

FILED

AUG 10 1993

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

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

THE CONTINENTAL INSURANCE)
COMPANY, a corporation,)
)
Plaintiff,)
)
vs.)
)
WILLIAM L. MOORE, III; JERRY E.)
WELLS; KAY WELLS; KENNETH R.)
STEELE; JANICE STEELE; JAMES W.)
RUSSELL; and GALE RUSSELL; all)
individuals,)
)
Defendants.)

No. 91-C-803-B

RELEASE AND SATISFACTION OF JUDGMENT

On April 7, 1993, a judgment was entered herein in favor of the plaintiff, The Continental Insurance Company, and against the defendants, Jerry E. Wells, Kay Wells, Kenneth R. Steele, Janice Steele, James W. Russell and Gale Russell. The judgment recites an agreement between and among the parties to compromise the same should the judgment debtors pay \$230,000 within a specified time. The plaintiff and judgment creditor, The Continental Insurance Company, hereby acknowledges the timely receipt of the \$230,000.

THEREFORE, The Continental Insurance Company hereby acknowledges timely receipt of the sum of \$230,000, and hereby releases and fully discharges the April 7, 1993 judgment in its favor.

Dated August 9, 1993

By:


John B. Hayes, #4805
LOONEY, NICHOLS, JOHNSON & HAYES
P.O. Box 468
Oklahoma City, OK 73101
(405) 235-7641

Attorney for Continental
Insurance Company

CERTIFICATE OF SERVICE

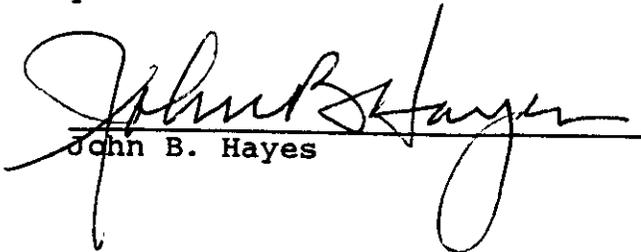
On the 9 day of August, 1993, a copy of the
foregoing was mailed, postage prepaid, to:

Mr. Ronald S. Weiss
Berman, DeLeve, Kuchan & Chapman
1006 Grand Avenue, Suite 1600
Kansas City, MO 64106
Attorneys for Kenneth R. Steele and Janice Steele

Drummond, Raymond & Hinds
Attorneys at Law
1924 South Utica, Suite 1000
Tulsa, OK 74104
Attorneys for Kenneth R. Steele and Janice Steele

Mr. Dennis J. Dobbels and
Mr. Mark E. Jones
Polsinelli, White, Vardeman & Shalton
700 West 47th Street, Suite 1000
Kansas City, MO 64112
Attorneys for James W. Russell and Gale Russell

Mr. Mark G. Stingley
Mr. Daniel R. Young
Smith, Gill, Fisher & Butts
3500 One Kansas City Place
1200 Main Street
Kansas City, MO 64105
Attorneys for Jerry E. Wells and Kay Wells


John B. Hayes

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

ENTERED ON DOCKET
DATE AUG 10 1993

RALPH V. MEADORS and)
WILDA RAE MEADORS,)
)
Plaintiffs,)
)
vs.)
)
VF CORPORATION and CINTAS)
CORPORATION,)
)
Defendants.)

No. 92-C-642-B

FILED
AUG 9 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

This matter comes on for hearing on the Joint Stipulation of the Plaintiffs, Ralph V. Meadors and Wilda Rae Meadors, and Defendants, VF Corporation and Cintas Corporation, for a dismissal with prejudice of the above captioned cause. The Court, being fully advised, having reviewed the Stipulation, finds that the parties herein have entered into a compromise settlement covering all claims involved in this action, which this Court hereby approves, and that the above entitled cause should be dismissed with prejudice to the filing of a future action pursuant to said Stipulation.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above entitled cause be and is hereby dismissed with prejudice to the filing of a future action, the parties to bear their own respective costs.

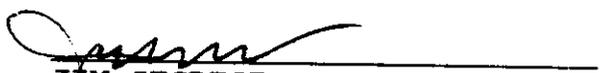
Dated this 9th day of Aug, 1993.

THOMAS R. BRETT

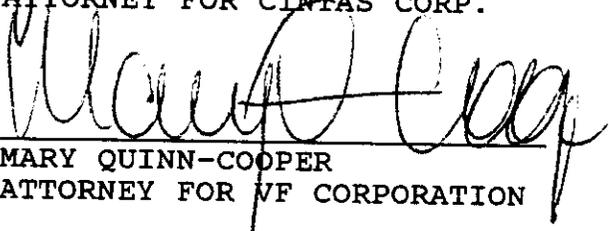
THOMAS R. BRETT, JUDGE
UNITED STATES DISTRICT COURT FOR THE



MIKE ATKINSON
ATTORNEY FOR PLAINTIFF



JIM SECREST
ATTORNEY FOR CINTAS CORP.



MARY QUINN-COOPER
ATTORNEY FOR VF CORPORATION

C:\WORD\VFCORP\LEADING\DISMISS.ORD

DATE AUG 10 1993

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

FILED

AUG 9 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

RALPH V. MEADORS and
WILDA RAE MEADORS,

Plaintiffs,

vs.

No. 92-C-642-B ✓

VF CORPORATION and CINTAS
CORPORATION,

Defendants.

ORDER OF DISMISSAL WITH PREJUDICE

NOW on this 9 day of Aug, 1993, the Court
having been advised that the parties to this matter have settled
and compromised the claims involved herein, finds and hereby orders
that Defendant VF Corporation's Cross-Petition in the above styled
matter should be and is hereby ordered dismissed, with prejudice,
and that each party hereto, shall bear its own costs and attorney's
fees.



JUDGE FOR THE UNITES STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE AUG 10 1993

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JACK E. GREEN a/k/a JACK ELWIN)
 GREEN; ANITA G. GREEN a/k/a)
 ANITA GAIL GREEN; ROGER D.)
 HUGHEY, Tenant; HELEN HUGHEY,)
 Tenant; COUNTY TREASURER,)
 Washington County, Oklahoma;)
 and BOARD OF COUNTY)
 COMMISSIONERS, Washington)
 County, Oklahoma,)
)
 Defendants.)

FILED
 AUG 9 1993
 Richard M. Lawrence, Clerk
 U. S. DISTRICT COURT
 NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 92-C-178-B

DEFICIENCY JUDGMENT

This matter comes on for consideration this 9th day of August, 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 Defendants, Jack E. Green a/k/a Jack Elwin Green and Anita G. Green a/k/a Anita Gail Green, 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 Jack E. Green a/k/a Jack Elwin Green, 664 Sunset, Bartlesville, Oklahoma 74003 and Anita G. Green a/k/a Anita Gail Green, Rt. 1, Box 269A, Copan, Oklahoma 74022-9751, and to all answering parties and/or counsel of record.

The Court further finds that the amount of the Judgment rendered on August 17, 1992, in favor of the Plaintiff United States of America, and against the Defendants, Jack E. Green

PRO SE DEFENDANTS IMMEDIATELY
 UPON RECEIPT.

a/k/a Jack Elwin Green and Anita G. Green a/k/a Anita Gail Green, with interest and costs to date of sale is \$10,509.36.

The Court further finds that the appraised value of the real property at the time of sale was \$6,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered August 17, 1992, for the sum of \$5,150.00 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 _____, 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, Jack E. Green a/k/a Jack Elwin Green and Anita G. Green a/k/a Anita Gail Green, as follows:

Principal Balance plus pre-Judgment Interest as of 8-17-92	\$	9,042.15
Interest From Date of Judgment to Sale		201.18
Late Charges to Date of Judgment		92.40
Appraisal by Agency		500.00
Abstracting		320.00
Publication Fees of Notice of Sale		128.63
Court Appraisers' Fees		<u>225.00</u>
TOTAL	\$	10,509.36
Less Credit of Appraised Value	-	<u>6,000.00</u>
DEFICIENCY	\$	4,509.36

plus interest on said deficiency judgment at the legal rate of 3.58 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.

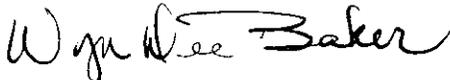
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, Jack E. Green a/k/a Jack Elwin Green and Anita G. Green a/k/a Anita Gail Green, a deficiency judgment in the amount of \$4,509.36, plus interest at the legal rate of 3.58 percent per annum on said deficiency judgment from date of judgment until paid.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

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

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

FILED
AUG 9 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

SHANNON SMITH, an individual,)
)
Plaintiff,)
)
DAVID LYE TAN,)
)
vs.)
)
WILLIAM ENGLERTH, an individual;)
HEAVY DUTY TRUX, LTD., a foreign)
corporation; COMMONWEALTH GENERAL)
INSURANCE COMPANY, a foreign)
corporation,)
)
Defendants and Third)
Party Plaintiffs,)
)
vs.)
)
STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)
)
Third Party Defendant.)

Case No. 93-C-47-B

ORDER

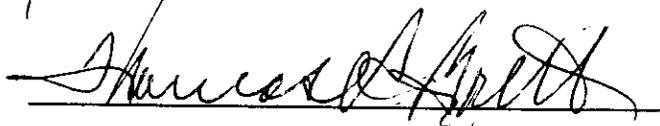
This matter comes on for consideration of Third Party Defendant State Farm Mutual Automobile Insurance Company's Motion To Dismiss Third Party Complaint And For Judgment On The Pleadings (#33). The parties herein, by and through their attorneys of record have jointly agreed that they have no objection to the Court entering its Order sustaining the Motion To Dismiss of Third Party Defendant State Farm Mutual Automobile (State Farm), based upon State Farm's agreement to waive all rights of subrogation as set forth in its Motion.

Based upon the parties' joint agreement the Court herewith sustains Third Party Defendant State Farm Mutual Automobile

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Insurance Company's Motion To Dismiss Third Party Complaint. State
Farm's Motion For Judgment On The Pleadings is denied as moot.

IT IS SO ORDERED, this 9 day of August, 1993.

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

THOMAS R. BRET
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE AUG 10 1993
FILED

AUG 9 1993

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

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

HEALTH AND FITNESS FOODS,)
CORP.,)
)
Plaintiff,)
)
vs.)
)
DUN & BRADSTREET, INC.,)
)
Defendant.)

No. 93-C-242-B

O R D E R

The Court has for decision the Motion to Dismiss, Transfer, or Stay Based on Prior Filed Action of the Defendant, Dun & Bradstreet, Inc. (Docket No. #6).

It is apparent from the record herein that a prior action was filed by Dun & Bradstreet, Inc., against Health and Fitness Foods, Corp., and its president, Raymond J. Francis, in the United States District Court for the Central District of California. (Dun & Bradstreet, Inc., Plaintiff, vs. Health and Fitness Foods, Corp. and Raymond J. Francis, Case No. SA CV-93 274AHS (RWRx)). The California federal action involved essentially the same subject matter as herein, i.e., a credit report prepared by Dun & Bradstreet regarding Health & Fitness Foods, Corp., and its president, Raymond J. Francis. Plaintiff asserts a different credit report prepared by Dun & Bradstreet, Inc., concerning Health and Fitness Foods, Corp. is involved in this instant matter.

Judicial economy would best be served by litigating the common subject matter in one lawsuit, the first filed, even if a counter-claim need be asserted. Fed.R.Civ.P. 13(a); Pipeliners Local Union No. 798, Tulsa, Oklahoma v. Ellerd, 503 F.2d 1193, 1198 (10th Cir.

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1974); Moore v. New York Cotton Exchange, 270 U.S. 593 (1926); also regarding the first filed case doctrine, see O'Hare International Bank v. Lambert, 459 F.2d 328, 331 (10th Cir. 1972); Cessna Aircraft Company v. Brown, 348 F.2d 689, 692 (10th Cir. 1965); Chicago Pneumatic Tool Co. v. Hughes Tool Co., 180 F.2d 97, 101 (10th Cir. 1950); and Ainsworth v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 298 F.Supp. 479 (W.D.Okla. 1969).

Also, it appears that the principal place of business of Plaintiff, Health and Fitness Foods, Corp., is in the Central District of California, and the principal witnesses reside in California, as well as the principal documentary exhibits are located in California. For this reason, the transfer pursuant to 28 U.S.C. § 1404(a) to the United States District Court for the Central District of California is appropriate, as the more convenient forum. Continental Grain Co. v. Barge FBL-585, 364 U.S. 19, 4 L.Ed.2d 1540 (1960); Van Dusen v. Barrack, 376 U.S. 612, 11 L.Ed.2d 945 (1964); and Northwest Animal Hospital, Inc. v. Earnhardt, 452 F.Supp. 191, 193 (W.D. Okla. 1977).

IT IS THEREFORE HEREBY ORDERED that this instant action be transferred forthwith to the United States District Court for the Central District of California.

DATED this 9th day of August, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE AUG 10 1993

FILED

AUG 9 1993

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

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

FLYNN ENERGY CORP.,
Plaintiff,

vs.
TULSA COMMERCE BANCSHARES,
INC., ET AL.

Defendants.

NO. 86-C-163-B

AGREED STIPULATION OF DISMISSAL

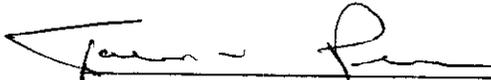
Pursuant to the agreement of the parties that this action be dismissed with prejudice and pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure,

IT IS HEREBY ORDERED that this action as against MCorp and in its entirety be and hereby is dismissed with prejudice.

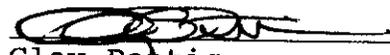
SIGNED this 9th day of Aug, 1993.


UNITED STATES DISTRICT JUDGE
for FRANK H. SEAY, CHIEF JUDGE,
EASTERN DISTRICT OF OKLAHOMA

AGREED TO IN FORM AND SUBSTANCE:

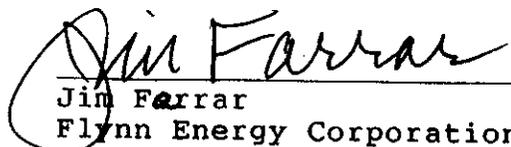


Jack N. Price
401 Congress Avenue
Austin, Texas 78701



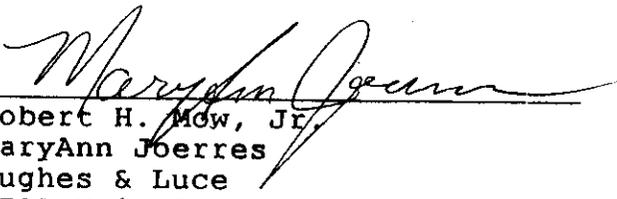
Clay Pettit
P. O. Box 858
Holdenville, Oklahoma 74848

197



Jim Ferrar
Flynn Energy Corporation
600 West Park Row
Arlington, Texas 76010
(817) 629-3116

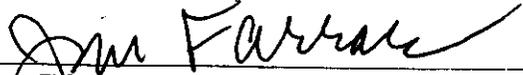
ATTORNEYS FOR PLAINTIFF



Robert H. Mow, Jr.
MaryAnn Joerres
Hughes & Luce
1717 Main Street, Suite 2800
Dallas, Texas 75201
(214) 939-5500

ATTORNEYS FOR DEFENDANT MCORP

26140063:324


Jim Farrar
Flynn Energy Corporation
600 West Park Row
Arlington, Texas 76010
(817) 629-3116

ATTORNEYS FOR PLAINTIFF


Robert H. Mow, Jr.
MaryAnn Joerres
Hughes & Luce
1717 Main Street, Suite 2800
Dallas, Texas 75201
(214) 939-5500

ATTORNEYS FOR DEFENDANT MCORP

26140063:326

SECRET
DATE AUG 10 1993

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JEFFLINE CORPORATION, et al., Plaintiffs,)
v.)
THRIFTY RENT-A-CAR SYSTEM, INC., and PENTASTAR TRANSPORTATION GROUP, INC., Defendants.)

Case No. 91-C-841-B

FILED
AUG 9 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

IT IS HEREBY ORDERED that all claims by Plaintiff John A. Kennedy, Jr. against Defendants Thrifty Rent-A-Car Systems, Inc. and Pentastar Transportation Group, Inc. are hereby dismissed with prejudice. It is further ordered that all counterclaims by Defendants against John A. Kennedy, Jr. are hereby dismissed with prejudice. Each party is to bear its own costs.

S/ THOMAS R. BRETT

United States District Judge

DATE 10 1993

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES W. ANGLE a/k/a JAMES
WINSTON ANGLE; STANLEY A.
ROBISON, SR. a/k/a STANLEY
ANDERSON ROBISON, SR.;
SHERRI ROBISON a/k/a SHERRI
JOANN ROBISON; NCNB NATIONAL
BANK OF NORTH CAROLINA;
JOHN DOE, TENANT; JANE DOE,
TENANT; COUNTY TREASURER,
Tulsa County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.)

FILED

AUG 9 1993

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

CIVIL ACTION NO. 91-C-917-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 9 day
of August, 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, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendants, John Doe,
Tenant and Jane Doe, Tenant, appear not, and should be dismissed
from this action; the Defendants, James W. Angle a/k/a James
Winston Angle, Stanley A. Robison, Sr. a/k/a Stanley Anderson
Robison, Sr., Sherri Robison a/k/a Sherri Joann Robison, and NCNB
National Bank of North Carolina, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, **James W. Angle a/k/a James Winston Angle**, acknowledged receipt of Summons and Complaint on December 6, 1991; that the Defendant, **NCNB National Bank of North Carolina**, acknowledged receipt of Summons and Complaint on December 4, 1991; that Defendant, **County Treasurer, Tulsa County, Oklahoma**, acknowledged receipt of Summons and Complaint on December 3, 1991; and that Defendant, **Board of County Commissioners, Tulsa County, Oklahoma**, acknowledged receipt of Summons and Complaint on December 3, 1991.

The Court further finds that the Defendants, **John Doe, Tenant** and **Jane Doe, Tenant**, have not been served herein since the subject real property is vacant and such persons do not exist, and should therefore be dismissed as Defendants herein.

