - (b)(3), from maintaining a claim under (b)(6) in order to bypass the one year limitation. See e.g., Murray v. Ford Motor Co., 770 F.2d 461 (5th Cir. 1985); In re Four Seasons Securities Laws Litigation, 502 F.2d 834, 841 (10th Cir. 1974). The Court, therefore, concludes that no claims for common law fraud will lie at this point.

Motion for Status Conference

Plaintiffs' motion for status conference will be denied as unnecessary and moot.

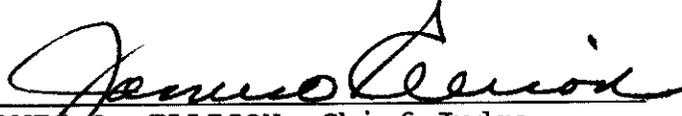
One final issue which is intermittently raised by the parties: the matter of the Court's recusal. A cursory examination of the legal authorities convinces the Court that recusal would be

inappropriate under the circumstances. See, United States v. Liteky, 973 F.2d 910 (11th Cir. 1992).

In sum, Plaintiffs' Motion for Clarification is granted in part; Plaintiffs' Motion for Reconsideration is denied; Plaintiff's Motion for Status conference is denied.

This matter is hereby dismissed.

So ORDERED this 18th day of June, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
DATE JUN 22 1993

FILED
JUN 21 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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

UNITED STATES OF AMERICA)
)
)
 vs.)
)
)
 EDWARD LEN DANIELS)

Docket No. 92-CR-125-B ✓

JUDGMENT AND COMMITMENT ORDER
ON REVOCATION OF SUPERVISED RELEASE

Now on this 11th day of June, 1993, this cause comes on for sentencing after a previous finding that the defendant violated conditions of supervised release as set out in the Petition of Supervised Release filed on February 19, 1993. The defendant is present in person and with his attorney, C. W. Hack. The Government is represented by Assistant United States Attorney Lucy Creekmore, and the United States Probation Office is represented by Kevin Robbins.

The defendant was heretofore, on August 11, 1989, convicted on his plea of guilty to a one-count Information which charged Transportation of Stolen Firearms in Foreign Commerce, in violation of 18 U.S.C. 922(i). He was subsequently sentenced to eighteen (18) months imprisonment to be followed by a three (3) year term of supervised release. The standard conditions of supervised release recommended by the Sentencing Commission were imposed, as were

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special conditions of substance abuse program participation, including a search provision, and mental health program participation.

On March 11, 1993, a Revocation Hearing was held regarding the thirteen allegations noted in the Petition on Supervised Release. Said allegations are all Class C violations of Supervised Release, and either misdemeanor or traffic in nature. Eleven of the allegations resulted in convictions, and stipulation of guilt was made to each of these at the Revocation Hearing. The Court ordered that the Revocation Hearing be passed until April 5, 1993, to allow Daniels to undergo a psychiatric examination. At the continuance on April 5, 1993, sentencing was scheduled for April 27, 1993, at 1:15 P.M., at which time it was passed to June 11, 1993 at 9:00 A.M., to determine whether therapy and medication were benefiting Daniels.

As a result of the Sentencing Hearing, the Court finds that the violations occurred after November 1, 1987, and that Chapter Seven of the U. S. Sentencing Guidelines is applicable. Further, the Court finds that the violations of supervised release constitute Grade C violations in accordance with U.S.S.G. § 7B1.1(a)(3)(B), and that a Criminal History Category of VI is now applicable for determining the imprisonment range of eight to fourteen months, in accordance with U.S.S.G. § 7B1.4(a) and 18 U.S.C. § 3583 (e). In view of these considerations, the following sentence is ordered:

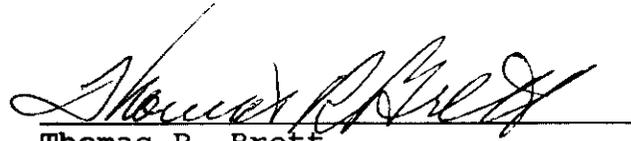
It is adjudged by the Court that the defendant shall remain on supervised release under modified terms and conditions. The

defendant shall be required to comply with all previously imposed standard and special conditions in addition to the following modifications:

-The defendant will continue in weekly group therapy and any individual therapy deemed necessary.

-The defendant will continue to take medication as prescribed.

-The defendant will report to the probation office twice monthly at times determined by the probation office.



Thomas R. Brett,
U. S. District Judge

Approved as to form:


Lucy Creekmore,
Assistant U. S. Attorney

ENTERED ON DOCKET

DATE 6-22-93

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

JESS PACK,

Plaintiff,

vs.

ROBERT KNIGHT and
THE TOWN OF LOCUST GROVE,

Defendants.

Case No. 92 C 469-E

F I L E D

JUN 21 1993

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

STIPULATION OF DISMISSAL WITH PREJUDICE

All the parties to this action hereby stipulate that any and all causes of action and claims against the Defendants, Town of Locust Grove, Oklahoma and Robert Knight, are hereby dismissed with prejudice.

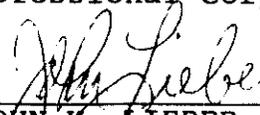
JESS PACK

JESS PACK, PLAINTIFF

REX EARL STARR
By: *Rex Earl Starr*
REX EARL STARR, OBA #8568
108 North First
Stilwell, OK 74960
(918) 696-6500

ATTORNEY FOR PLAINTIFF,
Jess Pack

ELLER AND DETRICH
A Professional Corporation

By: 

JOHN H. LIEBER, OBA #5421
2727 East 21st Street
Suite 200, Midway Building
Tulsa, Oklahoma 74114
(918) 747-8900

ATTORNEYS FOR DEFENDANTS,
Town of Locust Grove and
Robert Knight

MAG\KNIGHT\STIPULAT.DIS

JUN 22 1993

FILED

JUN 21 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

KIRK W. LEMMON,

Plaintiff,

-v.-

B.F. WILLIAMS, *et al.*,

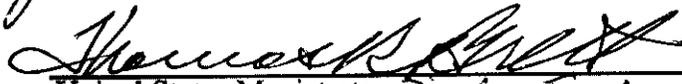
Defendants.

No. 90-C-697-B

ORDER DISMISSING PARTY DEFENDANT

Upon application of the Plaintiff, and for good cause shown, it is hereby ordered that Defendant Deputy Thompson is hereby dismissed as a party to this action as of the date of this order.

Witness my hand this 21 day June, 1993.


United States ~~Magistrate~~ *Dist. Judge*

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

F I L E D

JUN 21 1993

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

WILLIAM M. GRAY,)
)
 Plaintiff,)
)
 v.)
)
 THOMAS E. ENGLISH, et al,)
)
 Defendants.)

91-C-780-B

ORDER

This matter comes on for consideration of the Application For Award Of Attorney's Fees And Costs Of Prevailing Appellee Against Appellant, filed by Defendant English, Jones & Faulkner (#28). Also for consideration is William M. Gray's Motion To Review Clerk's Award Of Costs (#31).

Earlier hereto, English, Jones & Faulkner (EJF), a Tulsa law firm, requested \$271,504.93 in attorney fees and costs for services rendered between September of 1986 to October of 1988 in a bankruptcy matter. Part of those services included the work of Thomas English, (English) a senior partner in the firm who served as a Trustee for Northwest Exploration in the case.

The Bankruptcy Court awarded the law firm \$179,928.93 in fees and costs, but it denied the \$91,576 fee requested by English. The fees sought by English were denied because the Bankruptcy Court found wrongdoing on his part during the bankruptcy proceeding. Plaintiff William M. Gray, the current trustee for Northwest Exploration (Trustee), appealed the matter. EJF filed a cross-appeal. For the reasons set forth in its Order of February 9,

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1993, this Court affirmed both the Bankruptcy Court's awarding of fees to the law firm and denial of English's request for fees.

Both parties contested the Bankruptcy Court's decision. Trustee argued that the decision did not go far enough: He believed all fees earned by English and EJV from 1982 until 1988 should be either disgorged or denied. EJV opposed that argument. It contended that all fees and costs ought to be awarded, including those for English's services.

The Bankruptcy Court found that English should be denied compensation and that matter was appealed. Also for decision on appeal was the question whether EJV should suffer the same consequences as its senior partner. In other words, should English's conduct be imputed to his law firm? Defendants' counsel defended the award to EJV as well as urge, on cross-appeal, the Bankruptcy Court erred in denying English \$91,576 in fees.

The Bankruptcy Court's award of fees was approximately 2/3rds of the total amount sought. On appeal neither party won,¹ the Trustee having his appeal denied and EJV having its cross-appeal denied. While EJV was obligated to defend the award to it of \$179,928.93 it was not obliged to cross-appeal in the hopes of realizing the additional \$91,576 in fees.

EJV seeks attorneys fees of \$13,313.25² plus necessary

¹ The Court rejects out of hand EJV's assertion that it is "a prevailing party" and therefore entitled to fees based upon such status.

² This figure includes \$1500 attorneys fees for the present application.

expenses of \$249.57, for a total of \$13,562.82. Apparently Trustee does not contest the accumulation of hours charged nor the rate charges for such hours. The Court, in its discretion, awards EJV attorneys fees and expenses of \$9,041.88,³ based upon the premise that EJV prevailed in upholding the award of \$179,928.93 to it but lost, on cross appeal, on urging it should be further awarded the sum of \$91,576.93. The Court further DENIES the Trustee's Motion (#31) for review of the Clerk's award of costs to EJV in the amount of \$676.15.

IT IS SO ORDERED this 21 day of June, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

³ Trustee's request for reasonable costs and attorneys fees, set forth in his Brief in Opposition to EJV's attorney fee application, are denied as untimely. Local Rule 6 G provides for a 15 day filing period. Trustee's brief was filed March 8, 1993. The Court's affirmance of the Bankruptcy Court was entered February 9, 1993.

ENTERED ON DOCKET
JUN 22 1993
FILED

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

JUN 11 1993

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

MUCH SHELIST FREED DENENBERG
& AMENT, P.C.,

Plaintiff,

v.

Case No. 93-C-520-B

STEVEN A SMITH; HANSON, HOLMES, FIELD
& SNIDER; W.C. SELLERS, SR.; W.C.
SELLERS, INC.; AMERICAN NATIONAL BANK,
BRISTOW, OKLAHOMA,

Defendants.

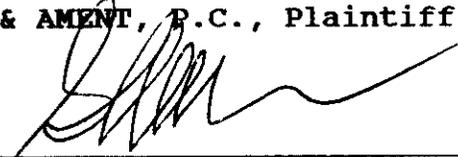
NOTICE OF VOLUNTARY DISMISSAL OF AMENDED COMPLAINT

Plaintiff Much Shelist Freed Deneberg & Ament, P.C., by their attorneys, files this notice of dismissal pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

No answer has been filed by any adverse party nor has any motion for summary judgment been brought.

**MUCH SHELIST FREED DENEBERG
& AMENT, P.C., Plaintiff**

By _____


Sam T. Allen, IV (OBA #232)
P.O. Box 230
Sapulpa, Ok 74067
PHONE: (918)-224-5302
Attorneys for Plaintiff

Michael B. Hyman
**MUCH SHELIST FREED DENEBERG
& AMENT, P.C.,**
200 N. LaSalle, Suite 2100
Chicago, IL 60601-1095
(312) 346-3100

Sam T. Allen, IV
LOEFFLER, ALLEN & HAM
P.O. Box 230
Sapulpa, Ok 74067
(918) 224-5302

ENTERED ON DOCKET
JUN 22 1993

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

LELAND STONECIPHER,
Petitioner,
vs.
LEROY L. YOUNG,
Respondent.

No. 92-C-816-B

FILED
JUN 21 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

O R D E R

Now before the court is Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. It has come to the court's attention that Petitioner was convicted in Beckham County, Oklahoma, which is located within the territorial jurisdiction of the Western District of Oklahoma. Therefore, in the furtherance of justice, this matter may be more appropriately addressed in that district.

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

IT IS SO ORDERED this 21 day of June, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

NOTE: THIS ORDER IS TO BE FILED WITH THE CLERK OF COURT BY MOVANT'S COUNSEL AND PRO SE LITIGANTS IMMEDIATELY UPON RECEIPT.

ENTERED IN DOCKET
JUN 22 1993

FILED

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

JUN 21 1993

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

SCOTT DAVIES,)
)
 Plaintiff,)
)
 vs.)
)
 AMERICAN AIRLINES, INC.,)
)
 Defendant.)

Case No. 89-C-881-B

J U D G M E N T

In accordance with the Judgment and Order of the United States Court of Appeals for the Tenth Circuit filed of record June 10, 1993, and the Order of this Court filed on this date, the Court hereby reinstates its Judgment of September 28, 1990, in favor of the Plaintiff, Scott Davies, and against the Defendant, American Airlines, for the amount of \$81,000.00, in actual damages and \$15,000.00 in punitive damages. Judgment is further entered in favor of Plaintiff and against Defendant for postjudgment interest from September 28, 1990, until paid at the legal rate of 7.78 per cent per annum. Costs are hereby assessed against Defendant if timely applied for pursuant to Local Rule 6.

DATED this 21 day of June, 1993.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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ENTERED ON DOCKET
FILED
 DATE JUN 22 1993
 JUN 21 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

SCOTT DAVIES,)
)
 Plaintiff,)
)
 vs.)
)
 AMERICAN AIRLINES, INC.,)
)
 Defendant.)

Case No. 89-C-881-B

O R D E R

Before the Court for consideration is Plaintiff's Motion for Award of Pre-Judgment Interest (Docket #155) pursuant to Okla.Stat. tit. 12, §727.

Plaintiff's wrongful termination action was tried to a jury September 24-25, 1990. The jury returned a verdict for the Plaintiff and awarded \$81,000 in actual damages and \$15,000 in punitive damages. A judgment in accordance with the verdict was filed September 28, 1990, which awarded the Plaintiff interest "as provided by law."

Also on September 28, 1990, the Court entered a Judgment Notwithstanding the Verdict in favor of the Defendant, American Airlines. Plaintiff, Scott Davies, timely appealed to the United States Court of Appeals for the Tenth Circuit, which reversed and remanded for reinstatement of the jury verdict. Davies v. American Airlines, 971 F.2d 463 (10th Cir. 1992), cert. denied, 1992 WL 391219 (June 1, 1993).

Plaintiff now seeks an award of prejudgment interest pursuant to Okla.Stat.tit. 12, §727. American Airlines contends Plaintiff is

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not entitled to prejudgment interest because the verdict included damages for future economic loss. Defendant points out that Plaintiff presented evidence of future economic loss and that the Court instructed the jury it could "award damages to compensate Plaintiff for past and future economic loss."

This Court has previously held that a party is not entitled to prejudgment interest on a general verdict which includes damages for loss of future wages and benefits. White v. American Airlines, Case No. 82-C-755-C (N.D.Okla. Nov. 19, 1987) (attached as Exhibit "D" to Defendant brief in opposition). The Court concludes the \$81,000 verdict for actual damages in this case included damages for Plaintiff's loss of future wages and benefits. For this reason, Plaintiff's motion for award of prejudgment interest should be and is hereby DENIED.

Defendant does not contest an award of postjudgment interest under 28 U.S.C. §1961(a) and it shall be so awarded from the date of the original judgment and at the rate applicable on that date. Kaiser Aluminum & Chemical Corp. v. Bonjorno, Pa., 110 S.Ct. 1570 (1990); Moore v. United States, 196 F.2d 906 (5th Cir. 1952). A judgment in accordance with this Order and the Mandate of the Tenth Circuit will be entered herewith.

IT IS SO ORDERED THIS 21ST DAY OF JUNE, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED JUN 22 1993

JUN 21 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

INTERSTATE COMMERCE COMMISSION,)
)
 Plaintiff,)
)
 v.)
)
 KROBLIN REFRIGERATED XPRESS, INC.,)
 a corporation,)
)
)
 Defendant.)

CIVIL NO. 93-C-276B

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause is before the Court upon plaintiff's motion for default judgment against defendant pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure.

Having considered plaintiff's motion and the record in this case, the Court now makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. This action arises, and the jurisdiction of this Court is invoked, under the provisions of 28 U.S.C. §§ 1337(a) and 1345, 49 U.S.C. § 11702(a)(4), and under the general laws and rules relative to suits in equity arising under the Constitution and laws of the United States.

2. Defendant Kroblin Refrigerated Xpress, Inc., was and is a corporation with its principal place of business located within this district.

3. At all times mentioned herein, defendant has operated as a motor common and contract carrier of property in interstate or foreign commerce within the meaning of 49 U.S.C. § 10521, and

accordingly is subject to the Interstate Commerce Act, 49 U.S.C. § 10101, et seq., and to the regulations promulgated thereunder by the Interstate Commerce Commission.

4. Since at least June 1991, defendant has not, in violation of 49 C.F.R. §§ 1057.11 and 1057.12, conformed its equipment leasing practices to the required lease terms, when defendant performed transportation, in interstate or foreign commerce, in equipment defendant did not own.

5. On numerous occasions prior to the filing of the complaint, defendant failed to process loss and damage claims in the form and manner prescribed by 49 C.F.R. Part 1005.

6. Unless restrained by this Court, defendant intends and will continue to engage or participate in the conduct described in paragraphs 4 and 5 above.

CONCLUSIONS OF LAW

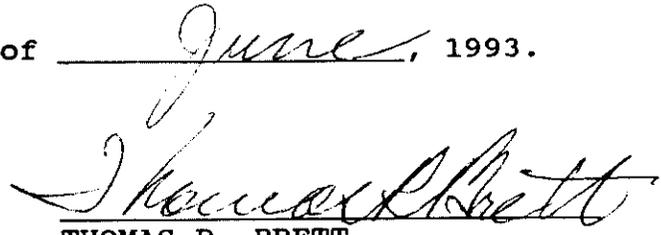
1. This Court has jurisdiction of the parties and the subject matter of this action by virtue of 28 U.S.C. §§ 1337 and 1345, 49 U.S.C. § 11702(a)(4), and under the general laws and rules relative to suits in equity arising under the Constitution and laws of the United States.

2. The conduct of Kroblin Refrigerated Xpress, Inc., as stated in paragraphs 4 and 5 of the above Findings of Fact is in violation of 49 U.S.C. § 11107, 49 C.F.R. 1057.11 and 1057.12, and 49 C.F.R. Part 1005. Such conduct may be enjoined by this Court under the express provisions of 49 U.S.C. § 11702(a)(4).

3. The Court may properly grant a default judgment in this action pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure.

4. Plaintiff has demonstrated by the pleadings that plaintiff is entitled to a default judgment and permanent injunction.

Dated this 21 day of June, 1993.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE JUN 22 1993

FILED

JUN 21 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

INTERSTATE COMMERCE COMMISSION,)
)
 Plaintiff,)
)
)
 v.)
)
 KROBLIN REFRIGERATED XPRESS, INC.,)
 a corporation,)
)
 Defendant.)

CIVIL NO. 93-C-276B

DEFAULT JUDGMENT
AND
PERMANENT INJUNCTION

This cause came to be heard on plaintiff's motion for default judgment against defendant pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure.

The court has considered the motion and the record in this case. The plaintiff is entitled to a default judgment against defendant granting the relief sought in plaintiff's complaint. Therefore, the Court having made and entered its Findings of Fact and Conclusions of Law:

IT IS ORDERED:

1. The plaintiff's motion for default judgment against defendant is granted.

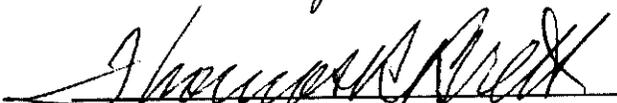
2. Defendant Kroblin Refrigerated Xpress, Inc., a corporation, and its officers, agents, employees, and representatives, and all persons in active participation or concert with it, are hereby permanently enjoined and restrained from, in any manner or by any device:

(a) Violating 49 C.F.R. §§ 1057.11 and 107.12 (a copy of these regulations are attached hereto and made a part hereof) when performing interstate transportation in equipment it does not own;

(b) Failing to process loss and damage claims in compliance with and according to the provisions of 49 C.F.R. Part 1005 (a copy of these regulations is attached hereto and made a part hereof); and

(c) Violating any successor versions of 49 C.F.R. §§ 1057.11 and 1057.12 and 49 C.F.R. Part 1005 should those regulations be revised or changed by the interstate Commerce Commission in the future.

Dated this 21 day of June, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

§ 1057.11 General leasing requirements.

Other than through the interchange of equipment as set forth in § 1057.31, and under the exemptions set forth in Subpart C of these regulations, the authorized carrier may perform authorized transportation in equipment it does not own only under the following conditions:

(a) *Lease*—There shall be a written lease granting the use of the equipment and meeting the requirements contained in § 1057.12.

§ 1057.12 Written lease requirements.

Except as provided in the exemptions set forth in subpart C of this part, the written lease required under § 1057.11(a) shall contain the following provisions. The required lease provisions shall be adhered to and performed by the authorized carrier.

(a) *Parties*—The lease shall be made between the authorized carrier and the owner of the equipment. The lease shall be signed by these parties or by their authorized representatives.

(b) *Duration to be specific*—The lease shall specify the time and date or the circumstances on which the lease begins and ends. These times or circumstances shall coincide with the times for the giving of receipts required by § 1057.11(b).

(c) *Exclusive possession and responsibilities*—(1) The lease shall provide that the authorized carrier lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the lease.

(2) Provision may be made in the lease for considering the authorized carrier lessee as the owner of the equipment for the purpose of subleasing it under these regulations to other authorized carriers during the lease.

(3) When an authorized carrier of household goods leases equipment for the transportation of household goods, as defined by the Commission, the parties may provide in the lease that the provisions required by paragraph (c)(1) of this section apply only during the time the equipment is operated by or for the authorized carrier lessee.

(4) Nothing in the provisions required by paragraph (c)(1) of this section is intended to affect whether the lessor or driver provided by the lessor is an independent contractor or an employee of the authorized carrier lessee. An independent contractor relationship may exist when a carrier lessee complies with 49 U.S.C. 11107 and attendant administrative requirements.

(d) *Compensation to be specified*—The amount to be paid by the authorized carrier for equipment and driver's services shall be clearly stated on the face of the lease or in an addendum which is attached to the lease. Such lease or addendum shall be delivered to the lessor prior to the commencement of any trip in the service of the authorized carrier. An authorized representative of the lessor may accept these documents. The amount to be paid may be expressed as a percentage of gross revenue, a flat rate per mile, a variable rate depending on the direction traveled or the type of commodity transported, or by any other method of compensation mutually agreed upon by the parties to the lease. The compensation stated on the lease or in the attached addendum may apply to equipment and driver's services either separately or as a combined amount.

(e) *Items specified in lease*. The lease shall clearly specify which party is responsible for removing identification devices from the equipment upon the termination of the lease and when and how these devices, other than those painted directly on the equipment, will be returned to the carrier. The lease shall clearly specify the manner in which a receipt will be

given to the authorized carrier by the equipment owner when the latter retakes possession of the equipment upon termination of the lease agreement, if a receipt is required at all by the lease. The lease shall clearly specify the responsibility of each party with respect to the cost of fuel, fuel taxes, empty mileage, permits of all types, tolls, ferries, detention and accessorial services, base plates and licenses, and any unused portions of such items. The lease shall clearly specify who is responsible for loading and unloading the property onto and from the motor vehicle, and the compensation, if any, to be paid for this service. Except when the violation results from the acts or omissions of the lessor, the authorized carrier lessee shall assume the risks and costs of fines for overweight and oversize trailers when the trailers are pre-loaded, sealed, or the load is containerized, or when the trailer or lading is otherwise outside of the lessor's control, and for improperly permitted overdimension and overweight loads and shall reimburse the lessor for any fines paid by the lessor. If the authorized carrier is authorized to receive a refund or a credit for base plates purchased by the lessor from, and issued in the name of, the authorized carrier, or if the base plates are authorized to be sold by the authorized carrier to another lessor the authorized carrier shall refund to the initial lessor on whose behalf the base plate was first obtained a prorated share of the amount received.

(f) *Payment period.* The lease shall specify that payment to the lessor shall be made within 15 days after submission of the necessary delivery documents and other paperwork concerning a trip in the service of the authorized carrier. The paperwork required before the lessor can receive payment is limited to log books required by the Department of Transportation and those documents necessary for the authorized carrier to secure payment from the shipper. In addition, the lease may provide that, upon termination of the lease agreement, as a condition precedent to payment, the lessor shall remove all identification devices of the authorized carrier and, except in the case of iden-

tification painted directly on equipment, return them to the carrier. If the identification device has been lost or stolen, a letter certifying its removal will satisfy this requirement. Until this requirement is complied with, the carrier may withhold final payment. The authorized carrier may require the submission of additional documents by the lessor but not as a prerequisite to payment. Payment to the lessor shall not be made contingent upon submission of a bill of lading to which no exceptions have been taken. The authorized carrier shall not set time limits for the submission by the lessor of required delivery documents and other paperwork.

(g) *Copies of freight bill or other form of freight documentation.* When a lessor's revenue is based on a percentage of the gross revenue for a shipment, the lease must specify that the authorized carrier will give the lessor, before or at the time of settlement, a copy of the rated freight bill or a computer-generated document containing the same information, or, in the case of contract carriers, any other form of documentation actually used for a shipment containing the same information that would appear on a rated freight bill. When a computer-generated document is provided, the lease will permit lessor to view, during normal business hours, a copy of any actual document underlying the computer-generated document. Regardless of the method of compensation, the lease must permit lessor to examine copies of the carrier's tariff or, in the case of contract carriers, other documents from which rates and charges are computed, provided that where rates and charges are computed from a contract of a contract carrier, only those portions of the contract containing the same information that would appear on a rated freight bill need be disclosed. The authorized carrier may delete the names of shippers and consignees shown on the freight bill or other form of documentation.

(h) *Charge-back items.* The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of payment or settlement, together

with a recitation as to how the amount of each item is to be computed. The lessor shall be afforded copies of those documents which are necessary to determine the validity of the charge.

(i) *Products, equipment, or services from authorized carrier*—The lease shall specify that the lessor is not required to purchase or rent any products, equipment, or services from the authorized carrier as a condition of entering into the lease arrangement. The lease shall specify the terms of any agreement in which the lessor is a party to an equipment purchase or rental contract which gives the authorized carrier the right to make deductions from the lessor's compensation for purchase or rental payments.

(j) *Insurance*—(1) The lease shall clearly specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public pursuant to Commission regulations under 49 U.S.C. 10927. The lease shall further specify who is responsible for providing any other insurance coverage for the operation of the leased equipment, such as bobtail insurance. If the authorized carrier will make a charge back to the lessor for any of this insurance, the lease shall specify the amount which will be charged-back to the lessor.

(2) If the lessor purchases any insurance coverage for the operation of the leased equipment from or through the authorized carrier, the lease shall specify that the authorized carrier will provide the lessor with a copy of each policy upon the request of the lessor. Also, where the lessor purchases such insurance in this manner, the lease shall specify that the authorized carrier will provide the lessor with a certificate of insurance for each such policy. Each certificate of insurance shall include the name of the insurer, the policy number, the effective dates of the policy, the amounts and types of coverage, the cost to the lessor for each type of coverage, and the deductible amount for each type of coverage for which the lessor may be liable.

(3) The lease shall clearly specify the conditions under which deductions for cargo or property damage may be made from the lessor's settlements. The lease shall further specify that

the authorized carrier must provide the lessor with a written explanation and itemization of any deductions for cargo or property damage made from any compensation of money owed to the lessor. The written explanation and itemization must be delivered to the lessor before any deductions are made.

(k) *Escrow funds*—If escrow funds are required, the lease shall specify:

(1) The amount of any escrow fund or performance bond required to be paid by the lessor to the authorized carrier or to a third party.

(2) The specific items to which the escrow fund can be applied.

(3) That while the escrow fund is under the control of the authorized carrier, the authorized carrier shall provide an accounting to the lessor of any transactions involving such fund. The carrier shall perform this accounting in one of the following ways:

(i) By clearly indicating in individual settlement sheets the amount and description of any deduction or addition made to the escrow fund; or

(ii) By providing a separate accounting to the lessor of any transactions involving the escrow fund. This separate accounting shall be done on a monthly basis.

(4) The right of the lessor to demand to have an accounting for transactions involving the escrow fund at any time.

(5) That while the escrow fund is under the control of the carrier, the carrier shall pay interest on the escrow fund on at least a quarterly basis. For purposes of calculating the balance of the escrow fund on which interest must be paid, the carrier may deduct a sum equal to the average advance made to the individual lessor during the period of time for which interest is paid. The interest rate shall be established on the date the interest period begins and shall be at least equal to the average yield or equivalent coupon issue yield on 91-day, 13-week Treasury bills as established in the weekly auction by the Department of Treasury.

(6) The conditions the lessor must fulfill in order to have the escrow fund returned. At the time of the return of the escrow fund, the authorized carrier

er may deduct monies for those obligations incurred by the lessor which have been previously specified in the lease, and shall provide a final accounting to the lessor or all such final deductions made to the escrow fund. The lease shall further specify that in no event shall the escrow fund be returned later than 45 days from the date of termination.

(l) *Copies of the lease.*—An original and two copies of each lease shall be signed by the parties. The authorized carrier shall keep the original and shall place a copy of the lease on the equipment during the period of the lease unless a statement as provided for in § 1057.11(c)(2) is carried on the equipment instead. The owner of the equipment shall keep the other copy of the lease.

(m) This paragraph applies to owners who are not agents but whose equipment is used by an agent of an authorized carrier in providing transportation on behalf of that authorized carrier. In this situation, the authorized carrier is obligated to ensure that these owners receive all the rights and benefits due an owner under the leasing regulations, especially those set forth in paragraphs (d)–(k) of this section. This is true regardless of whether the lease for the equipment is directly between the authorized carrier and its agent rather than directly between the authorized carrier and each of these owners. The lease between an authorized carrier and its agent shall specify this obligation.

PART 1005—PRINCIPLES AND PRACTICES FOR THE INVESTIGATION AND VOLUNTARY DISPOSITION OF LOSS AND DAMAGE CLAIMS AND PROCESSING SALVAGE

Sec.

- 1005.1 Applicability of regulations.
- 1005.2 Filing of claims.
- 1005.3 Acknowledgement of claims.
- 1005.4 Investigation of claims.
- 1005.5 Disposition of claims.
- 1005.6 Processing of salvage.
- 1005.7 Weight as a measure of loss.

AUTHORITY: 24 Stat. 380, 383 as amended, 386; 34 Stat. 595 as amended; 44 Stat. 1450 as amended; 49 Stat. 546 as amended; 550 as amended, 558 as amended, 560 as amended, 561 as amended, 563 as amended; 52 Stat. 1237; 54 Stat. 900, 922, 933, 934 as amended, 935, 944 as amended, 946; 56 Stat. 285, 286, 287, 294 as amended, 295, 297, 746 as amended; 62 Stat. 472; 63 Stat. 486; and 64 Stat. 1114 as amended, 49 U.S.C. 1, 5, 5b, 6, 12, 20, 304, 305, 316, 317, 318, 319, 320, 904, 905, 906, 913, 916, 1003, 1004, 1005, 1009, 1012, 1013, and 1017.

§ 1005.1 Applicability of regulations.

The regulations set forth in this part shall govern the processing of claims for loss, damage, injury, or delay to property transported or accepted for transportation, in interstate or foreign commerce, by each railroad, express company, motor carrier, water carrier, and freight forwarder (hereinafter called carrier), subject to the Interstate Commerce Act.

[46 FR 16224, Mar. 11, 1981]

§ 1005.2 Filing of claims.

(a) *Compliance with regulations.* A claim for loss or damage to baggage or for loss, damage, injury, or delay to cargo, shall not be voluntarily paid by a carrier unless filed, as provided in paragraph (b) of this section, with the receiving or delivering carrier, or carrier issuing the bill of lading, receipt, ticket, or baggage check, or carrier on whose line the alleged loss, damage, injury, or delay occurred, within the specified time limits applicable thereto and as otherwise may be required by law, the terms of the bill of lading or

other contract of carriage, and all tariff provisions applicable thereto.

(b) *Minimum filing requirements.* A written or electronic communication (when agreed to by the carrier and shipper or receiver involved) from a claimant, filed with a proper carrier within the time limits specified in the bill of lading or contract of carriage or transportation and: (1) Containing facts sufficient to identify the baggage or shipment (or shipments) of property, (2) asserting liability for alleged loss, damage, injury, or delay, and (3) making claim for the payment of a specified or determinable amount of money, shall be considered as sufficient compliance with the provisions for filing claims embraced in the bill of lading or other contract of carriage; *Provided, however,* That where claims are electronically handled, procedures are established to ensure reasonable carrier access to supporting documents.

(c) *Documents not constituting claims.* Bad order reports, appraisal reports of damage, notations of shortage or damage, or both, on freight bills, delivery receipts, or other documents, or inspection reports issued by carriers or their inspection agencies, whether the extent of loss or damage is indicated in dollars and cents or otherwise, shall, standing alone, not be considered by carriers as sufficient to comply with the minimum claim filing requirements specified in paragraph (b) of this section.

(d) *Claims filed for uncertain amounts.* Whenever a claim is presented against a proper carrier for an uncertain amount, such as "\$100 more or less," the carrier against whom such claim is filed shall determine the condition of the baggage or shipment involved at the time of delivery by it, if it was delivered, and shall ascertain as nearly as possible the extent, if any, of the loss or damage for which it may be responsible. It shall not, however, voluntarily pay a claim under such circumstances unless and until a formal claim in writing for a specified or determinable amount of money shall have been filed in accordance with the provisions of paragraph (b) of this section.

(e) *Other claims.* If investigation of a claim develops that one or more other carriers has been presented with a similar claim on the same shipment, the carrier investigating such claim shall communicate with each such other carrier and, prior to any agreement entered into between or among them as to the proper disposition of such claim or claims, shall notify all claimants of the receipt of conflicting or overlapping claims and shall require further substantiation, on the part of each claimant of his title to the property involved or his right with respect to such claim.

[37 FR 4258, Mar. 1, 1972, as amended at 47 FR 12803, Mar. 25, 1982]

§ 1005.3 Acknowledgement of claims.

(a) Each carrier shall, upon receipt in writing or by electronic transmission of a proper claim in the manner and form described in the regulations, acknowledge the receipt of such claim in writing or electronically to the claimant within 30 days after the date of its receipt by the carrier unless the carrier shall have paid or declined such claim in writing or electronically within 30 days of the receipt thereof. The carrier shall indicate in its acknowledgement to the claimant what, if any, additional documentary evidence or other pertinent information may be required by it further to process the claim as its preliminary examination of the claim, as filed, may have revealed.

(b) The carrier shall at the time each claim is received create a separate file and assign thereto a successive claim file number and note that number on all documents filed in support of the claim and all records and correspondence with respect to the claim, including the acknowledgment of receipt. At the time such claim is received the carrier shall cause the date of receipt to be recorded on the face of the claim document, and the date of receipt shall also appear in the carrier's acknowledgment of receipt to the claimant. The carrier shall also cause the claim file number to be noted on the shipping order, if in its possession, and the delivery receipt, if any, covering such shipment, unless the carrier has established an orderly and consist-

ent internal procedure for assuring: (1) That all information contained in shipping orders, delivery receipts, tally sheets, and all other pertinent records made with respect to the transportation of the shipment on which claim is made, is available for examination upon receipt of a claim; (2) that all such records and documents (or true and complete reproductions thereof) are in fact examined in the course of the investigation of the claim (and an appropriate record is made that such examination has in fact taken place); and (3) that such procedures prevent the duplicate or otherwise unlawful payment of claims.

[37 FR 4258, Mar. 1, 1972, as amended at 37 FR 20943, Oct. 10, 1972; 47 FR 12803, Mar. 25, 1982]

§ 1005.4 Investigation of claims.

(a) *Prompt investigation required.* Each claim filed against a carrier in the manner prescribed herein shall be promptly and thoroughly investigated if investigation has not already been made prior to receipt of the claim.

(b) *Supporting documents.* When a necessary part of an investigation, each claim shall be supported by the original bill of lading, evidence of the freight charges, if any, and either the original invoice, a photographic copy of the original invoice, or an exact copy thereof or any extract made therefrom, certified by the claimant to be true and correct with respect to the property and value involved in the claim; or certification of prices or values, with trade or other discounts, allowance, or deductions, of any nature whatsoever and the terms thereof, or depreciation reflected thereon; *Provided, however,* That where property involved in a claim has not been invoiced to the consignee shown on the bill of lading or where an invoice does not show price or value, or where the property involved has been sold, or where the property has been transferred at bookkeeping values only, the carrier shall, before voluntarily paying a claim, require the claimant to establish the destination value in the quantity, shipped, transported, or involved; *Provided, further,* That when supporting documents are

determined to be a necessary part of an investigation, the supporting documents are retained by the carriers for possible Commission inspection.

(c) *Verification of Loss.* When an asserted claim for loss of an entire package or an entire shipment cannot be otherwise authenticated upon investigation, the carrier shall obtain from the consignee of the shipment involved a certified statement in writing that the property for which the claim is filed has not been received from any other source.

[37 FR 4258, Mar. 1, 1972, as amended at 37 FR 23909, Nov. 10, 1972; 47 FR 12803, Mar. 25, 1982]

§ 1005.5 Disposition of claims.

(a) Each carrier subject to the Interstate Commerce Act which receives a written or electronically transmitted claim for loss or damage to baggage or for loss, damage, injury, or delay to property transported shall pay, decline, or make a firm compromise settlement offer in writing or electronically to the claimant within 120 days after receipt of the claim by the carrier; *Provided, however,* That, if the claim cannot be processed and disposed of within 120 days after the receipt thereof, the carrier shall at that time and at the expiration of each succeeding 60-day period while the claim remains pending, advise the claimant in writing or electronically of the status of the claim and the reason for the delay in making final disposition thereof and it shall retain a copy of such advice to the claimant in its claim file thereon.

(b) When settling a claim for loss or damage, a common carrier by motor vehicle of household goods as defined in § 1056.1(b)(1) shall use the replacement costs of the lost or damaged item as a base to apply a depreciation factor to arrive at the current actual value of the lost or damaged item: *Provided,* That where an item cannot be replaced or no suitable replacement is obtainable, the proper measure of damages shall be the original costs, augmented by a factor derived from a consumer price index, and adjusted downward by a factor depreciation over average useful life.

[37 FR 4258, Mar. 1, 1972, as amended at 46 FR 16224, Mar. 11, 1981; 47 FR 12803, Mar. 25, 1982]

§ 1005.6 Processing of salvage.

(a) Whenever baggage or material, goods, or other property transported by a carrier subject to the provisions herein contained is damaged or alleged to be damaged and is, as a consequence thereof, not delivered or is rejected or refused upon tender thereof to the owner, consignee, or person entitled to receive such property, the carrier, after giving due notice, whenever practicable to do so, to the owner and other parties that may have an interest therein, and unless advised to the contrary after giving such notice, shall undertake to sell or dispose of such property directly or by the employment of a competent salvage agent. The carrier shall only dispose of the property in a manner that will fairly and equally protect the best interests of all persons having an interest therein. The carrier shall make an itemized record sufficient to identify the property involved so as to be able to correlate it to the shipment or transportation involved, and claim, if any, filed thereon. The carrier also shall assign to each lot of such property a successive lot number and note that lot number on its record of shipment and claim, if any claim is filed thereon.

(b) Whenever disposition of salvage material or goods shall be made directly to an agent or employee of a carrier or through a salvage agent or company in which the carrier or one or more of its directors, officers, or managers has any interest, financial or otherwise, that carrier's salvage records shall fully reflect the particulars of each such transaction or relationship, or both, as the case may be.

(c) Upon receipt of a claim on a shipment on which salvage has been processed in the manner hereinbefore prescribed, the carrier shall record in its claim file thereon the lot number assigned, the amount of money recovered, if any, from the disposition of such property, and the date of transmittal of such money to the person or persons lawfully entitled to receive the same.

[37 FR 4258, Mar. 1972]

§ 1005.7 Weight as a measure of loss.

Where weight is used as a measure of loss in rail transit of scrap iron and steel and actual tare and gross weights are determined at origin and destination, the settlement of claims shall be based upon a comparison of net weights at origin and destination.

[41 FR 25908, June 23, 1976]

ENTERED ON DOCKET

DATE JUN 21 1993

FILED

JUN 21 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

C. VINSON REED,

Plaintiff,

v.

STATE OF OKLAHOMA ex rel
OKLAHOMA TAX COMMISSION, and
UNITED STATES OF AMERICA,
ex rel INTERNAL REVENUE
SERVICE,

Defendants.

Case No. 93-C-448-B ✓

ORDER

This matter comes on for consideration of Defendant United States of America ex rel Internal Revenue Service's Motion To Withdraw Notice Of Removal And Motion To Dismiss (#2).

This case is a removal of state court action CJ-93-00643, Tulsa County District Court, Notice of Removal being filed herein on May 12, 1993. The United States states that it was unaware this state court action had been removed to this court by the U. S. Department of Justice, Tax Division, Washington, D.C. on May 11, 1993, being case number 93-C-439-B.

For good cause shown the Court concludes the government's Motion To Withdraw Notice Of Removal And Motion To Dismiss should be and the same is GRANTED. The instant matter is herewith DISMISSED.

IT IS SO ORDERED, this 2/ day of June, 1993.

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

**THOMAS R. BRET
UNITED STATES DISTRICT JUDGE**

DATE JUN 21 1993

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

INTERNATIONAL SURPLUS LINES
INSURANCE COMPANY, a Corporation,

Plaintiff,

vs.

Case No. 92-C-1017-B ✓

STEWART, TODD, CHANEY & BAILEY,
an accounting partnership;
BILL STEWART, MARTIN E. TODD,
JACK C. CHANEY, and THOMAS C.
HERRMANN, individually and as
general partners; GRACE HERSETH,
an individual; JAMES WHEELER,
an individual; SEDCO INVESTMENTS,
an Oklahoma general partnership;
ROCK LAMBORN and RANDY LAMBORN,
d/b/a LAMBORN & LAMBORN; KEN
CAZZELL, an individual; DAN FRANK,
an individual; CHARLES PATTERSON,
an individual; THE PATTERSON GROUP,
an Oklahoma general partnership;
FRED RASCHEN, an individual;
JAMES BEAVERS, an individual;
CARL FISHER, an individual; and
WILLIAM S. FRISBIE, an individual,

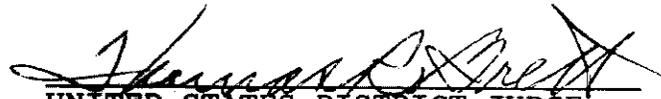
Defendants.

FILED
JUN 21 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

NOW on this 21 day of June, 1993, the above-styled
cause of action comes before this Court on Plaintiff's Application
to Dismiss Without Prejudice. The Court finds that good cause has
been shown and the relief should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the
above-styled cause of action is be dismissed without prejudice.


UNITED STATES DISTRICT JUDGE

3

DATE JUN 21 1993

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

JUN 21 1993

HARTFORD FIRE INSURANCE COMPANY, Plaintiff, vs. RAMSEY INDUSTRIES, INC., Defendant.

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

Case No. 92-C-205-B

ORDER DISMISSING WITHOUT PREJUDICE

NOW on this 21st day of June, 1993, the above-styled cause of action comes before this Court on Plaintiff's Application to Dismiss Without Prejudice. The Court finds that good cause has been shown and the relief should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above-styled cause of action will be dismissed without prejudice.

THE HONORABLE THOMAS R. BRETT

ENTERED DOCKET
DATE JUN 21 1993

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

ROBERT EUGENE ALLEN,
Plaintiff,
vs.
JOHNNY THOMPSON, et al.,
Defendants.

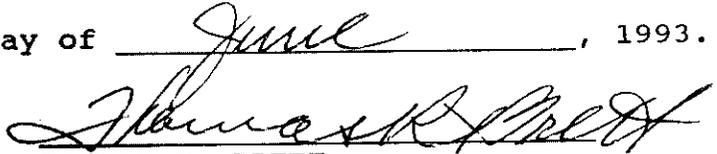
No. 92-1144-B

FILED
JUN 21 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Defendants filed a motion dismiss (docket #4). Plaintiff has failed to respond to the motion. Pursuant to Local Rule 15(A), Plaintiff's failure constitutes a waiver of objection and a confession of the matters raised by the motion. Defendants' motion prevails on its merits as well. Thus, for all the above reasons, Defendants' motion to dismiss (docket #4) is granted, and Plaintiff's complaint is hereby dismissed.

SO ORDERED THIS 21 day of June, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET.
DATE JUN 21 1993

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

DONALD HAMIL,)
)
 Plaintiff,)
)
 vs.)
)
 WILEY BACKWATER, et al.,)
)
 Defendants.)

No. 92-1124-B

FILED
JUN 21 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Defendants filed a motion for summary judgment (docket #5). Plaintiff has failed to respond to the motion. Pursuant to Local Rule 15(A), Plaintiff's failure constitutes a waiver of objection and a confession of the matters raised by the motion. Accordingly, Defendants' motion is granted, and Plaintiff's complaint is hereby dismissed.

SO ORDERED THIS 21 day of June, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT COURT

1

ENTERED ON DOCKET

DATE 6-18-93

FILED

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

JUN 18 1993

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

BEVERLY LARGE,

Plaintiff,

vs.

No. 93-C-239-E

AMERICAN AIRLINES, INC.,
a Delaware Corporation,

Defendant.

ORDER

COMES NOW BEFORE THE COURT FOR CONSIDERATION Defendant's unopposed combined motion for dismissal of this action and for imposition of sanctions pursuant to Federal Rule of Civil Procedure 11 (docket #3), which was filed April 12, 1993. The pertinent facts are as follows:

Plaintiff filed an action styled Beverly Large v. American Airlines, Inc., No. 91-C-425-E in June of 1991 (Large I). This court dismissed that action in March of 1992 on the grounds that Plaintiff failed to state any claim upon which relief can be granted. Plaintiff thereafter appealed the order of dismissal. The Tenth Circuit Court of Appeals dismissed Plaintiff's appeal for failure to prosecute. Plaintiff filed this action styled Beverly Large v. American Airlines, No. 93-C-239-E on March 19, 1993 (Large II).

(1) Motion to dismiss

In determining whether this action is barred as res judicata, the court must determine (1) whether the same parties or their privies are involved in both Large I and Large II, (2) whether the

5

claims sought to be litigated in Large II were raised or could have been raised in Large I, (3) whether the dismissal of Large I for failure to state a claim upon which relief can be granted constituted an adjudication on the merits, and (4) whether the dismissal of Plaintiff's appeal from Large I for failure to prosecute constituted an adjudication on the merits.

It is clear from a review of the complaint in Large I and the complaint in Large II that both actions involved identical parties. Furthermore, under the transactional approach, the minor differences between the complaint in Large I and Large II are disregarded and are treated as the same causes of action for purposes of determining the preclusive effect of the prior judgment in Large I. See Chandler v. Denton, 741 P.2d 855 (Okla.1987) (Oklahoma adheres to the transactional approach); Retherford v. Halliburton Co., 572 P.2d 966, 969 (Okla. 1977) ("[N]o matter how many 'rights' of a potential plaintiff are violated in the course of a single wrong or occurrence, damages flowing therefrom must be sought in one suit or stand barred by the prior adjudication"). The only remaining issue is whether a "final adjudication on the merits" occurred with respect to Large I.

Without question, the dismissal of an action for failure to state a claim upon which relief can be granted undoubtedly constitutes an adjudication on the merits of the claim. See Bell v. Hood, 66 S.Ct. 773, 776 (1946). Likewise, dismissal of an appeal for failure to prosecute is treated as an adjudication on the merits by virtue of Federal Rule of Civil Procedure 41(b) which provides:

Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication on the merits.

See also, Harrelson v. United States of America, 613 F.2d 114, 116 (5th Cir. 1980) (holding dismissal under Fed.R.Civ.P. 41(b) for failure to prosecute acts as an adjudication on the merits and enjoins any future litigation on any cause of action arising from the fact situation at issue in this case); Cannon v. Loyola University of Chicago, 784 F.2d 777, 780 (7th Cir. 1986) cert. denied, 107 S.Ct. 880 (1987) (treating dismissal pursuant to Rule 12(b)(6) as an adjudication on the merits pursuant to Rule 41(b)).

Accordingly, the court finds that Large I was finally adjudicated on the merits of the claims asserted therein. Based on the foregoing, the court further finds that Large II is barred as res judicata.

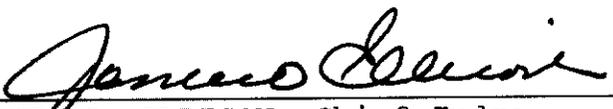
(2) Motion for Rule 11 sanctions

Defendant asks this court to impose sanctions under Fed.R.Civ.P. 11 by awarding costs and reasonable attorney's fees. Basically, Defendant contends that this action was not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and therefore the filing thereof constituted a violation of Rule 11. Defendant further notes that a letter was sent to Plaintiff's counsel in April of 1993 indicating that this action was barred as res judicata, citing the relevant authorities, and inviting Plaintiff to dismiss the action with prejudice.

Reviewing the record herein, the court finds that the filing of Large II amounted to a clear violation of Rule 11. The severity of the violations are only increased by the fact that Plaintiff was thereafter informed of the res judicata issue by opposing counsel, still failed to voluntarily dismiss, and then further failed to oppose or otherwise respond Defendant's motion to dismiss and for Rule 11 sanctions. Accordingly, the court awards Defendant costs incurred in litigating this matter, including reasonable fees.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's unopposed motion to dismiss is hereby granted and judgment is entered in favor of Defendant. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant's motion for imposition of sanctions pursuant to Fed.R.Civ.P. 11 is hereby granted AND Defendant is awarded costs including reasonable attorney fees.

SO ORDERED this 17th day of June, 1993.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 6-17-93

Attorney ID#11352

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE CORPORATION,)
in its corporate capacity,)

Plaintiff,)

vs.)

Civil Action No. 92-C-790 E

THOMAS WAID SHANK, a/k/a THOMAS W.)
SHANK, a single person; COUNTY TREASURER)
OF TULSA COUNTY; BOARD OF COUNTY)
COMMISSIONERS OF TULSA COUNTY,)
OKLAHOMA; STATE OF OKLAHOMA, ex rel)
OKLAHOMA TAX COMMISSION,)

Defendants,)

FILED

JUN 16 1993

and)

SCHELL SECURITY OF TULSA, INC.,)

Additional Party Defendant.)

Richard M. [unclear] Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT OF FORECLOSURE

This cause coming on for hearing pursuant to Plaintiff's Motion for Summary Judgment this 16 day of June, 1993, before the undersigned Judge of the United States District Court of the Northern District of Oklahoma; plaintiff, being present by its attorney, Works, Lentz & Pottorf, Inc., through K. Jack Holloway; the defendant, THOMAS WAID SHANK a/k/a THOMAS W. SHANK, appearing by and through his attorney, Dwight L. Smith; the defendants, COUNTY TREASURER OF TULSA COUNTY and BOARD OF COUNTY COMMISSIONERS OF TULSA COUNTY, appearing by and through their attorney, J. Dennis Semler; the defendant, STATE OF OKLAHOMA ex rel OKLAHOMA TAX COMMISSION, appears by and through its attorney, Kim Ashley.

The defendant, SCHELL SECURITY OF TULSA, INC., having been duly served with summons in this cause more than 20 days prior to this date, and having failed to appear, plead, or answer to the Petition of the plaintiff, came not, but wholly made default.

Thereupon, said cause coming on for hearing before the Court, and the Court, after having considered the pleadings filed herein and hearing the statements of counsel, finds that all of the allegations contained in the Petition of the plaintiff filed herein are true.

The court finds that the plaintiff's mortgage is in default and plaintiff is entitled to a decree of this Court foreclosing its mortgage upon the real property described below in satisfaction of its claim.

The Court further finds that Title 68 O.S., Section 1171, et seq., of the Statutes of the State of Oklahoma regarding mortgage tax has been satisfied by the plaintiff.

The Court finds that there is due from said note and mortgage sued on in this action, \$116,911.42 with interest thereon, accrued from August 6, 1986, through the date of judgment at the rate of 10.000% per annum, plus \$136.65 for abstracting expense, plus \$1,800.00 for attorney's fees, with interest from the date of judgment at the rate of 10.000% per annum, together with accrued costs of this action in the amount of \$113.00.

The Court finds that the plaintiff has a first and prior lien on the property described in the mortgage set out in the petition, to secure the payment of indebtedness, interest, late charges, abstracting costs, attorneys' fees continuing expenses and costs, said property being described as follows, to-wit:

The East 10 feet of Lot Thirty (30), all of Lot Thirty-one (31), Block Twenty-one (21), SUNSET TERRACE, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court finds that the defendant, STATE OF OKLAHOMA, ex rel OKLAHOMA TAX COMMISSION, has a valid Tax Warrant Lien in the amount of \$606.97, plus accruing interest, on the above described real property filed at Book 5226, Page 929, of the records of the Tulsa County Clerk. The lien is junior and inferior to the mortgage lien of the plaintiff.

The Court finds that the defendant, COUNTY TREASURER OF TULSA COUNTY, claims outstanding ad valorem real property taxes in the amount of \$1,020.00 for the tax year 1992, on the above described real property

The plaintiff has elected to have the property sold with appraisalment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that all of the allegations of plaintiff's Petition are true and plaintiff shall have and recover judgment in personam of and from the defendant, THOMAS WAID SHANK a/k/a THOMAS W. SHANK, for \$116,911.42 with interest thereon, accrued from August 6, 1986, through the date of judgment at the rate of 10.000% per annum, plus \$136.65 for abstracting expense, plus \$1,800.00 for attorney's fees, with interest from the date of judgment at the rate of 10.000% per annum, together with accrued costs in the amount of \$113.00, for all of which let execution issue against the property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that the mortgage in favor of plaintiff set forth in plaintiff's Petition is established and adjudged to be a valid and first lien upon the real property described as follows, to-wit:

The East 10 feet of Lot Thirty (30), all of Lot Thirty-one (31), Block Twenty-one (21), SUNSET TERRACE, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

This lien is prior and superior to the right, title, interest, and lien of each defendant and of all persons claiming by, through, or under any defendant since the filing of the Notice of Pendency of Action in the office of the county clerk. The amounts found due on the note set forth in plaintiff's Petition and for which judgment is rendered for plaintiff are secured by said mortgage.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that the defendant, STATE OF OKLAHOMA ex rel OKLAHOMA TAX COMMISSION, has a valid Tax Warrant Lien in the amount of \$606.97, plus accruing interest, on the above described real property that is junior and inferior to the lien of the plaintiff, but is superior to the right, title and interest of the other parties.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that the defendant, COUNTY TREASURER OF TULSA COUNTY, claims ad valorem real property taxes in the amount of \$1,020.00 for the tax year 1992, on the above described real property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that either the United States Marshal for the Northern District of Oklahoma or the Sheriff of Tulsa County, Oklahoma, shall levy upon the above described real property and advertise and sell the same, with appraisalment, according to law. The proceeds from said sale shall be distributed according to law by the Sheriff as follows:

- a. To payment of the costs of said sale and of this action;
- b. To payment of any unpaid ad valorem taxes in favor of the defendant, COUNTY TREASURER OF TULSA COUNTY;
- c. To payment of the judgment of the plaintiff;

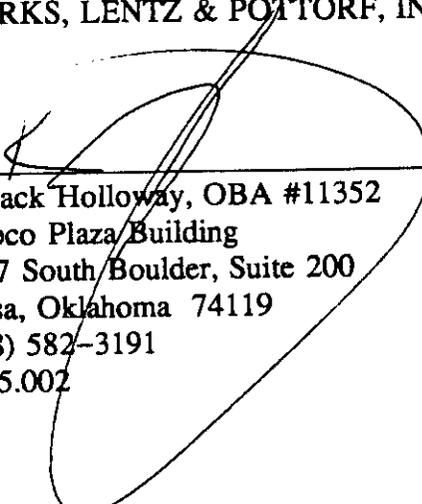
- d. To payment of the Tax Warrant Lien of the defendant, STATE OF OKLAHOMA ex rel OKLAHOMA TAX COMMISSION;
- e. The residue, if any, shall be paid to the Clerk of the Court to await the further Order of the Court.

Upon confirmation of the sale, the Marshal or the Sheriff of said County shall execute and deliver a good and sufficient deed to the premises to the purchaser which shall convey all the right, title, interest, estate, and equity of all defendants, and all persons claiming by, through, or under such defendants since the filing of the Notice of Pendency of Action in the office of the County Clerk, in and to said real property, except as provided by law; upon application of the purchaser, the Court Clerk shall issue a Writ of Assistance to the Sheriff, who shall forthwith place the purchaser in full and complete possession and enjoyment of the premises.

S/ JAMES O. ELLISON
JUDGE OF THE DISTRICT COURT

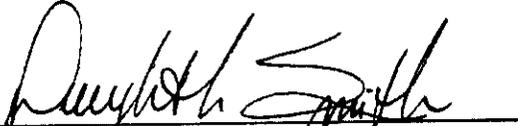
APPROVED:

WORKS, LENTZ & POTTORF, INC.

By 
K. Jack Holloway, OBA #11352
Mapco Plaza Building
1717 South Boulder, Suite 200
Tulsa, Oklahoma 74119
(918) 582-3191
2675.002

FEDERAL DEPOSIT INSURANCE CORPORATION,
in its corporate capacity,
vs. THOMAS WAID SHANK a/k/a THOMAS W. SHANK, et al
United State District Court Case No. 92-C-790 E
Judgment of Foreclosure

APPROVED: As to Form



Dwight L. Smith, OBA #008340
35 East 18th Street
Tulsa OK 74119-5201
(918) 599-7214

Attorney for Defendant
THOMAS WAID SHANK a/k/a THOMAS W. SHANK

FEDERAL DEPOSIT INSURANCE CORPORATION,
in its corporate capacity,
vs. THOMAS WAID SHANK a/k/a THOMAS W. SHANK, et al
United State District Court Case No. 92-C-790 E
Judgment of Foreclosure

APPROVED:



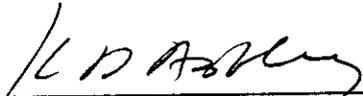
J. Dennis Semler, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa OK 74103
(918) 584-0440

Attorney for Defendants
COUNTY TREASURER OF TULSA COUNTY and
BOARD OF TULSA COUNTY COMMISSIONERS

2675.2.9

FEDERAL DEPOSIT INSURANCE CORPORATION,
in its corporate capacity,
vs. THOMAS WAID SHANK a/k/a THOMAS W. SHANK, et al
United State District Court Case No. 92-C-790 E
Judgment of Foreclosure

APPROVED:



Kim Ashley, OBA # 14175
Assistant General Counsel
P O Box 53248
Oklahoma City OK 73152-3248
(405) 521-3141

Attorney for Defendant
STATE OF OKLAHOMA ex rel
OKLAHOMA TAX COMMISSION

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

FILED

JUN 17 1993

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

KENNETH SCOTT BALMER,

Plaintiff,

vs.

STANLEY GLANZ,

Defendant.

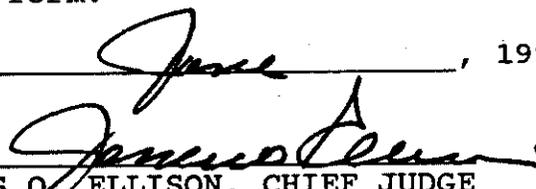
93-C-0492-E

ORDER

Plaintiff has filed a civil rights complaint and a motion for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. However, Plaintiff's motion for leave to proceed in forma pauperis is insufficient; it is not on the proper form, and there is no financial certificate by an authorized official of the penal institution.

The instant complaint shall therefore be dismissed without prejudice at this time. The court may reopen Plaintiff's action if he submits the \$120.00 filing fee or a properly completed motion for leave to proceed in forma pauperis to the court within thirty (30) days. The Clerk shall send Plaintiff the proper motion for leave to proceed in forma pauperis form.

SO ORDERED THIS 17th day of June, 1993.


JAMES O. ELLISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 6-16-93

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

F I L E D

JUN 16 1993

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

DAVID LYLE DANIEL, an individual,)	
)	
Plaintiff,)	
)	
vs.)	
)	
ROYCE WILLIE, an individual, and BRENT INDUSTRIES, INC., an Alabama corporation,)	
)	
Defendants.)	

No. 92-C-1000-E

JUDGMENT

This matter having been disposed of by Defendants' Motion for Summary Judgment, the Court having sustained such Motion, and Plaintiff having moved this Court to dismiss the below claim with prejudice, Judgment is hereby entered in favor of Brent Industries, Inc. and Royce Willie, an individual, and against David L. Daniel, an individual, on all remaining counts and the Second Claim for relief is hereby dismissed with prejudice.

S/JEFFREY S. WOLFE
U.S. MAGISTRATE JUDGE

MAGISTRATE JEFFREY WOLFE

ENTERED ON DOCKET
JUN 16 1993
DATE _____

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

FILED

JUN 15 1993

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

VIVIAN CURTIS WOODS,
Plaintiff,

vs.

No. 91-C-829-C

LOUIS W. SULLIVAN, M.D.,
Secretary of Health and
Human Services,
Defendant.

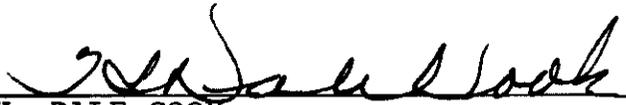
ORDER

Before the Court are the plaintiff's objections to the Report and Recommendation of the United States Magistrate Judge in which it was recommended that plaintiff be denied disability benefits.

The Magistrate Judge set out a detailed summary of the evidence considered and applicable authority. Plaintiff has presented no compelling argument that the Report and Recommendation is erroneous. The ALJ's decision to not order a consultative evaluation was within his latitude. cf. Diaz v. Secretary, 898 F.2d 774, 778 (10th Cir. 1990).

It is the Order of the Court that the Report and Recommendation of the United States Magistrate Judge is hereby affirmed. The plaintiff's complaint for disability benefits is hereby denied.

IT IS SO ORDERED this 15th day of June, 1993.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE JUN 16 1993

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

FILED

JUN 15 1993

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

JULIE CHAPMAN,)
)
Plaintiff,)
)
vs.)
)
DOUG NICHOLS,)
as Sheriff of Creek County,)
and the Board of County)
Commissioners of Creek County,)
Oklahoma,)
)
Defendants.)