The Court further finds that the Defendants, **Stanley A. Robison, Sr. a/k/a Stanley Anderson Robison, Sr.** and **Sherri Robison a/k/a Sherri Joann Robison**, were served by publishing notice of this action in the **Tulsa Daily Commerce & Legal News**, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning February 4, 1993, and continuing through March 11, 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, **Stanley A. Robison, Sr. a/k/a Stanley Anderson Robison, Sr.** and **Sherri Robison a/k/a Sherri Joann Robison**, 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, Stanley A. Robison, Sr. a/k/a Stanley Anderson Robison, Sr. and Sherri Robison a/k/a Sherri Joann Robison. 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, F. L. Dunn, III, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers to the Complaint on December 23, 1991 and their Answers to the Amended Complaint on

January 28, 1993; that the Defendants, James W. Angle a/k/a James Winston Angle, Stanley A. Robison, Sr. a/k/a Stanley Anderson Robison, Sr., Sherri Robison a/k/a Sherri Joann Robison, and NCNB National Bank of North Carolina, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Thirty-five (35), Block Five (5), LAKEVIEW HEIGHTS AMENDED ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that this is a suit brought for the further purpose of judicially determining the death of Naomi Elizabeth Angle a/k/a Naomi W. Angle a/k/a Naomi Wilson Angle (hereinafter referred to by any of these names), and of judicially terminating the joint tenancy of James W. Angle a/k/a James Winston Angle (hereinafter referred to by either of these names), and Naomi Elizabeth Angle a/k/a Naomi W. Angle a/k/a Naomi Wilson Angle.

The Court further finds that on May 10, 1991, Stanley Anderson Robison, Sr., filed his voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 91-01615-W. On September 4, 1991, the United States Bankruptcy Court entered a discharge of debtor. Subsequently, on October 25, 1991, Case No. 91-01615-W, United

States Bankruptcy Court for the Northern District of Oklahoma, was closed.

The Court further finds that James W. Angle and Naomi W. Angle became the record owners of the real property involved in this action by virtue of that certain Warranty Deed dated June 28, 1979, from Max Cleland as Administrator of Veterans Affairs, to James W. Angle and Naomi W. Angle, husband and wife, as joint tenants, and not as tenants in common, with full right of survivorship, the whole estate to vest in the survivor in the event of the death of either, which Warranty Deed was filed of record on July 2, 1979, in Book 4410, Page 1290, in the records of the County Clerk of Tulsa County, Oklahoma.

The Court further finds that on June 29, 1979, James W. Angle and Naomi W. Angle executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$14,800.00, payable in monthly installments, with interest thereon at the rate of nine and one half percent (9.5%) per annum.

The Court further finds that as security for the payment of the above-described note, James W. Angle and Naomi W. Angle 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 real estate mortgage dated June 29, 1979, covering the above-described property, situated in the State of Oklahoma, Tulsa County. This mortgage

was recorded on July 2, 1979, in Book 4410, Page 1292, in the records of Tulsa County, Oklahoma.

The Court further finds that Naomi Elizabeth Angle died on March 23, 1983. Upon the death of Naomi Elizabeth Angle, the subject property vested in her surviving joint tenant, James W. Angle, by operation of law. Certificate of Death No. 09163 issued by the Oklahoma State Department of Health certifies Naomi Elizabeth Angle's death.

The Court further finds that on June 4, 1982, a Decree of Divorce was entered in Case No. JFD-82-2082, Naomi Wilson Angle, Plaintiff, v. James Winston Angle, Defendant, in the District Court of Tulsa County, Oklahoma, wherein the above-described real property was awarded to the Defendant James Winston Angle. This Decree of Divorce was filed in the land records of Tulsa County, Oklahoma, on May 27, 1986, in Book 4944, Page 1871.

The Court further finds that James W. Angle a/k/a James Winston Angle and Naomi Elizabeth Angle a/k/a Naomi W. Angle a/k/a Naomi Wilson Angle, now deceased, 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 Plaintiff alleges that there is now due and owing under the note and mortgage, after full credit for all payments made, the principal sum of \$13,073.42, plus interest at the rate of 9.5 percent per annum from October 1, 1990 until judgment, plus interest

thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$314.20 for publication fees.

The Court further finds that Plaintiff is entitled to a judicial determination of the death of Naomi Elizabeth Angle a/k/a Naomi W. Angle a/k/a Naomi Wilson Angle, and to a judicial termination of the joint tenancy of James W. Angle a/k/a James Winston Angle and Naomi Elizabeth Angle a/k/a Naomi W. Angle a/k/a Naomi Wilson Angle, in the real property involved herein.

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 1991. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that the Defendants, Stanley A. Robison, Sr. a/k/a Stanley Anderson Robison, Sr., Sherri Robison a/k/a Sherri Joann Robison, and NCNB National Bank of North Carolina, are in default and have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the death Naomi Elizabeth Angle a/k/a Naomi W. Angle a/k/a Naomi Wilson Angle be and the same hereby is judicially determined to have occurred on March 23, 1983, in the City of Tulsa, Tulsa County, State of Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the joint tenancy of James W. Angle a/k/a James Winston Angle and Naomi Elizabeth Angle a/k/a Naomi W. Angle a/k/a Naomi Wilson Angle in the above-described real property be and the same is judicially terminated as of the date of the death of Naomi Elizabeth Angle on March 23, 1983.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Veterans Affairs, have and recover judgment against the Defendant, James W. Angle a/k/a James Winston Angle, in the principal sum of \$13,073.42, plus interest at the rate of 9.5 percent per annum from October 1, 1990 until judgment, plus interest thereafter at the current legal rate of 3.58 percent per annum until paid, plus the costs of this action in the amount of \$314.20 for publication fees, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$16.00, plus interest, for personal property taxes for the year 1991, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Stanley A. Robison, Sr. a/k/a Stanley Anderson Robison, Sr.; Sherri Robison a/k/a Sherri Joann Robison; John Doe, Tenant; Jane Doe, Tenant; NCNB National Bank of North

Carolina; and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property, and the Defendants, John Doe, Tenant and Jane Doe, Tenant, are hereby dismissed as Defendants.

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

First:

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

Second:

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

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.

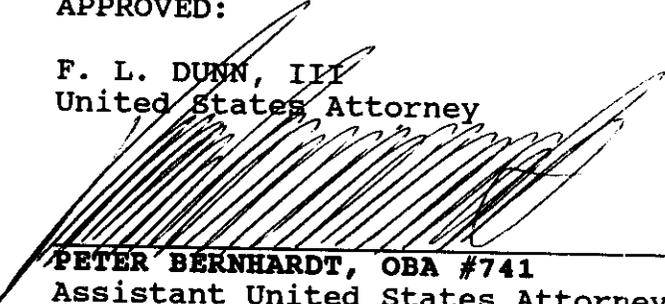
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

S/ THOMAS R. BRETT

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



J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 91-C-917-B

PB/css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CHARLES MORRELL; LINDA MORRELL;)
 JANE DOE, Tenant; CITY FINANCE)
 COMPANY OF OKLAHOMA, INC.;)
 LOMAS MORTGAGE USA, INC.;)
 EMIGRANT SAVINGS BANK; COUNTY)
 TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

FILED

AUG 9 1993

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

CIVIL ACTION NO. 93-C-0062-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 9 day
of August, 1993. The Plaintiff appears by F. L. Dunn,
III, United States Attorney for the Northern District of
Oklahoma, through Kathleen Bliss Adams, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; the Defendant, Lomas Mortgage
USA, Inc., appears not, having previously filed its Answer and
Disclaimer; the Defendant, Jane Doe, Tenant, appears not, and
should be dismissed from this action; and the Defendants, Charles
Morrell; Linda Morrell; City Finance Company of Oklahoma, Inc.;
and Emigrant Savings Bank, appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendants, Charles Morrell and Linda

Morrell, were served with Summons and Complaint on March 23, 1993; that the Defendant, City Finance Company of Oklahoma, Inc., was served with Summons and Complaint on March 24, 1993; that the Defendant, Lomas Mortgage USA, Inc., was served with Summons and Complaint on April 2, 1993; that the Defendant, Emigrant Savings Bank, was served with Summons and Complaint on March 25, 1993; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 28, 1993; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 27, 1993.

The Court further finds that the Defendant, Jane Doe, Tenant, has not been served herein as the subject real property is vacant and such person does not exist, and should therefore be dismissed as a Defendant herein.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on February 23, 1993; that the Defendant, Lomas Mortgage USA, Inc., filed its Answer and Disclaimer on February 18, 1993; that the Defendants, Charles Morrell; Linda Morrell; City Finance Company of Oklahoma, Inc.; and Emigrant Savings Bank, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real

property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Thirty-five (35), Block Four (4), LAKEVIEW HEIGHTS AMENDED ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that an Assignment of Mortgages dated October 19, 1976, was recorded in Book 4247, Page 973 in the records of Tulsa County, Oklahoma, to correct the Assignment of Mortgages recorded in Book 4003, Page 1457 in the records of Tulsa County, Oklahoma. This corrected Assignment was executed after the foreclosure proceedings on Gilbert O. Henry, Jr. and Mary Carol Henry were completed.

The Court further finds that on August 21, 1974, the Defendants, Charles Morrell and Linda Morrell, 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 \$9,500.00, payable in monthly installments, with interest thereon at the rate of 9 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Charles Morrell and Linda Morrell, 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 real estate mortgage dated August 21, 1974, covering the above-described property, situated in the State of Oklahoma, Tulsa

County. This mortgage was recorded on August 22, 1974, in Book 4133, Page 2250, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Charles Morrell and Linda Morrell, 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, Charles Morrell and Linda Morrell, are indebted to the Plaintiff in the principal sum of \$7,286.81, plus interest at the rate of 9 percent per annum from August 1, 1990 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$104.00 (fees for service of Summons and Complaint).

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 1991 (\$11.00) and 1992 (\$5.00). Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that the Defendant, Lomas Mortgage USA, Inc., disclaims any right, title, or interest in or to the subject real property.

The Court further finds that the Defendants, Charles Morrell; Linda Morrell; City Finance Company of Oklahoma, Inc.; and Emigrant Savings Bank, 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, the United States of America, acting on behalf of the Secretary of Veterans Affairs, have and recover judgment against the Defendants, **Charles Morrell and Linda Morrell**, in the principal sum of \$7,286.81, plus interest at the rate of 9 percent per annum from August 1, 1990 until judgment, plus interest thereafter at the current legal rate of 3.58 percent per annum until paid, plus the costs of this action in the amount of \$104.00 (fees for service of Summons and Complaint), 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 years 1991 (\$11.00) and 1992 (\$5.00), plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, **Jane Doe, Tenant; City Finance Company of Oklahoma, Inc.; Lomas Mortgage USA, Inc.; Emigrant Savings Bank; and Board of County Commissioners, Tulsa County, Oklahoma**, have no right, title, or interest in the subject real property, and the

Defendant, Jane Doe, Tenant, is hereby dismissed as a Defendant herein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, **Charles Morrell and Linda Morrell**, 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 for 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

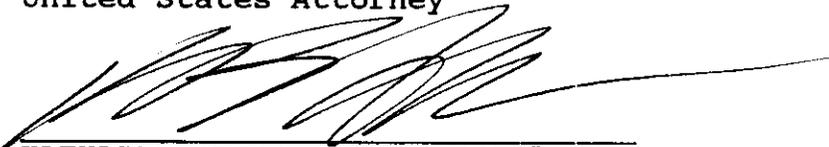
and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

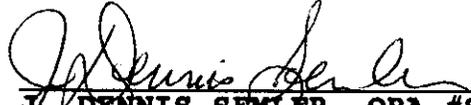
UNITED STATES DISTRICT JUDGE

APPROVED:

F. L. DUNN, III
United States Attorney



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



J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 93-C-62-B

KBA/css

ENTERED ON DOCKET

DATE 8-9-93

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

AUG 10 1993

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

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 -vs.-)
)
 WILLIAM LYNN ADAMS;)
 SANDRA SUE ADAMS;)
 SERVICE COLLECTION ASSOCIATION,)
 INC.;)
 CITY OF BROKEN ARROW, OKLAHOMA,)
 a municipal corporation;)
 COUNTY TREASURER,)
 Tulsa County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma;)
)
 Defendants.)

CASE NO. 92-C-593E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 9th day of Aug, 1993. The plaintiff appears by F. L. Dunn, III, United States Attorney for the Northern District of Oklahoma, through Mikel K. Anderson, Special Assistant United States Attorney; the defendant, Service Collection Association, Inc., appears by Daniel M. Webb; the defendant, City of Broken Arrow, Oklahoma, appears by Michael R. Vanderburg, City Attorney; the defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by J. Dennis Semler, Assistant District Attorney, Tulsa County, Oklahoma; the defendant, William Lynn Adams, appears not, but makes default; and the defendant, Sandra Sue Adams, appears not, but makes default

The Court, being fully advised and having examined the file, finds as follows:

1. (a) The defendant, **William Lynn Adams**, acknowledged receipt of summons and complaint on July 30, 1992, but has failed to otherwise appear and is now in default;

(b) the defendant, **Sandra Sue Adams**, acknowledged receipt of summons and complaint on April 26, 1993, but has failed to otherwise appear and is now in default;

(c) All other defendants, namely **Service Collection Association, Inc.; City of Broken Arrow, Oklahoma; County Treasurer, Tulsa County, Oklahoma; and Board of County Commissioners, Tulsa County, Oklahoma**, have filed timely answers in this action and have approved the form of this judgment as evidenced by their attorney's subscriptions.

2. This court has jurisdiction according to 28 U.S.C. Section 1345 because the United States is the plaintiff; and venue is proper because this lawsuit is based upon a note which was secured by a mortgage covering land located within the Northern Judicial District of Oklahoma.

3. On November 26, 1986, the defendants **William Lynn Adams** and **Sandra Sue Adams**, husband and wife, executed and delivered to **Commonwealth Mortgage Company of America, L.P., Limited Partnership**, a promissory note in the amount of \$59,581.00, payable in monthly installments, with interest thereon at the rate of ten (10%) percent per annum.

4. As security for the payment of the above described note, the defendants William Lynn Adams and Sandra Sue Adams, husband and wife, executed and delivered to Commonwealth Mortgage Company of America, L.P., Limited Partnership, a real estate mortgage dated November 26, 1986, covering the following described property:

Lot Sixteen (16), Block Five (5), VALLEY RIDGE, an addition to the City of Broken Arrow, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

This mortgage was recorded with the Tulsa County Clerk December 1, 1986, in book 4985 at page 2086. The mortgage tax due thereon was paid

5. (a) On February 28, 1988, Commonwealth Mortgage Company of America L.P. assigned such promissory note and the mortgage securing it to The Lomas & Nettleton Company by an assignment recorded with the Tulsa County Clerk June 6, 1988, in book 5104 at page 1933.

(b) On June 15, 1989, Lomas Mortgage USA, Inc., formerly The Lomas & Nettleton Company, assigned such promissory note and the mortgage securing it to The Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns by an assignment recorded with the Tulsa County Clerk June 22, 1989, in book 5190 at page 919.

6. On June 1, 1989, the defendants, William Lynn Adams and Sandra Sue Adams, husband and wife, entered into an agreement with the plaintiff lowering the amount of the monthly installments due under the note in exchange for the

plaintiff's forbearance of its right to foreclose. A superseding agreement was reached August 1, 1990.

7. The defendants, William Lynn Adams and Sandra Sue Adams, have defaulted under the terms of the note, mortgage and forbearance agreement due to their failure to pay installments when due. Because of such default, the defendants, William Lynn Adams and Sandra Sue Adams, are indebted to the plaintiff in the amount of \$82,197.57, plus interest at the rate of ten (10%) percent per annum from July 15, 1992, until the date of this judgment, plus interest thereafter at the legal rate until fully paid; plus the costs of this action in the amount of \$365.00 for abstracting and \$8.00 for recording the Notice of Lis Pendens.

8. The defendant, Service Collection Association, Inc., claims an interest in the Property by virtue of a judgment in District Court Case No. CS-89-04321 in the amount of \$1,901.57, plus costs, interest and attorney's fees.

9. The defendant, City of Broken Arrow, Oklahoma, has no right, title or interest in the Property except insofar as it is the holder of certain easements as shown on the duly recorded plat of Valley Ridge addition.

10. The defendant, County Treasurer, Tulsa County, Oklahoma, claims an interest in the Property by virtue of personal property taxes for tax year 1991, in the amount of \$24.00.

11. The defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title or interest in or to the Property.

12. Pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED that the plaintiff have and recover judgment against the defendants, William Lynn Adams and Sandra Sue Adams, in the principal sum of \$82,197.57, plus interest at the rate of ten (10%) percent per annum from July 15, 1992, until judgment, plus interest thereafter at the legal rate of 3.58% until paid, plus the costs of this action in the amount of \$373.00, plus any additional sums advanced or to be advanced or expended during this foreclosure action by the plaintiff for taxes, insurance, abstracting, or sums for the preservation of the Property.

IT IS FURTHER ORDERED that the defendant, Service Collection Association, Inc., have and recover judgment in the amount of \$1,901.57, plus penalties, interest and attorney's fees.

IT IS FURTHER ORDERED that the defendant, City of Broken Arrow, Oklahoma, has no right, title or interest in the Property except insofar as it is the holder of certain

easements as shown on the duly recorded plat of Valley Ridge Addition.

IT IS FURTHER ORDERED that the defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$24.00, plus penalties and interest.

IT IS FURTHER ORDERED that the defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title or interest in or to the Property.

IT IS FURTHER ORDERED that upon the failure of the defendants, William Lynn Adams and Sandra Sue Adams, 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 the Property, according to the plaintiff's election with or without appraisal and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action incurred by the plaintiff, including the costs of sale of the Property;

Second:

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

Third:

In payment of the judgment rendered herein in favor of the defendant, Service Collection Association, Inc.

Fourth:

In payment of the judgment rendered herein in favor of the defendant, County Treasurer, Tulsa County, Oklahoma.