91-C-539-C /

JOURNAL ENTRY OF JUDGMENT

On this 15th day of June, 1993, the Plaintiff, Julie Chapman, and Defendants, Doug Nichols, as Sheriff of Creek County; and the Board of County Commissioners of Creek County, Oklahoma, appear on this Settlement Agreement. Having examined the pleadings and being fully advised in the premises, the Court finds:

The Board of Commissioners of Creek County by Resolution and Warrant of Attorney, authorized the District Attorney of Creek County to present the settlement for approval of the Court. Certified copies of the Resolution and Warrant of Attorney are attached as Exhibits A and B, respectively.

The Court finds that the judgment is supported by the pleadings, case law, and ample evidence. The parties agree and the Court finds that such judgment shall constitute a judgment against Creek County and shall be satisfied according to state statute 62

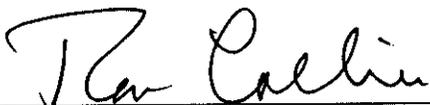
9

O.S. 1991 §3655 with interest on the judgment as provided by 12
O.S. 1991 §727.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff
have and recover judgment against the Defendants for \$20,000.00,
with interest thereon as provided by 12 O.S. 1991 §727.


UNITED STATES DISTRICT JUDGE

APPROVED:


COLLIER LAW OFFICE, INC.
RON COLLIER, OBA #1794
P.O. BOX 1257
OKLAHOMA CITY, OKLAHOMA 73101
405/236-1204


LANTZ MCCLAIN
CREEK COUNTY DISTRICT ATTORNEY
P.O. BOX 1055
SAPULPA, OKLAHOMA 74066


JOHN HARLAN
ATTORNEY AT LAW
404 E. DEWEY, SUITE 106
SAPULPA, OKLAHOMA 74067

Exhibit "A"

93-44

RESOLUTION

RESOLUTION AUTHORIZING THE DISTRICT
ATTORNEY OF CREEK COUNTY TO ENTER A SETTLEMENT
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA IN
CASE NO. 91-C-539-C, JULIE CHAPMAN V.
DOUG NICHOLS, INDIVIDUALLY AND AS
SHERIFF OF CREEK COUNTY; AND BOARD OF
COUNTY COMMISSIONERS OF CREEK COUNTY, OKLAHOMA

WHEREAS, the Board of Commissioners for Creek County has determined that a just settlement in the United States District Court for the Northern District of Oklahoma, case number 91 C 539 C, styled: JULIE CHAPMAN V. DOUG NICHOLS, INDIVIDUALLY AND AS SHERIFF OF CREEK COUNTY; AND THE BOARD OF COUNTY COMMISSIONERS OF CREEK COUNTY, would be to confess judgment for the plaintiff in the sum of Twenty Thousand Dollars (\$20,000.00); and

WHEREAS, it is the desire of the Board of County Commissioners of Creek County to make such settlement and issue a Warrant of Attorney for preparing and filing a Journal Entry of Judgment incorporating the settlement agreement;

WHEREAS, such judgment shall be a judgment against Creek County and should be paid as a municipal judgment as provided by 12 O.S. 1981 §365.5 with interest as provided by 12 O.S. 1991 §727.

NOW, THEREFORE, BE IT RESOLVED that the District Attorney for Creek County be and he is hereby directed to prepare and file a Journal Entry of Judgment incorporating this Resolution and the settlement agreement in the sum of Twenty Thousand Dollars (\$20,000.00) in the United States District Court for the Northern District of Oklahoma.

BE IT FURTHER RESOLVED that the Chairman of the Board of Commissioners of Creek County and the County Clerk are directed to

execute the attached Warrant of Attorney for entering such Journal Entry of Judgment which is attached hereto and made a part hereof by reference.

ADOPTED by the Board of Commissioners of Creek County and APPROVED by the Chairman of the Board of Commissioners of Creek County this 7 day of JUNE, 1993.



CHAIRMAN OF THE BOARD OF COUNTY
COMMISSIONERS OF CREEK COUNTY,
STATE OF OKLAHOMA

ATTEST



COUNTY CLERK



LANTZ McCLAIN
CREEK COUNTY DISTRICT ATTORNEY
P.O. BOX 1055
SAPULPA, OKLAHOMA 74066

Exhibit "B"

WARRANT OF ATTORNEY
FOR FILING JOURNAL ENTRY OF JUDGMENT

KNOW ALL MEN BY THESE PRESENTS:

That on the 7 day of June, 1993, by Resolution, the Board of County Commissioners of Creek County directed Lantz McClain, District Attorney for Creek County to file a Journal Entry of Judgment incorporating said Resolution and settlement agreement in the sum of Twenty Thousand Dollars (\$20,000.00) in the United States District Court for the Northern District of Oklahoma, case number 91-C-539-C, styled: Julie Chapman v. Doug Nichols, individually and as Sheriff of Creek County; and the Board of County Commissioners of Creek County, Oklahoma.

Said Resolution directed the President of the Board and the County Clerk to execute this Warrant and the execution of same by the President of the Board and the attestation by the Clerk of Creek County hereby authorizes Lantz McClain, District Attorney of Creek County to enter into the aforesaid settlement agreement in the amount of Twenty Thousand Dollars (\$20,000.00) and to file the aforementioned Journal Entry of Judgment incorporating said Resolution and settlement agreement.



CHAIRMAN OF THE BOARD OF COUNTY
COMMISSIONERS OF CREEK COUNTY

ATTEST:



COUNTY CLERK

ENTERED ON DOCKET

DATE 6-16-93

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

IN RE:)
)
 LINDELL M. WHITEFIELD)
 and DELIA ALICIA WHITEFIELD,)
)
 Debtors.)
)
 v.)
)
 GLEN W. TAYLOR, Trustee of the)
 Bankruptcy Estates of Mid-Americas)
 Process services, Inc., et al.,)
)
 Defendants.)

Bky. No. 91-00609-C

Case No. 92-C-1163-E

FILED

JUN 15 1993

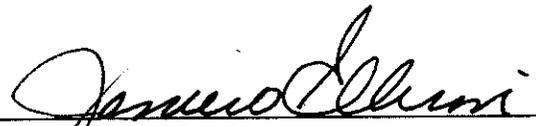
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This order pertains to Debtors' Dismissal (Docket #6)¹ filed May 21, 1993. No response or objection has been filed by the Defendants. The court grants the dismissal.

Debtors' appeal from a final order of the bankruptcy court entered on the 10th day of December, 1992, converting this case from one under Chapter 11 to Chapter 7 proceedings, is dismissed. The parties are to bear their own costs and attorney's fees.

Dated this 14th day of June, 1993.


 JAMES O. ELLISON, CHIEF
 UNITED STATES DISTRICT JUDGE

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

ENTERED ON DOCKET

DATE 6-16-93

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

DONALD D. PEPER, JANANA R.)
PEPER, and DONALD D. PEPER,)
as father and next friend of)
TRISTEN BLAKE PEPER, a minor,)

Plaintiffs,)

vs.)

Case No. 91-C-261-E

THE HERTZ CORPORATION and)
MOHAMMAD S. ALGHANDI,)

Defendants,)

vs.)

STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)

Intervenor.)

FILED

JUN 15 1993

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

STIPULATION OF DISMISSAL

All of the parties to the above-captioned cause, pursuant to Rule 41(a)(1), Fed R.Civ.P., stipulate that the above-captioned cause may be dismissed by Plaintiffs with prejudice to their rights to refile same.

MCDANIEL & ASSOCIATES

By: 

Dale F. McDaniel
2250 East 73rd
Suite 200
Tulsa, Oklahoma 74136
(918) 493-6446

Attorneys for Plaintiffs

RHODES, HIERONYMUS, JONES, TUCKER
& GABLE

By: W. Leach
William S. Leach, OBA 14892
Bank IV Center
15 West Sixth Street
Suite 2800
Tulsa, Oklahoma 74119-5430
(918) 582-1173

Attorneys for Defendants, Hertz
Corporation and Mohamad S. Alghamdi

KNOWLES, KING & SMITH

By: D. Ellis
Dale Ellis
603 Expressway Tower
2431 East 51st Street
Tulsa, Oklahoma 74105-6033
(918) 749-5566

Attorneys for Intervenor,
State Farm Mutual Automobile
Insurance Company

DATE ~~JUN 16 1993~~

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

WINEY BEAVER, STEPHANIE)
TAYLOR, and JENNAFER LEONE,)

Plaintiffs,)

vs.)

92-C-109-C

DOUG NICHOLS,)
as Sheriff of Creek County,)
and the Board of County)
Commissioners of Creek County,)
Oklahoma,)

Defendants.)

JOURNAL ENTRY OF JUDGMENT

On this 15th day of June, 1993, Plaintiff,
Stephanie Taylor and Defendants, Doug Nichols, as Sheriff of Creek
County and the Board of County Commissioners of Creek County,
Oklahoma, appear on this Settlement Agreement. Having examined the
pleadings and being fully advised in the premises, the Court finds:

The Board of Commissioners of Creek County by Resolution and
Warrant of Attorney, authorized the District Attorney of Creek
County to present the settlement for approval of the Court.
Certified copies of the Resolution and Warrant of Attorney are
attached as Exhibits A and B, respectively.

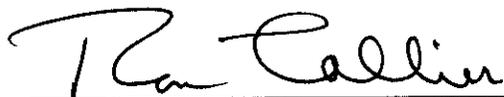
The Court finds that the judgment is supported by the
pleadings, case law, and ample evidence. The parties agree and the
Court finds that such judgment shall constitute a judgment against
Creek County and shall be satisfied according to state statute 62

O.S. 1991 §3655 with interest on the judgment as provided by 12
O.S. 1991 §727.

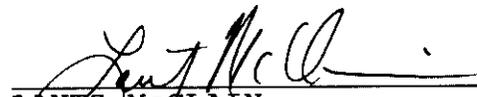
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff
have and recover judgment against the Defendants for \$20,000.00,
with interest thereon as provided by 12 O.S. 1991 §727.


UNITED STATES DISTRICT JUDGE

APPROVED:



COLLIER LAW OFFICE, INC.
RON COLLIER, OBA #1794
P.O. BOX 1257
OKLAHOMA CITY, OKLAHOMA 73101
405/236-1204



LANTZ McCLAIN
CREEK COUNTY DISTRICT ATTORNEY
P.O. BOX 1055
SAPULPA, OKLAHOMA 74066



JOHN HARLAN
ATTORNEY AT LAW
404 E. DEWEY, SUITE 106
SAPULPA, OKLAHOMA 74067

Exhibit "A"

93-43

RESOLUTION

RESOLUTION AUTHORIZING THE DISTRICT
ATTORNEY OF CREEK COUNTY TO ENTER A SETTLEMENT
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA IN
CASE NO. 92-C-109-C, STEPHANIE TAYLOR V.
DOUG NICHOLS, INDIVIDUALLY AND AS
SHERIFF OF CREEK COUNTY AND THE BOARD OF
COUNTY COMMISSIONERS OF CREEK COUNTY, OKLAHOMA

WHEREAS, the Board of Commissioners for Creek County has determined that a just settlement in the United States District Court for the Northern District of Oklahoma, case number 92-C-109-C, styled: STEPHANIE TAYLOR V. DOUG NICHOLS, INDIVIDUALLY AND AS SHERIFF OF CREEK COUNTY AND THE BOARD OF COUNTY COMMISSIONERS OF CREEK COUNTY, would be to confess judgment for the plaintiff in the sum of Twenty Thousand Dollars (\$20,000.00); and

WHEREAS, it is the desire of the Board of County Commissioners of Creek County to make such settlement and issue a Warrant of Attorney for preparing and filing a Journal Entry of Judgment incorporating the settlement agreement;

WHEREAS, such judgment shall be a judgment against Creek County and should be paid as a municipal judgment as provided by 12 O.S. 1981 §365.5 with interest as provided by 12 O.S. 1991 §727.

NOW, THEREFORE, BE IT RESOLVED that the District Attorney for Creek County be and he is hereby directed to prepare and file a Journal Entry of Judgment incorporating this Resolution and the settlement agreement in the sum of Twenty Thousand Dollars (\$20,000.00) in the United States District Court for the Northern District of Oklahoma.

BE IT FURTHER RESOLVED that the Chairman of the Board of Commissioners of Creek County and the County Clerk are directed to

execute the attached Warrant of Attorney for entering such Journal Entry of Judgment which is attached hereto and made a part hereof by reference.

ADOPTED by the Board of Commissioners of Creek County and APPROVED by the Chairman of the Board of Commissioners of Creek County this 7 day of JUNE, 1993.



CHAIRMAN OF THE BOARD OF COUNTY
COMMISSIONERS OF CREEK COUNTY,
STATE OF OKLAHOMA

ATTEST



COUNTY CLERK



LANTZ McCLAIN
CREEK COUNTY DISTRICT ATTORNEY
P.O. BOX 1055
SAPULPA, OKLAHOMA 74066

Exhibit "B"

WARRANT OF ATTORNEY
FOR FILING JOURNAL ENTRY OF JUDGMENT

KNOW ALL MEN BY THESE PRESENTS:

That on the 7 day of June, 1993, by Resolution, the Board of County Commissioners of Creek County directed Lantz McClain, District Attorney for Creek County to file a Journal Entry of Judgment incorporating said Resolution and settlement agreement in the sum of Twenty Thousand Dollars (\$20,000.00) in the United States District Court for the Northern District of Oklahoma, case number 92-C-109-C styled: Stephanie Taylor v. Doug Nichols, individually and as Sheriff of Creek County and the Board of County Commissioners of Creek County, Oklahoma.

Said Resolution directed the President of the Board and the County Clerk to execute this Warrant and the execution of same by the President of the Board and the attestation by the Clerk of Creek County hereby authorizes Lantz McClain, District Attorney of Creek County to enter into the aforesaid settlement agreement in the amount of Twenty Thousand Dollars (\$20,000.00) and to file the aforementioned Journal Entry of Judgment incorporating said Resolution and settlement agreement.



CHAIRMAN OF THE BOARD OF COUNTY
COMMISSIONERS OF CREEK COUNTY

ATTEST:



COUNTY CLERK

ENTERED ON DOCKET

DATE 6-15-93

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

JANIS C. EPPERSON,)
)
Plaintiff,)
)
v.) No. 93-C-0030-E
)
MUSKET CORPORATION, d/b/a)
LOVES COUNTRY STORE,)
)
Defendant.)

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, the plaintiff, Janis C. Epperson, hereby stipulates with the defendant, Musket Corporation, d/b/a Love's Country Store, that this action shall be dismissed with prejudice. Each party is to bear its own costs and attorney fees.


RICHARD D. JAMES
COY D. MORROW

- Of the Firm -

WALLACE, OWENS, LANDERS, GEE,
MORROW, WILSON, WATSON, JAMES
& WATSON
21 South Main
Post Office Box 1168
Miami, Oklahoma 74355
(918) 542-5501

ATTORNEYS FOR PLAINTIFF

Madalene A. B. Witterholt

LEONARD COURT, OBA #1948
MADALENE A. B. WITTERHOLT
OBA #10528

- Of the Firm -

CROWE & DUNLEVY
A Professional Corporation
1800 Mid-America Tower
20 North Broadway
Oklahoma City, Oklahoma 73102
(405) 235-7700
and
Suite 500
321 South Boston
Tulsa, Oklahoma 74103-3313
(918) 592-9800

ATTORNEYS FOR DEFENDANT

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

SHERRY E. GARTON,)
)
 Plaintiff,)
)
 vs.)
)
 LOUIS W. SULLIVAN, M.D.,)
 Secretary of Health and)
 Human Services,)
)
 Defendant.)

No. 91-C-813-C

FILED

JUN 15 1993

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

ORDER

Before the Court is the objection of the plaintiff to the Report and Recommendation of the United States Magistrate Judge, who recommended that plaintiff be denied disability benefits.

The Secretary must follow a five-step process in evaluating a claim for disability benefits. 20 C.F.R. §416.920 (1988). If a person is found to be disabled or not disabled at any point, the review ends. §416.920(a). The five steps are as follows:

- (1) A person who is working is not disabled. 20 C.F.R. §416.920(b).
- (2) A person who does not have an impairment or combination of impairments severe enough to limit the ability to do basic work is not disabled. 20 C.F.R. §416.920(c).
- (3) A person whose impairments meets or equals one of the impairments listed in the regulations is conclusively presumed to be disabled. 20 C.F.R. §416.920(d).
- (4) A person who is able to perform work he has done in the past is not disabled. 20 C.F.R. §416.920(e).
- (5) A person whose impairment precludes performance of past work is disabled unless the Secretary demonstrates that the person can perform other work. Factors to be considered are age, education, past work experience, and residual functional capacity. 20 C.F.R. §416.920(f).

Reyes v. Bowen, 845 F.2d 242, 243 (10th Cir. 1988).

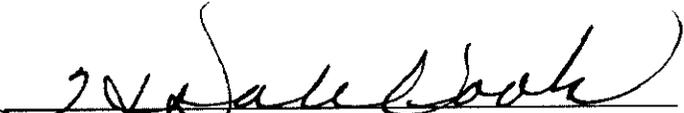
The claimant bears the burden of establishing a disability, *i.e.*, the first four steps. Williams v. Bowen, 844 F.2d 748, 751 n.2 (10th Cir. 1988). Once step five is reached, the burden shifts to the Secretary to show that claimant retains the capacity to perform alternative work types which exist within the national economy. Diaz v. Secretary of Health & Human Servs., 898 F.2d 774, 776 (10th Cir. 1990). Here, the ALJ proceeded to step five, and concluded that claimant could work as a clerical payroll clerk or an entry level secretary.

The Secretary's decision and findings will be upheld if supported by substantial evidence. Nieto v. Heckler, 750 F.2d 59, 61 (10th Cir. 1984). In her first argument, claimant contends that this evidentiary standard is not met. Upon review, the Court disagrees and affirms the Secretary and the Magistrate Judge on this point.

More specifically, claimant objects to a hypothetical question which the ALJ asked the vocational expert witness. Claimant argues that the question violates the principle of Hargis v. Sullivan, 945 F.2d 1482, 1492 (10th Cir. 1991) that such a question must relate with precision all of a claimant's impairments. As the Magistrate Judge noted, the hypothetical question need only relate impairments which the ALJ finds are supported by substantial evidence in the record. Ehrhart v. Secretary of Health & Human Servs., 969 F.2d 534, 540 (7th Cir. 1992); see also, Talley v. Sullivan, 908 F.2d 585, 588 (10th Cir. 1990). The Court does not find the question improper under the appropriate standard.

It is the Order of the Court that the Report and Recommendation of the United States Magistrate Judge is hereby affirmed. Plaintiff's complaint for benefits is hereby denied.

IT IS SO ORDERED this 15th day of June, 1993.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE JUN 14 1993

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

IN RE:

REPUBLIC FINANCIAL
CORPORATION, an Oklahoma
corporation,

Debtor.

R. DOBIE LANGENKAMP,
Successor Trustee,

Plaintiff-
Appellee,

vs.

RALPH HERBERT LINDLEY d/b/a
L.B.L. OIL COMPANY;

Defendant-
Appellant.

Case No. 84-01460-W
(Chapter 11)

FILED

JUN 14 1993

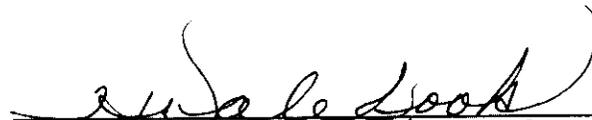
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Adversary No. 85-0309-C

District Court No. 92-C-943-C

ORDER

Comes now before the Court for its consideration the above styled parties' Stipulation of Dismissal pursuant to Rule 41(a)(1)(ii) Fed. R. Civ. Proc. After review, the Court finds said Stipulation of Dismissal is hereby granted.


~~JAMES O. ELLISON, Chief Judge~~
UNITED STATES DISTRICT COURT

MBK

DATE 6-15-93

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 STEPHEN RAY BREWER; DEMETA JO)
 BREWER; COUNTY TREASURER,)
 Tulsa County, Oklahoma; BOARD)
 OF COUNTY COMMISSIONERS, Tulsa)
 County, Oklahoma,)
)
 Defendants.)

FILED

JUN 14 1993

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

CIVIL ACTION NO. 93-C-201-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 11 day
of June, 1993. The Plaintiff appears by F.L. Dunn,
III, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, Stephen Ray Brewer and Demeta Jo
Brewer, appear by Gary W. Wood, Esq.; the Defendant, County
Treasurer, Tulsa County, Oklahoma, appears by J. Dennis Semler,
Assistant District Attorney, Tulsa County, Oklahoma; and the
Defendant, Board of County Commissioners, Tulsa County, Oklahoma,
appears not, having previously disclaimed any right, title or
interest in the subject property.

The Court, being fully advised and having examined the
court file, finds that the Defendant, County Treasurer, Tulsa
County, Oklahoma, acknowledged receipt of Summons and Complaint
on March 12, 1993; and that Defendant, Board of County
Commissioners, Tulsa County, Oklahoma, acknowledged receipt of
Summons and Complaint on March 11, 1993 and acknowledged receipt
of Summons and Amended Complaint on March 26, 1993.

It appears that the Defendants, Stephen Ray Brewer and Demeta Jo Brewer, filed their Answer to Complaint on March 30, 1993 and their Answer to Amended Complaint on April 5, 1993; that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed his Answer to Complaint on April 13, 1993 and his Answer to Amended Complaint on April 20, 1993; and that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer to Complaint on April 13, 1993, disclaiming any right, title or interest in the subject property.

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

Lot Eleven (11), Block Sixteen (16) VALLEY VIEW ACRES ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on September 30, 1992, Stephen Ray Brewer and Demeta Jo Brewer filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 92-03401-W and were discharged on January 29, 1993.

The Court further finds that on April 29, 1982, the Defendant, Stephen Ray Brewer, 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, his mortgage note in the amount of \$23,750.00, payable in monthly

installments, with interest thereon at the rate of 15.5 percent (15.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Stephen Ray Brewer, 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 April 29, 1982, covering the above-described property. Said mortgage was recorded on April 30, 1982, in Book 4610, Page 1294, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Stephen Ray Brewer, made default under the terms of the aforesaid note and mortgages by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Stephen Ray Brewer, is indebted to the Plaintiff in the principal sum of \$22,071.52, plus interest at the rate of 15.5 percent per annum from April 1, 1992 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$16.00 which became a lien on the property as of June 26, 1992. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, Demeta Jo Brewer 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 the Defendant, Stephen Ray Brewer, in the principal sum of \$22,071.52, plus interest at the rate of 15.5 percent per annum from April 1, 1992 until judgment, plus interest thereafter at the current legal rate of 3.54 percent per annum until paid, plus the costs of this action, 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, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$16.00 for personal property taxes for the year 1991, plus the costs of this action.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Stephen Ray Brewer, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, according to Plaintiff's election with or without appraisalment, the real

property involved herein and apply the proceeds of the sale as follows:

First:

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

Second:

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

Third:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$16.00, personal property taxes which are currently due and owing.

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

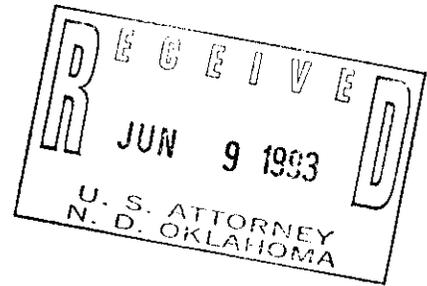
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ JAMES O. ELLISON

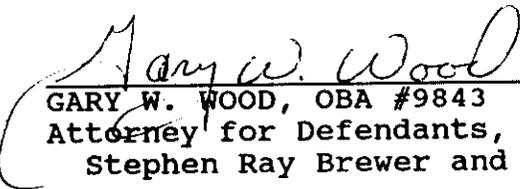
UNITED STATES DISTRICT JUDGE

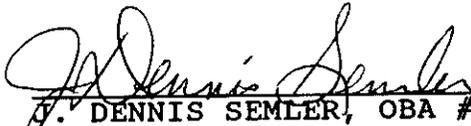
APPROVED:

F.L. DUNN, III
United States Attorney



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


GARY W. WOOD, OBA #9843
Attorney for Defendants,
Stephen Ray Brewer and Demeta Jo Brewer


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

Judgment of Foreclosure
Civil Action No. 93-C-201-E

PB/esr

DATE JUN 14 1993

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

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA,

Plaintiff,

vs.

CARRI A. OMSTEAD (formally
Watters), CHARLES THOMAS
WATTERS, SR., and DANIEL B.
JONES, Administrator of the
Estate of CHARLES THOMAS
WATTERS, JR.,

Defendants.

Case No. 90-C-332-B ✓

FILED
JUN 10 1993

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

ORDER

This matter comes before this Court on remand from the United States Court of Appeals for the Tenth Circuit. On December 11, 1992, the United States Court of Appeals for the Tenth Circuit, entered its Judgment in this matter remanding this case to this Court with directions to consider a constitutional issue, raised by Defendant Carri A. Omstead (formerly Watters-hereinafter Omstead) for the first time on appeal.

Omstead argues that Okla. Stat. 15, § 178 (Supp. 1987) violates the Contract Clause of the United States Constitution and the parallel provision of the Oklahoma Constitution because it retroactively impairs preexisting contract rights or obligations. See U.S. Const. art. I, §10. cl. 1; Okla. Const. art. II, § 15.

2

STATEMENT OF THE CASE

Plaintiff, Prudential Insurance Company of America (Prudential), filed a statutory interpleader action pursuant to 28 U.S.C. § 1335, depositing into Court the sum of \$130,000.00, plus accrued interest, which represented the face value of two life insurance policies issued by Prudential upon the life of Charles T. Watters, Jr. (Watters, Jr.), deceased. Defendant Omstead was married to Watters, Jr. during 1987 when Prudential issued these policies, and is listed as the primary beneficiary of each policy.¹ Omstead and Watters, Jr. divorced in 1989, a Decree of Divorce being entered by the District Court of Pawnee County, Oklahoma, on April 20, 1989. Watters, Jr. died on October 29, 1989, while living in Lewisville, (Denton County) Texas, as a result of a motor vehicle accident. Omstead remained as the primary beneficiary of the insurance policies at the time of Watters, Jr.'s death.

Defendant, Charles Thomas Watters, Sr. (Watters, Sr.), the father of the deceased, is listed on the two policies as a contingent beneficiary. Watters, Sr. claims the proceeds of the two insurance policies. Plaintiff Prudential has been discharged from this matter.

The parties were in dispute as to which law, Florida or Oklahoma, should apply to the interpretation of the Prudential policies as well as Omstead's status as ex-wife/primary beneficiary. Both Omstead and Watters, Sr., filed Motions and Supporting Briefs for Summary Judgment, claiming entitlement to the

¹ Under the name of Carri A. Watters.

proceeds of the policies.

This Court held that Oklahoma law governed the interpretation of the insurance policies at issue. Applying Okla. Stat. tit. 15, § 178 (Supp. 1987), this Court revoked Omstead's beneficiary status. Okla. Stat. tit. 15 § 178 provides:

§ 178. Death benefits contract for spouse revoked upon death of maker--Divorce or annulment--Exemptions

A. If, after entering into a written contract in which provision is made for the payment of any death benefit (including life insurance contracts, annuities, retirement arrangements, compensation agreements and other contracts designating a beneficiary of any right, property or money in the form of a death benefit), the party to the contract with the power to designate the beneficiary of any death benefit dies after being divorced from the beneficiary named to receive such death benefit in the contract, all provisions in such contract in favor of the decedent's former spouse are thereby revoked. Annulment of the marriage shall have the same effect as a divorce. In the event of either divorce or annulment, the decedent's former spouse shall be treated for all purposes under the contract as having predeceased the decedent.

* * *

D. This section shall apply to any contract of a decedent dying on or after November 1, 1987.

§ 178 was amended by Laws 1989, c. 181, § 10, effective November 1,

1989. The amendment altered paragraph D. to read:

D. This section shall apply to any contract of a decedent made and entered into on or after November 1, 1987.

Charles Thomas Watters, Jr. died on October 29, 1989. On that date the rights of the parties vested as to the insurance policies on Charles Thomas Watters, Jr.'s life. The statutory provision relating to ex-spouses who remain as beneficiaries on insurance policies, in effect at Watters, Jr.'s death was the 1987 version,

which read:

D. This section shall apply to any contract of a decedent dying on or after November 1, 1987.

This Court earlier ruled that since Watters, Jr. died after November 1, 1987 but before the 1989 amendment took effect, the earlier paragraph D. clearly applies. Had Watters, Jr. died on November 2, 1989, the earlier paragraph D. would not have been law at the time of his death and therefore the 1989 version of paragraph D. would have applied. This would have resulted in § 178 having no application to the instant matter since all agree the insurance contracts were entered into prior to November 1, 1987. In that event, Carrie Omstead would have prevailed herein, not Charles Thomas Watters, Sr..

The rights of beneficiaries to insurance policies vest upon the death of the insured. Baird v. Wainwright, et al, 260 P.2d 1060 (Okla. 1953).

Omstead argued Section D. only applies to a contract of a decedent made and entered into on or after November 1, 1987. (emphasis in original). The Court read this section to apply to decedents who *die* after November 1, 1987, not who have contracted *after* that date. The Watters/Prudential policies were taken out in March, 1987, before the effective date, but Watters, Jr. died *after* the effective date of the act. The Court concluded Omstead's reading of sub-section D. was essentially an urging of the 1989 amended paragraph D, and/or an averment that *if* the 1987 version applies, the 1989 paragraph D. *explains* what the earlier paragraph D.

means. The Court declined to adopt either Omstead view. Thereon, this Court denied Omstead's Motion for Summary Judgment and sustained Charles Watters, Sr.'s Motion for Summary Judgment.

Subsequent to the Court order of July 23, 1991, this Court entered an Amended Order and Judgment on July 29, 1991, clarifying its earlier ruling. Omstead filed a Motion for New Trial which was denied. Omstead then appealed to the United States Court of Appeals for the Tenth Circuit.

For the first time on appeal, Omstead argued that Okla. Stat. tit. 15, § 178 (Supp. 1987) violates the Contract Clause of the United States Constitution and the parallel provision of the Oklahoma Constitution. The Court of Appeals for the Tenth Circuit remanded the case to this Court for a decision on the merits of the constitutional claim.

After remand, this Court filed a notice with the Oklahoma Attorney General pursuant to Fed. R. Civ. P. 24(c) and 28 U.S.C. § 2403(b). The State of Oklahoma, pursuant to 28 U.S.C. §2403 (b), declined to intervene in the matter

I.

Omstead now argues that Okla. tit. 15 § 178 is unconstitutional when applied retrospectively. Article I, Section 10 of the Constitution of the United States and Article II, Section 15 of the Oklahoma Constitution, prohibit retrospective and retroactive laws. A retrospective or retroactive law has been defined as a law "which takes away or impairs vested or accrued rights." In Re Ross v. Bd. of Trustees of Firemen's Relief and

Pension Fund, 207 P.2d 254, 256 (Okla. 1949).

This Court agrees with Omstead that retrospective legislation, which lacks a legitimate purpose and a reasonable basis, that substantially impairs a vested or an accrued contractual right is unconstitutional under both the United States Constitution and the Oklahoma Constitution. Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 411-12 (1983); Baker, et al. v. Oklahoma Firefighters Pension & Retirement System, 718 P.2d 348, 352-53 (Okla. 1986). However, this Court concludes that Omstead does not stand in the proper position to assert that her rights have been violated under the Contracts Clause.

Omstead's position is analogous to the denial of pension benefits to the firefighters and police officers in Baker. 718 P.2d at 348. In Baker, the Supreme Court of Oklahoma held that firefighters and police officers who were not yet eligible for payment of pension benefits prior to repeal of a pension adjustment provision, were not eligible for protection afforded by Art. II §15 of the Oklahoma Constitution. Id. at 353. Thus, as to the pension rights not vested, retrospective application of a legislative act impairing such a non-vested right, would not be unconstitutional. Id.

In Oklahoma, the beneficiary of a life insurance policy does not have a vested right to the insurance proceeds. Baird v. Wainwright, 260 P.2d 1060, 1063 (Okla. 1953). Where the insured reserves the right to "change the beneficiary, the beneficiary acquires only an expectancy in the life policy or its proceeds, and

the rights of a beneficiary only become fixed or vested upon death of the insured." American Nat. Ins. Co. v. Reid, 108 F.Supp 428 (W.D. Okla. 1952).

According to the life insurance policy issued by Prudential, Watters, Jr., retained the ability to change the designated beneficiary on the insurance policy at anytime prior to his death. The ability to alter the listed beneficiaries not only made Watters, Jr., the sole policy owner, but also kept any potential right from actually accruing to Omstead. Reid, 108 F.Supp. at 428. The right of Omstead to receive the life insurance proceeds would not have accrued until the death of Watters. Id. Thus, Omstead only had a "contingent right" to the insurance policy. Baird, 260 P.2d at 1063. However, this "contingent right" did not constitute an interest in the policy during Watters, Jr.'s life. Id. This Court concludes that since Omstead did not have either a vested or accrued interest that could be violated by the statute, her argument that the statute is unconstitutional, as applied to her, must fail.

Omstead asserts that Whirlpool v. Ritter, 929 F.2d 1318 (8th Cir. 1991) and First National Bank & Trust Co. of McAlester, OK v. Coppin, 827 P.2d 180 (Okla. Ct. App. 1992) control in this case. Both Whirlpool and Coppin held that retrospective application of Okla. Stat. tit. 15 § 178 was unconstitutional as impairing obligations of contract. However, unlike this case, the standing of a contingent beneficiary to properly raise a Contracts Clause defense was never an issue in either case. Thus, this Court's

conclusion that Omstead lacked a vested right that could be protected by the Contracts Clause is not contrary to the decisions of either Whirlpool or Coppin.

II.

The Court concludes Omstead's assertion that Okla. Stat. tit. 15 §178 is unconstitutional as applied to her contingent interest, should be and the same is hereby DENIED. A Judgment in accord with the views expressed herein will be entered simultaneously herewith.

IT IS SO ORDERED this 10th day of June, 1993.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE JUN 14 1993

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 TERRY LEE ACKLEY; TERESA A.)
 ACKLEY; JOHN DOE, Tenant;)
 JANE DOE, Tenant; COUNTY)
 TREASURER, Tulsa County,)
 Oklahoma; BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
 Defendants.)

FILED

JUN 11 1993

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

CIVIL ACTION NO. 92-C-799-B

ORDER

Upon the Motion of the United States of America acting on behalf of the Secretary of Veterans Affairs by F.L. Dunn, III, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, to which no objections have been filed, it is hereby ORDERED that this action shall be dismissed without prejudice.

Dated this 11 day of June, 1993.
Richard M. Lawrence, Clerk

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

F.L. DUNN, III
United States Attorney

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

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

KBA/esr

ENTERED
DATE JUN 14 1993

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

THE PRUDENTIAL INSURANCE COMPANY)
OF AMERICA,)

Plaintiff,)

vs.)

CARRI A. OMSTEAD (formally)
Watters), CHARLES THOMAS)
WATTERS, SR., and DANIEL B.)
JONES, Administrator of the)
Estate of CHARLES THOMAS)
WATTERS, JR., Defendants.)

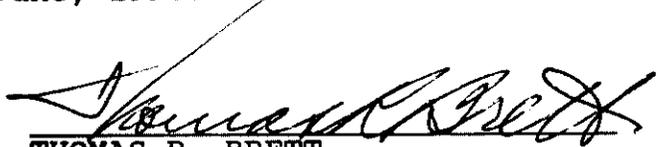
Case No. 90-C-332-B ✓

FILED
JUN 11 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

J U D G M E N T

In accordance with the Order filed June 10, 1993, finding in favor of Charles Thomas Watters, Sr. and against Carri A. Omstead on the issue of the constitutionality of 15 O.S.A. § 178 (Supp. 1987) as applied to the facts in this case, the Court enters judgment in favor of Charles Thomas Watters, Sr. and against Carri A. Omstead. Each party is to pay his or her own costs and attorneys fees. The Clerk of the Court has disbursed to Charles Thomas Watters, Sr. the interpled funds herein pursuant to an Amended Judgment entered herein on July 29, 1991.

DATED this 11th day of June, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

43

ENTERED
DATE JUN 14 1993

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

FILED

JUN 11 1993

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

STEPHANIE LINTHICUM,)
)
Plaintiff,)
)
v.)
)
U.S. EXPRESS, INC., a foreign)
corporation, and DAVID EUGENE)
HESSENFLOW,)
)
Defendants.)

No: 92-C-844-B

ORDER OF DISMISSAL WITHOUT PREJUDICE

NOW ON this 11 day of June, 1993, the Court orders that Defendant David Eugene Hessenflow is herewith dismissed without prejudice to the refiling of a future action.

~~Richard M. Lawrence, Clerk~~
S/ THOMAS H. ...
United States District Judge

ENTERED ON DOCKET

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

DATE 6-14-93

FILED

JUN 14 1993

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

92-C-109-C

WINEY BEAVER, STEPHANIE)
TAYLOR, and JENNAFER LEONE,)
)
Plaintiffs,)
)
vs.)
)
DOUG NICHOLS, individually and)
as Sheriff of Creek County,)
and the Board of County)
Commissioners of Creek County,)
Oklahoma,)
)
Defendants.)

DISMISSAL WITH PREJUDICE

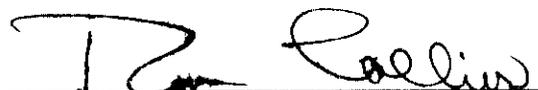
Plaintiffs, Winey Beaver, Stephanie Taylor and Jennafer Leone, hereby dismiss their cause of action with prejudice as to future filing against defendant, Doug Nichols, individually.



COLLIER LAW OFFICE, INC.
RON COLLIER - OBA #1794
P. O. BOX 1257
OKLAHOMA CITY, OKLAHOMA 73101
405/236-1204

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing DISMISSAL WITH PREJUDICE was mailed, postage prepaid thereon, this 17th day of May, 1993, to: Lantz McClain, District Attorney's Office, Creek County Courthouse, 222 E. Dewey, Sapulpa, Oklahoma 74066; and John L. Harlan, P.O. Box 1326, Sapulpa, Oklahoma 74067.



RON COLLIER

ENTERED ON DOCKET
DATE 6-14-93

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

FILED

JUN 14 1993

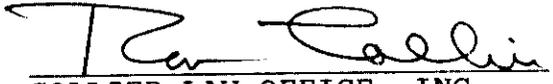
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JULIE CHAPMAN,)
)
 Plaintiff,)
)
 vs.)
)
 DOUG NICHOLS, individually and)
 as Sheriff of Creek County,)
 and the Board of County)
 Commissioners of Creek County,)
 Oklahoma,)
)
 Defendants.)

91-C-539-C

DISMISSAL WITH PREJUDICE

Plaintiff, Julie Chapman, hereby dismisses her cause of action with prejudice as to future filing against defendant, Doug Nichols, individually.



COLLIER LAW OFFICE, INC.
RON COLLIER - OBA #1794
P. O. BOX 1257
OKLAHOMA CITY, OKLAHOMA 73101
405/236-1204

CERTIFICATE OF SERVICE

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RON COLLIER

ENTERED ON DOCKET
JUN 14 1993
DATE

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

JOSEPH MACASTLE JACKSON,)
)
Petitioner,)
)
v.)
)
RON CHAMPION, Warden; and)
ATTORNEY GENERAL OF THE STATE)
OF OKLAHOMA,)
)
Respondents.)

91-C-9-B ✓

FILED
JUN 10 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This order pertains to Respondents' Supplement to Motion to Dismiss as Abusive Petition (Docket #19)¹ and Petitioner's Response to Supplement to Motion to Dismiss as Abusive Petition (Docket #23).

Petitioner was convicted in Oklahoma District Court of First Degree Murder and Conspiracy to Commit First Degree Murder on December 20, 1983 and sentenced to life and five years in prison. On appeal, Petitioner raised three alleged errors committed by the trial court: (1) error in allowing the jurors to separate after final submission of the cause; (2) error in failing to exclude state's exhibit number eleven, which depicted part of the victim's body and maggots on it; and (3) error when severance was not granted. The appeals court affirmed the conviction in Jackson v. Oklahoma, Case No. F-84-398 (Okla.Crim.App. 1987).

Petitioner filed a petition for writ of habeas corpus in this court on October 28, 1988. He sought federal habeas relief on the ground that he was denied due process

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

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because the jury that convicted him was not impartial. The court denied the petition on June 22, 1989, and the Tenth Circuit Court of Appeals affirmed the district court's denial.

The Petitioner filed an application for post-conviction relief in Oklahoma County District Court, which was denied May 30, 1990. The denial was affirmed on July 23, 1990. A supplemental/amended post-conviction application was denied October 12, 1990, and the denial was affirmed on appeal.

Petitioner then filed a second petition for writ of habeas corpus, the basis of this case, on January 10, 1991. The petition alleged that Petitioner did not receive a fair trial because of his counsel's failure to object to misleading jury instructions, that he was unconstitutionally denied a hearing concerning his allegations of jury partiality and misconduct, that the court erred in dismissing the jury following the verdict, and that he received ineffective assistance of counsel. On February 8, 1991, the court sua sponte dismissed the petition as an abuse of the writ, but the appeals court remanded the case, relying on McCleskey v. Zant, ___ U.S. ___, 111 S.Ct. 1454, 1470, 113 L.Ed.2d 517 (1991), and stating that the "the government bears the burden of pleading abuse of the writ."

Respondents then filed a Motion to Dismiss as Abusive Petition December 14, 1992, alleging abuse of the writ and seeking dismissal pursuant to Rule 9(b) of the Rules Governing Section 2254 Cases which provides:

[a] second or successive petition may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits, or if new and different grounds are alleged, the judge finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.

Respondents note that the petition filed by Petitioner in the instant case incorporates grounds set forth in his first habeas corpus petition and adds some new grounds that were not raised in the earlier petition.

Once abuse of the writ is sufficiently pled, the abusive claims are barred unless the petitioner can show cause for his failure to raise the claims earlier and prejudice resulting from the claimed error. Id. To show sufficient "cause", Petitioner must show some "external impediment" preventing him from raising them. Id. The Court stated in McCleskey: "Abuse of the writ doctrine examines petitioner's conduct: the question is whether petitioner possessed, or by reasonable means could have obtained, a sufficient basis to allege a claim in the first petition and pursue the matter through the habeas process. . . ." Id. at 1472. (emphasis in original). The inadequacy of the law library is Petitioner's only viable claim of "external impediment," as his own lack of legal training or knowledge is not a sufficient cause. Rodriguez v. Maynard, 948 F.2d 684, 688 (10th Cir. 1991).

Petitioner argues that he did not raise the new claims in his first petition because "he did not discover from the known facts the legal significance of the instant claims until later, after the first petition." He contends that the inadequacy of the prison law library and a lack of adequately trained prison legal research assistants were "external impediments" preventing him from recognizing "from known facts the legal significance that would entitle him to relief." (Attachment "A" to Petition for Writ of Habeas Corpus; Petitioner's Response to Order Dated 11-19-92 and Brief in Support, filed Dec. 24, 1992, p. 1).

The Supreme Court has held "that the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." Bounds v. Smith, 430 U.S. 817, 828 (1977).

Respondents note that, while Petitioner is complaining that he was not represented by counsel on his first habeas petition, under the law federal habeas corpus prisoners are not entitled to counsel in filing habeas petitions. The issue here is whether Petitioner possessed or could have obtained sufficient legal information to allege his present claims in his first petition. Respondents submit documents which they argue show that Petitioner had ample access to the law library during the time he was filing his original petition and, more importantly, that Petitioner is a trained law clerk.

Petitioner's first habeas corpus pleading was filed on October 28, 1988. During the month of October, the records submitted show that Petitioner was in the law library at least 55 hours. He was there for usually three hours each day, sometimes for a shorter time, on October 3-6, 10-14, 17-21, and 24-28. Petitioner was trained as a law clerk, as shown by his attendance at a law seminar in June of 1988, and served in the law library in that capacity.

Petitioner responds that this evidence does not allow the court to "evaluate the adequacy" of the law library or of his law clerk training. He admits that the law seminar he attended lasted 4 1/2 days, but claims "there was no order or teaching of legal principles; and inmate students were not taught the skill to assist others in framing legal arguments with a foundational [sic] affect." (Response, pg. "3"). However, it would be

impossible for Respondents to provide documentation countering Petitioner's allegations, as no document would reflect his legal knowledge. Respondents have shown that he was a trained law clerk who spent a considerable amount of time in the law library. The court also notes that he had counsel on his direct appeal, and the issues were framed at that time. He had sufficient legal knowledge to file an appeal from his original habeas petition to the Tenth Circuit and was successful in getting this case remanded from the Tenth Circuit.

The evidence submitted by Respondents shows that the legal resources available to Petitioner were sufficiently adequate and did not amount to an "external impediment" preventing Petitioner from raising all of his claims in his initial petition. In both of Petitioner's habeas corpus proceedings, he has filed numerous pleadings replete with citations to relevant cases and federal rules. He was provided with an adequate law library and had legal training to aid him in preparing his first petition. Petitioner has failed to show sufficient cause for failing to raise all of his claims in his first petition.

Respondent's Motion to Dismiss as Abusive Petition is granted. Petitioner's request for an attorney and request for a copy of the trial transcript are therefore moot.

IT IS SO ORDERED this 10 day of June, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 6-11-93

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

D. DWIGHT SNYDER,
Plaintiff,

vs.

No. 91-C-853-E

TRI-COUNTY AREA VOCATIONAL
TECHNICAL SCHOOL DISTRICT
NO. V-001 OF WASHINGTON
COUNTY, OKLAHOMA, a/k/a
TRI-COUNTY VO-TECH SCHOOL,
et al.,

Defendants.

FILED

JUN 10 1993

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

ORDER AND JUDGMENT

The Court has for consideration the Motion of Defendants for Summary Judgment (docket #23). It appearing from the record that the rule articulated in MacDonald v. Eastern Wyoming Mental Health Center, 941 F.2d 1115 (10th Cir. 1991) is applicable to the instant case, the Court finds the motion should be granted. As the MacDonald court stated:

[A] Plaintiff who succeeds in establishing a prima facie case does not automatically survive a motion for summary judgment ... The court "must still make a judgment as to whether the evidence, interpreted favorably to the plaintiff, could persuade a reasonable jury that the employer had discriminated against the plaintiff."

Id. at 1121 (citations omitted). Plaintiff brings this action against Tri-County Vo-Tech School, its Board of Education and its Superintendent, asserting claims under the Age Discrimination in Employment Act, 29 U.S.C. §621 et seq. (1988) (hereinafter, "ADEA"). In order to establish a prima facie case under the ADEA,

Plaintiff must show 1) that he was in the class or group Congress sought to protect under the statute; 2) he was executing his duties in a satisfactory manner at the time of termination; 3) nevertheless he was discharged; and 4) his position was filled by a younger person. Eastern Wyoming at 1119. While Plaintiff bears the initial burden of establishing the foregoing, once he has done so his prima facie case creates a presumption of an ADEA violation which Defendants may rebut by submitting evidence of a legitimate reason. Then Plaintiff, who bears the ultimate burden of proof must establish that the proffered reason is mere pretext. Id. Parenthetically, it should be noted that

"[A] plaintiff need not prove that the reasons offered by the Defendant are false if [she or he] proves that age was also a reason, and that age was the factor that made a difference."

Id., quoting EEOC v. Prudential Fed. Sav. & Loan Ass'n., 763 F.2d 1166, 1170 (10th Cir.), cert. denied, 474 U.S. 946, 106 S.Ct. 317, 88 L.Ed.2d 289 (1985); and Cockrell v. Boise Cascade Corp., 781 F.2d 173, 179 (10th Cir. 1986).

In the case at bar, Plaintiff alleges that his resignation was compelled under the Defendants' threat that his position would be abolished and that this constructive discharge was motivated by discrimination based upon Plaintiff's age. The following facts are not disputed:

1. The Plaintiff was born on July 26, 1933. He was employed by the Tri County Vo-Tech from the 1968-69 school year through the 1989-90 school year.
2. The Plaintiff taught consumer electronics through the

1987-88 school year. Consumer electronics involved instruction in basic electrical circuitry, including the repair of electronic devices such as televisions, radios and record players.

3. Clovis Weatherford was hired as deputy superintendent of the Tri County Vo-Tech at the beginning of the 1989-90 school year. Weatherford was employed with the understanding that he would become superintendent when Ken Phelps retired.
4. Clovis Weatherford became superintendent of the Tri County Vo-Tech on March 1, 1990. Weatherford determined that Snider's position with the Tri-County Vo-Tech would not be continued beyond the 1989-90 school year because, in Weatherford's judgment, the position was not necessary and because the Tri-County Vo-Tech needed to use the money in other areas.
5. On March 6, 1990, Weatherford met with Snider and offered to pay Snider an additional \$4,000 if Snider would resign. Weatherford told Snider that eliminating his position had nothing to do with Snider personally and was purely an economic decision.
6. Snider asked Weatherford if there were any other positions to which he could be reassigned. Weatherford indicated that no other position existed.
7. Snider met with Weatherford on March 9, 1990, to negotiate the terms of his resignation. Snider drafted an agreement for Weatherford to sign setting forth those

terms. Pursuant to this agreement, Snider was to receive back pay of \$4,270, \$528 for teaching a summer school course, \$1,400 for unused sick leave, and \$660 for attending a national VICA conference. The agreement Snider drafted then provided, "contingent upon these being paid, D. Dwight Snider will retire effective June 30, 1990." Snider and Weatherford each signed this agreement. Contemporaneous with the execution of the agreement, Snider advised Weatherford by letter dated March 9, 1990, that as a result of the options available to him, he would reluctantly retire.

8. Snider has been paid all of the amounts called for in the agreement he drafted.
9. On April 2, 1990, the Board of Education of the Tri-County Vo-Tech met in a regular session and voted to accept Snider's resignation. Prior to the meeting, the president of the Board met with Snider to ask him what he was going to do. Snider advised him that he was retiring. Snider knew that he had the option of withdrawing his resignation, but he also knew that if he did his position would be eliminated for budgetary reasons.
10. After Snider resigned, the student coordinator position was eliminated and the duties he had been performing were assigned to other employees already on staff. This allowed the Vo-Tech to use the funds from the eliminated position in other areas.

The evidence reveals that Plaintiff's position as an instructor of consumer electronics was not filled when he left that position to assume a teaching position at the Learning Center and to become Student Organization Coordinator. He retained these jobs until his retirement approximately two years later. It is also uncontested that the contract for the remaining tenured teacher in consumer electronics was not renewed for the academic year 1990-91 and that that area of study was eliminated from the curriculum. The uncontested position of the Defendants is that consumer electronics expertise did not command as high a salary for Vo-Tech graduates as did industrial electronics; therefore Defendants chose to emphasize the latter field of study. And it is undisputed that when Plaintiff resigned, his position at the learning center was eliminated and his duties assigned to other employees. There is no evidence to dispute Defendants' assertion that the decision to eliminate Plaintiff's position was a cost-saving device.

Viewing the uncontested evidence in the light most favorable to the Plaintiff it appears that he has failed to establish element #4 of his prima facie case: that he was replaced by a younger person. Even assuming, arguendo, that he has made out a prima facie case, however, the Court must conclude that he has failed to meet his burden of proof in rebutting Defendants' proffered reason for eliminating the positions at issue: legitimate business reasons of cost efficiency and market demand. The Court concludes that this case is materially analogous to Ackerman v. Diamond Shamrock Corp., 670 F.2d 66 (6th Cir. 1982) where Plaintiff's job was eliminated and his duties divided among existing staff when he

agreed to accept an early retirement package. Noting that the ADEA "was not intended as a vehicle for judicial review of business decisions," the Court found that the undisputed evidence on the record showed that the impetus for the employer's offer of early retirement was a move to increase corporate efficiency. Id. at 70 (citations omitted). Beyond Plaintiff's "'conclusory allegations'" there was no evidence in the record that Plaintiff's age played a role in the offer or that his acceptance of the offer was involuntary. Id. Similarly, in the instant case, where - indeed - Plaintiff drafted the retirement agreement, there is no genuine dispute as to any material fact relative to the issues of age discrimination and voluntariness. Rather, it appears from the material uncontested facts that a bargain was struck that was of economic advantage to Plaintiff and Defendants, respectively.

"[T]he moving party has the right to judgment without the expense of a trial when there are no issues of fact left for the trier of fact to determine. Ackerman at 69, citing First National Bank of Arizona v. Cities Service Co., 391 U.S. 253, 284-88, 88 S.Ct. 1575, 1590-93, 20 L.Ed.2d 569 (1968). Defendants' Motion for Summary Judgment is granted; this case is dismissed; parties to bear their own costs herein.

ORDERED this 10th day of June, 1993.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

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

JUN 07 1993
FILED

JUN 07 1993
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

IN RE:)
)
LMS HOLDING COMPANY,) Case No. 91-03412-C
an Oklahoma corporation,) (Chapter 11)
EIN: 73-1325164)
)
PETROLEUM MARKETING COMPANY,) Case No. 91-03413-C
an Oklahoma corporation,) (Chapter 11)
EIN: 73-0399271)
)
RETAIL MARKETING COMPANY,) Case No. 91-03414-C
an Oklahoma corporation,) (Chapter 11)
EIN: 73-1196027)
)
) (Jointly Administered Under
Debtors.) Case No. 91-03412-C)

LMS HOLDING COMPANY,)
PETROLEUM MARKETING COMPANY,)
and RETAIL MARKETING COMPANY,)
)
Appellants,)
)
vs.)
)
FLEMING PETROLEUM CORPORATION)
)
Appellee.)

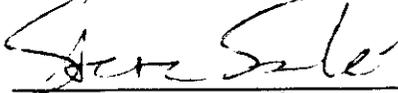
District Court No. 92-C-876-B

STIPULATION
DISMISSAL

COMES NOW the parties, LMS Holding Company, Petroleum Marketing Company and Retail Marketing Company and Fleming Petroleum Corporation, and hereby dismiss, with prejudice, the pending appeal referenced herein, with each party to bear its own costs.

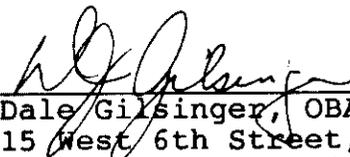
Respectfully submitted this 18th day of May, 1993.

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

By: 
Thomas A. Creekmore III,
OBA #2011
Steven W. Soulé, OBA #13781
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR RETAIL MARKETING
COMPANY

ALBRIGHT & GILSINGER

By: 
Dale Gilsinger, OBA #10821
15 West 6th Street, Suite 2600
Tulsa, Oklahoma 74119
(918) 583-5800

ATTORNEYS FOR FLEMING PETROLEUM
CORPORATION

MCF/plv/4174
6/2/93

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OKLAHOMA

FILED

JUN 4 1993

ST. PAUL FIRE & MARINE)
INSURANCE COMPANY,)
)
Plaintiff,)

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

vs.)

No. CIV-92-C-189-B

J. W. MORGAN, INC. d/b/a)
CROSTOWN DISCOUNT FOODS;)
GREGORY M. WHITE; STACIE LYNNE)
SANDERS, by and through her parents)
and guardians, JAMES FRANKLIN)
SANDERS and JEANNE MARIE)
SANDERS,)
)
Defendants.)

AMENDED JOINT STIPULATION OF DISMISSAL

Come now the parties and dismiss this declaratory judgment action with prejudice as to all defendants, namely, J. W. Morgan, Inc. d/b/a Crosstown Discount Foods, Gregory M. White, Stacie Lynne Sanders, by and through her parents and guardians, James Franklin Sanders and Jeanne Marie Sanders, on the grounds that the recent decision of the Supreme Court of Oklahoma in Stacie Lynne Sanders, by and through her parents and guardians, James Franklin Sanders and Jeanne Marie Sanders v. Crosstown Market, Inc.; J. W. Morgan, Inc.; Scrivner, Inc.; Jerry W. Morgan and Fred G. Latham, Jr., Case No. 75,435, reh'g denied, renders all issues pending herein moot.

WILKINSON & MONAGHAN

FOLIART, HUFF, OTTAWAY & CALDWELL

By Robyn R. Sanzalone

By Michael C. Felty

Bill V. Wilkinson
Robyn R. Sanzalone
7625 E. 51st St., Ste. 400
Tulsa, OK 74145
918/663-2252

Larry D. Ottaway
Michael C. Felty
20th Floor, First National Center
Oklahoma City, OK 73102
405/232-4633

ATTORNEYS FOR DEFENDANTS
SANDERS

ATTORNEYS FOR PLAINTIFF

FILED

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

MAY 28 1993

ROBERT A. BENTLEY, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY _____ DEPUTY

FEDERAL DEPOSIT INSURANCE CORPORATION,

Plaintiff,

vs.

H & A/CA 85-1 LIMITED PARTNERSHIP,
an Oklahoma limited partnership,
et.al.,

Defendants.

No. 93-C-0171 B

FILED

JUN 4 1993

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

JOINT STIPULATION OF DISMISSAL

COMES NOW the parties named herein, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, and by joint stipulation, hereby dismiss with prejudice the within numbered and styled cause for the reason that the parties have settled and compromised all issues set forth in Plaintiff's Complaint.

FEDERAL DEPOSIT INSURANCE CORPORATION,
Plaintiff

By: _____

JANET COX DEVRIES, OBA #01968
P. O. Box 26208
Oklahoma City, OK 73126

ATTORNEY FOR PLAINTIFF

CASE-AIMOLA EQUITIES I, MICHAEL S. AIMOLA,
DON BUCHHOLZ, and MIKE E. CASE,
Defendants,

By: _____

BENJAMIN P. ABNEY, OBA #115
502 West Sixth Street
Tulsa, Oklahoma 74119-1010

ATTORNEY FOR DEFENDANTS

ENTERED ON DOCKET
DATE JUN 11 1993

FILED
JUN - 9 1993

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

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

LEWIS AARON COOK,)
)
 Plaintiff,)
)
 v.)
)
 MARK McCRORY,)
)
 Defendant.)

90-C-210-W

JUDGMENT

Judgment is hereby entered in favor of the defendant, Mark McCrory, and against the plaintiff, Lewis Aaron Cook, pursuant to the verdict of the jury.

Dated this 9th day of June, 1993.



JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

to file a direct appeal was caused by court appointed counsel and was not the fault of petitioner. (Exhibit G to Respondent's Response). On March 15, 1991, the Comanche County District Court conducted an evidentiary hearing and concluded that petitioner had failed to show that his failure to appeal was his court-appointed lawyer's fault. (Exhibit I & J to Respondent's Response). The judge found that petitioner was not entitled to raise issues in an appeal for post-conviction relief that should have been raised on appeal. Petitioner appealed this order and the Court of Criminal Appeals affirmed.

Petitioner now seeks federal habeas relief on the alleged grounds that: (1) his conviction was improperly enhanced by a conviction that was in the name of William Milliner, (2) the trial court erred in validating his prior conviction without insuring he was the person named (3) the prosecutor breached a plea agreement at sentencing, (4) the trial court erred in sentencing him twice for one offense, and (5) he was denied effective assistance of counsel because his attorney failed to object to statements made by the prosecutor at his sentencing.

Respondents ask the court to dismiss the state attorney general as a party to this action. Under Rule 2(a) of the Rules Governing Section 2254 Cases, the state officer having custody of the applicant should be named as respondent. When a habeas corpus petitioner seeks relief from state custody, he must direct his petition against those state officials holding him in restraint. Moore v. United States, 339 F.2d 448 (10th Cir. 1964). However, petitioner's pro se pleadings will be held to a less stringent standard than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972).

In Spradling v. Maynard, 527 F.Supp. 398, 404 (W.D. Okla. 1981), the court held

that the Attorney General of the State of Oklahoma is not a proper party respondent in a habeas corpus action brought by a state prisoner already in custody.² The court stated:

The Attorney General of Oklahoma is simply legal counsel for the Oklahoma Department of Corrections and its employees. He is not the custodian of any prisoner incarcerated in any Oklahoma correctional institution. In the circumstances, he could not respond to a writ of habeas corpus on behalf of a prisoner even if one was issued to him.

Id.

The court is aware that the model form for use by petitioners making § 2254 habeas corpus applications includes the state attorney general as an additional respondent. Practically speaking, the Attorney General of Oklahoma, as legal counsel for the Oklahoma Department of Corrections and its employees, benefits by receiving immediate notice of a habeas corpus action filed when named as an additional respondent. However, the court concludes that the respondent's request for dismissal of the Attorney General of the State of Oklahoma as a party respondent should be granted pursuant to Rule 2(a).

Respondent claims that petitioner's petition should be dismissed, because it is procedurally barred. Respondent points out that the Oklahoma Court of Criminal Appeals ruled that petitioner was barred from bringing claims for post-conviction relief that he had not raised on appeal. The record shows he was informed of his right to appeal (Exhibit D to Respondent's Response) and that his failure to appeal was his own fault (Exhibit J to Respondent's Response).

² The Magistrate notes that Rule 2(b) of the Rules Governing Section 2254 Cases in the United States District Courts pertaining to applicants subject to future custody requires the joinder of the State Attorney General: "If the applicant is not presently in custody pursuant to the state judgment against which he seeks relief but may be subject to such custody in the future, the application shall be in the form of a petition for a writ of habeas corpus with an added prayer for appropriate relief against the judgment which he seeks to attack. In such a case the officer having present custody of the applicant and the attorney general of the state in which the judgment which he seeks to attack was entered shall each be named as respondents."

In Harris v. Reed, 489 U.S. 255, (1989), the Supreme Court concluded that an adequate and independent finding of procedural default by a state court reviewing a prisoner's application for post-conviction relief will bar federal habeas review of the federal habeas claim, unless the habeas petitioner can show "cause and prejudice" or that failure to consider the federal claim will result in a fundamental miscarriage of justice.

However, the claimant's procedural default precludes habeas review, like direct review, only if the last state court rendering a judgment "clearly and expressly" states that its judgment rests on a state procedural bar. The court was curtailing reconsideration of the federal issue on federal habeas as long as the state court explicitly invoked a state procedural bar rule as a separate basis for decision. The court noted, however, that this rule necessarily applies only when a state court has been presented with the federal claim. Id. at 263, n.9.