Fifth:

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 that there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED that from and after the sale of the Property, under and by virtue of this judgment and decree, all of the defendants and all persons claiming under them, be forever barred and foreclosed of any right, title, interest or claim in or to the Property or any part thereof.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Judgment of Foreclosure
USA v. William Lynn Adams, et al.
Civil Action No. 92-C-593E

APPROVED:

F. L. DUNN, III
United States Attorney



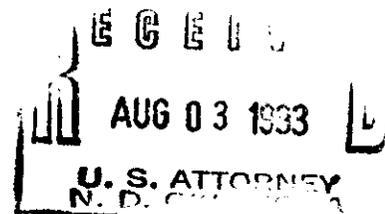
Mikel K. Anderson
Special Assistant United States Attorney
U.S. Dept. of Housing & Urban Development
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Michael R. Vanderburg
City Attorney
Attorney for defendant
City of Broken Arrow, Oklahoma



J. Dennis Semler
Assistant District Attorney
Attorney for defendants
Tulsa County Treasurer and
Board of Tulsa County Commissioners

Judgment of Foreclosure
USA v. William Lynn Adams, et al.
Civil Action No. 92-C-593E



APPROVED:

F. L. DUNN, III
United States Attorney

A handwritten signature in cursive script, appearing to read "Mikel K. Anderson".

Mikel K. Anderson
Special Assistant United States Attorney
U.S. Dept. of Housing & Urban Development
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

A handwritten signature in cursive script, appearing to read "Michael R. Vanderburg".

Michael R. Vanderburg
City Attorney
Attorney for defendant
City of Broken Arrow, Oklahoma

J. Dennis Semler
Assistant District Attorney
Attorney for defendants
Tulsa County Treasurer and
Board of Tulsa County Commissioners

DATE 8-9-93

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

STEVEN LEE GAGHINS,)	
Petitioner,)	
)	
vs.)	No. 92-C-742-E
)	
JAMES SAFFLE,)	
Respondent.)	

FILED
 AUG 9 1993
 Richard M. Lawrence, Clerk
 U.S. DISTRICT COURT

ORDER

This action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is now before the court for decision. Respondents have filed an answer, in which they argue that Petitioner's claims are barred by procedural default.

The doctrine of procedural default generally prohibits a federal court from considering a specific habeas claim where the state's highest court declined to reach the merits of that claim on procedural grounds. See Murray v. Carrier, 477 U.S. 478 (1986); Engle v. Isaac, 456 U.S. 107 (1982).

Only upon a showing of "actual cause" and "prejudice" is a federal court permitted to entertain such claims. Murray, 477 U.S. at 492; Engle, 456 U.S. at 129. "The existence of cause for a procedural default must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded...efforts to comply with the state procedural rules." Murray, 477 U.S. at 488. Examples of such external factors include the discovery of new evidence, a change in the law, and interference by state officials. Id.

ENTERED ON RECORD

DATE AUG 09 1993

FILED

AUG 9 1993

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

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

IDELL M. COOK, an individual,)
)
 Plaintiff,)
)
 v.)
)
 INTERNATIONAL ASSETS)
 ADVISORY CORPORATION and)
 DAVE W. CONNOCHIE,)
)
 Defendants.)

Case No. 92-C-554 B

Stipulation of
DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Idell M. Cook, and hereby
dismisses with prejudice, the above styled cause of action as to
Defendant Dave W. Connochie, each party to bear their own
attorney's fees and costs herein.

Respectfully submitted,

By *William H. Hinkle*
William H. Hinkle
320 South Boston, Suite 1100
Tulsa, Oklahoma 74103
(918) 584-6700

Attorneys for Plaintiff,
Idell M. Cook

CERTIFICATE OF MAILING

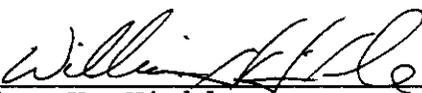
I, William H. Hinkle, do hereby certify that on the _____ day of _____, 1993, I caused to be mailed a true and correct copy of the above and foregoing to the following with proper postage prepaid:

Richard D. Black
Sneed, Lang, Adams & Barnett
2300 Williams Center Tower II
Two West Second Street
Tulsa, Oklahoma 74103

Attorney for Defendant
Dave W. Connochie

K. Clark Phipps
Thomas, Glass, Atkinson,
Haskins, Nellis & Boudreaux
Suite 1500
525 South Main St.
Tulsa, Oklahoma 74103

Attorney for Defendant,
International Assets
Advisory Corporation



William H. Hinkle

ENTERED ON DOCKET

DATE AUG 6 1993

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

F I L E D

FEDERAL DEPOSIT INSURANCE CORPORATION,)
in its corporate capacity as)
successor in interest of the now)
insolvent Union Bank and Trust)
Company, Bartlesville, Oklahoma,)
Plaintiff,)
vs.)
GREG ALAN MACKIE, ET AL.,)
Defendants.)

AUG 5 - 1993

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

No. 91-C-795-C

JUDGMENT

This matter comes on for consideration this 18th day of March, 1993, before the undersigned Judge of the United States District Court for the Northern District of Oklahoma, on Plaintiff's Motion for Summary Judgment. Berkeley Federal Bank & Trust, FSB substituted Plaintiff for Federal Deposit Insurance Corporation, in its corporate capacity as successor in interest of the now insolvent Union Bank and Trust Company, Bartlesville, Oklahoma, (FDIC) appears by and through its attorneys of record, Lamun Mock Featherly Kuehling & Cunnyngnam by M. Pete Marianos. The Defendants, Board of Osage County Commissioners and Osage County Treasurer, Oklahoma, appear by and through their attorney of record, Larry D. Stuart, District Attorney, by John S. Boggs, Jr., Assistant District Attorney. The Defendant Judy Ann Mackie appears by and through her attorneys of record Kane Kane Kane and Roark by Patrick H. Roark. The remaining Defendants Dean Lee and Barbara Lee, individually and dba Lee's Repair Shop and Greg Alan Mackie, appear not. The Court being fully advised in the premises finds as follows:

There are no further proceedings to be had in this matter and the parties are advised to appear in court on the date and time specified on the summons and to bring with them the amount of money and property specified in the summons immediately upon receipt.

1. That Federal Deposit Insurance Corporation, in its corporate capacity as Receiver of Union Bank and Trust assigned the mortgage recorded in Book 683 at Page 208 to First Federal Savings Bank (of Delaware) by assignment dated December 16, 1992.

2. That First Federal Savings Bank (of Delaware) and Berkeley Federal Bank & Trust, FSB were combined pursuant to an Agreement and Plan of Acquisition, dated as of February 23, 1993 and as amended as of March 5, 1993, pursuant to which Berkeley Federal Bank & Trust, FSB will convert from the mutual to the stock form of organization and will merge with First Federal with First Federal to be the surviving entity operating under the name Berkeley Federal Bank & Trust, FSB, all as shown by Articles of Combination attached hereto, marked Exhibit "A" and made a part hereof.

3. On or about September 16, 1985, Greg Alan Mackie and Judy Ann Mackie executed and delivered to Union Bank and Trust Company, Bartlesville, Oklahoma, a promissory note in the original principal amount of \$88,089.20 (hereinafter referred to as the "Note").

4. The Note is secured by a certain real estate mortgage (hereinafter referred to as the "Mortgage") in and to the following described real property located in Osage County, Oklahoma, to-wit:

Lot (1), Block Four (4), and Lots Two (2), Three (3) and Four (4), in Block Five (5) in OSAGE VIEW ADDITION, Osage County, Oklahoma, according to the recorded plat thereof.

5. On July 7, 1989, Greg Alan Mackie filed his voluntary Petition in Bankruptcy (Chapter 7); Case No. 89-01983-C, United States Bankruptcy Court, Northern District of Oklahoma. Said Defendant was discharged by the Bankruptcy Court on December 12, 1989. Said bankruptcy case is now closed and Plaintiff is authorized to proceed against said Defendant for an in rem judgment and foreclosure of the Mortgage against said Defendants. Judy Ann Mackie, was not a petitioner in the bankruptcy case.

6. That the Note and Mortgage are in default and there remains due and owing to the FDIC the principal amount of \$87,023.56 accrued interest through September 16, 1991 in the sum of \$43,109.12 with interest accruing at the rate of \$28.61 per diem and through the date hereof and at the statutory rate for judgments until all amounts due hereunder are paid in full, plus abstract expense, late charges, advances, taxes, insurance, fees, charges and other costs and expenses and the cost of this action including a reasonable attorney fee of \$2,500.00.

7. The FDIC should be granted judgment in rem as to the Defendant Judy Ann Mackie and in rem as to the Defendants Greg Alan Mackie, Dean Lee and Barbara Lee, individually and dba Lee's Repair Shop; Board of County Commissioners and Osage County Treasurer as prayed for in its Complaint and Motion for Summary Judgment. The Motion for Summary Judgment filed by the Federal Deposit Insurance Corporation should be sustained as meritorious and pursuant to Local Rule 15(a) and Plaintiff's judgment shall constitute and be a first lien on the subject property superior to the interest of any of the Defendants herein their heirs, successors or assigns.

8. The Defendants Board of County Commissioners and Osage County Treasurer have filed herein their Answer to Plaintiff's Complaint asserting a lien for personal property taxes in the sum of \$93.35 for the year 1988 and the sum of \$102.44 for the year 1989. The liens of the Board of County Commissioners and Osage County Treasurer shall constitute a second and third lien on the above described property subject, junior and inferior to the judgment lien, and interest of Plaintiff in the subject property.

9. The Defendant Greg Alan Mackie was duly served with process, including a Summons and copy of Plaintiff's Complaint on or about the 3rd day of December, 1991, pursuant to Affidavit of Process Server dated December 4, 1991 and filed with the Clerk of this Court on December 4, 1991. Said Defendant has failed to Answer or enter an appearance and his answer date has expired and the Defendant Greg Alan Mackie is hereby found to be in default.

10. The Defendants Dean Lee and Barbara Lee individually and dba Lee's Repair Shop were duly served with process, including a Summons and copy of Plaintiff's Complaint on or about the 3rd day of December, 1991, pursuant to Affidavit of Process Server dated December 4, 1991 and filed with the Clerk of this Court on December 4, 1991. Said Defendants have failed to Answer or enter an appearance and their answer date has expired and the Defendants Dean Lee and Barbara Lee, individually and dba Lee's Repair Shop are hereby found to be in default.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Berkeley Federal Bank & Trust, FSB, Plaintiff, have and recover judgment, in rem against the Defendant Judy Ann Mackie and in rem against the Defendants Greg Alan Mackie, Dean Lee and Barbara Lee, individually and dba Lee's Repair Shop; Board of County Commissioners and Osage County Treasurer for the principal sum of \$87,023.56 plus accrued interest in the sum of \$33,034.63 through September 16, 1991, interest continuing to accrue at \$28.61 per diem from September 16, 1991, to the date hereof and at the statutory rate for judgments hereinafter until paid in full; plus abstract expense, late charges, advances, taxes, insurance, fees, charges and other costs and expenses; plus the costs of this action accrued and accruing and a reasonable attorney fee of \$2,500.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Berkeley Federal Bank & Trust, FSB, Plaintiff, has a valid first lien on the subject real property described above securing the judgment amounts set forth above.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Defendants Osage Board of County Commissioners and Osage County Treasurer have judgment in rem only against the defendants Greg Alan Mackie, Dean Lee and Barbara Lee, individually and dba Lee's Repair Shop; Board of County Commissioners and Osage County Treasurer in the principal sum of \$93.35 for unpaid personal property taxes for the year 1988 which judgment lien constitutes a second lien against the subject property and judgment in rem against all of the abovenamed Defendants in the sum of \$102.44 for

unpaid personal property taxes for the year 1989, which judgment lien constitutes a third lien against the subject property. Both of the judgment liens of Osage Board of County Commissioners are subject junior and inferior to the first judgment lien of the FDIC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the rights, titles, interests and liens of all parties and their successors, assigns and heirs be foreclosed upon the subject real property described above and that a Special Execution and Order of Sale be issued, directing the sale of the above described real property after proper notice and appraisal as provided by law. This Court hereby authorizes the Sheriff of Osage County, State of Oklahoma, to conduct the sale of the above described real property and hereby approves the use of said Sheriff for the sale of said real property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the order of priority of loss of the parties and the order of distribution of the proceeds of the sale are as follows:

- FIRST: To the payment of all costs incurred herein by the Federal Deposit Insurance Corporation.
- SECOND: To the payment of the first judgment lien of the Berkeley Federal Bank & Trust, FSB, Plaintiff as set forth above.
- THIRD: To the payment of the second judgment lien of the Board of County Commissioners and Osage County Treasurer, Oklahoma, as set forth above.
- FOURTH: To the payment of the third judgment lien of the Board of Osage County Commissioners and Osage County Treasurer, Oklahoma, as set forth above.

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

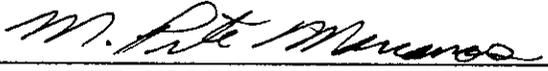
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon confirmation of the sale of the above described real property, each and every party shall be forever barred, foreclosed and enjoined from asserting or claiming any right, title, interest, estate or equity of redemption in and to said premises or any part thereof.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that, upon confirmation of said sale, the Sheriff of Osage County, State of Oklahoma, shall execute and deliver good and sufficient deed to the premises to the purchaser thereof, conveying all right, title, interest, estate and equity of redemption of each of the parties herein and all parties claiming under them since the filing of the Complaint in this suit, and to the real estate described above, and that upon application of the purchaser, a writ of assistance shall be issued and directed to the Sheriff of Osage County, State of Oklahoma, who shall thereupon and forthwith, place said premises in full and complete possession and enjoyment of said purchaser.

(Signed) N. Dale Cook

UNITED STATES DISTRICT COURT JUDGE

Approved as to form and content:


M. PETE MARIANOS #11415
LAMUN MOCK FEATHERLY KUEHLING
& CUNNYNGHAM
5900 Northwest Grand Boulevard
Oklahoma City, OK 73118-1295
(405) 840-5900
Attorneys for Plaintiff

FDIC vs. Mackie

John S. Boggs, Jr.

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

ENTERED ON DOCKET

DATE 8-6-93

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

FILED

AUG 6 1993

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

BILL BRAKHAGE, an individual,)
)
 Plaintiff,)
)
 vs.)
)
 BAKER OIL TOOLS, INC., A)
 DIVISION OF BAKER HUGHES,)
 INC., a corporation,)
)
 Defendant.)

Case No. 92-C-1195-E

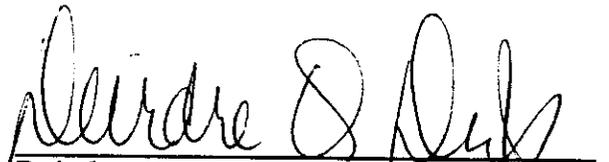
STIPULATION OF DISMISSAL WITH PREJUDICE

Come now Plaintiff Bill Brakhage and Defendant Baker Oil Tools, Inc. through their respective attorneys and, pursuant to Rule 41(a)(1), hereby stipulate that the above-entitled cause be dismissed with prejudice.



 Thomas A. Bright, OBA #001131
 7030 South Yale, Suite 408
 Tulsa, Oklahoma 74136
 (918) 492-0008

ATTORNEY FOR PLAINTIFF



 Deirdre O. Dexter, OBA #10780
 CONNER & WINTERS, A Professional
 Corporation
 2400 First National Tower
 15 East Fifth Street
 Tulsa, Oklahoma 74103-4391
 (918) 586-5711

ATTORNEYS FOR DEFENDANT

ENTERED ON DOCKET

DATE 8-5-93

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

AUG -5 1993

GEAMES CRAIG WOOTEN,)
)
 Plaintiff,)
)
 vs.)
)
 UNITED STATES POSTAL SERVICE,)
 Marvin T. Runyon,)
 POSTMASTER GENERAL OF THE)
 UNITED STATES,)
)
 Defendant.)

RECEIVED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

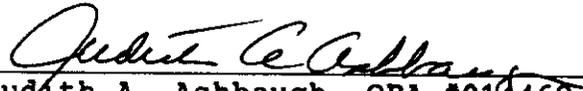
CASE NO. 92 C-840 E

JOINT STIPULATION OF DISMISSAL

It is hereby stipulated that the above-entitled action be discontinued and dismissed pursuant to Fed. R. Civ. P. 41(a)(1) with prejudice to the refiling thereof, and the parties would advise the Court that this matter has been resolved through settlement.



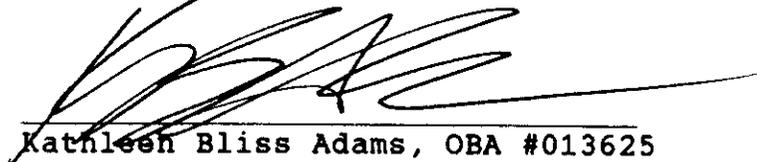
Joseph C. Fallin, OBA #002812



Judith A. Ashbaugh, OBA #014468
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ATTORNEYS FOR PLAINTIFF

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UNITED STATES ATTORNEY



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OF COUNSEL:

Sandra Walton Bowens
Attorney, Law Department
United States Postal Service
1407 Union Avenue, 15th Floor
Memphis, Tennessee 38166-0170
(901) 722-7350

ENTERED ON DOCKET

DATE 8-4-93

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

FILED

AUG 4 1993

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

TIMOTHY DAVID MC GUIRE, as
Personal Representative of
the Estate of PAULA GAIL McGUIRE
Deceased,

Plaintiff,

vs.

No. 91-C-711-E

BURLINGTON NORTHERN RAILROAD
a foreign corporation,

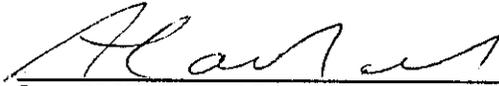
Defendant.

MUTUAL DISMISSAL WITH PREJUDICE

Come now the Plaintiff, TIMOTHY DAVID McGUIRE, as Personal
Representative of the Estate of PAULA GAIL McGUIRE, deceased, and
the Defendant, BURLINGTON NORTHERN RAILROAD, and mutually dismiss
with prejudice this cause of action.



GARVIN A. ISAACS OBA # 4559
1400 FIRST NATIONAL CENTER WEST
OKLAHOMA CITY, OK 73102



A. CAMP BONDS, JR. OBA # 944
BONDS, MATTHEWS, BONDS & HAYES
P. O. BOX 1906
MUSKOGEE, OK 74402-1906

DATE AUG 04 1993
FILED
AUG 3 1993
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

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

ATLANTIC RICHFIELD COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 AMERICAN AIRLINES, INC., et al.,)
)
 Defendants.)