Here the state court clearly and expressly rested its judgment on the state procedural bar. Therefore, this court cannot review the petitioner's claims unless he can show cause and prejudice or that failure to consider the claim will result in a fundamental miscarriage of justice. Petitioner's claim that his failure to appeal was his attorney's fault has been rejected by the state court. As already stated, the transcript of the proceedings in which he pled no contest to the charges shows he was informed of his right to appeal and he failed to do so.

Petitioner has also failed to show that failure to consider his claims will result in a miscarriage of justice. He claims that his conviction was improperly enhanced by a conviction that was in the name of William Milliner and the trial court erred in failing to

investigate the validity of that conviction. These claims are more suited to the situation where a person is convicted based on a jury verdict and the sentence is then enhanced based on previous convictions. Here, petitioner pled guilty to these crimes, including the recidivist portion. The plea was made pursuant to an agreement with prosecutors. There is no indication in the transcript of his sentencing (Exhibit D to Respondent's Response) that petitioner disputed the use of the former conviction. He does not claim that he was not the person named in the former conviction or that it was not a valid conviction, and he offers the court a copy of the transcript of the sentencing in the former case (Exhibit F to Petition for a Writ of Habeas Corpus (Docket #2)). However, he claims the Comanche County Court had to require the state to prove that he was the same person named in the prior conviction.

The Transcript of the Plea Hearing (Exhibit D to Respondent's Response) shows that petitioner was informed of the charges (including the AFC portions), the minimum and maximum penalties, and the rights he was giving up, and that he was pleading guilty because he did the acts charged, including the recidivist portion, and was pleading pursuant to a plea agreement, but without coercion or compulsion.

It should be noted that, although petitioner is challenging only the sentences he received, he received minimal possible sentences. Each count carried up to a life sentence. Petitioner received a twenty year and a ten year sentence to be served consecutively, when he could have received two life sentences. Petitioner's argument seems to assume that the recidivist portion of the crimes is separate from the crimes he pled guilty to and should be treated as part of the sentence, but that is incorrect. He pled guilty to two crimes which

included the recidivist element. As an example, petitioner did not plea guilty to "Unlawful Distribution of LSD," instead he pled guilty to "Unlawful Distribution of LSD AFC of a Felony."

The Tenth Circuit dealt with this question in Bailey v. Cowley, 914 F.2d 1438 (10th Cir. 1990). In Bailey, a petitioner for habeas corpus claimed that his 1973 sentence was improperly enhanced by a 1971 conviction. The 1973 conviction was based on a guilty plea made to avoid the prosecution's use of a 1971 conviction. The 1971 conviction was for the sake of argument, assumed to be invalid. The court said:

[A] conviction based on a guilty plea differs from a conviction based on a guilty verdict in two important respects. First, '[c]entral to the plea and the foundation for entering judgment against the defendant is the defendant's admission in open court that he committed the acts charged in the indictment'

Second, when a defendant pleads guilty, he makes a decision based on a calculated risk that the consequences that will flow from entering the guilty plea will be more favorable than those that would flow from going to trial. This inherent uncertainty does not make the plea involuntary

In addition, when petitioner chose to plead guilty while believing himself to be innocent, he took a calculated risk that he would fare better by pleading guilty than by going to trial. The fact that his assessment of the risk was based on a faulty premise, that his 1971 conviction would continue to be valid, did not render his plea either involuntary or unintelligent.

Id. at 1441-42 (quoting Brady v. United States, 397 U.S. 742, 748 (1970)).

The conviction for theft, a Class D Felony in Indiana, while in the name William Milliner, was a prior felony conviction and properly used to enhance his sentence following his plea. There is no evidence in the record that the prosecutor agreed to make no recommendation for sentencing. Rather, petitioner and his counsel agreed to try to convince the court to ignore the state's recommendation (Transcript of Sentencing, Exhibit

D to Respondent's Response). The court did not even follow the prosecutor's recommendation of two fifteen year sentences. A hearing was set especially to hear arguments on the matter of punishment after petitioner formally entered his plea a month earlier (Exhibit D to Respondent's Response).

Petitioner claims he was sentenced twice for one offense. In essence, he argues that both offenses required an intent to distribute as an essential element and both arose out of one transaction. He notes that the Supreme Court in United States v. Wilson, 420 U.S. 332, 343 (1975), found that the Double Jeopardy Clause of the Constitution protects against multiple punishments for the same offense. However, the Transcript of his Sentencing (Exhibit D to Respondent's Response) clearly shows that the two offenses to which he pled guilty were two separate transactions.³

While petitioner claims the prosecutor "made prejudicial statements" against him in his closing argument, he does not state what these statements were and the court, in review of the transcript, finds no such statements. The courts have held that "every slight excess of the prosecution does not require that a verdict be overturned and a new trial

³The Transcript at pages 13 and 14 shows that Mr. Schulte, the District Attorney for Comanche County, told the court as follows:

Your Honor, we, by virtue of our case, can show where this individual brought into the State of Oklahoma in excess of 200 hits of acid. The first case for which -- in which this individual pled guilty was a wired-tape buy where a Mr. Brent Copeland, who has known this individual and bought from him from some time in the past, went in and made a purchase of a hundred hits of acid. (sic)

He -- he was paid a hundred and seventy-five dollars for these hundred hits. On the tape it clearly states "I left another hundred hits for you at the Sheperd's (Phonetic spelling) residence."

...

The second charge come into being as a result of a search warrant being served on his motel room after the controlled buy. There was seventeen hundred hits of acid taken out of the motel room. So this individual can account directly to our office for nineteen hundred hits of this.

ordered." United States v. Coppola, 526 F.2d 764, 772 (10th Cir. 1975). The Supreme Court has ruled that to constitute a due process violation, prosecutorial misconduct must be "of sufficient significance to result in the denial for the defendant's right to a fair trial." United States v. Bagley, 473 U.S. 667, 676 (1985) (quoting United States v. Agurs, 427 U.S. 97, 108 (1976)). "A defect of constitutional proportions is not to be found in any but egregious cases." Darden v. Wainwright, 699 F.2d 1031, 1034 (11th Cir. 1983).

Petitioner's Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (Docket #2) is dismissed.

Dated this 8th day of June, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

SHIRLEY JEAN LEWIS,)
)
 Plaintiff,)

v.)

MARRIOTT HOTELS, INC., a)
 Delaware corporation,)
)
 Defendant.)

Case No. 92-C-916-C

(Consolidated with)

CAROLYN REINE CEASER,)
)
 Plaintiff,)

v.)

MARRIOTT HOTELS, INC., a)
 Delaware corporation,)
)
 Defendant.)

Case No. 92-C-917-C

O R D E R

Before the Court is the motion of the defendant for judgment on the pleadings pursuant to Rule 12(c) F.R.Cv.P. Plaintiffs in these consolidated cases bring identical claims. They allege that they were employed by defendant and suffered on-the-job injuries, that defendant's physician determined them to be "temporarily totally disabled," but that defendant refused to make voluntary payment of benefits. Plaintiffs contend that such refusal constitutes bad faith, entitling plaintiffs to punitive damages.

On a motion for judgment on the pleadings, the factual allegations contained in the Complaint are deemed admitted and the only question is whether the moving party is entitled to judgment as a matter of law. Bethel v. American Intern. Mfg. Corp., 768 F.

Supp. 327, 328 (W.D. Okla. 1991).

Defendant argues that Oklahoma law does not recognize a cause of action for bad faith against an employer for failing to voluntarily pay workers' compensation benefits. Both sides acknowledge the existence of Goodwin v. Old Republic Ins. Co., 828 P.2d 431 (Okla. 1992), in which the Supreme Court of Oklahoma held that a workers' compensation insurance company may be subjected to liability in tort for a bad faith refusal to pay an employee's workers' compensation award. Defendant contends that because (1) defendant is not an insurance company and (2) a workers' compensation court has made no award in these cases, plaintiffs' claims fail. Plaintiffs respond that defendant's reading of Goodwin is too narrow, and that the decision encompasses all aspects of an employer's obligation to pay benefits. Specifically, plaintiffs assert that defendant is self-insured pursuant to 85 O.S. §61 and therefore is both employer and insurance carrier.

Upon review, the Court agrees with the defendant's interpretation. The language used by the Supreme Court of Oklahoma refers to the refusal of a workers' compensation insurance company to pay an employee's award. 828 P.2d at 431-32. The recognition of the cause of action is supported in the opinion by citations to such decisions as Christian v. Amer. Home Assurance Co., 577 P.2d 899 (Okla. 1978) and Timmons v. royal Globe Ins. Co., 653 P.2d 907 (Okla. 1982), which also involve insurance companies. Also, the use of the word "award" clearly contemplates an adjudicative process being concluded, which apparently is not the factual

situation here. No showing has been made that defendant has refused to comply with an order of a workers' compensation court directing payment of benefits.

In sum, the language used by the Goodwin court clearly delimits its holding. This Court declines the invitation to expand Oklahoma law beyond the boundaries set by the state's highest court.

It is the Order of the Court that the motion of the defendant for judgment on the pleadings is hereby granted.

IT IS SO ORDERED this 7th day of June, 1993.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 6/10/93

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

FILED

JUN 7 1993

MARY JANE HEMRY,
an individual,

Plaintiff,

vs.

KIDDER, PEABODY & CO.,
a Delaware corporation
and KATHERYN DELGADO,
an individual,

Defendants.

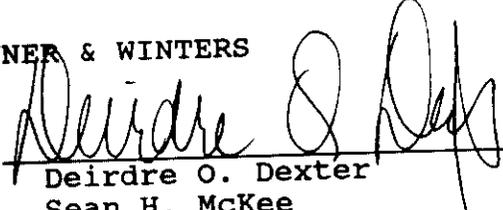
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

Case No. 92-C-938-E

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW all parties to this action, pursuant to Fed.R.
Civ.Pro. 41 (a) (1) (ii), and dismiss the above captioned action with
prejudice.

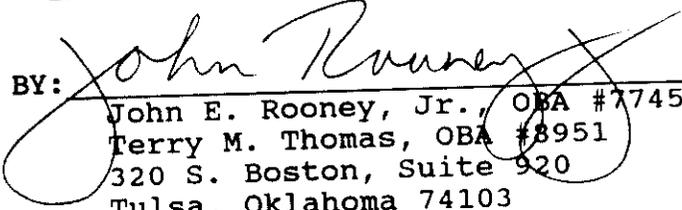
CONNER & WINTERS

BY: 

Deirdre O. Dexter
Sean H. McKee
2400 First National Tower
15 E. 5th St.
Tulsa, OK 74103-4391

ATTORNEYS FOR PLAINTIFF
MARY JANE HEMRY

MOYERS, MARTIN, SANTEE,
IMEL & TETRICK

BY: 

John E. Rooney, Jr., OBA #7745
Terry M. Thomas, OBA #8951
320 S. Boston, Suite 920
Tulsa, Oklahoma 74103
(918) 582-5281

ATTORNEYS FOR DEFENDANTS
KIDDER PEABODY & CO., INC. AND
KATHERYN DELGADO

DATE JUN 10 1993

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

SHIRLEY JEAN LEWIS,)

Plaintiff,)

v.)

MARRIOTT HOTELS, INC., a)
Delaware corporation,)

Defendant.)

Case No. 92-C-916-C

(Consolidated with)

CAROLYN REINE CEASER,)

Plaintiff,)

v.)

MARRIOTT HOTELS, INC., a)
Delaware corporation,)

Defendant.)

Case No. 92-C-917-C

J U D G M E N T

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

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

IT IS SO ORDERED this 10 day of June, 1993.



H. DALE COOK
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE JUN 10 1993

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

FILED

COASTAL COMPUTER CONSULTANTS)
CORPORATION, a Massachusetts)
corporation,)
)
Plaintiff,)
v.)
)
STEVEN S. WHITE, LISA K. MASON,)
AMERICAN COMPUTER EXCHANGE,)
INC., an Oklahoma corporation,)
and OKLAHOMA COMPUTER REFURB,)
INC., an Oklahoma corporation,)
)
Defendants.)

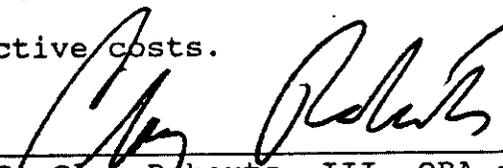
JUN 8 1993

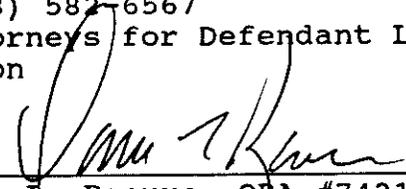
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

Case No. 92-C-960-C

STIPULATION OF DISMISSAL WITH PREJUDICE

Defendants Steven S. White, Lisa K. Mason, American Computer Exchange, Inc., and Oklahoma Computer Refurb, Inc. (collectively referred to herein as the "Defendants"), pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, hereby dismiss the above captioned cause with prejudice as to any and all of Defendants' claims made therein against Plaintiff Coastal Computer Consultants Corporation ("Coastal"), with Defendants and Coastal to each bear their respective costs.


C. Clay Roberts, III, OBA #7632
Richard D. Marrs, OBA #5705
110 South Hartford, Suite 111
Tulsa, Oklahoma 74120
(918) 582-6567
Attorneys for Defendant Lisa K. Mason


Dana L. Rasure, OBA #7421
J. Gregory Magness, OBA #14773
BAKER & HOSTER
800 Kennedy Building
Tulsa, Oklahoma 74103
(918) 592-5555
Attorneys for Plaintiff Coastal Computer Consultants Corporation

FILED

JUN 8 1993

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

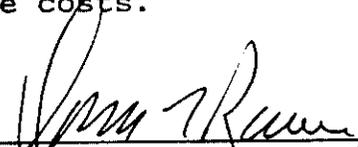
COASTAL COMPUTER CONSULTANTS)
CORPORATION, a Massachusetts)
corporation,)
))
Plaintiff,)
))
v.)
))
STEVEN S. WHITE, LISA K. MASON,)
AMERICAN COMPUTER EXCHANGE,)
INC., an Oklahoma corporation,)
and OKLAHOMA COMPUTER REFURB,)
INC., an Oklahoma corporation,)
))
Defendants.)

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

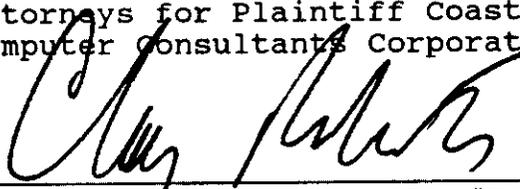
Case No. 92-C-960-C

STIPULATION OF PARTIAL DISMISSAL WITH PREJUDICE

Plaintiff Coastal Computer Consultants Corporation ("Coastal"), pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, hereby dismisses the above captioned cause with prejudice as to any and all of Coastal's claims made therein against Defendant Lisa K. Mason, with Coastal and Defendant Lisa K. Mason to each bear their respective costs.



Dana L. Rasure, OBA #7421
J. Gregory Magness, OBA #14773
BAKER & HOSTER
800 Kennedy Building
Tulsa, Oklahoma 74103
(918) 592-5555
Attorneys for Plaintiff Coastal
Computer Consultants Corporation



C. Clay Roberts, III, OBA #7632
Richard D. Marrs, OBA #5705
110 South Hartford, Suite 111
Tulsa, Oklahoma 74120
(918) 582-6567
Attorneys for Defendant Lisa K.
Mason

ENTERED ON DOCKET
DATE JUN 10 1993

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

F I L E D

JUN 8 1993

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

COASTAL COMPUTER CONSULTANTS)
CORPORATION, a Massachusetts)
corporation,)
)
Plaintiff,)
v.)
)
STEVEN S. WHITE, LISA K. MASON,)
AMERICAN COMPUTER EXCHANGE,)
INC., an Oklahoma corporation,)
and OKLAHOMA COMPUTER REFURB,)
INC., an Oklahoma corporation,)
)
Defendants.)

Case No. 92-C-960-C

PARTIAL JOURNAL ENTRY OF JUDGMENT

Now on this 8 day of June, 1993, this matter comes on before the undersigned District Judge. Plaintiff, Coastal Computer Consultants Corporation ("Coastal") filed its First Amended Complaint on April 7, 1993. On April 28, 1993, Steven S. White, Lisa K. Mason, American Computer Exchange, Inc. and Oklahoma Computer Refurb, Inc. filed their Answer to Plaintiff's First Amended Complaint and Counterclaims. Coastal, White, ACE and Refurb have agreed to the entry of a judgment as hereinafter set forth:

1. The Court finds that the Court has jurisdiction over White, ACE and Refurb and that White, ACE and Refurb consent to the jurisdiction of this Court.
2. The Court further finds that every issue of law and fact herein is wholly between citizens of different states and the amount in controversy exceeds \$50,000, exclusive of interest and

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

costs. The Court further finds that it has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. § 1332(a)(1).

3. The Court further finds that venue is proper pursuant to 28 U.S.C. § 1391(a).

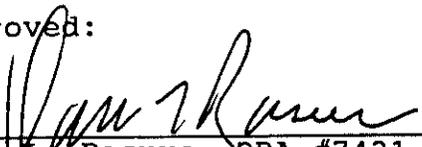
4. The Court further finds that Coastal should be granted a joint and several judgment in its favor against the Defendants, White, ACE and Refurb, and each of them, on the claims for relief stated in the First Amended Complaint filed herein on April 7, 1993, in the amount of \$100,000, with interest thereon from and after May 5, 1993 until the entry of judgment at the rate of 3.54 percent per annum as provided by law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that a joint and several judgment be and is hereby entered in favor of Coastal Computer Consultants Corporation against the Defendants, Steven S. White, American Computer Exchange, Inc. and Oklahoma Computer Refurb, Inc., and each of them, on the claim for relief stated in the First Amended Complaint, in the amount of \$100,000 with interest thereon from and after the entry of judgment at the rate of 3.54 percent per annum as provided by law.

s/H. DALE COOK

DISTRICT JUDGE

Approved:



Dana L. Rasure, OBA #7421
BAKER & HOSTER
800 Kennedy Building
Tulsa, Oklahoma 74103
(918) 592-5555
Attorney for Coastal Computer
Consultants Corporation



C. Clay Roberts, III, Esq.
Richard D. Marrs, Esq.
110 South Hartford, Suite 111
Tulsa, Oklahoma 74120

Attorney for Defendants
Steven S. White, American Computer
Exchange, Inc. and Oklahoma Computer
Refurb, Inc.

JUN 8 1993

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

ROBERT J. SODEN, a/k/a
BOB SODEN,

Plaintiff,

vs.

STATE FARM GENERAL INSURANCE
COMPANY and STATE FARM FIRE AND
CASUALTY COMPANY, foreign
corporations,

Defendants,

and

FIRST GIBRALTAR BANK, F.S.B.,

Petitioner in
Intervention and Third
Party Plaintiff,

vs.

STATE FARM GENERAL INSURANCE
COMPANY, a foreign corporation,

Third Party Defendant.

Case No. 92-C-251-B

FILED

JUN 8 1993

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

AMENDED JOURNAL ENTRY OF JUDGMENT

On March 2, 1993, the Court signed and filed the original Journal Entry of Judgment granting judgment in favor of State Farm General Insurance Company and against the Plaintiff, Robert J. Soden. That Journal Entry of Judgment is incorporated herein. Subsequently, the Defendant, State Farm General Insurance Company timely filed its Motions for Costs and Attorneys Fees. On March 30, 1993, the Court Clerk awarded costs to State Farm General Insurance Company and against Robert J. Soden in the amount of \$1,267.50. This award was not appealed.

ENTERED ON DOCKET

DATE 6-9-93

FILED

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

JUN 8 1993

GAS ENERGY DEVELOPMENT COMPANY,)	
)	
Plaintiff,)	
)	
vs.)	No. 93-C-170-E
)	
GASMARK LIMITED,)	
)	
Defendant.)	

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

ADMINISTRATIVE CLOSING ORDER

The Plaintiff, Gas Energy Development Company, having filed petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within thirty (30) days of a final adjudication of the bankruptcy proceedings the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

ORDERED this 7th day of June, 1993.


 JAMES O. ELLISON, Chief Judge
 UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

F(1)

DATE 6-9-93

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

FILED

MAY 26 1993

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

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

Plaintiff,

vs.

COMPENSATION PROGRAMS, INC., et al.,

Defendants.

Case No. 91 C 120 E

THIRD PARTY PLAINTIFFS' STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE OF THIRD PARTY CLAIMS ONLY

it is hereby stipulated and agreed, by and between the undersigned attorneys for the parties in this action,

1. Defendants integrated Financial Services, Inc. and R.H. Jones Abstract and Title Guarantee Company hereby discontinue, withdraw and dismiss with prejudice all claims against Saastopankkien Keskus-Osake-Pankki ("Skopbank") in this action.

2. Each party shall bear its own attorney fees and other costs incurred in this action.

Dated: January 4, 1993

Respectfully submitted,

LASHLY & BAER A Professional Corporation

Kenneth C. Brostron

Kenneth C. Brostron MO #24094 Michael W. Silvey 714 Locust Street St. Louis, Missouri 63101 (314) 621-2939

IT 15 50 ORDERED 6/7/93 James Allison, US DJ

130

BARKLEY, RODOLF & MCCARTHY

John D. Clayman

John D. Clayman
Frank H. McCarthy
2700 Mid-Continent Tower
401 South Boston Avenue
Tulsa, Oklahoma 74103
(918) 599-9991

ATTORNEYS FOR COMPENSATION
PROGRAMS, THE MASTER FUND
COMPANY, INTEGRATED FINANCIAL
SERVICES, INC., R.H. JONES
ABSTRACT & TITLE GUARANTY COMPANY,
AMERICAN FIDUCIARY FINANCIAL
SERVICES CORPORATION and
JOHN H. BENNETT

LUSKIN & STERN

Michael Luskin

Michael Luskin ML #3957
A Member of the Firm
1500 Broadway
New York, New York 10036
(212) 768-7500

ATTORNEYS FOR SAASTOPANKKIEN
KESKUS-OSAKE-PANKKI

RHODES, HIERONYMUS, JONES,
TUCKER & GABLE

Catherine Taylor

Catherine Taylor
2800 Fourth National Bank Building
15 West Sixth Street
Tulsa, Oklahoma 74119
(918) 582-1173
Telecopier: (918) 592-3390

WIRKEN & KING
A Professional Corporation



James C. Wirken MO #21734
Christine L. Schlomann MO #27849
Wirken & King Building
4740 Grand Avenue, Third Floor
Kansas City, Missouri 64112
(816) 753-6666
Telecopier: (816) 531-6661

ATTORNEYS FOR MASTER MORTGAGE
INVESTMENT FUND, INC.

SO ORDERED THIS _____ day of _____, 1992.

UNITED STATES DISTRICT COURT JUDGE

DATE 6-9-93

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

FILED

JUN 7 1993

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

CHERON L. SLAUF,)	
)	
Plaintiff,)	
)	
v.)	92-C-0360-E
)	
SECRETARY OF HEALTH & HUMAN)	
SERVICES,)	
)	
Defendant.)	

92-C-0360-E

ORDER

Plaintiff Cheron Slauf is appealing the Secretary's decision to deny her Social Security benefits. The Secretary found that Slauf was not disabled and that she could return to work. Slauf rejects that finding, contending that the Secretary did not properly evaluate her mental impairments.

Slauf, who was 46 at the time of the Secretary's decision, filed an application for Social Security benefits on September 11, 1989. In the application, Slauf stated that she had been disabled since October of 1988 because of arthritis in her knee and a broken bone in her foot.

I. Summary Of Evidence

The pertinent time frame is from Slauf's alleged onset date of October 10, 1988 to the Secretary's final decision on March 27, 1991. The issue in question focuses primarily on Slauf's alleged mental impairments.¹ Below is a summary of the evidence.

¹ Slauf testified that her mental health is linked, in part, to her weight. Other evidence corroborated that. Slauf, 5-foot-4, is described as "morbidly obese". She testified that she weighed 330 pounds at the time of the hearing, although the record indicates the weight had ballooned to as much as 350 pounds.

Slauf testified that she could not work due to her emotional and physical problems. She admitted having a mental problem. She said she has attempted suicide four times and acknowledged that "suicidal tendencies" still exist. *Id. at 71.*²

Other evidence concerning Slauf's alleged mental impairment came from three psychologists and a psychologist's assistant. Dr. Gail Smolen, an M.D in Oregon, examined Slauf on January 29, 1990. Dr. Smolen recanted Slauf's past medical history and summarized her daily activities. Dr. Smolen also gave the following diagnosis.

Serious impairment in occupational functioning. Though I feel her dysthymia goes way back to childhood with memories of depression and sexual abuse--and thus it is primary--it is exacerbated by her problems with pain...She is in therapy now, and it would be expected that she would get a little better, but not improve dramatically. *Id. at 236.*

In addition, Dr. Smolen filled out a form concerning Slauf's ability to do work-related mental activities. On that form, the doctor stated that Slauf was "not significantly limited" in the following categories: Understanding and memory, social interaction and adaptation. Dr. Smolen, however, found that Slauf was "limited" in her concentration and persistence. *Id. at 238-239.*

Another piece of medical evidence was a February 4, 1991 letter from Lori S. Cable, a Psychological Assistant at the Grand Lake Mental Health Center. That letter stated:

I initially saw Cheron Slauf on 9/19/90, and have seen her a total of seven times since that date. Based on interviewing, she appears to be in a severe Major Depression as manifested by difficulty concentrating, sleep disturbances, tearfulness, suicidal ideation and a depressing mood...As a result of my sessions with Mrs. Slauf and psychological information provided by other agencies it [is] unlikely that she could sustain employment for a

² Slauf also testified that she attended secretarial courses in 1990 and completed a GED course in 1989.

one-year period. *Id. at 393.*³

On February 6, 1991, the ALJ held a hearing. At the hearing, Dr. Cullen Mancuso - the Secretary's psychological expert -- testified that Slauf did not meet Listings 12.04 and 12.08. However, Slauf's counsel and Dr. Mancuso also had the following exchange:

Atty: Dr. Mancuso, do you feel that this claimant is capable of sustaining work at this point in time?

Dr. Mancuso: No, probably not.⁴

In addition to the testimony, Dr. Mancuso also submitted a written report on Slauf's ability to do work-related activities. *Id. at 412-413.* He rated Slauf on 15 items, ranging from how she would make occupational adjustments to how she would interact socially. Of the 15 items, Dr. Mancuso ranked Slauf as "fair" on 11 items.⁵ He ranked her as "poor" on two other items.⁶ Vocational Expert Carla Sutter also testified that Slauf could return to work.

Some two months after the hearing, the ALJ denied Slauf benefits. He found that, while Slauf could not return to her past work, she could work at jobs such as a short order

³ On May 23, 1989, Slauf took the Minnesota Multiphasic Personality Inventory (MMPI). David N. Sweet, a Ph.D. and psychological consultant, offered his opinion on what Slauf's score means: "The pattern of clinical scales suggests the possibility of a personality disorder and also reveals a significant depression and anxiety...Her tolerance for stress and frustration is quite low and she tends to be rigid and naive. Individuals with similar profiles tend to be unpredictable and peculiar in thought and action. The level of depression that she is reporting is likely to reduce the potential for impulsive or irresponsible behavior. The client may benefit from some therapy to help reduce the depression and anxiety but the underlying personality characteristics are not likely to change. This is a lady who may have problems establishing and maintaining close interpersonal relationships due to subtle communication problems and impaired empathy. She also may have difficulty following through on tasks requiring sustained effort." *Id. at 394.*

⁴ It appears from other places in the record that Dr. Mancuso's questioned whether Slauf could work because of her mental and physical problems. *Id. at 85,90.*

⁵ Fair, according to the form's definition, means the claimant's ability to function is seriously limited but not precluded. Poor means "no useful ability to function in this area."

⁶ At the hearing, the ALJ, with Dr. Mancuso's guidance, also filled out the OHA Psychiatric Review Technique Form. *Id. at 31.* The form states that Slauf does not meet Listing 12.04 or 12.08.

cook, a chicken and/or fish butcher, a salad maker, a deli cutter, a food assembler, a and telephone solicitor.

Slauf asked the Appeals Council to review the ALJ's decision. Included in the record for that appeal was a letter from Dr. William B. Berman. Dr. Berman, a Ph.D. and licensed psychologist, examined Slauf on May 7, 1991 -- after the ALJ's decision. He stated that "unequivocal evidence" of significant psychopathology" existed with Slauf. He further wrote:

Clinically, she is best described as suffering from a chronic borderline personality disorder, with progressive decompensation and manifesting schizophrenic features. Specifically, there is evidence of somatic delusions, hysterical and histrionic management of emotions, severe depression with suicidal ideation expressed through an eating disorder producing morbid obesity, paranoid ideation and impaired reality testing. It is my opinion that this woman is not capable of maintaining steady employment at this time and is not likely to improve without intensive and long term psychotherapy.*Id. at 13.*

On February 25, 1992, the Appeals Council denied the request to review the ALJ's decision. Apparently, it did not consider Dr. Berman's opinion because he did not attach test results.

II. Legal Analysis

The issue is whether substantial evidence supports the ALJ's decision to deny benefits.⁷ Substantial evidence is "more than a scintilla." It means relevant evidence that a reasonable mind deems adequate to support a conclusion." *Jordan v. Heckler*, 835 F.2d 1314, 1316 (10th Cir. 1987). A finding of "no substantial evidence" will be found only where there is a conspicuous absence of credible choices or no contrary medical evidence.

⁷ More specifically, Slauf asserts that the ALJ improperly evaluated her mental impairments. As discussed in 20 C.F.R. § 404.1520a, mental impairments are analyzed under a special procedure.

Trimiar v. Sullivan, 966 F.2d 1326, 1332 (10th Cir. 1992).

The Secretary has the burden of showing that Slauf retains the capacity to perform a job besides her past relevant work. The Secretary must also show that such jobs exist in the national economy. *Channel v. Heckler*, 747 F.2d 577, 579 (10th Cir. 1984).

The evidence surrounding Slauf's ability to work is unclear. Her physical health, except for her "morbid obesity", appears well enough to work. Yet, questions remain concerning her mental health.

Dr. Smolen stated on January 29, 1990 that Slauf could work, despite her mental problems. But a February 4, 1991 letter by a psychological assistant states that Slauf was unable to work for a one-year period. Such a conflict, in itself, is not a problem. Credibility determinations are the province of the finder of fact, which, in this case, is the ALJ. *Diaz v. HHS*, 898 F.2d 774, 777 (10th Cir. 1990).

What is more troubling, however, is the testimony of Dr. Mancuso -- the Secretary's medical expert. The ALJ found that Slauf did not have an impairment or impairments that met or equalled those in listing 12.04 and 12.08, citing the "written testimony of the medical expert." What the ALJ does not discuss is Dr. Mancuso's oral testimony that Slauf was not capable of sustaining work at this point in time. Consequently, the evidence submitted by the Secretary's medical expert is conflicting. In addition, while this Court respects the ALJ's right to make determinations of credibility, it is difficult to understand why the ALJ would both, in effect, accept and reject Dr. Mancuso's testimony.

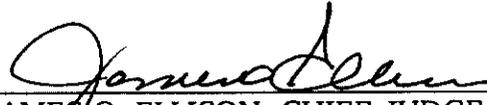
Adding to the confusion is Dr. Berman's May 7, 1991 examination of Slauf. Dr. Berman states that Slauf "is not capable of maintaining steady employment at this time and

is not likely to improve without intensive and long term psychotherapy." While that examination did not take place prior to the ALJ's decision, it supports Slauf's alleged mental impairments, and effectively corroborates Dr. Mancuso's oral testimony.⁸

After carefully examining the record, the court finds that substantial evidence does not support the Secretary's decision that Slauf can return to work. Of particular importance in this finding is the fact that the Secretary's own medical expert said Slauf could not work, although his written reports state otherwise. On top of that, Slauf's testimony, the letter from the psychological assistant and Dr. Berman's report state that Slauf can not return to work due to her mental impairments.

Therefore, the court **REMANDS** the case. A supplemental hearing must take place where Dr. Berman testifies. He must submit written reports to document his testimony. In addition, the Secretary must re-call its medical expert to clarify his testimony on whether Slauf can return to work.

SO ORDERED THIS 4th day of June, 1993.


JAMES O. ELLISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

⁸ Since the examination took place after the ALJ's decision, he did not consider Berman's report. The Appeals Council did examine the report, but rejected it because no test results were attached.

ENTERED ON DOCKET

DATE 6-9-93

FILED

JUN 7 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

LAWRENCE BRAINARD, JR.,)	
)	
Plaintiff,)	
)	
v.)	92-C-213-E
)	
LOUIS W. SULLIVAN,)	
)	
Defendant.)	

ORDER

Plaintiff Lawrence Brainard appeals the Secretary's decision to deny him Social Security benefits. The Secretary found that Brainard was not disabled as he could return to his past work.

Brainard raises two issues. First, he argues that the Administrative Law Judge ("ALJ") erred by finding that he did not meet the listing for mental retardation. Second, Brainard argues that the ALJ erred in asking his hypothetical question.¹

I. Standard of Review

Judicial review of the Secretary's decision is limited in scope by 42 U.S.C. § 405(g). The undersigned's role "on review is to determine whether the Secretary's decision is supported by substantial evidence." *Campbell v. Bowen*, 822 F.2d 1518, 1521 (10th Cir. 1987). The court "may not reweigh the evidence or try the issues de novo or substitute its judgment for that of the Secretary." *Pierre v. Sullivan*, 884 F.2d 799, 802 (5th Cir.

¹ Brainard also contends that the Appeals Council did not fully evaluate his case. That issue is without merit.

1989).

The claimant bears the burden of proving disability under the Social Security Act. *Channel v. Heckler*, 747 F.2d 577, 579 (10th Cir. 1984). If he shows that his disability precludes returning to his prior employment, the burden of going forward shifts to the Secretary, who must then show that the claimant retains the capacity to perform another job and that this job exists in the national economy. *Id.*

II. Summary of Evidence

At the time of his March 1991 administrative hearing, Plaintiff was 44 years old and had a 10th grade education. He asserts that he has been unable to work since January 5, 1990, when he was laid off work due to dermatitis of his hands. Brainard also asserts that he cannot work due to back problems from a 1980 injury, and, asthma. *Record at 45, 49, 51, 649, 690, 694, 698.*

Brainard first developed dermatitis on his hands while working on the chicken gut removal machine at Tyson Farms. *Id. at 771.* He was laid off due to the "cellulitis" on his hands. *Id. at 787.*

The evidence relating to Brainard's condition begins with a consultative examination by Dr. David Heck on April 24, 1990. Brainard told Dr. Heck that he had residual back pain and discomfort, and that he was allergic to chicken feathers and chicken products. Brainard said he developed a rash and sinus symptoms when he worked at the chicken plant. *Id. at 773.*

Brainard's physical examination revealed that his blood pressure was 130/80, he had no discreet wheezes or rales in the lungs, good peripheral pulses, and "excellent" dorsalis

pedis, posterior tibialis, and radial pulsations. The neurological examination showed no localized neurologic deficit.

Another medical report of record concerning Brainard's condition after his alleged disability onset date is a hospital admission on May 5, 1990 after a tire ruptured and Brainard was knocked unconscious in the resulting accident. Brainard had multiple contusions to his left hand and ankle and a questionable shoulder dislocation. X-rays of his shoulder did not reveal any abnormalities, but he was still placed in a sling for comfort.²

At his March 5, 1991 administrative hearing, Brainard testified that he drove everyday, and that he drove 55 miles to the hearing. Brainard testified that he worked after his alleged disability onset date. He said he was a grounds keeper at a golf course for six (6) months and then he worked two weeks in September or October 1990 as a dishwasher.³

He also said that he used medication for asthma once a week, and that the dermatitis on his hands mostly cleared up by using hand cream and staying away from the chemicals at the chicken plant and golf course that irritated his skin. Brainard also said he smoked two packs of cigarettes a day.

Brainard testified that he could lift only five pounds because, when he lifted 50 to 100 pounds, he had to stay in bed for 2 days (Tr. 64-65). He also said that he could sit

² Brainard appeared well nourished, and well developed, his extremities were intact, his cranial nerves were grossly intact, and deep tendon reflexes were brisk and equal (Tr. 794-95). Brainard was instructed to stop smoking, and he was discharged in stable condition with a good prognosis.

³ Brainard also testified that he walks a half mile to town when he gets bored, applies for jobs, gets his food stamps, and fills out job applications. He also noted that he did not like to just sit around the house, so he would go for walks in the park or to town.

"a couple hours", and stand and an hour or two at a time (Tr. 68). Brainard said he has trouble reading and writing.

Ms. Cheryl Mallon, a Vocational Expert ("V.E."), was asked by the ALJ to enumerate jobs that Brainard could perform considering his work experience, age, education, limited ability to read and write, his borderline mental retardation with I.Q. scores of 71, 71, and 74, his mild to moderate chronic pain, his adequate gross and fine manipulation abilities, and the ability to perform light and sedentary exertional activities that involved only simple tasks considering his I.Q., and which did not involve more than only occasional stooping, rapid finger to thumb movements or the need to reach above the shoulder *Id. at 88-89*. The vocational expert testified that Brainard would be capable of performing sedentary assembly jobs, light office clearing jobs and light assembly jobs.

II. Legal Analysis

When deciding a claim for benefits under the Social Security Act, the Administrative Law Judge ("ALJ") must use the following five-step evaluation: (1) whether the claimant is currently working; (2) whether the claimant has a severe impairment; (3) whether the claimant's impairment meets an impairment listed in appendix 1 of the relevant regulation;⁴ (4) whether the impairment precludes the claimant from doing his past relevant work; and (5) whether the impairment precludes the claimant from doing any work. *20 C.F.R. § 404.1520(b)-(f) (1991)*. If the Secretary finds the claimant disabled at any step, the review ends. *Gossett v. Bowen*, 862 F.2d 802, 805 (10th Cir. 1988). In this case, the ALJ found that Brainard could not return to his past relevant work. But the Secretary

⁴ *Appendix 1 is a listing of impairments for each separate body system. 20 C.F.R. Pt. 404, Subpt. P, App. 1 (1991).*

concluded that Brainard could do other type of work. *Record at 15.*

Brainard raises two issues: 1) Whether the ALJ erred in finding that Brainard did not meet 12.05C; and 2) Whether the ALJ erred in asking his hypothetical question of the V.E. Concerning the first issue, a claimant meets Listing 12.05C if he can show:

A valid verbal performance, or full scale IQ of 60 to 69 inclusive and a physical or other mental impairment imposing additional and significant work-related limitation of function.

Brainard's full scale IQ was 71, 74 and 71. Consequently, he fails to meet the first criteria of 12.05C. Brainard argues that, given the standard deviation of IQ tests, his score, in effect, is 69 or lower. The court rejects the argument.⁵ Substantial evidence supports the ALJ's finding that Brainard does not meet 12.05C.

The second issue is whether the ALJ erred in his hypothetical questioning of the V.E. Testimony elicited by hypothetical questions that do not relate with precision all of a claimant's impairments cannot constitute substantial evidence to support the Secretary's decision. *Hargis v. Sullivan*, 945 F.2d 1482, 1492 (10th Cir. 1991). However, this argument, too, is without merit. The hypothetical question must only include the impairments the ALJ found to be true; not every impairment alleged by Brainard must be a part of the question.

Here, the hypothetical question posed to the V.E. is inclusive of the impairments found to be true by the ALJ; and the ALJ did not err in excluding others. The issues raised by Brainard are thus without merit. Substantial evidence does support the ALJ's decision that Brainard can return to his past work. Therefore, this Court **AFFIRMS** the Secretary's

⁵ *No such evidence is in the record below; nor do the guidelines contemplate such deviation.*

decision.

SO ORDERED THIS 4th day of June, 1993.


JAMES O. ELLISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 6-9-93

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

D.H. MILLER,

Plaintiff,

v.

W.T. JEFFERS, individually,
WORLD CHANGERS, INC., an
Oklahoma corporation, COYOTE
HILLS, INC., an Oklahoma
corporation, INDIAN POINTE,
INC., an Oklahoma corpora-
tion, GREAT OAKS ESTATES,
INC., an Oklahoma corpora-
tion, WORLD CHANGERS INTER-
NATIONAL MINISTRIES, INC.
(a/k/a WORLD CHANGERS
MINISTRIES, INC. an Oklahoma
corporation, WILDEWOOD
ESTATES, INC., an Oklahoma
corporation, UNITED STATES OF
AMERICA, ex rel., Department
of the Treasury - Internal
Revenue Service, STATE OF
OKLAHOMA, ex rel. - Oklahoma
Tax Commission, STUART LUMBER
COMPANY, INC., an Oklahoma
corporation, and CITIZENS
SECURITY BANK & TRUST COM-
PANY, an Oklahoma chartered
banking organization, TWENTY
FIRST PROPERTIES, INC., an
Oklahoma corporation, and
BANK OF OKLAHOMA, a national
chartered banking organiza-
tion,

Defendants.

FILED

JUN 8 1993

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

No. 92-C-494-E

JOURNAL ENTRY OF JUDGMENT

NOW on this 7 day of June, 1993,
this cause comes on for hearing. The plaintiff appears by his

attorney, Michael J. Edwards; the defendants, W.T. Jeffers and World Changers International Ministries, Inc., appear by their attorney, Lawrence D. Taylor; the defendants, World Changers, Inc., Coyote Hills, Inc., Indian Pointe, Inc., Great Oaks Estates, Inc. and Wildewood Estates, Inc., appear by their attorney, Thomas A. Creekmore, III; defendant, United States of America, ex rel., Department of the Treasury - Internal Revenue Service, appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Wyn Dee Baker, Assistant United States Attorney; and, defendant, State of Oklahoma, ex rel., Oklahoma Tax Commission, appears by its attorney, Kim D. Ashley. It appears to the Court that this is a suit upon a Promissory Note and a foreclosure of a mortgage upon real estate securing same resulting from certain Warranty Deeds and a Settlement Agreement, which said real estate is located in the County of Tulsa, State of Oklahoma; and it further appears to the Court that all parties have agreed to the entry of this Journal Entry of Judgment.

The Court thereupon examined the pleadings, process and files in this cause and after being fully advised in the premises by counsel for all parties, finds that due and regular service of summons has been made upon defendant, W.T. Jeffers, by personal service on the 11th day of June, 1992; that said summons and the service thereof are legal and regular in all respects; that defendant Jeffers, on the 16th day of July, 1992, filed his Answer herein amounting to a general denial of most allegations contained

in plaintiff's Complaint; that defendant Jeffers has agreed to the terms of this Journal Entry and has agreed that judgment be taken against him as recited hereinafter.

The Court finds that due and regular service has been made upon the defendant, World Changers, Inc., by personal service upon W.T. Jeffers on the 11th day of June, 1992; that the defendant, World Changers, Inc., on the 16th day of July, 1992, filed its Answer herein amounting to a general denial of most allegations contained in plaintiff's Complaint; that the defendant, World Changers, Inc., has agreed to the terms of this Journal Entry and has agreed that judgment be taken against it as recited herein.

The Court finds that due and regular service has been made upon the defendant, Coyote Hills, Inc., by personal service upon Rosemary Beckham on the 12th day of June, 1992; that the defendant, Coyote Hills, Inc., on the 16th day of July, 1992, filed its Answer herein amounting to a general denial of most allegations contained in plaintiff's Complaint; that the defendant, Coyote Hills, Inc., has agreed to the terms of this Journal Entry and has agreed that judgment be taken against it as recited herein.

The Court finds that due and regular service has been made upon the defendant, Indian Pointe, Inc., by personal service upon Rosemary Beckham on the 12th day of June, 1992; that the defendant, Indian Pointe, Inc., on the 16th day of July, 1992, filed its Answer herein amounting to a general denial of most allegations contained in plaintiff's Complaint; that the defendant,

Indian Pointe, Inc., has agreed to the terms of this Journal Entry and has agreed that judgment be taken against it as recited herein.

The Court finds that the defendant, Great Oaks Estates, Inc., entered its general appearance herein on the 1st day of July, 1992, and on the 16th day of July, 1992, filed its Answer amounting to a general denial of most allegations contained in plaintiff's Complaint; that the defendant, Great Oaks Estates, Inc., has agreed to the terms of this Journal Entry and has agreed that judgment be taken against it as recited herein.

The Court finds that due and regular service has been made upon the defendant, World Changers International Ministries, Inc. (a/k/a World Changers Ministries, Inc.), by personal service upon Rosemary Beckham on the 12th day of June, 1992; that the defendant, World Changers International Ministries, Inc., on the 16th day of July, 1992, filed its Answer herein amounting to a general denial of most allegations contained in plaintiff's Complaint; that the defendant, World Changers International Ministries, Inc., has agreed to the terms of this Journal Entry and has agreed that judgment be taken against it as recited herein.

The Court finds that due and regular service has been made upon the defendant, United States of America, ex rel., Department of the Treasury - Internal Revenue Service, as required by 28 U.S.C. §2410(b); that the defendant, United States of America, has heretofore filed its Answer herein asserting certain federal tax liens against the subject real property and further

asserting that the priority of said liens should be protected as provided by law; that the answer of the United States further asserted its right of redemption to such realty pursuant to 28 U.S.C. §2410(c); that the defendant, United States of America, ex rel., Department of the Treasury -- Internal Revenue Service, has agreed to the terms of the present Journal Entry and has agreed that judgment be taken against it as recited herein.

The Court finds that due and regular service has been made upon defendant, State of Oklahoma, ex rel., Oklahoma Tax Commission, as required by 12 O.S. § 2004(C)(1)(c)(5); that defendant, State of Oklahoma, on the 6th day of November, 1992, filed its Amended Answer, Counterclaim and Cross-Claim herein asserting that certain tax warrants should be declared liens against the subject property and further asserting that said liens should be prioritized and satisfied from proceeds of sale of the property; that this defendant has agreed to the terms of this Journal Entry and has agreed that judgment be taken against it as recited herein.

The Court finds that due and regular service has been made upon the defendant, Stuart Lumber Company, Inc., by personal service upon Louis V. Stuart, its registered service agent, on the 11th day of June, 1992; that the defendant, Stuart Lumber Company, Inc., has wholly failed to answer or otherwise respond or appear herein and is in default; and that judgment in rem should be entered in favor of plaintiff against the defendant, Stuart Lumber Company, Inc., as prayed for in plaintiff's Complaint.

The Court finds that due and regular service has been made upon the defendant, Citizens Security Bank & Trust Company, by personal service upon Betty Smith, Vice-President and Cashier, on the 11th day of June, 1992; that the defendant, Citizens Security Bank & Trust Company, filed its Disclaimer herein on the 22nd day of June, 1992.

The Court finds that due and regular service has been made upon the defendant, Twenty First Properties, Inc., by personal service upon Paul D. Wilson, on the 15th day of June, 1992; that the defendant, Twenty First Properties, Inc., filed its Answer, Counterclaim and Cross-Claim on the 15th day of July, 1992, and thereafter filed its Disclaimer and Dismissal herein on the 21st day of December, 1992.

The Court finds that due and regular service has been made upon the defendant, Bank of Oklahoma, by personal service upon Joy Chandler, Assistant Vice-President, on the 11th day of June, 1992; that the defendant, Bank of Oklahoma, filed its Entry of Appearance and Reservation of Time to Plead or Answer herein on the 19th day of June, 1992, and thereafter filed its Disclaimer herein on the 15th day of March, 1993.

Thereupon, the parties to this action introduced their testimony and evidence, including the note and mortgage documents of plaintiff. The Court, having heard all the evidence offered and arguments and statements and stipulations of counsel, and being fully advised in the premises, finds that all material allegations

in the plaintiff's Complaint are true and the Court finds that it has jurisdiction of the parties and the subject matter of this action.

The Court further finds that although the plaintiff's Complaint requested that title to the Thompson Property and Reid Property, as hereinafter described, be quieted in the plaintiff, plaintiff's interest in said Thompson Property and Reid Property should be foreclosed as a mortgage and that the pleadings should be and are hereby amended to conform to the findings and judgments hereinafter entered.

The Court finds that on November 13, 1990 the defendants, W.T. Jeffers, World Changers, Inc., and World Changers International Ministries, Inc., made, executed and delivered to the plaintiff, D.H. Miller, the note herein sued upon in the original principal sum of \$115,000.00 with interest from said date at the rate of ten percent (10%) per annum on the unpaid balance until paid, payable in monthly installments of \$2,000.00 to continue until December 12, 1992, with an additional payment of \$5,000.00 due on February 12, 1991.

The Court further finds that on November 13, 1990 the defendants, W.T. Jeffers, World Changers, Inc., Coyote Hills, Inc., Indian Pointe, Inc., World Changers International Ministries, Inc., and Wildewood Estates, Inc., entered into a certain Settlement Agreement, a copy of which is attached to the Complaint filed herein as Exhibit B.

The Court finds that by virtue of a General Warranty Deed, dated September 15, 1987, from Indian Pointe, Inc. to D.H. Miller, filed November 8, 1989, and recorded in Book 5218 at Page 1984 of the records of the Tulsa County Clerk, the plaintiff is the holder of an equitable mortgage interest, superior to the other parties herein, in the following described real property situated in Tulsa County, Oklahoma, known between the parties as the "Berryhill Property":

Beginning at a point 905 feet West of the NE corner of Section 30, Township 19 North, Range 12 East, Tulsa County, Oklahoma THENCE South 711.12 feet, thence East 245 feet, thence South 558.48 feet, thence S 61°05'W a distance of 1057 feet to a point 1060 feet East of West line of NE/4 and 1778.2 feet South of North line of NE/4 of said Section 30, thence North 983.44 feet, thence West 1060 feet to the West line of said NE/4, thence North 794.7 feet to NW corner of said NE/4, thence East along the North line of NE/4 a distance of 1735 feet to the point of beginning, containing 46.6 acres AND A TRACT described as Beginning at a point 1820 feet South of NW corner of NE/4 of Section 30, Township 19 North, Range 12 East, Tulsa County, Oklahoma, THENCE South 250 feet, thence N 70° -24' E a distance of 672 feet to a point 640 feet East of the West line of said NE/4, thence West 640 feet to the point of beginning, containing 1.8 acres, more or less.

The Court finds that the Warranty deed, described in the preceding paragraph contains a scrivener's error:

"Beginning at a point 905 feet West of the NE corner of Section 30, Township 19 North, Range 12 East, Tulsa County, Oklahoma THENCE South 711.12 feet, thence East 245 feet, thence South 558.48 feet, thence S 61°05'W a distance of 1057 feet to a point 1060 feet West of West line of NE/4 and 1778.2 feet South of North . . ." (Emphasis added.)

and that the emphasized word "West" should be "East".

The Court further finds that all documents in the chain of title to the aforementioned property, containing the "West" vs. "East" description defect, and specifically the above-described General Warranty Deed recorded in the records of the Tulsa County Clerk in Book 5218 at Page 1984 and the Settlement Agreement recorded in Book 5410 at Pages 0163-0175, should be reformed, nunc pro tunc, to properly show the correct legal description.

The Court finds that by virtue of a General Warranty Deed, dated July 10, 1989, from Richard Thompson a/k/a Richard O. Thompson and Jackie Thompson a/k/a Jackie H. Thompson, Husband and Wife, to D.H. Miller, filed July 10, 1989, and recorded in Book 5193 at Page 2046 of the records of the Tulsa County Clerk, the plaintiff is the holder of an equitable mortgage interest, superior to the other parties herein, in the following described real property situated in Tulsa County, Oklahoma, known between the parties as the "Thompson Property":

The East Half of the North Half of the North Half of the North Half of the Northwest Quarter (E/2 N/2 N/2 N/2 NW/4) of Section Twenty-six (26), Township Nineteen (19) North, Range Ten (10) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court finds that by virtue of a General Warranty Deed dated August 29, 1989 from Don R. Reid and Suzan Reid, Husband and Wife, to D.H. Miller, filed August 31, 1989, and recorded in Book 5204 at Page 1123 of the records of the Tulsa County Clerk, the plaintiff is the holder of an equitable mortgage interest, superior

to the other parties herein, in the following described real property situated in Tulsa County, Oklahoma, known between the parties as the "Reid Property":

A tract of land in the West Half of the Northeast Quarter (W 1/2 NE 1/4) of Section Twenty-five (25), Township Nineteen (19) North, Range Ten (10) East, Tulsa County, State of Oklahoma, according to the United States Government Survey thereof, more particularly described as follows: Beginning at a point East a distance of 764.36 feet from the North Quarter Corner, along the North Section line of Section 25, Township 19 North, Range 10 East, Tulsa County, Oklahoma; Thence East a distance of 561.13 feet along the North Section line of said Section and the approximate Center line of 'West 41st Street' an existing Tulsa County Road; Thence South 0° 27' 41" West a distance of 961.08 feet; Thence West a distance of 558.06 feet; Thence North 0° 16' 38" East a distance of 961.05 feet to the point of beginning containing 12.3 acres, more or less.

The Court further finds that the Warranty Deeds set forth above were given to secure certain indebtedness owed by the defendant, World Changers, Inc., to the plaintiff, D.H. Miller; at the time the Settlement Agreement described hereinabove was entered into, the plaintiff, D.H. Miller, retained said Warranty Deeds to secure the payment of any prior indebtedness of World Changers, Inc. and to further secure the indebtedness evidenced by the Promissory Note; that said Settlement Agreement and Promissory Note were filed of record in the records of the Tulsa County Clerk, in Book 5410 at Pages 0163-0175, and the mortgage taxes were duly paid thereon; that the Deeds and Settlement Agreement constitute a mortgage on the described real estate with any buildings,

improvements, appurtenances, hereditaments and all other rights thereto appertaining or belonging, and all fixtures therein or thereafter attached or used in connection with said premises.

The Court finds that there is a balance due, owing and unpaid on the subject note and mortgage in the sum of \$115,000.00, with interest thereon at the rate of 10% per annum, from the 13th day of November, 1990 until paid, plus attorney fees in the amount of \$22,272.00 and costs accrued and accruing; the Court further finds that all of said amounts are secured by the subject mortgage and constitute a lien upon the real estate and the premises hereafter described and that any and all right, title or interest which the defendants in and to this cause, or any of them have, or claim to have, in or to the subject real estate and premises, is subsequent, junior and inferior to the mortgage and lien of plaintiff; that the subject real estate, encumbered by the mortgage of plaintiff, is described as follows:

Beginning at a point 905 feet West of the NE corner of Section 30, Township 19 North, Range 12 East, Tulsa County, Oklahoma THENCE South 711.12 feet, thence East 245 feet, thence South 558.48 feet, thence S 61°05'W a distance of 1057 feet to a point 1060 feet East of West line of NE/4 and 1778.2 feet South of North line of NE/4 of said Section 30, thence North 983.44 feet, thence West 1060 feet to the West line of said NE/4, thence North 794.7 feet to NW corner of said NE/4, thence East along the North line of NE/4 a distance of 1735 feet to the point of beginning, containing 46.6 acres AND A TRACT described as Beginning at a point 1820 feet South of NW corner of NE/4 of Section 30, Township 19 North, Range 12 East, Tulsa County, Oklahoma, THENCE South 250 feet, thence N 70° -24' E a distance of 672 feet to

a point 640 feet East of the West line of said NE/4, thence West 640 feet to the point of beginning, containing 1.8 acres, more or less (known between the parties as the "Berryhill Property").

The East Half of the North Half of the North Half of the North Half of the Northwest Quarter (E/2 N/2 N/2 N/2 NW/4) of Section Twenty-six (26), Township Nineteen (19) North, Range Ten (10) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof (known between the parties as the "Thompson Property").

A tract of land in the West Half of the Northeast Quarter (W 1/2 NE 1/4) of Section

Twenty-five (25), Township Nineteen (19) North, Range Ten (10) East, Tulsa County, State of Oklahoma, according to the United States Government Survey thereof, more particularly described as follows: Beginning at a point East a distance of 764.36 feet from the North Quarter Corner, along the North Section line of Section 25, Township 19 North, Range 10 East, Tulsa County, Oklahoma; Thence East a distance of 561.13 feet along the North Section line of said Section and the approximate Center line of 'West 41st Street' an existing Tulsa County Road; Thence South 0° 27' 41" West a distance of 961.08 feet; Thence West a distance of 558.06 feet; Thence North 0° 16' 38" East a distance of 961.05 feet to the point of beginning containing 12.3 acres, more or less (known between the parties as the "Reid Property").

The Court further finds that defendants, W.T. Jeffers, World Changers, Inc., and World Changers International Ministries, Inc., and each of them, have made default in the performance of the terms and conditions of the subject note and mortgage, as alleged in plaintiff's Complaint, and that the plaintiff is entitled to a foreclosure of his mortgage sued upon in this cause.

The Court further finds that the mortgage created by the Warranty Deeds and Settlement Agreement is silent as to whether the sale of the property should be had with or without appraisal, and that plaintiff elects to have any sale resulting from this foreclosure conducted with appraisal.

The Court further finds that the defendant, United States of America, ex rel., Department of the Treasury -- Internal Revenue Service, has good and valid liens upon the properties covered by plaintiff's mortgage, by virtue of the following described liens arising under the Internal Revenue laws, to-wit:

IRS SERIAL NO.	DATE OF FILING	AGAINST	AMOUNT DUE
739210288	06/12/92	World Changers, Inc., alter ego of College of Americas, Inc.	\$120,017.26
739210289	06/12/92	World Changers, Inc., alter ego of College of Americas, Inc.	60,383.33
739127231	10/18/91	World Changers, Inc.	82,266.92
739207034	04/21/92	World Changers, Inc.	70,954.22
739131108	12/17/91	World Changers, Inc.	61,019.22

but that said liens are subordinate, junior and inferior to the lien of plaintiff's mortgage.

The Court further finds that the defendant, State of Oklahoma, ex rel., Oklahoma Tax Commission, has good and valid liens upon the properties covered by plaintiff's mortgage by virtue of the following described tax warrants, to-wit:

WARRANT NO.	DATE OF FILING	AGAINST	AMOUNT DUE
STS9200093002	04/15/92	W.T. Jeffers	\$40,107.61
STS9200093000	04/15/92	World Changers, Inc.	40,107.61
STS9200092902	04/15/92	W.T. Jeffers	25,530.41
STS9200092900	04/15/92	World Changers, Inc.	25,530.41
STS9200005800	04/15/92	World Changers, Inc.	881.20
ITW9200028802	04/15/92	W.T. Jeffers	11,437.55
ITW9200028800	04/15/92	World Changers, Inc.	11,437.55
ITW9200028702	04/15/92	W.T. Jeffers	1,209.98
ITW9200028902	04/20/92	W.T. Jeffers	7,034.78
ITW9200028700	04/15/92	World Changers, Inc.	1,209.98
ITW9200028900	04/20/92	World Changers, Inc.	7,084.78
STR9200005801	04/15/92	Discoveryland	881.20
STS9200092901	04/15/92	Discoveryland	25,530.41
ITW9200028801	04/15/92	Discoveryland	11,437.55
STS9200093001	04/15/92	Discoveryland	40,107.61
ITW9200028701	04/15/92	Discoveryland	1,209.98
ITW9200028901	04/20/92	Discoveryland	7,034.78

together with any subsequently accruing interest, but that said liens and tax warrants are subordinate, junior and inferior to the lien of plaintiff's mortgage.

The Court further finds that any matters concerning the relative subordinate priorities of the liens of the defendants, United States of America, ex rel., Department of the Treasury - Internal Revenue Service, and State of Oklahoma, ex rel., Oklahoma

Tax Commission, as between such defendants, should be reserved for further, future determination by the Court in the event any excess proceeds of the foreclosure sale hereinafter provided are paid into Court.

The Court further finds that by virtue of a General Warranty Deed from Coyote Hills, Inc., an Oklahoma corporation, D.H. Miller, and Coyote Hills, Inc., d/b/a Coyote Hills Development Company, a joint venture, and D.H. Miller and Jeanette L. Miller, husband and wife, to D.H. Miller, filed December 13, 1990, and recorded in Book 5293 at Page 2623 of the records of the Tulsa County Clerk, the plaintiff is the owner of all right, title and interest, superior to any other party herein, of the following described real property situated in Tulsa County, Oklahoma:

The South 838.8 feet of the West 1210 of the Southwest Quarter (SW/4) of Section 30, Township 19 North, Range 11 East and all that part of the Southeast Quarter of the Southeast Quarter (SE/4 SE/4) of Section 25, Township 19 North, Range 10 East, lying North and East of Coyote Trail, all in Tulsa County, State of Oklahoma, being 50 acres, more or less (known between the parties as the "Coyote Hills Property").

The Court further finds that by virtue of a General Warranty Deed, from Coyote Hills, Inc., an Oklahoma corporation, to World Changers, Inc., dated July 5, 1991 and filed of record on August 6, 1991 in Book 5340 at Page 1664 of the Tulsa County Clerk, the defendants, World Changers, Inc. and Coyote Hills, Inc., claim some right, title, lien, estate, encumbrance, claim, or interest, adverse to the plaintiff, in and to the subject real property.