Case No. 89-C-868-B ✓
89-C-869-B
89-C-859-B

JUDGMENT OF DISMISSAL AND STIPULATED DECLARATORY JUDGMENT

Now on this 3rd day of Aug, 1993, this matter comes on for consideration of the Plaintiff Atlantic Richfield Company's (ARCO's) Notice of Motion and Motion for Entry of Judgment of Dismissal and Stipulated Declaratory Judgment for Future Response Costs at the Glenn Wynn Site (Docket # 679). The Plaintiff ARCO appears by its attorney, Larry Gutierrez, and the Defendant, the Sand Springs Home ("Home"), appears by its attorney, William Anderson. The Court having examined the files and records herein, having reviewed and considered the terms and conditions of the settlement in question, having heard the evidence and arguments of all the parties in a hearing held June 10, 11, 22 and 23, 1993, and being fully advised and informed in the premises FINDS, ADJUDGES, ORDERS and DECREES:

1. A Judgment of Dismissal and Declaratory Judgment for Future Response Costs at the Glenn Wynn Site is hereby entered, subject to the terms set forth below.
2. Each and every claim asserted by ARCO against the Home and/or by the Home against ARCO is dismissed in its entirety on the merits, with prejudice and without costs, except as specifically

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set forth in ¶¶ 4.a., 4.b. and 4.c. below, such dismissal being conditioned upon the Home's payment in full of the settlement amount due and owing to the Plaintiff (ARCO).

3. Each and every claim, counterclaim and cross-claim "deemed filed" by ARCO against the Home and/or by the Home against ARCO, pursuant to the terms of the First Amended Case Management Order, Section VII.B., filed March 6, 1992, is dismissed in its entirety on the merits, with prejudice and without costs, except as set forth in Article V of the Settlement Agreement between ARCO and the Sand Springs Home ("Agreement").

4. This Judgment embodies the terms of the Agreement, including without limitation the following specific terms:

a. Except as expressly indemnified or released by ARCO in the Agreement, and subject to the provisions of this paragraph 4, the Home is jointly and severally liable to ARCO in accordance with the Court's Order Clarifying and Confirming Report and Recommendation of U.S. Magistrate Judge filed January 28, 1992, (Docket #182), for any and all sums (over and above the sums ARCO is required to spend at the Glenn Wynn Site to perform the September, 1987, Record of Decision, for the Source Control Operable Unit ("ROD I"), the Consent Decree and the June, 1988, Record of Decision for the Main Site Operable Unit ("ROD II"), estimated at the time of the settlement to be \$14,131,000.00), which ARCO may be required in the future to expend at the Glenn Wynn Site, as that term is defined in the Agreement, because of either of the following occurrences: (1) EPA or some other

governmental agency or person requires that ARCO perform some remedial action which exceeds the requirement of ROD I or the Consent Decree, or (2) EPA or some other governmental agency or person requires that ARCO perform remediation of the groundwater beyond monitoring as required by ROD II.

b. With respect to the Glenn Wynn Site, the Home's liability to ARCO for future response costs covered by this Judgment of Dismissal ("Judgment") shall be equal to, and shall not exceed, directly or indirectly, the same percentage as the Home's settlement share in this action (i.e. \$875,000.00 divided by approximately \$14,131,000.00, or 6.19%); provided, that subject to the "provided further" clause below, the current defendants listed on Exhibit (6) of the Agreement, attached thereto, must be financially viable and not "orphans" at the time any such future response costs are incurred by ARCO; and provided further, that to the extent any current defendant listed on Exhibit (6) has become financially non-viable, i.e., an "orphan", at the time such future response costs are incurred, the Home's agreed percentage liability (6.19%) for such future response costs shall be proportionally increased so that the Home bears its proportional share (i.e., 6.19%) of the percentage liability for such future response costs which such "orphan" defendant would otherwise have born (for purposes hereof, the percentage liability for future response costs of any defendant listed on Exhibit (6) which subsequently becomes an "orphan" shall be calculated by dividing the dollar contribution which such defendant pays to ARCO for such defendant's share of the

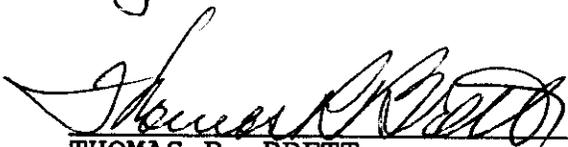
sums ARCO is required to spend at the Glenn Wynn Site to perform ROD I, the Consent Decree and ROD II, by \$14,131,000.00).

c. With respect to the Home's liability to ARCO for future response costs at the Glenn Wynn Site, subject to equitable allocation, as provided above, ARCO will not release any of the current defendants listed on Exhibit (6) from their joint and several responsibility for the same liability for future response costs as set forth above, except as to such persons who may be released as major/nonsubstantial generators, as agreed to by ARCO and the Home. If ARCO grants any of such defendants a release from such liability without the prior written consent of the Home as to the terms thereof, such release shall automatically be deemed to also constitute a release of the Home for all such liability and a release and satisfaction in full of the Declaratory Judgment.

5. Nothing contained in the Judgment shall be construed to effect the rights of the Plaintiff ARCO or Defendant Home with respect to claims which are preserved by the Agreement.

6. There being no just reason to delay entry of this Judgment, this Court hereby directs entry of this final Judgment of Dismissal pursuant to Rule 54(b) of the Federal Rules of Civil Procedure and a Declaratory Judgment for Future Response Costs as set forth herein.

Dated this 3rd day of Aug, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

SECRET
AUG 04 1993
~~FILED~~
AUG 3 1993

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

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

ATLANTIC RICHFIELD COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 AMERICAN AIRLINES, INC., et al.,)
)
 Defendants.)

Case No. 89-C-868-B
89-C-869-B
89-C-859-B

Findings of Fact
and
Conclusions of Law
and
Order

Before the Court for consideration are the Motion for Determination of Good Faith Settlement for Settlement between ARCO and the Sand Springs Home (Docket #680) and the Motion for Entry of Judgment of Dismissal and Stipulated Declaratory Judgment (Docket #679). An evidentiary hearing on these motions was held June 10, 11, 22, and 23 ("the hearing").

These consolidated actions were brought by the Atlantic Richfield Company ("ARCO") against numerous defendants, who have been divided into Defendant Groups I through V, arising out of the remediation of hazardous substances at the Sand Springs Petrochemical Complex. In its Third Consolidated Amended Complaint, ARCO makes claims for reimbursement of its response costs under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9607; makes claims for contribution under CERCLA §113(f), 42 U.S.C. §9613(f); requests the entry of a declaratory judgment for the liability of the parties for future remediation costs; and makes a claim for

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state law contribution and/or indemnity pursuant to OKLA.STAT.tit. 12, §832 (1991).

ARCO entered into a settlement agreement with one of the Defendants, the Sand Springs Home, on January 20, 1993, and now seeks a ruling that the settlement was entered into in good faith and is fair to the non-settling defendants. ARCO and the Home also seek a ruling that bars all contribution claims by the non-settling defendants against the Home. Further, ARCO and the Home seek a declaratory judgment as to the Home's percentage of liability for any future response costs incurred by ARCO.

The non-settling defendants contend that the Home has received a "sweetheart deal" from ARCO that is not fair to the remaining defendants and that any declaration of the Home's percentage liability for future costs is unnecessary and premature.

Following a consideration of the parties contentions, the evidence, and applicable legal authority, the Court enters these findings of fact and conclusions of law.

Findings of Fact

1. This case, Atlantic Richfield Company v. American Airlines, Inc. et al., Nos. 89-C-868-B; 89-C-869-B; 90-C-859-B, involves the Sand Springs Petrochemical Complex ("Sand Springs Site" or "Site"), which, according to the United States Environmental Protection Agency ("EPA"), is a triangular piece of property totalling approximately 235 acres situated on the north bank of the Arkansas River west of Tulsa. (Home Ex. 1; Stipulations filed June 10, 1993, Stip. No. 1).

2. In 1930, Sinclair Refining Company ("Sinclair") acquired a refinery located on a portion of the Site. Sinclair operated the refinery until 1948 when a portion of the refinery was closed, and later dismantled. All remaining refinery operations on the Site were shut down in 1952. (Consent Decree, Group I, Ex. 2).

3. On or about September 21, 1953, the Sand Springs Home¹ ("Home") acquired in excess of 100 acres of the Site from Sinclair for a purchase price of \$100,000.00. At present, the Home retains ownership of approximately one-half of the land it acquired from Sinclair. (Stip. No. 2).

4. Sinclair retained approximately 38 acres of the Site, which ARCO acquired in its 1969 merger with Sinclair. ARCO sold the 38-acre parcel to Pony Industries in 1987. (Stip. No. 3).

5. Beginning in 1964 and continuing into the early 1980's, the Home leased portions of the Site (known as the "Glenn Wynn Site", which is an approximately 6.2 acre tract located south and east of the intersections of Adams Road and Morrow Road in Sand Springs), to defendant Vacuum & Pressure Tank Truck Services, Inc. ("V&P") and Recyclon Corporation, as follows:

<u>Term of Lease</u>	<u>Lessee</u>	<u>Acreage Leased</u>	<u>Purpose</u>
08/01/64-08/01/69	V&P	.26 acres	"A commercial and Refining Business"
10/01/68-10/01/73	V&P	.49 acres	"Refining of Crude and Lube Oils"

¹ The Home is an Oklahoma eleemosynary corporation and a charitable institution whose principal function is operation of a children's home and "widow's colony" in Sand Springs. (Tr. at 581:9-16).

09/01/74-09/01/79	V&P	.49 acres	"Refining of Crude and Lube Oils"
09/01/79-09/01/84	V&P	6.2 acres	"Crude and Lube Oils"
11/01/81-11/01/83	Recyclon Corporation	6.2 acres, subject to lease to V&P on 1.88 acres	"Re-refining and treatment of solvents crude and lube oils"

Deliveries of materials to the Glenn Wynn Site terminated approximately mid-1982. (Stip. Nos. 2, 4).

6. The rental income received by Sand Springs Home from Glenn Wynn Site tenants is as follows:

Vacuum & Pressure Tank Truck Service

<u>Dates</u>	<u>Rental Amount</u>	<u>Total Rents</u>
June 1, 1964 to Aug. 31, 1974	\$ 50.00/month	\$ 6,150.00
Sept. 1, 1974 to Aug. 31, 1979	\$ 100.00/month	\$ 6,000.00
Sept. 1, 1979 to Oct. 31, 1983	\$ 1,025.00/month	\$ <u>51,250.00</u>
TOTAL RENTALS PAID		\$ <u>63,400.00</u>

No royalties were paid by Vacuum and Pressure under real estates leases or oil and gas leases with the Home.

Recyclon Corporation

<u>Dates</u>	<u>Rental Amount</u>	<u>Total Rents</u>
Nov. 1, 1981 to April 30, 1982	\$ 1,000.00/month	\$ <u>6,000.00</u>
TOTAL RENTALS PAID		\$ <u>6,000.00</u>

No monies were paid by Recyclon under throughput provision. (Home Ex. 38).

6. In 1986, the Environmental Protection Agency ("EPA") identified the Site as a Superfund site containing hazardous

substances, as defined in CERCLA §101(14), including petroleum wastes, acids and acid sludge, heavy metals, solvents, chlorinated hydrocarbons, and other chemicals, and EPA placed the Site on the National Priorities List. (Stip. No. 5).

7. EPA divided the response action for the site into two operable units; the Source Control Operable Unit ("SCOU"), which includes all surface liquids, sludges, and heavily-contaminated soils; and the Main Site (Groundwater) Operable Unit ("MSOU"), which includes minimally-contaminated soil and groundwater. (Stip. No. 6).

8. The EPA entered into a cooperative agreement with the Oklahoma State Department of Health ("OSDH") to conduct a Remedial Investigation and Feasibility Study ("RI/FS"). See Hearing Testimony of Dennis J. Hrebec at 420.

9. In April or May of 1987, the EPA's RI/FS for the SCOU was completed. The EPA's preferred/proposed remedy for all sources of contamination over the entire Site was on-site incineration. See Womack Hearing Testimony at 242; Swanberg deposition at 70; Simmons deposition at 37, 42-43; Group I Defendants' Exhibit 254.

10. On July 15, 1987, the EPA notified more than one hundred Potential Responsible Parties ("PRPs") of their possible liability for remedial and removal costs at the Sand Springs Site, and asked each whether it wanted to "voluntarily perform the work required to abate any releases or threatened releases of hazardous substances, pollutants or contaminants from the Site." Upon receiving the notification, the Group I Defendants organized, and several members

submitted timely comments to the EPA with respect to the inadequacy of the RI/FS. See Hearing Testimony of Michael D. Graves at 637-42.

11. At an August 4, 1987, public meeting, the EPA announced that its preferred remedy for all materials at the Sand Springs Site was on-site incineration. See Simmons Hearing Testimony at 333-34; Group I Defendants' Exhibit 254.

12. ARCO entered into settlement negotiations with the EPA in early 1987. If ARCO wanted to perform the remedy on the non-Glenn Wynn portion of the site (for which it was primarily responsible), it also had to perform the remediation of the materials in the Glenn Wynn lagoons. See Hrebec Hearing Testimony at 428-29, 440; Simmons Hearing Testimony at 345.

13. ARCO proposed to perform the remedy for the Site in an August 17, 1987, meeting with EPA. As a part of its proposal, ARCO agreed to perform the remedy only if solidification was allowed as the remedy of the non-Glenn Wynn portion of the Site. ARCO simultaneously proposed off-site incineration of the materials in the Glenn Wynn lagoons. See Wineman Deposition at 25-26, 43-47, 58-64; Swanberg deposition at 110-115; Simmons deposition at 17-20, 29-33, 35-37, 43, 53; May 4, 1993 deposition of Larry Gutierrez at 105; May 4, 1993 Deposition of Roseanne Stevenson at 74-75, 84; Group I Defendants' Exhibits 9, 99, 237, 238, 239.

14. At the time ARCO proposed off-site incineration of the Glenn Wynn materials, ARCO had performed no investigation or testing of the materials contained within the Glenn Wynn lagoons. Thus, ARCO had conducted no cost analyses for various remedial

alternatives for the materials in the Glenn Wynn lagoons. See Simmons Hearing Testimony at 332-33, 339-40, 346; Hrebec Hearing Testimony at 432, 435; Swanberg Deposition at 93; Wineman deposition at 48; Gutteridge deposition at 102-03; Simmons deposition at 60, 236; Group I Defendants' Exhibits 227-229, 248.

15. On September 29, 1987, the EPA issued a Record of Decision pertaining to the SCOU ("ROD I"). ROD I mandated a remedy calling for excavation and off-site thermal destruction of sludges from the Glenn Wynn Site, and stabilization/solidification of all remaining sludges, with containment of the solidified material in a hazardous waste cell. In the ROD, EPA required that the stabilization/solidification remedy be demonstrated to meet EPA criteria, and in the event such a demonstration was not made, an on-site incineration remedy of the non-Glenn Wynn wastes was required. (ROD I, Group I Ex. 9; Tr. 315:24 - 316:9).

16. In March/April 1988, EPA completed a RI/FS for the MSOU, and in June 1988, EPA issued a ROD pertaining to the MSOU ("ROD II"). ROD II required no remediation other than long-term monitoring. (TR. at 311:15-20; Home Ex. 1, Stip. No. 7).

17. In 1987 and 1988, ARCO and EPA negotiated a Consent Decree by which ARCO agreed to implement the entire SCOU remedy set forth in ROD I. ARCO also agreed to pay for past costs which EPA incurred in response to Site contamination. ARCO further agreed to pay for EPA's future oversight of the remedy's implementation. (Consent Decree, Group I Ex. 2; Home Ex. 1, Stip. No. 8).

18. The Consent Decree was filed in May 1989, and entered by

this Court on October 10, 1990, United States v. Atlantic Richfield Company, No. 89-C-447-B (N.D. Okla. 1990). (Consent Decree, Group 1 Ex. 2; Home Ex. 1, Stip. No. 8).

19. Pursuant to the Consent Decree, ARCO has completed the remediation of the Glenn Wynn Site. ARCO has submitted a final construction report containing data related to the Glenn Wynn Site remediation. (Tr. 292:10-23).

20. The OSDH has declared that remediation of the Glenn Wynn portion of the site is complete. (Tr. at 459:22 - 460:8).

21. A post-hearing letter from the EPA to ARCO, dated June 30, 1993, stated as follows:

The Environmental Protection Agency (EPA) and the Oklahoma State Department of Health (OSDH) have reviewed the Glenn Wynn confirmation results and acknowledge that ARCO has remediated the Glenn Wynn lagoons as specified in the Sand Springs Source Control Record of Decision (ROD) and Section 6.1 of the Consent Decree Statement of Work (SOW);

It is EPA's position at this time that an unacceptable direct contact risk to human health does not exist due to the Glenn Wynn lagoons and further remediation in the Glenn Wynn lagoons is not necessary.

(ARCO/Home Joint Closing Brief, Ex. A; Group 1 Post-Hearing Brief, Ex. C).

22. The total cleanup cost of the Glenn Wynn Site as specified in the SCOU and MSOU was estimated by ARCO, as of January 20, 1993, at the time of the Settlement, at approximately \$14.1 million. (Tr. 321:4-7). ARCO seeks to receive 100% reimbursement for its remediation of the Glenn Wynn portion of the site.

23. Of the \$14.1 million, approximately \$3.3 million consists

of attorneys' fees and administrative costs. (See Court's Order filed simultaneously herewith on the recoverability of attorneys' fees). Although these attorneys' fees and administrative costs are continuing, the \$14.1 million does not include these continuing costs. Certain other estimates for future costs are included within the \$14.1 million figure as noted below. (Tr. at 115:1-8; ARCO Ex. 34).

24. Also included in the \$14.1 million is a projected post-closure monitoring cost at the Glenn Wynn Site of \$1,613,580 and approximately \$684,000 for vapor extraction of certain portions of the Glenn Wynn Site. (ARCO Ex. 34, Attach 1, ¶¶ F, J). The post-closure monitoring and vapor extraction are tasks not required under ROD I. (Tr. at 354:1-10; Group I Ex. 9). As noted above in paragraph 21, the EPA has taken the position that further remediation is not necessary and thus vapor extraction will not be required.

25. As of the time the ARCO-Home settlement was executed, January 20, 1993, ARCO had already received a total of approximately \$6.3 million in de minimis settlements from about 230 parties (Tr. at 321:8-12).

26. As of the time of the hearing, ARCO had received a total of approximately \$6.6 million in de minimis settlements with approximately 248 settling defendants plus 44 de minimis third party defendants. The de minimis settlement parties settled based upon a volume of approximately 3,014,595 gallons of materials contributed by them. In all but a few instances, the basis for

these settlements was \$2.15 per gallon of material sent to the Glenn Wynn Site by the settling parties.² The Court has previously found that the de minimis settlements were entered into in good faith. With certain minor exceptions, the parties have stipulated the de minimis settlements were fair.³ (Home Ex. 1, Stip. 9; Tr. at 321:19-22).

27. As of June 10, 1993, ARCO had entered into a settlement in principle with Group V and most of Group IV totalling \$2.1 million (Tr. at 322:9-12).

28. To date, ARCO has agreed to accept approximately \$9.5 million in settlements, which includes the \$6.6 million in de minimis settlements, the settlements with Groups IV and V, and the instant Settlement of \$875,000.00 from the Home. (Tr. at 322:13-17).

29. As of January 20, 1993, ARCO's estimated uncollected balance was approximately \$7 million (\$14.1 million estimated remediation costs less \$6.3 million in de minimis settlements and \$875,000 to be paid by the Home). (Tr. at 322:23 - 323:8).

30. Other than the Home, which is the only owner Defendant, there are 87 remaining defendants in the case,⁴ including 57

² The \$2.15 per gallon settlements included a \$0.50 per gallon premium for potential future remediation costs.

³ Group 3 objects to the fairness of the de minimis settlements with four Defendants, Baxter Healthcare Corporation, Brown & Root, Inc., Syntex Corporation and Rheem Manufacturing Corporation. (Stip. No. 9).

⁴ This number includes the Group IV and V defendants involved in the settlement announced at the hearing on June 10, 1993.

generator defendants. (Stip. No. 10). The volume of material attributed by ARCO to have been delivered by the remaining generator defendants to the Glenn Wynn Site is approximately 8 million gallons. (Tr. at 322:23-25).

31. If the Settlement between ARCO and the Home is approved, and ARCO's gallonage estimates are accurate, the cost per gallon which the non-settling defendants would bear would be less than \$1 per gallon. (\$7 million/8 million gallons). This amount is less than half the \$2.15 per gallon paid by the de minimis settling parties (Tr. at 322:23 - 323:8). Even allowing for the discrepancy recognized between the defendants' gallonage figures and ARCO's figures (Tr. at 411:5-13), the amount the remaining defendants will pay will be substantially less than \$2.15.⁵

32. If the total \$9.5 million in settlements ARCO presently has agreed to accept (as described in paragraph 28) is deducted from the \$14.5 million cleanup cost,⁶ the remaining balance is \$5 million, which further reduces the amount the non-settling defendants would have to pay.

33. The total cost and cost per gallon non-settling generator defendants must pay will be further reduced by any payment made by the operator defendants (Group III). The total cost and cost per

⁵ These estimates are premised on the theory that there will not be substantial unanticipated future costs. In the remote likelihood future costs are greater than expected, the non-settling defendants contribution would be increased.

⁶ Since execution of the Settlement, ARCO has incurred or will incur additional costs of approximately \$400,000.00 bringing the total amount ARCO seeks to recover to \$14.5 million. (Tr. at 320:23 - 321:3).

gallon remaining generator defendants must pay will also be reduced to the extent ARCO's \$14.5 million estimate includes attorneys fees arising from the litigation of this action. (See Court's Order filed this date on recoverability of attorneys' fees).

34. The Home's settlement of \$875,000.00 is almost four times the size of that of the largest settling party to date, Majestic Lubricating Company, who settled its liability associated with 110,000 gallons of material for \$236,500.00 (Home Ex. 2, Attach. A, page 1, Motion for Determination of Good Faith Heard January 14, 1993). Some of the remaining generator defendants in the case and the stipulated gallonage they sent to the Glenn Wynn Site include Borg-Warner Corporation (no less than 318,955 gallons), Dover Corporation (no less than 702,480 gallons), McDonnell Douglas Corporation (no less than 234,870 gallons), Phillips Petroleum Corporation (no less than 493,010 gallons), Uniroyal Goodrich Tire Company (no less than 221,459 gallons), Webco Industries (no less than 248,740 gallons), and Whirlpool Corporation (no less than 449,833 gallons). (ARCO Ex. No. 27).

35. Seventeen of the remaining generator defendants in Group I have signed stipulations that they are liable for an equitable share, to be determined by the Court, of necessary costs of response incurred by ARCO at the Glenn Wynn Site which are found to be consistent with the National Contingency Plan. (ARCO Ex. 27; Tr. 671:19-24).

36. The non-settling defendants contend that varying portions of ARCO's claimed costs are not recoverable response costs under

CERCLA. (Home Exs. 3-6).

37. All of the non-settling defendants claim that ARCO is liable for an equitable share of the costs to remediate the Glenn Wynn Site. (Home Ex. 1, Stip No. 15).

38. The Home's liability for the Glenn Wynn Site is based solely on its capacity as a lessor of the property. The Home was not a generator of any of the waste delivered to the site.

39. From early 1984 to 1987 the Home conducted several cleanup projects on the Site at a total cost of approximately \$700,000.00. The Home was able to recover all but approximately \$113,000.00 of these costs from third parties. (Tr. at 149:5-8).

40. The settlement negotiations that ultimately led to the ARCO-Home settlement began in July, 1991. In mid-July 1991, ARCO received a letter from the Home setting forth its proposal to settle its liability to ARCO, for an undetermined amount, under terms specified in a draft Settlement Agreement. That letter initiated the settlement negotiations between ARCO and the Home concerning the terms of an agreement and the amount to be paid by the Home. (Tr. at 70:13-18, 74:4-19; ARCO Ex. 3).

41. The negotiations between ARCO and the Home took place over the course of one and one-half years and culminated in the Sand Springs Petrochemical Complex Superfund Site Settlement Agreement between the Home and ARCO ("Settlement") that was executed on January 20, 1993. (ARCO Ex. 1).

42. The negotiations were conducted by experienced, competent counsel, Jess Womack, counsel for ARCO, and William Anderson, of

Doerner, Stuart, Saunders, Daniel & Anderson, counsel for the Home. (Tr. 69:9-12, 251:10-14: Home Ex. 1, Stip. No. 17).

43. Adjunct Settlement Judge Martin Frey has acted as Settlement Judge in this action since his appointment by order of United States Magistrate Judge Wagner, dated February 11, 1991. (Home Ex. 1, Stip. No. 18).

44. After January, 1992, the settlement negotiations by ARCO and the Home were conducted under the auspices of and with the participation of Settlement Judge Frey. (Tr. at 87:12 - 88:3, 90:11 -25, 93:1-14, 93:25 - 94:1, 95:2 - 96:6, 97:8-10, 98:1-8, 101:20-22; Home Ex. 1, Stip. No. 19).

45. After January, 1992, the settlement negotiations between ARCO and the Home were conducted as part of the Court-ordered settlement process. (Home Ex. 1, Stip. No. 20).

46. The principal open terms between the parties were resolved at a settlement conference held in Los Angeles at the offices of ARCO on September 29, 1992, which was attended by William Anderson and Joe Williams for the Home, and Jess Womack, Walter Simmons, and, for a brief period, Richard Knowles, for ARCO. (Tr. at 97:12 - 98:8, 100:7 - 102:5, 213:13 - 214:19, 590:22 - 591:7).

47. The Settlement requires, among other things, for the Home to pay \$875,000.00 to ARCO for its share of liability for performing RODs I and II at the Glenn Wynn Site. (ARCO Ex. 1).

48. The \$875,000.00 to be paid by the Home to ARCO under the Settlement will be paid by the Home from its trust corpus and income. The Home does not have insurance for this liability. (Tr.

at 77:14-16, 594:6-9).

49. Under the Settlement, the Home also has agreed to negotiate a separate agreement with the Oklahoma State Department of Health or the State of Oklahoma pursuant to which the Home will transfer to the State of Oklahoma an easement covering access to the Site sufficient for the State to allow ARCO to conduct the remedial action required by RODs I and II, including placement of the hazardous waste cell, commonly referred to as the "landfill," which will hold the treated materials from the pits, ponds and lagoons on the non-Glenn Wynn portion of the Site. (Tr. at 453:15-24; ARCO Ex. 1).

50. Under the Settlement, the Home also has agreed to release and covenant not to sue ARCO for any claims it may have against ARCO for response costs it has incurred related to the Site, including those referred to in paragraph 39 above. (ARCO Ex. 1).

51. Under the Settlement, the Home gave up any rights or claims it may have had to the \$0.50 premium for future response costs (totalling approximately \$1.5 million) paid as part of de minimis settlements (Tr. at 114:14 - 115:8).

52. The Home also agreed to certain reopener obligations for any future remediation cost at the Glenn Wynn Site not included in RODs I and II. The reopener obligations are to be reduced to judgment as provided in subsection V.(B) and (D) of the Settlement. The form of the judgment has been agreed to by ARCO and the Home. No other party which has settled to date with ARCO has agreed to any reopener obligations or has agreed to any commitment, whether

reduced to judgment or otherwise, concerning future response costs at the Glenn Wynn Site not covered by RODs I or II. (Tr. at 411:23 - 412:5; ARCO Ex. 1).

53. Subsection V.(B) and (D) of the Settlement provide, among other things, that the Home will pay 6.19% of future remediation costs at the Glenn Wynn Site, not covered by RODs I and II, subject to certain limitations stated therein. (ARCO Ex. 1).

54. The Home's obligation for future costs is the same percentage it paid of ARCO's estimate of current costs. (Tr. at 114:5-13, 113:19, 115:8, ARCO Ex. 1).

55. No evidence has been presented to show that the Home's equitable share of future costs should be greater than the Home's share of current costs. (Tr. at pp. 1-785).

56. The Home's 6.19% share of future costs increases to the extent remaining defendants' shares become orphan shares in the future. (Tr. at 114:5-13).

57. Pursuant to the terms of the Settlement, the landfill will be located on a tract owned by the Home which presently encompasses the large acid sludge pit, the small acid sludge pit, the surface water impoundment, an area north of the surface water impoundment and west of the Con-Rad building, the tract currently leased to Montello, and 2.8 acres of the eastern portion of the portion of the tract formerly leased by Sooner Pipe. (ARCO Exs. 20, 21; Home Ex. 1, Stip. No. 23).

58. The parties agreed to value the Home's contribution to the refinery portion of the remediation at the appraised fair

market value of the property, although their appraisals differed. (Home Ex. 1, Stip. No. 24).

59. In negotiating the Settlement, neither the Home nor ARCO had any intent or purpose to injure the interest of any other party to the litigation. (Tr. at 69:9 - 117:1, 213:11 - 241:4).

60. The settlement negotiations between ARCO and the Home were conducted at arm's-length. (Home Ex. 1, Stip. No. 21).

61. The non-settling Defendants do not contend that the ARCO/Home Settlement Agreement was the product of collusion between ARCO and the Home. (Stip. No. 22).

62. The Home did not construct or operate any of the facilities, equipment, or installations located on the Glenn Wynn Site. Nor did the Home generate or transport any of the material that was transported to or ended up at the Glenn Wynn Site. (Tr. at 589:9-22).

63. The generators of solvents transported to the Glenn Wynn site did not pay anything for disposal because their solvents were to be recycled and returned to them. They paid only a transportation charge. The generator defendants retained ownership of the solvents that were shipped to the Glenn Wynn Site for recycling. (Tr. at 566:1-9).

64. The generators of waste oil transported to the Glenn Wynn Site were not charged for disposal and in some cases received payment for their waste oil from the operators at the Glenn Wynn Site. (Tr. at 565:3-25).

65. Neither V&P nor its President Glenn Wynn informed the

Home that it had environmental problems on the site. In addition, neither V&P nor Glenn Wynn informed the Home of inspections of V&P facilities by the EPA, the OSDH or other environmental agencies. Neither V&P nor Glenn Wynn ever notified the Home of any releases of materials at the Glenn Wynn Site. (Tr. at 561:6-22).

66. The Home's trustee, J. C. Warner, made periodic visits to the Glenn Wynn Site from 1976 until 1982. Mr. Warner did not have any experience or background in the chemical or refining business. (Tr. at 534:22 - 525:7, 560:3-10, 587:9-20).

67. On May 28, 1980, the Home began efforts to evict Glenn Wynn and V&P from the Glenn Wynn site. V&P subsequently vacated the premises sometime in 1982 or 1983. (Tr. at 541:23 - 542:2, 617:19 - 618:9); Home Ex. 38; Group I Ex. 278).

68. In the negotiations, ARCO and the Home separately addressed the Home's liability for cleanup costs on the Glenn Wynn and the non-Glenn Wynn portions of the Site. The ultimate resolution of the Home's liability on the non-Glenn Wynn portion of the site did not impact the resolution of the Home's liability on the Glenn Wynn Site and vice versa, even though these separate aspects of the negotiations were ultimately incorporated into one settlement agreement. (Tr. 591:8-15).

69. ROD I required the landfill to be located on the Superfund Site. (Tr. at 294:21 - 295:3). EPA could have obtained the property for the landfill site had the Home not granted access. (Tr. at 317:12 - 318:3, 592:11 - 593:6; Group I Ex. 603). Representatives of both ARCO and the Home were aware of this fact

during negotiations of the Settlement. (Tr. at 84:9 - 85:10, 317:12 - 318:3).

70. ARCO's need for the landfill site was unrelated to whether EPA finally approved solidification or incineration. Pursuant to ROD I, if EPA had determined that solidification did not work, ARCO would have had to incinerate all the acid sludges and put them into a landfill on the same spot. (Tr. at 314:10-14; 315:24 - 316:9).

Conclusions of Law

1. The Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1331 and 42 U.S.C. §§ 9607 and 9613(f).

2. Any Finding of Fact above which might be properly characterized a Conclusion of Law is incorporated herein.

3. Good faith, pre-trial settlement is encouraged under both federal and state law. "Since it obviously eases crowded court dockets and results in savings to the litigants and the judicial system, settlement would be facilitated at as early a stage of litigation as possible." Fed.R.Civ.P. 16(c), Advisory Committee Note. The policy to encourage early settlement is especially acute in CERCLA actions because of CERCLA's primary goal of promoting "effective and speedy clean-up of hazardous waste sites in order to protect human life and the environment." H.R. Rep. No. 253 (III), 99th Cong., 2d Sess. 18 (1985), reprinted in 1986 U.S. Code Cong. & Admin. News 2835, 3038. United States v. Vertac Chem. Corp., 756 F.Supp. 1215, 1218 (E.D. Ark. 1991), *aff'd*, 961 F.2d 796 (8th Cir. 1992) (noting that the public policy favoring settlement

is reflected in CERCLA).

4. A contribution bar order, barring non-settling parties from the right to seek contribution or indemnity from a settling party, is necessary to promote settlement.⁷ As noted in the Restatement of Torts, if contribution claims are allowed after a party has settled its liability, there will be no incentive to settle at all. Restatement (2d) of Torts § 886A, comment m (1977). See also Miller v. Christopher, 887 F.2d 902, 906 (9th Cir. 1989) ("denial of a settlement bar would interfere with policies favoring settlement"); Westheimer v. Finesod (In re Terra-Drill Partnerships Sec. Litig.), 726 F.Supp. 655, 656 (S.D. Tex. 1989) ("[a]ny other rule would inhibit settlement of claims"); In re Nucorp Energy Sec. Litig., 661 F.Supp. 1403, 1408 (S.D. Cal. 1987) ("Anyone foolish enough to settle without barring contribution is courting disaster.") Oklahoma state law provides for such a contribution bar. See 12 Okla. Stat. § 832 (a release given in good faith "discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor").

5. To ensure fairness to the non-settling parties without conducting a trial, the Court conducts a good faith determination before approving a settlement. For example, the Oklahoma district court in FDIC v. Gelderman, Inc., 763 F.Supp. 524, 530 (W.D. Okla.

⁷"In essence, a bar order constitutes a final discharge of all obligations of the settling defendants and bars any further litigation of claims made by non-settling defendants against settling defendants." Franklin v. Kaypro Corp., 884 F.2d 1222, 1225 (9th Cir. 1989), *cert. denied*, 498 U.S. 890 (1990).

1990), later proceeding, 975 F.2d 695 (10th Cir. 1992), recognized that a good faith determination of a settlement agreement will protect the interests of non-settling defendants. *See also Miller v. Christopher*, 887 F.2d at 907 (approving bar order after good faith hearing under federal admiralty law); Singer v. Olympia Brewing Co., 878 F.2d 596, 600 (2d Cir. 1989), *cert. denied*, 493 U.S. 1024 (1990).

6. Accordingly, the Court finds that if the Settlement was negotiated in good faith, ARCO and the Home are entitled to a contribution bar precluding the non-settling defendants from bringing any actions in contribution or indemnity against the Home.⁸

7. In determining whether the Settlement between ARCO and the Home was in good faith, the Court must "satisfy itself that the settlement is reasonable, fair, and consistent with the purposes

⁸Group I asserts that its state law negligence cross-claims alleged in its fourth and sixth cross-claims would not be affected by the entry of a contribution bar order, because those cross-claims are not asserted either under CERCLA or under Oklahoma contribution law. These claims, however, appear to be contribution claims. Any Group I damages sustained by reason of the Home's alleged negligence can be attributable only to the sums it may have to pay to ARCO, or to any costs certain of its members may have for alleged clean-ups at the Glenn Wynn portion of the Site. Any claims whereby Group I seeks reimbursement for payments it makes to ARCO as a result of ARCO's complaint are, in essence, contribution claims, however Group I may choose to title its cross-claims. *See, United States v. Pretty Products, Inc.*, 780 F.Supp. 1488 (S.D. Ohio 1991) (to the extent the cross-complainant was seeking recovery based on its liability to the original plaintiff, the cross-claims were merely disguised claims for contribution). Any additional claims, which it seeks to offset against its share also are disguised contribution claims.

that CERCLA is intended to serve." H.R. Rep. No. 253 (III), 99th Cong., 2d Sess. 18 (1985), reprinted in 1986 U.S. Code Cong. & Admin. News 2835, 3042 (stating standard of review for a consent decree with the government). See, United States v. Cannons Engineering Corp., 899 F.2d 79, 85 (1st Cir. 1990); United States v. Hardage, 750 F.Supp. 1460, 1491 (W.D.Okla. 1990).⁹

8. In determining whether a settlement is reasonable, fair, and consistent with the purposes of CERCLA, and in determining allocation of response costs, courts have broad discretion in considering the equitable factors they consider appropriate. CERCLA §113(f)(1), 42 U.S.C. §9613(f)(1); H.R. 253 (III), 99th Cong., 2d Sess. 19 (1985), reprinted in 1986 U.S. Code Cong. & Admin. News 3038, 3041-42; United States v. R.W. Meyer, Inc., 932 F.2d 568, 572-73 (6th Cir. 1991); Amoco Oil Co. v. Borden, Inc., 889 F.2d 664, 672 (5th Cir. 1989); O'Neill v. Picillo, 883 F.2d 176, 183 (1st Cir. 1989), cert. denied, 493 U.S. 1071 (1990).

9. Upon review of all the relevant facts and applicable case law, the Court is satisfied the Settlement between ARCO and the Home is fair, reasonable, and promotes the policies of CERCLA, and was, therefore, made in good faith.

10. A CERCLA settlement must be both procedurally and

⁹Factors considered in measuring settlement fairness and reasonableness include: "the strength of the plaintiff's case, the good faith efforts of the negotiators, the opinions of counsel, and the possible risks involved in litigation if the settlement is not approved." City of New York v. Exxon Corp., 697 F.Supp. 677, 692 (S.D.N.Y. 1988) (citation omitted). See also Hardage, 750 F.Supp. at 1491 n. 32.

substantively fair. Cannons, 899 F.2d at 86. "To measure procedural fairness, a court should ordinarily look to the negotiation process and attempt to gauge its candor, openness, and bargaining balance." *Id.*

11. The Court finds that the Settlement was procedurally fair. ARCO and the Home negotiated the Settlement at arm's length as part of the Court-ordered settlement process. The Settlement was reached at a settlement conference conducted by experienced counsel with the presence of Settlement Judge Frey, and is the result of extensive, adversarial negotiations conducted over more than one year, without any aim or intent to injure the interest of any other party.

12. Under the Settlement, the Home's payment of \$875,000.00, and the Home's obligation to pay 6.19% of certain future costs is fair given the Home's limited role as the lessor of the Glenn Wynn property, and also because it does not require non-settling defendants to pay more than their fair share.¹⁰

13. The total cost of ARCO's clean-up activities related to RODS I and II for the Glenn Wynn portion of the Site was estimated during the settlement negotiations at approximately \$14.1 million. The Home's payment of \$875,000.00 or 6.19% of the total estimated cleanup cost, is a reasonable approximation of the Home's equal

¹⁰With the EPA's recent approval of the Glenn Wynn remediation, it now appears quite likely that the non-settling defendants will pay substantially less per gallon than the settling *de minimis* defendants.

share of liability for the Glenn Wynn portion of the Site. Further, the value of the access and use rights the Home will provide pursuant to the Settlement, particularly the rights concerning the landfill, is within the reasonable range of the Home's equitable share of liability for response costs regarding the non-Glenn Wynn portion of the Site.

14. Had the Home not settled its liability before trial, the Court would be required at trial to determine the Home's equitable share of liability pursuant to CERCLA § 113(f). Section 113(f), the CERCLA contribution section, explicitly directs that courts "allocate response costs among liable parties using such equitable factors as the court determines are appropriate." CERCLA § 113, 42 U.S.C. § 9613(f). Section 113(f) "does not limit courts to any particular list of factors, nor does the section direct the courts to employ any particular test." Environmental Transp. Sys., Inc. v. Ensco, Inc., 969 F.2d 503, 507 (7th Cir. 1992). Rather, "courts may consider any criteria relevant to determining whether there should be an apportionment," and "are to resolve claims for apportionment on a case-by-case basis." H.R. Rep. No. 253 (III), 99th Cong., 2d Sess. 18 (1985), reprinted in 1986 U.S. Code Cong. & Admin. News 2835, 3042. "A court may consider several factors, a few factors, or only one determining factor . . . depending on the totality of circumstances presented to the court." Ensco, 969 F.2d at 509 (upholding district court's apportionment of liability based on consideration of fault alone).

15. Factors courts have considered in allocating liability

include: 1) the amount of hazardous waste involved; 2) the degree of involvement by the parties in the generation, transportation, treatment, storage, or disposal of the hazardous waste; 3) the degree of care exercised by the parties with respect to the hazardous waste concerned, taking into account the characteristics of such hazardous waste; 4) the degree of cooperation by the parties with federal, state or local officials to prevent any harm to the public health or the environment; 5) the financial resources of the parties; and 6) public interest considerations. See, B.F. Goodrich Co. v. Murtha, 958 F.2d 1192, 1206 (2d Cir. 1992); Ensco, 969 F.2d at 508.

16. Several of these factors weigh in favor of a small apportionment of liability to the Home. The Home did not generate any waste, nor did it transport any to the Glenn Wynn portion of the Site. The Home also cooperated in facilitating the cleanup of the Site. The Home has actively participated in the cleanup, and has engaged in many cleanup activities, including the following:

- 1984-85: Conducted a private surface cleanup of waste drums and tanks;
- 1986: Removed a 5,000 barrel tank and its contents in cooperation with Phillips Petroleum Company; and
- 1987: Conducted a further cleanup consisting of the removal, cleaning, and disposal of all tanks and other hardware remaining on the surface, and disposed of a substantial quantity of hazardous substances.

Thus, the Home has demonstrated its willingness to cooperate with government agencies to aid in limiting the threat of harm to the public and environment.

17. The Home's status as a charitable institution is also an appropriate factor in apportioning liability. The Home's principal function is the operation of a children's home and "widow's colony" in Sand Springs. Given its lack of insurance coverage for its liability at the Site, the Home will pay the settlement from the trust corpus and income which supports the Home's charitable operations.

18. Based on these factors, the Settlement's allocation to the Home of 6.19% of the liability for the Glenn Wynn cleanup is an appropriate approximation of the Home's liability as a lessor. Such a finding is consistent with United States v. Mexico Feed & Seed Co., 988 F.2d 478 (8th Cir. 1992), in which the court upheld a landowner's allocation of liability of less than 5% based on facts similar to these present here.¹¹ In Mexico Feed, James Covington and his company Mexico Feed & Seed Company ("Mexico Feed"), leased 53 acres to Pierce Waste Oil Service, Inc. ("PWOS"), which installed oil tanks later found to have leaked oil containing PCBs into the ground. 988 F.2d at 482. The EPA obtained a joint and several judgment against Covington, Mexico Feed and PWOS for EPA's cleanup costs of \$1,024,321.79. *Id.* Mexico Feed filed a cross-

¹¹The similarity of Mexico Feed to the present case is further illustrated by the fact that previously negotiated agreements for sharing of cleanup costs at the Glenn Wynn Site put the Home's share in the same range as that of the land owner in Mexico Feed. In the Phillips cleanup, the Home paid approximately 5% of the total cleanup costs (Trans. at 128:13-21), and for the cleanup under the 1984 EPA administrative order, the Home paid roughly 15% of the cleanup costs. (Trans. at 124:23 - 125:18).

claim in contribution seeking to recover \$20,000 it paid in settlement of its claims with the government, and in excess of \$53,000 in attorneys' fees. United States v. Mexico Feed & Seed Co., 764 F.Supp. 565, 573 (E.D. Mo. 1991). The court entered judgment on Mexico Feed's cross-claim, but awarded only \$36,500. *Id.*¹² On appeal, the Eighth Circuit upheld the contribution award to Mexico Feed, finding:

While arguably Covington was not an innocent and unsuspecting landlord, he was hardly in the waste oil hauling business. He had no close relationship with PWOS, and was, if anything, very unhappy with its operations. He benefitted very little from the placement of the tanks on his land, and put no oil in them. He had tried to have the tanks removed.

980 F.2d at 491.

19. As in Mexico Feed, the Home is not in the waste oil hauling or solvent recycling business; it benefitted very little from placement of the storage tanks on its lands; it did not have a close relationship with Glenn Wynn; it was unhappy with Glenn Wynn's operations; and it tried to evict Glenn Wynn. Unlike the landowners in Mexico Feed, the Home is a charitable institution, and participated in the cleanup of the Site.¹³

¹²The district court's opinion does not indicate what portions of the settlement amount or the attorneys' fee claim are included in the judgment.

¹³In addition, the large number of defendants in this case (over 300) when compared to the ten defendants in Mexico Feed, 764 F.Supp. at 567-68, further supports the reasonableness of the Settlement. The number of defendants in this case also supports the 6.19% Settlement, when compared with the 15% settlement in Sand Springs Home v. Interplastic Corp., 670 F.Supp. 913 (N.D. Okla. 1987), where only 19 parties were available to share the cleanup

20. The Settlement is fair also with regard to future costs.¹⁴ Under the Settlement, the Home is obligated to pay 6.19% of certain future costs.¹⁵ No other settling party has agreed to pay any future costs. The Home's obligation for future costs is the same percentage it paid of ARCO's estimate of current costs. No evidence was introduced at trial to show that the Home's equitable share of future costs should be greater than the Home's share of current costs.¹⁶ In addition, the Home gives up any claim to the approximately \$1.5 million of *de minimis* settlements designated for future costs. The Home also retained sole liability for future

costs (Home Ex. 30).

¹⁴On or about June 8, 1993, Group I Defendants filed with the Court a Supplemental Conclusion of Law No. 12, citing United States v. Hardage, 982 F.2d 1436, 1445 (10th Cir. 1992) for the proposition that a declaratory judgment determining the Home's allocation of future cleanup costs is inappropriate. In point of fact, Hardage struck a declaratory judgment because it prevented defendants from challenging the recoverability of future costs which were inconsistent with the National Contingency Plan ("NCP"). However, unlike Hardage, the Settlement contains no provisions that restrict the right of the Home or any other party to require that ARCO show that any future costs are consistent with the NCP as a prerequisite to recoverability. Hardage expressly recognized CERCLA's mandate of requiring declaratory judgments of liability for future costs. (See ARCO Opening Brief at 22-24).

¹⁵Subsections V.B. and D. of the Settlement provide, among other things that the Home will pay 6.19% of future remediation costs at the Glenn Wynn Site not covered by RODS I and II, subject to certain limitations stated therein. (Arco Ex. 1).

¹⁶The Court is aware that an upward or downward change of the \$14.1 million Glenn Wynn remedial cost figure could change the 6.19% calculation. However, for finality of the good faith settlement, the Court approves the same.

response costs for the waste it disposed of pursuant to the 1984 EPA administrative order, a liability which no other party faces. Moreover, the Home's 6.19% share of future costs increases to the extent remaining defendants' shares become orphan shares in the future. Finally, the Home has, in effect, already paid toward future costs because ARCO's \$14.1 million in estimated costs, toward which the Home's payment of \$875,000.00, will be applied, includes \$2.3 million in vapor extraction and post-closure monitoring costs which are both future costs.¹⁷

21. Defendants contend that the Home should be liable for between 25% to 50% simply because it is a landowner. The cases the defendants rely upon, however, involve owners who were also operators, or who otherwise actively contributed to or benefitted from the contaminating activity, and therefore are not factually on point. See United States v. Tyson, 19 Chem. Waste Litig. Rep. 1310 (E.D.Pa. 1989) (defendant was an active participant in the operations which caused the environmental damage at issue); Amoco Oil Co. v. Dingwell, 690 F.Supp. 78 (D. Me. 1988), *aff'd sub nom*, Travelers Indem. Co. v. Dingwell, 884 F.2d 629 (1st Cir. 1989) (defendant was the owner and operator of a landfill); Weyerhaeuser Co. v. Koppers Co., 771 F.Supp. 1420 (D.Md. 1991) (land owner

¹⁷It may be unnecessary to expend the \$684,000 for vapor extraction because the EPA, in a post-hearing letter, dated June 30, 1993, stated that no further remediation of the soils "in the Glenn Wynn lagoons" will be necessary. The Court has taken judicial notice of this letter as it is an official agency action that is a matter of public record and was written after the Good Faith Hearing.

permitted lessee to build a wood-treating facility used in part to treat the owner's wood); United States v. R.W. Meyer, Inc., 932 F.2d 568 (6th Cir. 1991) (landlord assisted in negotiations permitting the operator to open a facility, constructed a defective pipeline which contributed to contamination, and failed to cooperate with the EPA). Here, there is no evidence that the Home actively contributed to or benefitted from the contamination. Further, the Home did not construct the facilities at the Glenn Wynn Site nor did it operate the Glenn Wynn Site at any time.

22. The Court also recognizes that this is to be an equitable allocation. In some cases, balancing the equities may favor absolving the landowner entirely. See Jersey City Redevelopment Authority v. PPG Ind. Inc., 14 Chem. Waste Litig. Rep. 1207, 1216 (D.N.J. 1987) (court allocated entire liability between two generators and no liability to the landowner, holding: "Imposition of CERCLA strict liability upon an unknowing landowner is unnecessary and unfair where knowing generators and distributors are available"); Louisiana-Pacific Corp. v. Asarco, Inc., 21 Chem. Waste Litig. Rep. 1165, 1189 (W.D.Wash. 1991) (current owner of landfill allocated no liability; owner at time of contamination allocated 7% liability). Here, the absence of any contribution by the Home to the contamination of the Glenn Wynn portion of the Site, its past cleanup efforts, and its charitable status weigh in favor of the 6.19% allocation of liability.

23. The Court accordingly concludes that the Home has agreed to pay its equitable share of liability in this case.

24. The Settlement also is fair to non-settling defendants. If the Settlement is approved, the non-settling defendants will not pay more than their equitable portion of liability. Rather, the evidence establishes just the opposite. As noted in the Findings of Fact, after subtracting the \$6.3 million received in *de minimis* settlements as of January 20, 1993, and the Home's payment of \$875,000.00 from the \$14.1 million which ARCO sought to recover, only about \$7 million remained to be collected as of the date of settlement.¹⁸ This would amount to less than \$1 per gallon, which is far less than the \$2.15 per gallon paid by the *de minimis* settling parties. If the total \$9.5 million in settlements ARCO presently has agreed to accept is deducted from the \$14.5 million estimated cleanup cost, the remaining balance would be \$5 million, which makes the amount per gallon the non-settling defendants would have to pay even less. The total cost and cost per gallon non-settling defendants would have to pay would be even further reduced by any payments made by the operator defendants and by any portions of the \$14.5 million disallowed by the Court. If the Home were held liable for 25% to 50% of the \$14.1 million as defendants contend, the non-

¹⁸Since the execution of the Settlement, ARCO has incurred or will incur, additional costs of approximately \$400,000, bringing the total amount ARCO seeks to recover to \$14.5 million. (Trans. at 320:23-321:3). The \$14.5 million includes amounts which are estimated will be expended or committed to by the date of a final judgment. These of course may be significantly higher or lower. As noted above the \$684,000.00 expense for vapor extraction that was included in ARCO's \$14.1 million estimate apparently will not need to be incurred. Further, the 14.5 million total cost estimate includes litigation related attorneys fees which are not recoverable as necessary costs of the clean-up. (See Court's Order filed this date).

settling defendants would in the end pay an inequitable sum. This would be particularly offensive in view of the fact that remaining generator defendants are the largest generators of materials sent to the Site.

25. Thus, it appears that the non-settling defendants are improving their lot by their intransigence. With the remediation of the Glenn Wynn site now virtually complete and the EPA apparently satisfied with the clean-up, it appears quite likely that the remaining (non-*de minimis*) generator defendants will pay a substantially smaller amount per gallon than was paid by the *de minimis* settling defendants. Ironically, it now appears that the non-settling generator defendants will actually pay less than their equitable share as a result of overpayments by *de minimis* settling parties and the application of the *pro tanto* credit rule.

26. The Settlement therefore is fair to the non-settling defendants.

27. In addition to being fair, the settlement also is reasonable and furthers CERCLA's policy goals. The Settlement is reasonable because although ARCO's case against the Home is strong, the Settlement will simplify an already complex, lengthy, and expensive litigation now in its fourth year. By entering into the Settlement, the Home will avoid the additional expense of further litigation with ARCO. See Cannons, 899 F.2d at 90 (whether a settlement is reasonable turns on such factors as the relative strength of the bargaining parties and the resulting savings in

time and litigation expense).¹⁹

28. The Settlement is consistent with CERCLA because it furthers CERCLA's policy goal of requiring the parties responsible for contaminating property to pay for the cleanup. See Philadelphia v. Stepan Chem. Co., 544 F.Supp. 1135, 1142-43 (E.D. Pa. 1982). The \$875,000.00 payment by the Home therefore represents an appropriate allocation of liability for the cleanup of the Glenn Wynn portion of the Site.

29. Because the settlement is procedurally and substantively fair, reasonable, and consistent with CERCLA, the Court finds that the Settlement was entered into in good faith under federal law.

30. Section 832 of Title 12 of the Oklahoma statutes is taken verbatim from the Uniform Contribution Among Tortfeasors Act ("UCATA") § 4, 12 U.L.A. 98 (1979). In that the Oklahoma courts have not formulated a test for determining good faith, the Court will refer to decisions of other states which have similar laws. "[W]here Oklahoma has adopted uniform law or laws from other jurisdictions, case law from those jurisdictions interpreting such laws is persuasive authority" Cleere v. United Parcel Service, 669 P.2d 785 (Okla. App. 1983). Many other states have adopted the UCATA. See e.g., Cal. Civ. Proc. Code § 877.

¹⁹The other factors cited by the Cannons court as being relevant to the reasonableness inquiry -- whether the settlement agreement will serve as a vehicle for cleansing the environment and whether the public is properly compensated for the cleanup costs, 899 F.2d at 90 -- are not of particular relevance here because ARCO is already undertaking the cleanup and no public funds are involved.

31. The leading California case on good faith determinations of settlements, Tech-Bilt, Inc. v. Woodward-Clyde & Associates, 38 Cal.3d 488, 499, 213 Cal.Rptr. 256 (1985) ("Tech-Bilt"), sets forth guidelines to aid courts in determining whether a settlement has been reached in good faith. Among the factors to be taken into consideration are: a rough approximation of plaintiff's total recovery and the settlers' proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, a recognition that a settler should pay less in a settlement than he would if he were found liable after a trial, the financial conditions and insurance policy limits of settling defendants, and the existence of collusion, fraud or tortious conduct aimed to injure the interest of non-settling defendants. 38 Cal.3d at 499. The Tech-Bilt court noted that, "practical considerations obviously require that the evaluation be made on the basis of information available at the time of settlement." *Id.* The court held that settlements found not to be in good faith are "quite rare." This analysis for a good faith determination under state law is nearly identical to that under federal law. Thus, the conclusion here is the same under state and federal law -- the settlement was made in good faith.

32. Because the Settlement was entered into in good faith pursuant to both federal and state law, ARCO and the Home are entitled to a contribution bar precluding non-settling defendants from bringing any actions in contribution or indemnity against the Home.

33. Having concluded that a contribution bar is appropriate, the Court must decide whether the bar shall be a *pro tanto* bar or a proportionate bar. Magistrate Judge Wagner has recommended that a *pro tanto* contribution bar be adopted (Report & Recommendation of U.S. Magistrate Judge, filed March 3, 1993). The Court finds Magistrate Judge Wagner's reasoning in support of his recommendation persuasive in this particular case, and accordingly finds that a *pro tanto* bar is appropriate. (See Court's Order filed simultaneously herewith).

34. The Court finds that a declaratory judgment as to the Home's future liability to ARCO is appropriate.

35. Contrary to the objecting defendants' assertion, uncertainty as to the amount of future response costs does not bar the entry of a declaratory judgment as to future liability. CERCLA itself provides for declaratory judgments as to future liability, stating that in any section 107 cost recovery action, "the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages." CERCLA § 113(g)(2), 42 U.S.C. § 9613(g)(2).

36. Moreover, courts repeatedly have held that the speculative nature of future response costs does not bar a declaratory judgment as to future liability. In United States v. Hardage, 733 F.Supp. 1424 (W.D. Okla. 1989), *aff'd in part, rev'd in part*, 982 F.2d 1436 (10th Cir. 1992), the court rejected the argument

raised by Group I. There, the United States sought a declaratory judgment that the defendants would be liable for future response costs. 733 F.Supp. at 1427. Like the objecting defendants here, the Hardage defendants argued that a declaratory judgment would be improper because the amount of future response costs "is purely speculative." *Id.* at 1439. The court rejected this argument, holding that "although the court would not award costs until they are incurred, the court can presently determine liability for future costs." *Id.*; see also O'Neil v. Picillo, 682 F.Supp. 706, 730 (D.R.I. 1988) ("the courts are unanimous that declaratory judgments as to future removal costs are consistent with CERCLA's purpose of encouraging prompt, remedial action"), *aff'd*, 883 F.2d 176 (1st Cir. 1989), *cert. denied*, 493 U.S. 1071 (1990).

37. Courts have reached the same conclusion with regard to cost recovery actions by private parties. In Pinole Point Properties v. Bethlehem Steel Corp., 596 F.Supp. 283 (N.D.Cal. 1984), a private plaintiff sought past response costs and a declaratory judgment as to defendant's liability for future costs. The court concluded that "[i]n cases in which either the government or a private party has expended response costs, courts have not hesitated to grant declaratory relief." *Id.* at 291; see also Jones v. Inmont Corp., 584 F.Supp. 1425, 1430 (S.D. Ohio 1984) (court may "determine defendant's liability for future costs").

38. The Court does not believe the entry of the proposed judgment will impede future settlements.

39. For these reasons, the Court concludes that ARCO is entitled to a declaratory judgment as to the Home's future liability to ARCO.

IT THEREFORE IS ORDERED:

1. The Settlement between ARCO and the Home is found to be in good faith.

2. All claims, including but not limited to all cross-claims or third-party claims now or hereafter filed or deemed filed by any party against the Home for liabilities associated with the Site are barred under state and federal law, except to the extent they are preserved by the Settlement.

3. ARCO's recovery against any other parties at the Site is reduced by the amount of the settlement according to the *pro tanto* rule, as expressed in the Report and Recommendation of U.S. Magistrate Judge, filed March 3, 1993 (Docket No. 642).

4. All claims by ARCO against the Home, except as specified in Article V of the Settlement, and as set forth at ¶¶ 8.a., 8.b., 8.c. below, are hereby dismissed with prejudice as to any future action upon such claims.

5. All counterclaims by the Home against ARCO, except as specified in Article V of the Settlement, and as set forth at ¶¶ 8.a., 8.b. and 8.c. below, are hereby dismissed with prejudice as to any future action upon such claims.

6. Each and every claim, counterclaim and cross-claim "deemed filed" by ARCO against the Home and/or by the Home against ARCO is hereby dismissed, such claims having been "deemed filed"

pursuant to section VII.B. of the First Amended Case Management Order, filed March 6, 1992; such claims to be dismissed in their entirety on the merits, with prejudice and without costs, except as set forth in Article V of the Settlement, with prejudice as to any future action upon such claims.

7. ARCO and the Home shall bear and be responsible for its own expenses, attorneys' fees and legal costs incurred herein.

8. The Court hereby enters a Declaratory Judgment for Future Response Costs at the Glenn Wynn Site, embodying the terms of the Agreement, including and without limitation the following specific terms:

a. Except as expressly indemnified or released by ARCO in the Settlement, and subject to the provisions of this paragraph 8, the Home is jointly and severally liable to ARCO in accordance with the Court's Order Clarifying and Confirming Report and Recommendation of U.S. Magistrate Judge filed January 28, 1992, (Docket No. 182), for any and all sums (over and above the sums ARCO is required to spend at the Glenn Wynn Site to perform the SCOU (ROD I), the Consent Decree, and MSOU (ROD II) currently estimated by ARCO to be \$14,131,000), which ARCO may be required in the future to expend at the Glenn Wynn Site, as that term is defined in the Settlement, because of either of the following occurrences (1) EPA or some other governmental agency or person requires that ARCO perform some remedial action which exceeds the requirement of ROD I or the Consent Decree, or (2) EPA or some other governmental agency or person requires that ARCO perform

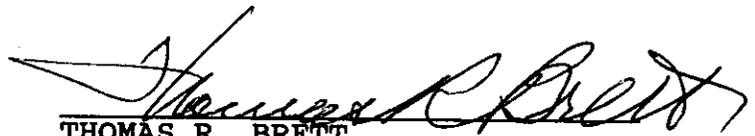
remediation of the groundwater beyond monitoring as required by ROD II.

b. With respect to the Glenn Wynn Site, the Home's liability for future response costs covered by the Judgment shall be equal to, and shall not exceed, directly or indirectly, the same percentage as the Home's settlement share in this action (i.e. \$875,000 divided by approximately \$14,131,000, or 6.19%); provided, that subject to the "provided further" clause below, the current defendants listed on Exhibit (6) to the Settlement, must be financially viable and not "orphans" at the time any such future response costs are incurred by ARCO; and provided further, that to the extent any current defendant listed on Exhibit (6) has become financially non-viable, i.e., an "orphan", at the time such future response costs are incurred, the Home's agreed percentage liability (6.19%) for such future response costs shall be proportionally increased so that the Home bears its proportional share (i.e., 6.19%) of the percentage liability for such future response costs which such "orphan" defendant would otherwise have borne (for purposes hereof, the percentage liability for future response costs of any defendant listed on Exhibit (6) which subsequently becomes an "orphan" shall be calculated by dividing the dollar contribution which such defendant pays to ARCO for such defendant's share of the sums ARCO is required to spend at the Glenn Wynn Site to perform ROD I, the Consent Decree and ROD II, by \$14,131,000).

c. With respect to the Home's liability to ARCO for future response costs at the Glenn Wynn Site, as is to be embodied

in the Declaratory Judgment, subject to equitable allocation, as provided above, ARCO will not release any of the current defendants listed on Exhibit 6 from their joint and several responsibility for the same liability for future response costs as set forth above, except as to such persons who may be released as major/nonsubstantial generators, as agreed to by ARCO and the Home. If ARCO grants any of such defendants a release from such liability without the prior written consent of the Home as to the terms thereof, such release shall automatically be deemed to also constitute a release of the Home for all such liability and a release and satisfaction in full of this declaratory judgment.

IT IS SO ORDERED THIS 3rd DAY OF AUGUST, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
AUG 04 1993
DATE FILED
AUG 3 1993

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

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

ATLANTIC RICHFIELD COMPANY,)
)
Plaintiff,)
)
vs.)
)
AMERICAN AIRLINES, INC., et al.,)
)
Defendants.)

Case No. 89-C-868-B ✓
89-C-869-B
89-C-859-B

O R D E R

Now before the Court is the Report and Recommendation of the U.S. Magistrate Judge (Docket #642) filed March 3, 1993, pertaining to the Plaintiff's Motion for Determination of Good Faith Settlement (Docket #259) and the Defendants' Memorandum Regarding the Proper Settlement Bar Rule (Docket #270). Defendant Groups I, III and V have objected to the Magistrate's Report and Recommendation which concludes that the *pro tanto* credit rule should be applied in this case.

The Plaintiff asks the Court to bar any and all claims by non-settling Defendants against settling Defendants for contribution or indemnity associated with liability for clean-up of the hazardous wastes disposed at the Sand Springs Petrochemical Complex Superfund Site ("Site") and asks the Court to apply the *pro tanto* credit rule to any future recovery against non-settling Defendants. No party resists the imposition of a contribution bar with respect to settling defendants; however, Defendant Groups I, III and V argue that the Court should apply the proportionate credit rule rather

than the *pro tanto* credit rule to any future recovery against non-settling defendants.

The procedural history and background of this case are sufficiently detailed in the Findings of Fact and Conclusions of Law filed simultaneously herewith and thus such Findings and Conclusions shall be incorporated as though fully set out in this Order.

The issue before the Court is the proper credit rule to apply to any future recovery against non-settling defendants. A number of courts have discussed the application of the *pro tanto* and proportionate credit rules as they apply to cases brought pursuant to the Comprehensive Environmental, Response, Compensation and Liability Act ("CERCLA"). See Magistrate's Report and Recommendation of March 3, 1993, pp. 6-7. The *pro tanto* approach is contained in the Uniform Contribution Among Tortfeasors Act (UCATA), which provides contribution protection to all settling parties and reduces the amount of the non-settling parties' liability by the dollar amount of the settlements. This approach requires the Court to conduct a "fairness hearing" prior to approving a partial settlement.

The proportionate approach is used in the Uniform Comparative Fault Act (UCFA) to handle partial settlements. This approach results in the reduction of the plaintiff's claim by the percentage of the settling defendant's causal fault, which must be determined at trial, where total damages and the percentage of the settling defendants' proportionate fault are found.

The Magistrate's Report and Recommendation includes a thorough explanation of the development of the case law and discusses the practical and policy considerations relevant to this issue. The Magistrate concluded that the application of the proportionate or *pro tanto* approach is a matter left to the Court's discretion and should be determined on a case by case basis in an effort to both reach an equitable result and further the goals of CERCLA. The Magistrate concluded that the *pro tanto* rule "is clearly superior" under the facts of this case and should be applied herein. This Court agrees.

The Court reviews the issue of the proper credit rule on a *de novo* basis. 28 U.S.C. §636(b)(1)(c).

Prior to 1986, CERCLA did not include a provision dealing with settlements or the proper apportionment methodology to be used when plaintiffs entered into partial settlements. United States v. Conservation Chemical Co., 628 F.Supp. 391 (W.D.Mo. 1985).¹ Congress subsequently provided some guidance on the issue in the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub.L. 99-499, §113(f), which provides in pertinent part:

(1) Contribution

Any person may seek contribution from any other person who is liable or potentially liable under section 107(a), during or following any civil action under section 106

¹ In Conservation Chemical the court recognized that CERCLA was silent on the subject of apportionment methodology but concluded that the proportionate approach of the UCFA was most consistent with Congress' intent in drafting CERCLA.

or under section 107(a). Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate.

(2) Settlement

A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

This amendment clearly adopted the contribution bar and *pro tanto* credit rule for administrative or judicially approved settlements involving the United States or a State. However, it did not explicitly provide which credit rule should be applied to settlements when the cost recovery action is brought by a private party, rather than the United States or a State.

Several courts have continued to follow the analysis and reasoning of Conservation Chemical and have applied the proportionate credit rule to settlements involving private parties, despite Congress' express adoption of the *pro tanto* rule for partial settlements with the government. E.g. Edward Hines Lumber Co. v. Vulcan Materials Co., 685 F.Supp. 651 (D.C.Ill. 1987), aff'd 861 F.2d 155 (7th Cir. 1988); Lyncott Corp. v. Chemical Waste Management, 690 F.Supp. 1409 (E.D.Pa. 1988); and United States v. Western Processing Co., Inc., 756 F.Supp. 1424 (W.D.Wash. 1990).

These courts concluded that Congress only intended for the *pro tanto* rule to be applied in actions brought by the Government and that policy and practical considerations still favored the application of the proportionate rule in actions brought by private parties.²

Other courts have viewed the passage of SARA as an indication that Congress has rejected the UCFA approach and the proportionate credit rule. Allied Corp. v. Frola, 730 F.Supp. 626 (D.N.J. 1990); United States v. Cannons Engr. Corp., 720 F.Supp. 1027 (D.C.Mass. 1989), aff'd, 899 F.2d 79 (1st Cir. 1990); and United States v. Rohm & Haas Co., 721 F.Supp. 666 (D.N.J. 1989). Neither the Tenth Circuit Court of Appeals nor this Court has yet addressed the issue of the proper credit rule to be applied in CERCLA cases brought by private parties.

Although the majority of Courts that have been faced with this issue have applied the proportionate rule, this Court concludes that it has the discretion to apply the credit rule which under the facts of the instant case will best achieve the overriding objectives of CERCLA. Upon consideration of all the facts and circumstances of this particular case, the Court concludes the *pro tanto* rule is superior to the proportionate rule in this instance.

The Magistrate Judge and the Settlement Judge have thoroughly compared the proportionate and *pro tanto* credit rules and have

² Several of the Courts listed the "extensive fairness hearings" required by the *pro tanto* approach as a significant practical consideration favoring the use of the proportionate approach.

concluded that under the facts of this case, the *pro tanto* rule would better facilitate settlement. See Magistrate's Report and Recommendation of March 3, 1993, and Settlement Judge's letter attached thereto. This Court agrees.

Adoption of the proportionate rule in this case would substantially complicate Plaintiff's trial task³ and expose Plaintiff to the risk of a less than full recovery.⁴ On the other hand, adoption of the *pro tanto* approach in this case will assure Plaintiff of a full recovery and apparently will not leave the non-settling defendants with an inequitable share of the costs.⁵ The Court does not share Defendants concern that application of the *pro tanto* rule will result in the non-settling defendants being assessed an inequitable portion of the response costs.

Furthermore, the prospect of conducting "fairness hearings" does not dissuade this Court from applying the *pro tanto* credit rule

³ Plaintiff would be in the awkward position at trial of minimizing its damages caused by the approximately 300 parties that have settled to date and maximizing its damages caused by the remaining defendants.

⁴ Adoption of the proportionate rule at this point in the case would also present the Plaintiff with the strong possibility of recovering substantially more than its cost, i.e. a windfall, due to the apparent "overpayments" of the de minimis settling parties. This potential for a substantial windfall might encourage the Plaintiff to discontinue settlement efforts and gamble on a successful trial.

⁵ Absent significant unanticipated future costs, it appears the non-settling generator defendants will pay substantially less per gallon than was paid by the de minimis settling defendants. See Court's Findings of Fact No. 31 filed this date.

in this case. The Court has conducted an evidentiary hearing on the fairness of the ARCO/Sand Springs Home settlement and has concluded that the settlement was in good faith and is fair to the non-settling defendants. The Court has also previously found that the de minimis settlements were entered into in good faith and with certain minor exceptions, the parties have stipulated the de minimis settlements were fair. Although "fairness hearings" do take the Court's time, they also simplify trial.

In summary, the Court concludes the selection of the proper credit rule is a matter that has been left to the Court's discretion, to be evaluated on a case-by-case basis. In this particular instance, the Court concludes application of the *pro tanto* rule will best achieve the objectives of CERCLA by encouraging settlement, simplifying trial and equitably distributing cost. For all the reasons stated herein, the Court hereby AFFIRMS the Report and Recommendation of the Magistrate Judge filed March 3, 1993, and adopts the *pro tanto* credit rule in this case.⁶

The trial schedule is hereby amended and the pre-trial conference is hereby reset as follows:

September 17, 1993

COMPLETE ALL DISCOVERY;

September 3, 1993

EXCHANGE THE NAMES AND ADDRESSES OF ALL WITNESSES, INCLUDING EXPERTS, IN WRITING, ALONG WITH A BRIEF STATEMENT REGARDING EACH WITNESS' EXPECTED TESTIMONY (UNNECESSARY IF WITNESS' DEPOSITION TAKEN);

⁶ The Court is genuinely appreciative of the considerable time and outstanding dedicated judicial service of Magistrate Judge John Wagner and Adjunct Settlement Judge Martin Frey herein.

September 20, 1993

FILE ANY MOTIONS IN LIMINE

September 22, 1993

FILE AN AGREED PRETRIAL ORDER AND
EXCHANGE ALL PRENUMBERED EXHIBITS;

September 24, 1993
at 1:30 p.m.

FINAL PRE-TRIAL CONFERENCE

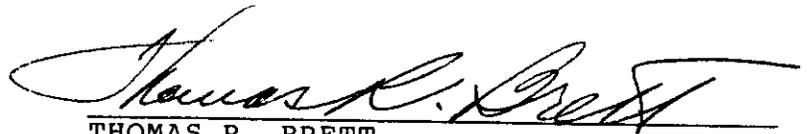
October 12, 1993

FILE SUGGESTED FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND ANY TRIAL
BRIEFS;

October 18, 1993

NON-JURY TRIAL AT 9:30 A.M.

IT IS SO ORDERED this 3rd day of August, 1993.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett". The signature is written in black ink and is positioned above a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

AUG 04 1993
 FILED
 AUG 3 1993
 Richard M. Lawrence, Court Clerk
 U.S. DISTRICT COURT

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

ATLANTIC RICHFIELD COMPANY,)	
)	
Plaintiff,)	
)	
v.)	89-C-868-B ✓
)	89-C-869-B
AMERICAN AIRLINES, INC., et al,)	90-C-859-B
)	
Defendants.)	Consolidated

ORDER

This Order pertains to Defendants Glenn E. Wynn and Vacuum & Pressure Tank Truck's Motion for Partial Summary Judgment on the Recoverability of Attorney Fees (Docket #689)¹, the Motion for Partial Summary Judgment on the Pleadings and to Dismiss Plaintiff's Claim for Attorney Fees of Defendants United States of America and United States Postal Service (Docket #716), the Group I Defendants' Motion for Partial Summary Judgment (Docket #719), the Opposition of Plaintiff to Motion of Group III Defendants for Partial Summary Judgment on the Recoverability of Attorney Fees (Docket #721), the Motion for Partial Summary Judgment of the Group IV Defendants (Docket #723), Plaintiff's Opposition to Group IV and V Defendants' Motion for Partial Summary Judgment on the Pleadings and to Dismiss Plaintiff's Claim for Attorneys' Fees (Docket #737), Plaintiff's Opposition to Group I and Group IV Defendants' Motion for Partial Summary Judgment (Docket #743), the Reply in Support of United States' Motion for Partial Summary Judgment on the Pleadings and to Dismiss Plaintiff's Claim for Attorneys' Fees (Docket #755), Plaintiff's Motion for Partial Summary Judgment Against all

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.

912

Defendants (Docket #762), Group I Defendants' Objection to Plaintiff's Motion for Partial Summary Judgment (Docket #774), Group III Defendants' Response and Objection to Plaintiff's Motion for Partial Summary Judgment (Docket #779), the Opposition of the United States of America to ARCO's Motion for Partial Summary Judgment Against all Defendants Regarding the Recoverability of Legal Expenses as Response Costs (Docket #833), and the Response of the Group IV Defendants to Plaintiff's Motion for Partial Summary Judgment (Docket #842).

Plaintiff is one of the parties liable for the costs of hazardous waste clean-up of the Sand Springs Petrochemical Site ("Site") under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9607 and § 9613. Plaintiff brought this action to recover the sums it claims to have expended in cleaning up the site, including an award of its costs and attorney fees. The Defendants argue that Plaintiff is not entitled to recover attorney fees on its CERCLA claims and ask the court to grant partial summary judgment as to this issue. The parties dispute whether the language of CERCLA authorizes recovery of attorneys fees and whether policy considerations support an award of such fees.

On July 9, 1993, the Tenth Circuit ruled that a private party may recover nonlitigation attorneys fees, but may not recover attorneys fees arising from the litigation of a private recovery action under CERCLA. FMC Corp. v. Aero Industries, Inc., Nos. 92-4040 and 92-4048 (10th Cir. July 9, 1993). The court noted that under § 9607(a)(4)(B), a private party may recover the "necessary costs of response," and "response" is defined as including "enforcement activities related thereto." 42 U.S.C. § 9601(25). Examining the

availability of litigation fees, the court concluded "[T]he law of the United States . . . has always been that absent explicit congressional authorization, attorneys' fees are not a recoverable cost of litigation." (citing Runyon v. McCrary, 427 U.S. 160, 185 (1976)). The court found that the circuits had split on whether CERCLA's statutory language contains the requisite explicit authority to award litigation fees.

The Court of Appeals concluded:

We simply cannot agree with those courts that find an explicit authorization for the award of litigation fees from the fact that response costs include related enforcement activities. We recognize that CERCLA is designed to encourage private parties to assume the financial responsibility of cleanup by allowing them to seek recovery from others. It may be true that awarding the litigation fees incurred in that recovery would further this goal. Nonetheless, the efficacy of an exception to the American rule is a policy decision that must be made by Congress, not the courts. The desirability of a fee-shifting provision cannot substitute for the express authorization mandated by the Supreme Court Accordingly, we conclude that a private party may not recover attorneys fees arising from the litigation of a private recovery action. (citation omitted). FMC Corp., slip op. at 13-14.

The court reached a different conclusion with respect to nonlitigation attorneys fees, which do not fall under the American rule set out in Runyon, because they are not incurred in pursuing litigation. Since recovery of such fees is not barred as a matter of law, the court examined whether nonlitigation attorneys fees are necessary response costs within the meaning of § 9607(a)(4)(B).

In United States v. Hardage, 982 F.2d 1436 (10th Cir. 1992), the court had considered a related question concerning "necessary costs." There the government sought injunctive relief against the Hardage Steering Committee ("HSC") to require it to clean up a Superfund site. HSC counterclaimed against the government as a responsible party for

response costs it incurred in developing its trial remedy. The lower court found that these litigation-related response costs were not necessary costs under § 9607(a)(4)(B), and the Tenth Circuit affirmed, stating: "necessary costs of response' must be necessary to the containment and cleanup of hazardous releases." *Id.* at 1448 (citing Daigle v. Shell Oil Co., 972 F.2d 1527, 1535-37 (10th Cir. 1992)). The court applied that definition and held that a private party incurring response costs in developing its own remedy, solely to defend against the government's § 106(a) injunction action, does not incur response costs that are "necessary" within the meaning of § 9607(a)(4)(B). *Id.*

In FMC Corp., as distinguishable from Hardage, plaintiffs incurred response costs complying with a unilateral EPA order and performing the cleanup work under EPA direction. They then sought recovery of the nonlitigation attorneys fees generated in designing and negotiating the removal action and in preparing and carrying out the work plan approved by the EPA. The court could not determine as a matter of law that none of these nonlitigation attorneys fees were necessary response costs. It remanded the case to the district court for further proceedings to ascertain whether any of the nonlitigation attorneys fees sought by plaintiffs were necessary to the containment and cleanup of hazardous releases and therefore recoverable as necessary costs.

Defendants Glenn E. Wynn and Vacuum & Pressure Tank Truck's Motion for Partial Summary Judgment on the Recoverability of Attorney Fees (Docket #689), the Motion for Partial Summary Judgment on the Pleadings and to Dismiss Plaintiff's Claim for Attorney Fees of Defendants United States of America and United States Postal Service (Docket #716), the Group I Defendants' Motion for Partial Summary Judgment (Docket #719), and

the Motion for Partial Summary Judgment of the Group IV Defendants (Docket #723) are granted. Plaintiff's Motion for Partial Summary Judgment Against all Defendants (Docket #762) is denied. Plaintiff may not recover attorneys fees arising from the litigation of this private recovery action. During the trial on the merits, Plaintiff will be allowed to submit evidence of all costs which it incurred, including any necessary non-litigation attorneys fees, that were necessary to the containment and clean-up of hazardous releases.

Dated this 3rd day of Aug, 1993.



THOMAS R. BRET
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 8-3-93

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

FILED

AUG 3 1993

HELLER FINANCIAL INC.,)
 a Delaware corporation,)
)
 Plaintiff,)
)
 vs.)
)
 ERNEST M. WALKER d/b/a)
 Machine Tool Builders,)
)
 Defendant.)

No. 92-C-877-E

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

ADMINISTRATIVE CLOSING ORDER

The Plaintiff having filed a 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 3rd day of August, 1993.


 JAMES O. ELLISON, Chief Judge
 UNITED STATES DISTRICT COURT

Complaint on February 10, 1993; that the Defendant, **Board of County Commissioners, Washington County, Oklahoma**, acknowledged receipt of Summons and Complaint on February 4, 1993; that the Defendants, **Edward E. Haworth, Tenant, and Rhoda Haworth, Tenant**, were served with Summons and Amended Complaint on April 6, 1993; that the Defendant, **State of Oklahoma ex rel. Oklahoma Tax Commission**, acknowledged receipt of Summons and Amended Complaint on March 10, 1993.

It appears that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer, Counterclaim and Cross-Claim on March 22, 1993; and that the Defendants, John Crosby Rose; Rita Joyce Rose; Edward E. Haworth, Tenant; Rhoda Haworth, Tenant; County Treasurer, Washington County, Oklahoma, and Board of County Commissioners, Washington County, Oklahoma, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Three (3), in Block One (1), SEYBERT
ADDITION to the City of Bartlesville,
Washington County, Oklahoma.

The Court further finds that on June 5, 1987, the Defendants, John Crosby Rose and Rita Joyce Rose, 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 \$26,500.00, payable in monthly installments, with interest thereon at the rate of 9.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, John Crosby Rose and Rita Joyce Rose, 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 June 5, 1987, covering the above-described property. Said mortgage was recorded on June 5, 1987, in Book 844, Page 477, in the records of Washington County, Oklahoma.

The Court further finds that the Defendants, John Crosby Rose and Rita Joyce Rose, 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, John Crosby Rose and Rita Joyce Rose, are indebted to the Plaintiff in the principal sum of \$25,608.65, plus interest at the rate of 9.5 percent per annum from December 1, 1991, until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$27.68 (\$19.68 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action in the amount of \$847.93, plus penalties and interest according to law, by

virtue of Income Tax Warrant No. ITI9200854200 dated June 4, 1992. Said lien is inferior to the interest of the Plaintiff, United States of America.

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

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Veterans Affairs, have and recover judgment against the Defendants, **John Crosby Rose and Rita Joyce Rose**, in the principal sum of \$25,608.65, plus interest at the rate of 9.5 percent per annum from December 1, 1991 until judgment, plus interest thereafter at the current legal rate of 3.58 percent per annum until paid, plus the costs of this action in the amount of \$27.68 (\$19.68 fees for service of Summons and Amended Complaint, \$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 Defendant, **State of Oklahoma ex rel. Oklahoma Tax Commission**, have and recover judgment in the amount of \$847.93, plus penalties and interest according to law, by virtue of Income Tax Warrant No. ITI9200854200 dated June 4, 1992.

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

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

First:

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

Second:

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

Third:

In payment of the judgment rendered herein in favor of the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission.

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

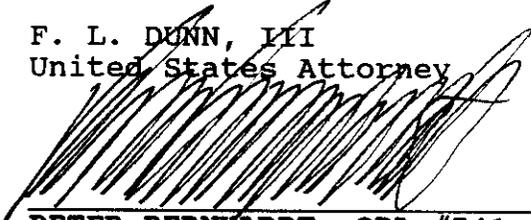
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of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

EDWARD C. ELISON

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
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KIM D. ASHLEY, OBA #14175
Assistant General Counsel
P.O. Box 53248
Oklahoma City, Oklahoma 73152-3248
(405) 521-3141
Attorney for Defendant,
State of Oklahoma ex rel.
Oklahoma Tax Commission

Judgment of Foreclosure
Civil Action No. 93-C-101-E

PB/css

ENTERED ON DOCKET

DATE 8-3-93

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

FILED

AUG 3 1993

BRADLEY A. ROGERS, ET AL,

PLAINTIFFS,

v.

Case No. 92-C-341-E

FRANCO NICOLETTI,

DEFENDANT.

ORDER

Rule 35(a) of the Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

(a) In any case in which no action has been taken by the parties for six (6) months, it shall be the duty of the Clerk to mail notice thereof to counsel of record or to the parties, if their post office addresses are known. If such notice has been given and no action has been taken in the case within thirty (30) days of the date of the notice, an order of dismissal may, in the Court's discretion, be entered.

In the action herein, notice pursuant to Rule 35(a) was mailed to counsel of record or to the parties, at their last address of record with the Court, on JUNE 29, 1993. No action has been taken in the case within thirty (30) days of the date of the notice.

Therefore, it is the Order of the Court that this action is in all respects dismissed.

Dated this 3rd day of August, 19 93.


United States District Judge

ENTERED ON DOCKET

DATE 8-2-93

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

JUL 30 1993

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

REBECCA CHRISTIAN,

PLAINTIFF,

v.

Case No. 92-C-1138-E

BAPTIST REGIONAL HEALTH CENTER, ET AL,

DEFENDANTS.

O R D E R

Rule 35(a) of the Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

(a) In any case in which no action has been taken by the parties for six (6) months, it shall be the duty of the Clerk to mail notice thereof to counsel of record or to the parties, if their post office addresses are known. If such notice has been given and no action has been taken in the case within thirty (30) days of the date of the notice, an order of dismissal may, in the Court's discretion, be entered.

In the action herein, notice pursuant to Rule 35(a) was mailed to counsel of record or to the parties, at their last address of record with the Court, on June 28, 1993. No action has been taken in the case within thirty (30) days of the date of the notice.

Therefore, it is the Order of the Court that this action is in all respects dismissed.

Dated this 30th day of July, 1993.


United States District Judge

ENTERED ON DOCKET

DATE 8-2-93

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

FILED

AUG 2 1993

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

JEFFREY D. JOHNSON

Plaintiff,

v.

AMERADA HESS CORPORATION,

Defendant.

)
)
)
)
)
)
)
)
)
)

Case No. 92-C-272-E

ORDER ALLOWING DISMISSAL WITH PREJUDICE

This matter came on before the Court this 30 day of July, 1993, upon the parties' Stipulation of Dismissal With Prejudice, and for good cause shown, it is therefore ORDERED, ADJUDGED AND DECREED, that Plaintiff's cause of action against Defendant, Amerada Hess Corporation is hereby dismissed with prejudice with each party to bear its own costs and attorney fees.

57 JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 8-2-93

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

FILED

AUG 2 1993

KENNEY F. MOORE,)
)
 Plaintiff,)
)
 vs.)
)
 KYLE DAMERON, et al.,)
)
 Defendants.)

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

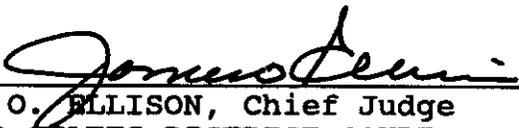
No. 93-MC-21-E

ORDER AND JUDGMENT

The Court has reviewed Plaintiff's Citizens Warrant ("Plaintiff's motion") for the arrest of the above-styled Defendants. The Court finds Plaintiff has failed to state a claim upon which relief can be granted. Accordingly, Plaintiff's motion is hereby DENIED.

The Court finds dismissal of said action on the merits is proper.

ORDERED this 30th day of July, 1993.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 8-2-93

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

AUG 2 1993

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

Kathrine W. Johnson,)
Plaintiff,)
v.)
TRW Inc.,)
Defendant.)

No. 93 C 577 E

AGREED ORDER OF DISMISSAL WITH PREJUDICE

On this day came on for consideration the Joint Motion for Dismissal filed by Plaintiff Kathrine W. Johnson and Defendant TRW Inc., wherein they advised the Court that they had settled all matters in controversy in this action and requested that this lawsuit be dismissed with prejudice. The Court, having considered the motion, is of the opinion it should be granted. It is therefore

ORDERED that all claims by Plaintiff against TRW be, and they are hereby, dismissed with prejudice; and it is further

ORDERED that all costs incurred herein are to be borne by the party incurring same.

SIGNED this 30 day of July, 1993.

BY JAMES O. ELLISON
U.S. DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

APPROVED AS TO FORM:

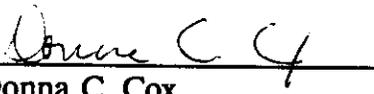


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ATTORNEYS FOR DEFENDANT
TRW INC.

ENTERED ON DOCKET

DATE 8-2-93

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

FILED

RANDY AND PATTY MARTIN,)
)
 Plaintiff,)
)
 vs.)
)
 SHELTER GENERAL INSURANCE)
 COMPANY, a Missouri)
 corporation,)
)
 Defendant.)

JUL 30 1993

Richard M. Lawless, Clerk
 U.S. DISTRICT COURT
 No. 92-C-348
 NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT

This action came before the Court, Honorable James O. Ellison, District Judge, presiding, and the Court, hearing Plaintiffs' Notice of Dismissal of Plaintiffs' action without prejudice ("Plaintiffs' motion"), finds the same should be granted.

IT IS THEREFORE ORDERED that Plaintiffs' motion is hereby granted.

ORDERED this 30th day of July, 1993.



 JAMES O. ELLISON, Chief Judge
 UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 8-2-93

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

FILED

JUL 30 1993

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

BRIAN PITTS,
Plaintiff,

v.

AMOCO CORPORATION,
Defendant.

Case No. 92-C-1097-E

ORDER OF DISMISSAL

This cause having come before this Court on the Joint Application for Dismissal with Prejudice of the parties, and this Court being fully advised in the premises, and the parties having stipulated and the Court having found that the parties have reached a private settlement of the claims of Plaintiff, and that such claims should be dismissed with prejudice, it is, therefore,

ORDERED, ADJUDGED AND DECREED that the Complaint of Plaintiff, together with any causes of action asserted therein, be and hereby are dismissed with prejudice. Each party is to bear its own attorney fees and costs.

So Ordered this 30 day of July, 1993.

S/ JAMES O. ELLISON

United States District Judge

APPROVED AS TO FORM AND CONTENT:

[Signature]
Attorney for Plaintiff

[Signature]
Attorney for Defendants

JKS/dkc meadors.19

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

FILED

JUL 30 1993

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

RALPH V. MEADORS and
WILDA RAE MEADORS,

Plaintiffs,

and

BALL-INCON GLASS PACKAGING
CORPORATION,

Third-Party Plaintiff,

vs.

VF CORPORATION and CINTAS
CORPORATION,

Defendants.

ENTERED ON DOCKET
AUG 2 1993
DATE _____

Case No. 92-C-642 B

ORDER OF DISMISSAL WITH PREJUDICE

NOW on this 30 day of July, 1993, the
Court, having been advised that the parties to this matter have
settled and compromised the claim, finds and
hereby orders that Defendant Cintas
in the above-styled matter should be
dismissed, with prejudice, and that Cintas
its own costs and attorney's fees.

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

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