The Court finds that the interests of all defendants, if any, in and to the "Coyote Hills Property" are junior and inferior to the right, title and interest of the plaintiff, and that plaintiff's title to the subject property should be quieted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that all documents in the chain of title to the "Berryhill Property," containing the "West" vs. "East" description defect, and specifically the above-described General Warranty Deed recorded in the records of the Tulsa County Clerk in Book 5218 at Page 1984 and the Settlement Agreement recorded in Book 5410 at Pages 0163-0175, are hereby reformed, nunc pro tunc, to properly show the correct legal description as follows:

Beginning at a point 905 feet West of the NE corner of Section 30, Township 19 North, Range 12 East, Tulsa County, Oklahoma THENCE South 711.12 feet, thence East 245 feet, thence South 558.48 feet, thence S 61°05'W a distance of 1057 feet to a point 1060 feet East of West line of NE/4 and 1778.2 feet South of North line of NE/4 of said Section 30, thence North 983.44 feet, thence West 1060 feet to the West line of said NE/4, thence North 794.7 feet to NW corner of said NE/4, thence East along the North line of NE/4 a distance of 1735 feet to the point of beginning, containing 46.6 acres AND A TRACT described as Beginning at a point 1820 feet South of NW corner of NE/4 of Section 30, Township 19 North, Range 12 East, Tulsa County, Oklahoma, THENCE South 250 feet, thence N 70° -24' E a distance of 672 feet to a point 640 feet East of the West line of said NE/4, thence West 640 feet to the point of beginning, containing 1.8 acres, more or less.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff, D. H. Miller, have judgment in rem, as

described below, against the defendants, W.T. Jeffers, World Changers, Inc., Coyote Hills, Inc., Indian Pointe, Inc., Great Oaks Estates, Inc., World Changers International Ministries, Inc. (a/k/a World Changers Ministries, Inc.), Wildewood Estates, Inc., United States of America, ex rel., Department of the Treasury - Internal Revenue Service, State of Oklahoma, ex rel. - Oklahoma Tax Commission, Stuart Lumber Company, Inc., Citizens Security Bank & Trust Company, Twenty First Properties, Inc. and Bank of Oklahoma, for the sum of \$115,000.00 with interest thereon at the rate of ten percent (10%) per annum (\$31.51 per diem) from November 13, 1990, until paid; the cost of the title report in the amount \$700.00; a reasonable attorney fee in the amount of \$22,272.00; and, for all costs of this action accrued and accruing; that all of said amounts are secured by the mortgage of plaintiff and constitute a good and valid lien upon the real estate and premises located in Tulsa County, Oklahoma; and that the plaintiff's mortgage lien be and the same is hereby adjudged and established to be prior and superior to the right, title and interest of all of the defendants to the present action, and each of them, and all persons claiming under them since the commencement of this action, for all of which let execution issue.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the mortgage lien of the plaintiff is a good and valid, first, prior, and superior lien upon the subject real estate, described as follows:

Beginning at a point 905 feet West of the NE corner of Section 30, Township 19 North, Range 12 East, Tulsa County, Oklahoma THENCE South

711.12 feet, thence East 245 feet, thence South 558.48 feet, thence S 61°05'W a distance of 1057 feet to a point 1060 feet East of West line of NE/4 and 1778.2 feet South of North line of NE/4 of said Section 30, thence North 983.44 feet, thence West 1060 feet to the West line of said NE/4, thence North 794.7 feet to NW corner of said NE/4, thence East along the North line of NE/4 a distance of 1735 feet to the point of beginning, containing 46.6 acres AND A TRACT described as Beginning at a point 1820 feet South of NW corner of NE/4 of Section 30, Township 19 North, Range 12 East, Tulsa County, Oklahoma, THENCE South 250 feet, thence N 70° -24' E a distance of 672 feet to a point 640 feet East of the West line of said NE/4, thence West 640 feet to the point of beginning, containing 1.8 acres, more or less (known between the parties as the "Berryhill Property").

The East Half of the North Half of the North Half of the North Half of the Northwest Quarter (E/2 N/2 N/2 N/2 NW/4) of Section Twenty-six (26), Township Nineteen (19) North, Range Ten (10) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof (known between the parties as the "Thompson Property").

A tract of land in the West Half of the Northeast Quarter (W 1/2 NE 1/4) of Section Twenty-five (25), Township Nineteen (19) North, Range Ten (10) East, Tulsa County, State of Oklahoma, according to the United States Government Survey thereof, more particularly described as follows: Beginning at a point East a distance of 764.36 feet from the North Quarter Corner, along the North Section line of Section 25, Township 19 North, Range 10 East, Tulsa County, Oklahoma; Thence East a distance of 561.13 feet along the North Section line of said Section and the approximate Center line of 'West 41st Street' an existing Tulsa County Road; Thence South 0° 27' 41" West a distance of 961.08 feet; Thence West a distance of 558.06 feet; Thence North 0° 16' 38" East a distance of 961.05 feet to the point of beginning containing 12.3 acres, more or less (known between the parties as the "Reid Property").

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the plaintiff's mortgage lien is hereby adjudged and established to be prior and superior to the right, title and interest of all the defendants to the present action, and each of them, and all persons claiming under them since the commencement of this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that defendant, United States of America, ex rel., Department of the Treasury -- Internal Revenue Service, has good and valid liens upon the properties covered by plaintiff's mortgage, by virtue of the following liens arising under the Internal Revenue laws:

IRS SERIAL NO.	DATE OF FILING	AGAINST	AMOUNT DUE
739210288	06/12/92	World Changers, Inc., alter ego of College of Americas, Inc.	\$120,017.26
739210289	06/12/92	World Changers, Inc., alter ego of College of Americas, Inc.	60,383.33
739127231	10/18/91	World Changers, Inc.	82,266.92
739207034	04/21/92	World Changers, Inc.	70,954.22
739131108	12/17/91	World Changers, Inc.	61,019.22

but that said liens are subordinate, junior and inferior to the lien of plaintiff's mortgage.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that defendant, State of Oklahoma, ex rel., Oklahoma Tax Commission, has good and valid liens upon the properties covered by plaintiff's mortgage by virtue of the following tax warrants:

WARRANT NO.	DATE OF FILING	AGAINST	AMOUNT DUE
STS9200093002	04/15/92	W.T. Jeffers	\$40,107.61
STS9200093000	04/15/92	World Changers, Inc.	40,107.61
STS9200092902	04/15/92	W.T. Jeffers	25,530.41
STS9200092900	04/15/92	World Changers, Inc.	25,530.41
STS9200005800	04/15/92	World Changers, Inc.	881.20
ITW9200028802	04/15/92	W.T. Jeffers	11,437.55
ITW9200028800	04/15/92	World Changers, Inc.	11,437.55
ITW9200028702	04/15/92	W.T. Jeffers	1,209.98
ITW9200028902	04/20/92	W.T. Jeffers	7,034.78
ITW9200028700	04/15/92	World Changers, Inc.	1,209.98
ITW9200028900	04/20/92	World Changers, Inc.	7,084.78
STR9200005801	04/15/92	Discoveryland	881.20
STS9200092901	04/15/92	Discoveryland	25,530.41
ITW9200028801	04/15/92	Discoveryland	11,437.55
STS9200093001	04/15/92	Discoveryland	40,107.61
ITW9200028701	04/15/92	Discoveryland	1,209.98
ITW9200028901	04/20/92	Discoveryland	7,034.78

together with any subsequently accruing interest, but that said liens and tax warrants are subordinate, junior and inferior to the lien of plaintiff's mortgage.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that any matters concerning the relative subordinate priorities of the liens of the defendants, United States of America, ex rel., Department of the Treasury - Internal Revenue Service, and State of Oklahoma, ex rel., Oklahoma Tax Commission, as between such

defendants, are hereby reserved for further, future determination by the Court in the event any excess proceeds of the foreclosure sale hereinafter provided are paid into Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the mortgage and liens of the parties, in the amounts hereinabove found and adjudged, be foreclosed, and that upon the failure of the defendants to satisfy said judgments, interests, attorney fees and costs, a special execution and order of sale shall issue out of the Office of the Clerk of the United States District Court in this cause, directed to the United States Marshal to levy upon, advertise and sell, after due and legal appraisalment, the real estate and premises hereinabove described, all three properties at the same time en masse, subject to unpaid taxes, if any, and subject to the right of the United States of America, ex rel., Department of the Treasury - Internal Revenue Service, to redeem the property.

The United States Marshal shall pay the proceeds of said sale to the Clerk of this Court, as provided for by law, for application as follows:

First: To the payment of the United States Marshal's costs and other costs of sale;

Second: To the payment of the judgment and lien of the plaintiff in the amounts herein set out; and,

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that from and after the sale of said real estate as herein

directed, and the confirmation of such sale by the Court, the parties to this action shall be forever barred and foreclosed of and from any lien upon or adverse to the right and title of any purchaser at such sale; and the plaintiff and defendants hereto, and all persons claiming by, through or under them since commencement of this action, are hereby perpetually enjoined and restrained from ever setting up or asserting any lien upon or right, title, interest or equity of redemption in or to said real estate adverse to the right and title of any purchaser at such sale, if same be had and confirmed (with the exception of the right of redemption granted to the United States of America by 28 U.S.C. §2410(c)); and that upon proper application by any purchaser, the said Court Clerk shall issue a writ of assistance to the United States Marshal, who shall, thereupon and forthwith place the said purchaser in full and complete possession and enjoyment of the premises.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that plaintiff, D. H. Miller, is the legal owner in possession of the real property known as the "Coyote Hills Property," to-wit:

The South 838.8 feet of the West 1210 of the Southwest Quarter (SW/4) of Section 30, Township 19 North, Range 11 East and all that part of the Southeast Quarter of the Southeast Quarter (SE/4 SE/4) of Section 25, Township 19 North, Range 10 East, lying North and East of Coyote Trail, all in Tulsa County, State of Oklahoma, being 50 acres, more or less;

and that plaintiff's title thereto is valid, perfect and superior to any right or interest claimed by defendants, and that defendants have no right, title or interest in and to the said property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the title and possession of plaintiff in the "Coyote Hills

Property" be, and the same is hereby forever settled and quieted in the plaintiff as against all claims or demands by said defendants, and those claiming, or to claim under them, or any of them; that the General Warranty Deed from Coyote Hills, Inc., an Oklahoma corporation, to World Changers, Inc., dated July 5, 1991 and filed of record August 6, 1991 in Book 5340 at Page 1664 of the Tulsa County Clerk, and all other deeds or documents in said chain of title claimed by defendants, be and the same are hereby canceled and removed as clouds on the title of plaintiff, D. H. Miller, in and to the said "Coyote Hills Property."

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that defendants, and those claiming through, by, or under them be, and they are hereby perpetually enjoined and forbidden to claim any right, title, interest or estate in or to said premises by virtue of said deeds, hostile or adverse to the possession and title of plaintiff; that defendants, and those claiming under them, are hereby perpetually forbidden and enjoined from commencing any suit to disturb plaintiff in his possession and title to the "Coyote Hills Property," from setting up any claim or interest adverse to the title of plaintiff, and from disturbing plaintiff in his peaceable and quiet enjoyment of said premises.

S/ JAMES O. ELLISON

JUDGE OF THE DISTRICT COURT

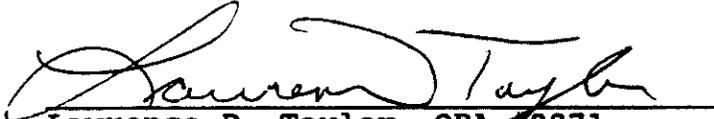
APPROVED:



Michael J. Edwards, OBA #2644
Logan Building, Suite 132
3840 South 103rd East Avenue
Tulsa, Oklahoma 74146
(918) 660-0051

ATTORNEY FOR PLAINTIFF

Miller v. Jeffers, et al
Journal Entry of Judgment
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A handwritten signature in cursive script, appearing to read "Lawrence D. Taylor", is written over a horizontal line.

Lawrence D. Taylor, OBA #8871
3223 East 31st, Suite 211
Tulsa, Oklahoma 74105
(918) 749-9131

ATTORNEY FOR DEFENDANTS W. T.
JEFFERS, AND WORLD CHANGERS
INTERNATIONAL MINISTRIES, INC.



Thomas A. Creekmore, III, OBA #2011
Steven W. Soule, OBA #13781
HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.
4100 Bank of Oklahoma Tower
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR WORLD CHANGERS,
INC., COYOTE HILLS, INC.,
INDIAN POINTE, INC., GREAT
OAKS ESTATES, INC., AND WILDE-
WOOD ESTATES, INC.

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TONY M. GRAHAM
UNITED STATES ATTORNEY

Wyn Dee Baker

Wyn Dee Baker, OBA #465
Assistant United States Attorney
3900 United States Courthouse
333 West Fourth Street
Tulsa, Oklahoma 74103
(918) 581-7463

ATTORNEY FOR DEFENDANT UNITED
STATES OF AMERICA, EX REL.
DEPARTMENT OF THE TREASURY -
INTERNAL REVENUE SERVICE

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Kim D. Ashley, OBA #14175
Post Office Box 53248
Oklahoma City, Oklahoma 73152-3248
(405) 521-3141

ATTORNEY FOR DEFENDANT STATE OF
OKLAHOMA, EX REL., OKLAHOMA TAX
COMMISSION

ENTERED ON DOCKET

DATE 6-8-93

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

JUDY FLOOD,)
)
Plaintiff,)
)
v.)
)
WAL-MART STORES, INC.,)
)
Defendant.)

92-C-325-E

FILED

JUN -4 1993

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

Judgment is hereby entered in favor of the plaintiff, Judy Flood, in the amount of 51% of \$10,000.00, or \$5,100.00, plus costs, against the defendant, Wal-Mart Stores, Inc., pursuant to the verdict of the jury.

Dated this 4th day of June, 1993.



 JOHN LEO WAGNER
 UNITED STATES MAGISTRATE JUDGE

ENTERED ON DOCKET

DATE 6-7-93

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

FILED

JUN 3 1993

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

NATIONAL FOOTBALL SCOUTING, INC.,)
HARRY W. BUFFINGTON and)
LESLIE MILLER,)

Plaintiffs,)

v.)

CONTINENTAL ASSURANCE COMPANY, et al.)

Defendants.)

Case No. 86-C-843-E
Consolidated with
Case No. 87-C-588-E

SUPERIOR HARD-SURFACING COMPANY,)
INC., and HAROLD WEST,)

Plaintiffs,)

v.)

CONTINENTAL ASSURANCE COMPANY,)
et al.,)

Defendants.)

Case No. 87-C-588-E
Consolidated with
Case No. 86-C-843-E

JOURNAL ENTRY OF JUDGMENT

On May 10, 1993, there came on before this Court, a status conference held between Plaintiff, National Football Scouting, Inc. and Defendant, William C. Morton, Jr. ("Morton"). Upon consideration of the matters raised and the representations and stipulated facts proffered by NFS and Morton, this Court finds as follows:

1. On or about April 22, 1987, the defendant, William C. Morton, Jr. was convicted, inter alia, of the embezzlement of \$507,923.88 from Plaintiff, National Football Scouting, Inc. in the action styled United States of America v. William C. Morton, Jr., CR-87-50001-01, United States District Court for the Western

1/11/61

lm

District of Arkansas.

2. As a result of such conviction, that certain Judgment and Probation/Commitment Order dated April 22, 1987, and filed in United States of America v. William C. Morton, CR-87-50001-01, United States District Court for the Western District of Arkansas (the "Restitution Order") was issued imposing financial restitution obligations on Morton for the repayment of sums embezzled from persons and entities listed therein.

3. As a result of such conviction for embezzlement, Morton is liable to NFS in this action, as a matter of law, for the sum of \$507,923.88.

4. Morton admits liability in this action to NFS for the sum of \$507,923.88 and does not contest entry of judgment against himself and in favor of NFS for such amount.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of NFS and against Morton in the amount of \$507,923.88.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that though NFS is not prohibited from causing writs of execution to be issued in an attempt to satisfy or extend the life of this judgment, no such attempts are permitted to result in the seizure, attachment, garnishment or other acquisition of assets possessed, or income received by Morton, or to which Morton is entitled, until Morton has fully satisfied those legal obligations imposed on him by the Restitution Order, or the Restitution Order expires by operation of law.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this judgment shall bear post-judgment interest from the date of its entry at the rate of 7.42 percent per annum until paid in full.

DATED at Tulsa, Oklahoma this 3^d day of June, 1993.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:


Sheppard F. Miers, Jr., (OBA #6178)
Gerald L. Hilsher (OBA #4218)
HUFFMAN ARRINGTON KIHLE
GABERINO & DUNN
A Professional Corporation
100 West Fifth Street
Suite 1000
Tulsa, Oklahoma 74103-4219
(918) 585-8141
ATTORNEYS FOR NATIONAL FOOTBALL SCOUTING, INC.


William C. Morton, Jr.
Defendant, Pro Se

ENTERED ON DOCKET

DATE 6-7-93

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

FILED

JUN - 4 1993

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

DAVID LYLE DANIEL, an individual,)
)
Plaintiff,)
)
vs.)
)
ROYCE WILLIE, an individual, and BRENT INDUSTRIES, INC., an Alabama corporation,)
)
Defendants.)

No. 92-C-1000-E

ORDER

This matter having come on before this Court on this the 18th day of May, 1993, on the Defendants' Motion for Summary Judgment, and this Court having reviewed the argument and authorities of the parties, and being fully informed of the facts and the law, Defendants' Motion is hereby granted and Plaintiff's action is hereby dismissed with Prejudice, each party bearing their own costs and attorneys' fees.

APPROVED:

Frank M. Hagedorn
Frank M. Hagedorn

J. Patrick Cremin
J. Patrick Cremin

Royce Willie
Royce Willie

Tony W. Haynie
Tony W. Haynie

John C. Holden
John C. Holden

[Handwritten signature]

David L. Daniel

MAGISTRATE JEFFREY WOLFE

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

FILED

JUN 4 1993

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

UNION PACIFIC RESOURCES)
COMPANY, a Delaware)
corporation,)

Plaintiff,)

v.)

TRANSOK, INC., an Oklahoma)
corporation, and PUBLIC)
SERVICE COMPANY OF OKLAHOMA,)
an Oklahoma corporation,)

Defendants.)

No. 92-C-001-B

ORDER

Now before the Court for its consideration is defendants Transok, Inc.'s and Public Service Company of Oklahoma's motion for partial summary judgment. Defendants seek the Court's declaration that plaintiff Union Pacific Resources Company's claim of economic duress is legally insufficient and therefore should be dismissed.

The basic facts are undisputed. The parties entered into a Gas Purchase Agreement (the "Contract") on August 24, 1982. The Contract included a "take-or-pay" provision, in which defendants agreed to take a certain number of volumes of gas per year, or otherwise to pay for that volume of gas if it was not taken in that year. On December 5, 1990, the parties executed a "Temporary Excess Gas Release Agreement" (the "Release"), which provided that gas dedicated to the long term Contract, in excess of what defendants took, could be sold by plaintiff to third parties. The Release also provided that defendants were released from their

take-or-pay obligations during the period that the Release was in effect. Plaintiff could terminate the Release after giving defendants one month's notice of its intent to terminate. Plaintiff elected to terminate the Release and gave proper notice of that election to defendants on March 3, 1992.

In its Amended Complaint, plaintiff asked the Court to void and set aside the Release. When defendants pressed for explanation of this request, plaintiff replied that the Release was executed as a result of economic duress. Plaintiff alleged that because its share of gas from the Arnett and Heriford wells could be sold only to defendants under the Contract, and because defendants had not taken the contractually required amount of gas from those two wells, plaintiff's interest in the two wells was severely out-of-balance with the other interest owners in the well. Plaintiff alleged it was forced to execute the Release so that it could sell its gas from the two wells to third parties in order to alleviate the gas imbalance situation and to obtain a cash flow from the two wells.

Oklahoma law has recognized that a release agreement may be voided on grounds of economic duress. Centric Corp. v. Morrison-Knudsen Co., 731 P.2d 411 (Okla. 1986). In Centric, the Oklahoma Supreme Court held that economic duress was comprised of the following elements.

- A. The settlement was the result of a wrongful or unlawful act which
 - (1) was initiated by the coercing party,
 - (2) was committed with knowledge on the part of the coercing party of the impact it would have,
 - (3) was made for the purpose of, and reasonably adequate

to secure coercion over the other, and
(4) resulted in obtaining undue advantage over the other.

B. The act or acts complained of in (A) must have deprived the coerced party of its free will, leaving no adequate legal remedy nor reasonable alternative available. In this respect it is not enough that the alleged victim merely show, for example:

- (1) its reluctance to settle,
- (2) its financial embarrassment, or
- (3) its business necessities.

C. Detriment to the complaining party caused thereby.

Id. at 417. The use of economic duress to set aside a settlement or release agreement was to be limited, according to the Oklahoma Supreme Court.

The rationale underlying the principle of economic duress is the imposition of certain minimal standards of business ethics in the market place. Hard bargaining, efficient breaches, and reasonable settlements of good faith disputes are acceptable, even desirable, in our economic system. However, the minimum standards are not limited to precepts of rationality and self-interest - they include equitable notions of fairness and propriety which preclude the wrongful exploitation of business exigencies to obtain disproportionate exchanges of value which, in turn, undermine the freedom to contract and the proper functioning of the system. The doctrine of economic duress comes into play only when conventional alternatives and remedies are unavailable to correct aberrational abuse of these norms. It is available solely to prevent injustice, not to create injustice.

Id. at 413-14 (emphasis added).

In their motion, defendants contend that plaintiff's claim of economic duress fails to meet all the elements listed in Centric. In particular, defendants point to plaintiff's failure to show that defendants obtained an undue advantage over plaintiff under subsection A(4) or that there was a deprivation of plaintiff's "free will" under subsection B in the execution of the Release. Plaintiff asserts in response that fact questions, such as whether

defendants had an undue bargaining advantage over plaintiff and whether plaintiff had a reasonable alternative or an adequate legal remedy when it signed the Release, preclude the Court's grant of summary judgment in favor of defendants.

In Centric, the Oklahoma Supreme Court delineated the jury's and the court's roles in determining questions concerning economic duress.

Generally, the issue is one of fact to be determined after consideration of all the circumstances surrounding the transaction. Although the question of actual duress is always a question of fact for the jury, the trial court is not required to submit evidence to the jury which does not measure up to the required standard of proof. In essence, if the existence of the alleged facts pleaded as constituting duress is denied, duress is a jury question; whether the alleged facts are sufficient to constitute duress is a question of law.

Id. at 417 (emphasis added). Here, defendants are not denying the existence of the facts surrounding the execution of the Release, but instead are questioning the sufficiency of the grounds which plaintiff alleges constituted economic duress. The Court is thus faced only with questions of law in ruling on defendants' motion.¹

From the facts presented by the parties' briefs, the Court fails to see that defendants held an undue bargaining advantage that "forced" plaintiff to sign the Release. The Court agrees with plaintiff's argument that "imminent financial ruin" is not one of

¹ In its response to defendants' motion, plaintiff controverts defendants' assertion that plaintiff's employees first proposed the Release. Plaintiff contends that defendants suggested the Release and sent a draft to plaintiff. Although the initiation of the Release is a factor to be considered according to Centric, that question of fact is not relevant nor material to the Court's determination here.

the elements of economic duress as defined in Centric. Nevertheless, the potential of financial distress most often creates the situation allowing one party to exercise a superior bargaining advantage over the other party. Plaintiff acknowledges that it enjoys a healthy financial condition, yet as one of its reasons for signing the Release, cites the desire for cash flow from the two wells. While such cash flow might be desirable, plaintiff does not suggest that it was vital to sustain plaintiff's business as a whole. The evidence does not indicate that plaintiff's desire for cash flow was such that it enabled defendants to wield the execution of the Release as a hammer to allow plaintiff to obtain that cash flow.

Plaintiff states that its underproduced status in the two wells compelled it to do whatever it could to reduce or eliminate that imbalance of gas sales. Plaintiff attributes the imbalance to defendants' refusal to take their contractual obligation of gas, while the dedication of that gas to defendants under the Contract prevented plaintiff from selling gas to third parties. By characterizing defendants as plaintiff's "sole effective source" of a market for plaintiff's gas, plaintiff suggests that defendants took advantage of plaintiff's "perilous" underproduced status. This characterization of "peril" might be more convincing if the two wells represented plaintiff's only ownership of gas interests. The evidence, however, shows that plaintiff owns interests in more than 1000 natural gas wells; in the face of such extensive interest ownership, the "threat" posed by the underproduced status of the

two wells appears less menacing.

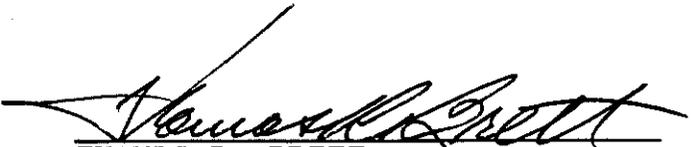
The circumstances surrounding the drafting and execution of the Release further support finding that defendants held no superior bargaining position over plaintiff. Plaintiff made changes to the draft Release it received from defendants, who made every significant change to the Release requested by plaintiff. One particularly important modification requested by plaintiff and made by defendants was to change the term of the Release from twelve months (with a one-month renewal option thereafter) to one month (with the same one-month renewal option), thereby offering plaintiff flexibility in the duration of the Release. It is undisputed that defendants never made any threat to induce plaintiff to execute the Release.

The Court likewise is unpersuaded that plaintiff lacked a reasonable alternative or a legal remedy to deprive plaintiff of its "free will" in executing the Release. At the time the Release was being drafted, plaintiff had the ability to bring an action for defendants' breach of the take-or-pay provision in the Contract. Plaintiff later sued on those grounds in this very action. Plaintiff has not shown the Court any reason why it could not have pursued this action earlier as an alternative to its execution of the Release.

The Court thus finds that defendants have shown that plaintiff cannot demonstrate sufficient facts to constitute economic duress under two of the necessary elements as defined in the Centric decision. Specifically, plaintiff cannot demonstrate that the

defendants obtained an undue bargaining advantage over the plaintiff or that the plaintiff was deprived of its "free will" in having no reasonable alternative or legal remedy in lieu of signing the Release. As part of its case at trial, plaintiff must demonstrate all of the elements for economic duress listed by the Centric court. In Centric, the Oklahoma Supreme Court stated that "the trial court is not required to submit evidence to the jury which does not measure up to the required standard of proof." Id. at 417. Here, since plaintiff could not demonstrate at least two of the required elements for proof of economic duress, the Court believes that summary judgment in favor of defendants on plaintiff's claim of economic duress is thus warranted. Accordingly, the Court will **GRANT** defendants' motion for summary judgment on the economic duress claim.

IT IS SO ORDERED this 4th day of June, 1993.


THOMAS R. BRETT
U.S. District Court Judge

ENTERED ON DOCKET

DATE 6-4-93

FILED

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

JUN 3 1993

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

UNISYS FINANCE CORPORATION,)
)
 Plaintiff,)
)
 vs.)
)
 RMP SERVICE GROUP, INC.,)
 et al.,)
)
 Defendants.)

No. 92-C-250-E

ORDER

Pursuant to the Court's order dated April 16, 1993 and the subsequent hearing held on May 10, 1993, the Court enters the following order on the issue of damages:

Under the master lease, title to the equipment was in Plaintiff. Defendants had no equity interest and no possessory rights in the equipment after default and termination of the master lease. The evidence shows that after default Defendants continued to possess the equipment, thereby in violation of Plaintiff's right to possess the equipment. Consequently, the Court finds the rule requiring Plaintiff (injured party) to mitigate its damages does not apply. Skyline Steel Corp. v. A. J. Dupuis Co., 648 F.Supp. 360 (E.D. Mich. 1986). Moreover, even if Defendants had not possessed the equipment after default, the Court finds Defendants have failed to show Plaintiff failed to use every reasonable effort in its power to minimize its loss. Lorenz Supply Co. v. American Std., Inc., 100 Mich.App. 610, 300 N.W.2d 335 (1980), aff'd, 419

Mich.App. 610, 358 N.W.2d 845 (1984).

IT IS THEREFORE ORDERED that Plaintiff be awarded \$105,408.01 pursuant to the amount due under the master lease.

ORDERED this 30 day of June, 1993.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

FILED
JUN 04 1993

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

FILED

JUN 3 1993

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

No. 93-C-197

ROBERT AND MARY SULLINS,)
et al.,)
)
Plaintiffs,)
)
vs.)
)
BLACKBURN-SKEEDEE WATER)
DISTRICT, et al.,)
)
Defendants.)

ORDER AND JUDGMENT

Before the Court is Defendants' Motion to Dismiss pursuant to Rules 12(b)(1)(2)(3) and (6) Fed.R.Civ.P. The material facts of this case are neither complex nor disputed. The Defendant District is a not-for-profit entity incorporated for the purpose of providing water distribution to its members. District has a .058 acre tract which is the situs of its water tower. It also has a perpetual easement of ingress and egress across Plaintiffs' property in order to access the water tower.

On January 7, 1988 the water tower collapsed onto Plaintiffs' land. The parties were unable to negotiate an agreeable settlement on Plaintiffs' property damages relative to the incident and the subsequent reconstruction work. District sued in state court requesting the Pawnee District Court to enjoin Plaintiffs from prohibiting District's use of its easement. Plaintiffs denied District's allegations and counterclaimed for damages. Ultimately, the District Court ruled in favor of District's request for injunctive relief, awarding its costs and fees. Additionally, the

em

Court dismissed the counterclaim for failure to comply with the notice provisions of Oklahoma's Governmental Tort Claims Act, 51 O.S. 1991 §151,156. Finding that Plaintiffs had substantially complied with §156, the Oklahoma Court of Appeals, Division I, reversed and remanded the dismissal of the counterclaim, but affirmed the remainder of the Judgment. This Court has not been apprised of further developments at the state court level. Plaintiffs' case herein joins the same parties regarding the same operative facts but seeks damages for, inter alia, emotional distress created by the situation.

The Court has reviewed the record and finds that it is jurisdictionally constrained from proceeding. No federal question has been raised herein and it is uncontested that the parties are not diverse. Therefore, the Court must dismiss this suit for want of subject-matter jurisdiction.

So ORDERED this 2^d day of June, 1993.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

JUN 04 1993

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

R. J. BALL
COUNTY TREASURER,
Tulsa County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

No. 93 C 493 B

F I L E D

JUN 03 1993

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

NOTICE OF PLAINTIFF'S VOLUNTARY DISMISSAL

The Plaintiff, United States of America, acting on behalf of the Secretary of Housing and Urban Development, by F. L. Dunn, United States Attorney for the Northern District of Oklahoma, through Mikel K. Anderson, Special Assistant United States Attorney, pursuant to Rule 41(a)(1) hereby gives notice of a voluntary dismissal of this action, without prejudice.

The defendant, R. J. Ball, has made arrangements to deed the mortgaged premises to the plaintiff in lieu of foreclosure and neither of the other parties to this suit have yet filed an answer or otherwise plead.

UNITED STATES OF AMERICA

F. L. DUNN
United States Attorney



Mikel K. Anderson, OBA 12195
Special Asst. U. S. Attorney
U.S. Department of H.U.D.
3600 U. S. Courthouse
Tulsa, OK 74103
(918) 581-7643, ext. 72

CERTIFICATE OF SERVICE

This is to certify that on the 2nd day of June, 1993, a true and correct copy of the foregoing notice of voluntary dismissal was mailed, postage prepaid to:

R. J. Ball

2712 E. 29th St. N.
Tulsa, OK 74110

Mr. J. Dennis Semler

406 Tulsa Co. Courthouse
Tulsa, OK 74103

151

Special Asst. U. S. Attorney

ENTERED ON DOCKET

DATE 6-4-93

FILED

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

JUN 2 1993

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
Clerk

IN RE:)
)
 FITZGERALD, DeARMAN & ROBERTS,)
 INC., FDR INSURANCE AGENCY,)
 INC., AND FDR COMMUNICATIONS,)
 INC.,)
 Debtor,)
)
 P. DAVID NEWSOME, JR., Trustee)
 for Liquidation of Fitzgerald,)
 DeArman & Roberts, Inc.,)
)
 Plaintiff,)
)
 vs.)
)
 ELVIN ALLEN, et al.,)
)
 Defendants.)

Civil No. 92-C-882-E
Case No. 88-01859-W
(SIPA)

(Substantively consolidated)

Adv. Pro No.
92-0117-W

ORDER

The Court has for consideration the Combined Motions of Plaintiff to strike affidavits of K. C. Craichy and Joseph Ferrell and Request for Sanctions (docket #15) and the Motion of certain Defendants for Withdrawals of Reference for Transfer and for Stay (docket #1).

This civil case was initiated as a Motion for Withdrawal of Reference from the Bankruptcy Court. Additionally, these Defendants have requested that following withdrawal, this Court transfer the case to the Middle District of Florida, Orlando Division, pursuant to In Re: Xonics, 67 B.R. 33 (Bkrtcy. N.D. Ill. 1986). All of the Defendants in this case were, in one capacity or another, involved in an unfortunate investment scheme, hereinafter

referred to as "Goldcor". The details of the enterprise need not detain us. One Debtor in the bankruptcy proceedings, Fitzgerald, DeArman & Roberts, is now in Chapter 7 ("Debtor") with Plaintiff as Trustee of the estate. Plaintiff has filed suit on the estate's behalf, alleging conspiracy to commit fraud, breach of contract and violations of the Florida and Utah securities laws. The six Defendants who have moved for withdrawal of reference ("Movants") counterclaim that Debtor knew or should have known that Goldcor was a bad investment and they allege violations of Section 12 of the Securities Act of 1933 of Section 10(b) of the Securities Exchange Act of 1934 and of the RICO Act (18 U.S.C. §1961 et seq.).

Combined Motion to Strike Affidavits of K. C. Craichy and Joseph Ferrell and Request for Sanctions:

The affidavits in question were appended to Defendants' Reply to Trustee's Memorandum in Opposition to Motion to Transfer Venue. That motion was originally filed in the Adversary Proceeding (Adv.Pro.No. 92-0117-W) and it sought transfer of venue to the Middle District of Florida, Orlando Division, on the bases of residency of the Defendants, locale of the business transactions at issue, availability of witnesses and expense related thereto. Plaintiff alleges that the affidavits of Messrs. Ferrell and Craichy submitted in support of the Motion was virtually bereft of requisite personal knowledge and that there was no credible basis for belief by moving attorneys that the affidavits had personal knowledge of the underlying facts at issue. Citing, inter alia, Rule 9011 of the Federal Rules of Bankruptcy Procedure. As Rule 11 sanctions, Plaintiff asks to be reimbursed for travel, lodging,

costs and attorneys' fees incurred in deposing these affiants in Florida.

In response, Defendants assert that the said affiants have personal knowledge of the facts to be presented as a defense and that they would be unwilling to testify in the case venued in the Northern District of Oklahoma. Therefore, the Motion to Strike should be denied. In addition, aver the Defendants, no sanctions should be imposed to recoup expenses unnecessarily incurred in deposing affiants in Florida where less costly methods of discovery were adequate and available. The Court has reviewed the evidence submitted and concurs with Defendants: where, as here, filings are submitted for a proper purpose, sanctions are not available. See, e.g., White v. American Airlines, Inc., 915 F.2d 414 (10th Cir. 1990). Accordingly, the Combined Motions of Plaintiff will be denied.

Motion of Certain Defendants for Withdrawal of Reference:

As stated above, the litigation in this matter was initiated by Plaintiff's claim that the named Defendants had breached their contract with Debtor and conspired to defraud it. It is the position of the Movants that this Court must withdraw the reference of this matter from the Bankruptcy Court, pursuant to 28 U.S.C. §157(d).

In response, the Trustee first argues that the Motion to Withdraw comes too late pursuant to Rule B-6 of the District Court Rules for Bankruptcy Practice and Procedure; therefore Defendants' Motion was not "timely" pursuant to 28 U.S.C. §157(d) and on

§157(d) grounds, alone, Defendants' Motion must be denied. Thus, assuming that mandatory withdrawal is applicable to the instant case the untimeliness of Defendants' Motion works to waive the provisions of §157(d) mandating withdrawal. See, Lowin v. Dayton Securities Associates (In re: Securities Group 1980), 89 B.R. 192 (M.D. Fla. 1988). The Court concurs.¹ The Court further finds that, timeliness notwithstanding, because the claims do not involve substantial or significant interpretation of non-code laws, withdrawal is not mandated in this case. See, e.g., Wittes v. Interco, 137 B.R. 328 (E.D. Mo. 1992). And, to complete the record, the Court finds that there exists no sufficient basis for permissive withdrawal of the reference. The interests of judicial economy in the instant case compel the Court to deny the Motion for Withdrawal of References. Thus, for all of the foregoing reasons Defendants' Motion will be denied.

ORDERED this 10th day of June, 1993.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

¹The Court was not persuaded by Defendants' argument that Local Rule B-6 is unconstitutional.

ENTERED ON DOCKET

DATE 6-4-93

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FIRST NATIONAL BANK)
 NORTHWEST FLORIDA, a national)
 banking association,)
)
 Plaintiff,)
)
 vs.)
)
 DON C. WRIGHT, an individual,)
 CAROL L. WRIGHT, an individual,)
 OMA CARTER, an individual,)
 and OMA CARTER and DON C. WRIGHT,)
 co-trustees of the OMA CARTER)
 REVOCABLE TRUST,)
)
 Defendants and)
 Third-Party Plaintiffs,)
)
 vs.)
)
 WALLACE C. YOST,)
)
 Third-Party Defendant.)

Case No. 92-C-1162-E

FILED
JUN 3 1993
 Richard M. Lawrence, Clerk
 U.S. DISTRICT COURT
 NORTHERN DISTRICT OF OKLAHOMA

STIPULATION OF DISMISSAL

Plaintiff First National Bank Northwest Florida (the "Bank") and Defendants Don C. Wright, Carol L. Wright, Oma Carter, in their individual capacities, and Oma Carter and Don C. Wright, in their capacities as the co-trustees of the Oma Carter Revocable Trust (collectively the "Defendants"), pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, hereby stipulate and agree that Plaintiff's claims against Defendants and Defendants' claim against Plaintiff asserted in this action should be dismissed with prejudice. Defendants further dismiss the Third-Party Complaint against Third-Party Defendant Wallace C. Yost without prejudice, pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure. It is further stipulated by the Bank and

Defendants that the parties will be responsible for their own respective costs, expenses and attorneys' fees.

Barbara Eden

Dana L. Rasure, OBA #7421
Barbara J. Eden, OBA #14220
BAKER & HOSTER
800 Kennedy Building
Tulsa, Oklahoma 74103
(918) 592-5555

Attorneys for First National Bank
Northwest Florida

Therese Buthod

Therese Buthod, Esq. 10752
James Gotwals, Esq.
GOTWALS & ASSOCIATES
525 South Main, Suite 1130
Tulsa, Oklahoma 74103

Attorneys for Defendants
Don C. Wright, Carol L. Wright, Oma
Carter, and Oma Carter and Don C.
Wright, as the co-trustees of the Oma
Carter Revocable Trust

JUN 03 1993

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

FILED

CONTINENTAL CASUALTY COMPANY,)
a foreign corporation,)
)
Plaintiff,)
)
vs.)
)
KAISER-FRANCIS OIL COMPANY,)
a Delaware corporation,)
)
Defendant.)

JUN 2 1993

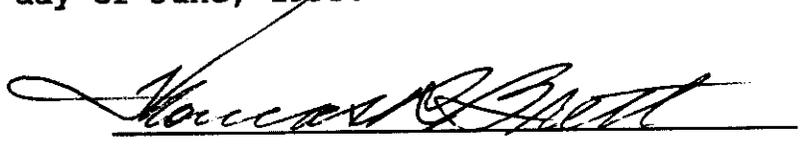
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

No. 91-C-507-B

J U D G M E N T

In accord with the Findings of Fact and Conclusions of Law filed August 6, 1992, the Court hereby enters judgment in favor of the Defendant, Kaiser-Francis Oil Company, and against the Plaintiff, Continental Casualty Company. The Plaintiff shall take nothing of its claim. Costs are assessed against the Plaintiff, if timely applied for under Local Rule 6, and each party is to pay its own respective attorney fees.

Dated, this 15th day of June, 1993.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

JUN 30 1993
DATE

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

JUAN J. RINCONES and LYNDA G.
RINCONES, individually and as
next friends of MARK ANTHONY
RINCONES, JOSE RINCONES and
MONICA RINCONES, minors,
MARICELDA RINCONES and JOSE
RINCONES, JR.,

Plaintiff,

vs.

ROGER COOPER, individually
and doing business as ROGER
COOPER, INC., ROBERT LEWIS
SHORT, JR., SHELTER GENERAL
INSURANCE COMPANY, OFELIO PEREZ,
ZENITH ELECTRONICS CORPORATION,
ZENITH ELECTRONICS OF TEXAS
and RIDER TRUCK RENTAL, INC.,

Defendants.

and

HOUSTON GENERAL INSURANCE CO.,

Intervenor.

Case No. 91-C-565-B

FILED

JUN 2 1993

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

ORDER OF DISMISSAL WITHOUT PREJUDICE

On this 1st day of June, 1993, this case came on for jury trial. Plaintiffs' counsel appeared announcing not ready and Defendants' counsel appeared announcing ready. In April and May 1993, the case was called for jury trial with the same announcement, Plaintiffs' counsel stating back or neck surgery on Plaintiff, Juan J. Rincones, was imminent. Whether or not Plaintiff will ever have surgery is problematical. Defendants moved for the Court to dismiss the case for failure to prosecute. The evidence Plaintiffs provided the Court justifying a continuance

was inadequate so the Court hereby dismisses the case without prejudice. Further, the cost of twenty-four (24) jurors of the panel appearing as requested for trial is hereby assessed against the Plaintiff, Juan J. Rincones. Said sum is \$1,301.50 (\$40 per day for 24 jurors, plus mileage and parking expense).

IT IS SO ORDERED THIS 19TH DAY OF JUNE, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

JUN 03 1993
DATE

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

F I L E D

JUN 1 - 1993

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

PUBLIC SERVICE COMPANY)
OF OKLAHOMA,)
)
Plaintiff,)
)
v.)
)
HAMON OPERATING COMPANY,)
)
Defendant.)

92-C-394-B

ORDER

This order pertains to Defendant's Motion for Partial Summary Judgment (Docket #26)¹, Plaintiff's Objection to Defendant's Motion for Partial Summary Judgment (Docket #31), and the Reply of Defendant to Plaintiff's Objection to Defendant's Motion for Partial Summary Judgment (Docket #36).

Public Service Company of Oklahoma ("PSO") has brought this suit for a declaratory judgment concerning its obligations under nine natural gas purchase contracts with Hamon Operating Company ("Hamon"), referred to in the oil and gas industry as take-or-pay contracts, which obligated PSO to take from Hamon and pay for a minimum amount of gas per year. If that quantity was not taken, PSO nevertheless was required to pay for that minimum amount of gas per year. PSO brought this suit against Hamon after claims were made that PSO had failed to take the minimum annual quantities of gas specified in the contracts and did not pay for the annual minimum quantities. In its answer (Docket #21),

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

Hamon asserted a counterclaim for breach of the nine gas purchase contracts and a counterclaim for underpayment for gas.

Under the terms of the contracts, PSO agreed to purchase and take, or to pay Hamon for, whether taken or not, a "contract quantity" of gas, determined by multiplying the "daily average volume" of gas meeting certain quality, quantity, and pressure standards, as defined in the contracts, by the number of days that Hamon's gas was "available" to PSO during the accounting year, as defined by the contracts. The "daily average volume" of gas for each well covered by the contracts was defined as the lesser of certain listed criteria, including a specified percentage of the "daily deliverability" of gas that Hamon was physically capable of delivering from the well, and a 1/365th portion of the yearly volume of gas which could be lawfully produced from Hamon's gas reserves attributable to the well.²

In the Reply of Plaintiff Public Service Company of Oklahoma to Defendant's Counterclaims in Response to Plaintiff's First Amended Complaint (Docket #23), PSO specifically pled in its "First Defense" that it has fully complied with the contracts because Hamon was allegedly prohibited by Oklahoma's natural gas conservation laws prohibiting "waste" from legally producing quantities of gas in excess of the amounts actually produced and taken and paid for during the relevant time period. PSO claimed in its "Fifth Defense" that the take-or-pay provisions of the contracts allegedly constitute an unenforceable contract penalty clause and an unreasonable liquidated damages provision.

² The relevant portion of the contracts is section 6.2, which provides: "Gas covered by [the Contracts] shall be considered available . . . only when such gas . . . is producible from Gas Reserves covered [by the Contracts] in accordance with applicable laws and in compliance with the rules of regulatory authority having control over such production."

Hamon now asks the court to grant partial summary judgment as to PSO's first and fifth defenses. Hamon does not ask the court at this time to determine the volumes of gas that Hamon was, or would have been, able to deliver to PSO from the wells covered by the contracts if PSO had been willing to take such gas. It also does not dispute PSO's contention that each well's "allowable" was affected by Okla.Stat.tit. 52, §§ 29 and 232. Hamon challenges PSO's first defense that Oklahoma's natural gas conservation laws prohibiting "waste" prevented Hamon from making available quantities of gas in excess of the volumes actually taken and paid for by PSO during the relevant time period. Hamon argues that this subject has already been rejected by the Oklahoma Supreme Court, as well as this court.

In Golsen v. ONG Western, Inc., 756 P.2d 1209, 1214 (Okla. 1988), the court examined a gas purchase contract defining the term "tender" (with respect to volumes of gas) to mean "Seller's making available to Buyer volumes of gas which are deliverable and legally producible from wells covered" It then considered the buyer's argument that gas not actually taken by the buyer under the contract was not legally producible by virtue of the strictures of Oklahoma's natural gas conservation statutes and rules of the Oklahoma Corporation Commission. The judges analyzed Oklahoma's natural gas conservation laws and held that Oklahoma laws prohibiting "waste" did not prohibit payment for gas not presently taken, for gas not taken is not produced and therefore does not constitute waste as a matter of law. Id. at 1220.

This holding was followed by the federal court in Sabine Corp. v. ONG Western, Inc., 725 F.Supp. 1157, 1183-84 (W.D. Okla. 1989). In Sabine the court ruled that the

buyer's defense to its take-or-pay obligation based on Oklahoma's natural gas conservation laws failed as a matter of law.

While the contract language is not identical to that in the Golsen and Sabine cases and the context in which the issue was raised is different, the contracts in this case define "available" gas and PSO's take-or-pay obligation in terms of the volumes of gas legally producible from the wells by Hamon under Oklahoma law. As in Golsen and Sabine, PSO, the buyer of natural gas, argues that gas not actually taken by it under the contracts was not legally producible by Hamon because of the restrictions under Oklahoma's natural gas conservation laws prohibiting "waste."³

"[T]he plain language of Rule 56(c) [Fed.R.Civ.P.] mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp v. Catrett, 477 U.S. 317, 322 (1986). If there is a complete failure of proof concerning an essential element of the non-movant's case, there can be no genuine issue of material fact because all other facts are necessarily rendered immaterial. Id. at 323.

A party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must affirmatively prove specific facts showing that there is a genuine issue of material fact for trial. Anderson v. Liberty Lobby,

³ Hamon acknowledges that it cannot lawfully produce, in any given year, more than the annual volume of gas designated by statute to be each well's production "allowable," as stated in Okla. Stat. tit. 52, §§ 29 and 232. (See pg. 4 of Defendant's Reply). PSO admits that if Hamon can show that it could have lawfully produced to PSO more gas than was actually produced and taken from the wells, then PSO, absent any other legal excuse, is obligated to pay the difference. (See pg. 7 of Plaintiff's Objection to Defendant's Motion for Partial Summary Judgment).

Inc., 477 U.S. 242, 256 (1986). The Court stated that "the mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." Id. at 252.

The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts". Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

The record must be construed liberally in favor of the party opposing the summary judgment, but "conclusory allegations by the party opposing ... are not sufficient to establish an issue of fact and defeat the motion." McKibben v. Chubb, 840 F.2d 1525, 1528 (10th Cir. 1988). The Tenth Circuit requires "more than pure speculation to defeat a motion for summary judgment" under the standards set by Celotex and Anderson. Setliff v. Memorial Hosp. of Sheridan County, 850 F.2d 1384 (10th Cir. 1988).

Defendant's Motion for Partial Summary Judgment as to PSO's first defense alleging full performance of the contract is denied. There is an issue of material fact as to the quantity of gas which Hamon could legally produce and Hamon was required to take or pay for under the contracts. However, Defendant's Motion for Partial Summary Judgment is granted in part as to PSO's claim that Oklahoma's laws prohibiting waste prevented PSO from paying for any gas not presently taken which defendant tendered but did not produce.

In its fifth defense to Hamon's counterclaim, PSO asserts that the take-or-pay provisions of the contracts constitute an unenforceable penalty clause or an unreasonable liquidated damages provision. The contracts give PSO alternative methods of performance: to either take the contract quantity of gas during each accounting year and pay Hamon for

that volume, or to pay for the volume of gas for that period.

Courts faced with claims of a "penalty/liquidated damages" defense in similar cases have consistently rejected it as a matter of law, concluding that take-or-pay provisions constitute a promise in the contracts, not a measure of damages after a breach has occurred. Therefore, no penalty for failure to perform is involved, nor will "liquidated damages" for breach of the take obligation be imposed, because payment pursuant to the take-or-pay provisions constitutes performance of the contracts. Prenalta Corp. v. Colorado Interstate Gas Co., 944 F.2d 677, 689 (10th Cir. 1991); Sabine, 725 F.Supp. at 1184 ("take-or-pay provision . . . specifies a contractual obligation rather than dictates damages upon breach.").

Defendant's Motion for Partial Summary Judgment as to PSO's fifth defense is granted. PSO has failed to make a showing sufficient to establish the elements of this defense.

Dated this 1st day of June, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FEDERAL DEPOSIT INSURANCE)
CORPORATION IN ITS CORPORATE)
CAPACITY,)

Plaintiff,)

vs.)

No. 92-C-708-E

CURTIS A. PARKS, MICHAEL J.)
BEARD, JAMES A. WILLIAMSON,)
OKLAHOMA BANKING COMMISSIONER,)
RECEIVER FOR PIONEER SAVINGS)
AND TRUST COMPANY, TREASURER)
FOR TULSA COUNTY AND BOARD OF)
COUNTY COMMISSIONERS FOR TULSA)
COUNTY,)

Defendants.)

FILED

JUN 1 1993

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

JUDGMENT

This matter comes on for consideration this 28th day of May, 1993, on the Cross Motions for Summary Judgment filed by the parties herein. This Court, being fully advised in the premises, finds that Plaintiff has served all Defendants herein, and that the Defendants, Oklahoma Banking Commissioner as Receiver for Pioneer Savings and Trust Company, Treasurer for Tulsa County and Board of County Commissioners for Tulsa County, have filed their disclaimers in this action. The Court further entered an Order on April 20, 1993 granting Plaintiff's Motion for Summary Judgment and denying Defendants'

Motion for Summary Judgment; said Order is incorporated herein by reference. The Court further finds that pursuant to Note No. 2, as defined in this Court's Order of April 20, the Defendants Curtis A. Parks, Michael J. Beard and James A. Williamson are liable to the Plaintiff for the principal sum of \$30,921.66, plus interest, attorney fees and all costs in the total sum of \$18,078.34 until May 28, 1993, with continuing interest from May 28, 1993 until paid at the rate of \$8.05 per diem, and that judgment should be rendered against all other Defendants and this judgment should accordingly be entered.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the Plaintiff, the Federal Deposit Insurance Corporation, in its corporate capacity (the "FDIC"), have and recover judgment, in personam and in rem, against the Defendants, Curtis A. Parks, Michael J. Beard and James A. Williamson, for the principal sum of \$30,921.66, plus interest, attorney fees and all costs in the total sum of \$18,078.34 until May 28, 1993, with continuing interest from May 28, 1993 until paid at the rate of \$8.05 per diem.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that the FDIC has a valid first lien on the following described real property, securing the Judgment entered herein, which is prior to all rights, titles, interests and liens of all Defendants herein, including the Oklahoma Banking Commissioner, Receiver for Pioneer Savings and Trust Company, who has filed a disclaimer of interest

herein, and, therefore, the FDIC is entitled to a judgment in rem against all Defendants named herein, to-wit:

Lot Three (3) and the South 30 feet of Lot Two (2), Block Two (2), BUENA VISTA PARK ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma according to the recorded Plat thereof (the "Subject Property").

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that the Defendant Oklahoma Banking Commission, Receiver for Pioneer Savings and Trust Company is adjudged to have no right, title, claim, estate or interest in and to the real property described above, and that it is perpetually banned and enjoined from setting up or asserting any right, title, claim, estate or interest in and to said property.

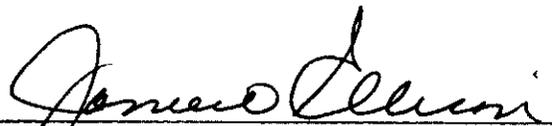
IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that the Plaintiff's lien be foreclosed upon the Subject Property and that a Special Execution and Order of Sale be issued, directing the sale of said real property after proper notice is provided by law. This Court hereby authorizes the County Sheriff of Tulsa County, State of Oklahoma, to conduct the sale of the Subject Property and hereby approves the use of said Sheriff for the sale of said property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that the order of distribution of the proceeds from the sale are as follows:

1. First, to the payment of delinquent ad valorem taxes, penalties and interests due;

2. Second, to the payment of all costs and attorney's fees incurred herein by the FDIC;
3. Third, to the payment of the Judgment lien of the FDIC in the sum of \$30,921.66, plus accrued and accruing interest;
4. Fourth, the balance, if any, to be paid to the Clerk of this Court to await further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that, upon confirmation of the sale, the United States Marshall of the Northern District of Oklahoma or the Sheriff of Tulsa County, whichever is called upon to conduct said sale, shall execute and deliver good and sufficient deed to the Subject Property to the purchaser thereof, conveying all right, title, interest, estate and equity of redemption of all parties herein and each and all parties claiming under them since the filing of the Complaint in this action, in and to the Subject Property, and that upon application of the purchaser, a writ of assistance shall be issued placing said property in full and complete possession and enjoyment of said purchaser.

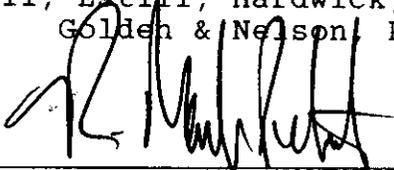


JAMES O. ELLISON, Chief Judge
United States District Court for
the Northern District of Oklahoma

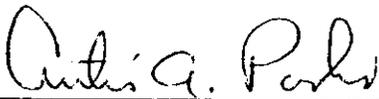
Judgment - Case No. 92-C-708-E

Approved as to Content and Form:

Hall, Estill, Hardwick, Gable,
Golden & Nelson, P.C.



R. MARK PETRICH
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
918/588-4161
ATTORNEYS FOR THE PLAINTIFF



CURTIS A. PARKS, OBA #6901
1736 South Carson
Tulsa, Oklahoma 74119
918/587-7113



MICHAEL J. BEARD, OBA #626
1736 South Carson
Tulsa, Oklahoma 74119
918/587-7113



JAMES A. WILLIAMSON, OBA #9698
1736 South Carson
Tulsa, Oklahoma 74119
918/587-7113

DATE JUN 2 1993

FILED

JUN 1 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

THE TRAVELERS INSURANCE)
COMPANIES,)
)
Plaintiff,)
)
vs.)
)
JOHN KINZIE McFARLIN, JR.,)
and MICHAEL A. RUDOLPH,)
)
Defendants.)

No. 92-C-173-E /

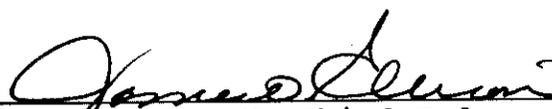
ORDER AND JUDGMENT

At the continued pre-trial conference, held on May 23, 1993, the Court stated that it would rule on Plaintiff's Renewed Motion for Summary Judgment (docket #34) after it had an opportunity to review the claims file. The parties will recall that the purpose of the review was to ascertain whether Defendants had submitted any evidence which would put in issue the evidence submitted by Plaintiff in support of its assertion that the insured Pontiac was driven by Defendant McFarlin without the permission of the Pontiac's owner when the accident occurred on November 9, 1988. The Court has now completed its review and finding no evidence which contradicts Plaintiff's evidence, finds that the Pontiac was driven without permission; and accordingly Plaintiff is entitled to summary judgment.

IT IS THEREFORE ORDERED that Plaintiff's Renewed Motion for Summary Judgment is granted; Declaratory Judgment is hereby entered in favor of Plaintiff; Plaintiff has no obligation under the automobile liability insurance policy issued to Midwest Pancake

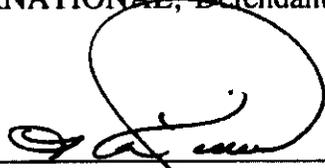
House, Inc. to defend Plaintiff John Kinzie McFarlin, Jr. against any lawsuit brought by Michael A. Rudolph for damages or injury sustained as a result of the November 9, 1988 automobile collision.

ORDERED this 28th day of May, 1993.



JAMES G. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

TOSHIBA INTERNATIONAL, Defendant

By  

James L. Kincaid, O.B.A. #5021

CROW & DUNLEVY, A Professional Corporation

321 South Boston, Suite 321

Tulsa, Oklahoma 74103-3313

(918) 592-9800

JUN 1 1993

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

F I L E D

JUN 1 1993

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 RALPH E. BAILEY,)
 SHARON K. BAILEY, and)
 JOAN HASTINGS,)
 Tulsa County Clerk,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

Case No. 93-C-100-B ✓

J U D G M E N T

Pursuant to the Findings of Fact and Conclusions of Law entered of even date herewith, and pursuant to Rule 58 of the Federal Rules of Civil Procedure, it is hereby

ORDERED ADJUDGED and DECREED that Judgment be entered in favor of the plaintiff United States and against defendants Ralph E. Bailey and Sharon K. Bailey as follows:

1. The "Claims of Commercial Lien and Affidavits" filed by defendants Ralph E. Bailey and Sharon K. Bailey on or about September 29, 1992 and October 2, 1992 against K.J. Sawyer, J. Tinkler, Jay C. Grooms, James P. Cuny, Sam Koch and Connie Medlock are declared to be invalid and null and void.

2. Defendants Ralph E. Bailey and Sharon K. Bailey, and pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, their officers, agents, servants, employees, attorneys and those

persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, are permanently enjoined from filing any additional "Claims of Commercial Lien and Affidavits" or similar documents with the Tulsa County Clerk's office or any state authority or from filing any other frivolous or vexatious pleadings or other documents of any nature whose purpose is to frustrate and intimidate the Internal Revenue Service or its employees in carrying out their lawful activities.

3. All costs of this action are assessed against the defendants, Ralph E. Bailey and Sharon K. Bailey, if timely applied for pursuant to Local Rule 6.

4. Pursuant to the settlement agreement between the plaintiff United States and defendant Joan Hastings, Tulsa County Clerk, announced in open court, defendant Joan Hastings, Tulsa County Clerk, is hereby dismissed from this action.

DATED this 13th day of June, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

JUN 0 9 1993

FILED

JUN 1 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

UNITED STATES OF AMERICA,

Plaintiff,

v.

RALPH E. BAILEY,
SHARON K. BAILEY, and
JOAN HASTINGS,
Tulsa County Clerk,
Tulsa County, Oklahoma,

Defendants.

Case No. 93-C-100-B ✓

J U D G M E N T

Pursuant to separate Order entered simultaneously herewith, granting Judgment in favor of the United States and against Ralph E. Bailey and Sharon K. Bailey, in the amounts of \$2,064.51 and \$355.97, for attorneys fees and expenses respectively, the Court enters Judgment in favor of the United States and against the Baileys, for attorneys fees in the amount of \$2,064.51 and expenses of \$355.97, for a total amount of \$2,420.48, with interest thereon from this date at the annual rate of 3.54% per annum until paid.

DATED this 1st day of June, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE 6-1-93

FILED

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

MAY 28 1993

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

STEVE HOLLAND,

Plaintiff,

v.

AMERICAN MEGATRENDS, INC.,

Defendant.

CASE NO. 92-C-56-E

STIPULATION OF DISMISSAL WITH PREJUDICE

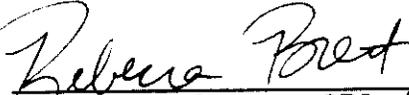
COMES NOW Plaintiff, Steve Holland ("Holland"), by and through his attorneys, Cornish & Viles, Inc., Jack McCalmon and Fred Cornish, and pursuant to Rule 41(a)(1), hereby dismisses, with prejudice, any and all claims against the Defendant, American Megatrends, Inc. ("AMI"), included in the above-referenced action. By this Stipulation of Dismissal with Prejudice, AMI hereby dismisses, with prejudice, any and all claims asserted through its counterclaim or otherwise against Holland in the above-referenced action.



Fred C. Cornish, OBA #1924
Jack S. McCalmon, OBA #14506
CORNISH & VILES, INC.
321 S. Boston Ave., Suite 917
Tulsa, Oklahoma 74103-3321
(918) 583-2284

ATTORNEYS FOR PLAINTIFF

and



James E. Weger, OBA #9437
Rebecca Brett, OBA #14190
JONES, GIVENS, GOTCHER & BOGAN
3800 First National Tower
Tulsa, Oklahoma 74103
(918) 581-8200

ATTORNEYS FOR DEFENDANT

DATE JUN 01 1993

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

FILED
MAY 28 1993

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

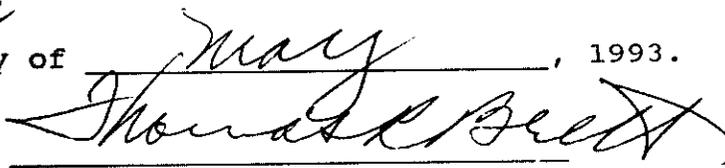
MICHAEL ANDRE CAMPBELL,)
)
 Plaintiff,)
)
 vs.)
)
 SHERIFF STANLEY GLANZ,)
)
 Defendant.)

No. 92-C-1059-B

ORDER

Defendant filed a motion to dismiss/motion for summary judgment (docket #8). Plaintiff has failed to respond to the motion. Pursuant to Local Rule 15(A), Plaintiff's failure constitutes a waiver of objection and a confession of the matters raised by the motion. In addition, Plaintiff has written to the court asking to dismiss his action, and stating that he doesn't want to waste the court's time. Accordingly, Defendants' motion to dismiss/motion for summary judgment is granted, and Plaintiff's complaint is hereby dismissed.

SO ORDERED THIS 28th day of May, 1993.



THOMAS R. BRETT
UNITED STATES DISTRICT COURT

JUL 1 1993

FILED

MAY 28 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

CHARLES E. SLANE AND PATRICIA)
A. SLANE,)
)
 Plaintiffs,)
)
 vs.)
)
 EXXON CORPORATION and GRACE)
 PETROLEUM CORPORATION,)
)
 Defendants.)

Case No. 92-C-241-B

ORDER

COMES ON for hearing the Plaintiffs and Defendants' Joint Application for a sixty (60) day administrative closure order so that the parties can reduce their settlement to writing in a form agreeable to all parties, and the Court, being duly advised in the premises, does hereby grant said Application and this case is hereby administratively closed for a period of sixty (60) days. If the written settlement agreement is not finalized in said sixty (60) day period, the case can only be reopened upon written application by one or more of the parties prior to the end of said sixty (60) day period and, absent such an application, this case will be dismissed with prejudice at the end of the sixty (60) day administrative closure provided for herein.

IT IS SO ORDERED.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE