

DEC 20 1993

FILED

DEC 17 1993

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

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

MICHAEL A. HELLEMEYER and)
HEIDI M. HELLEMEYER,)
)
Plaintiffs,)
)
vs.)
)
RAMSEY WINCH COMPANY, an)
Oklahoma Corporation,)
)
Defendant.)

Case No. 93-C-0031B

ORDER OF DISMISSAL

This matter comes on for hearing on the Joint Stipulation of the Plaintiff, Heidi Hellemeier, for dismissal without prejudice of the above captioned case against Ramsey Winch Company. The Court, being fully advised, having reviewed the Stipulation, finds that the above entitled case should be dismissed without prejudice to the filing of a future action as to Ramsey Winch Company pursuant to said Stipulation.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above entitled cause be and is hereby dismissed without prejudice to the filing of a future action against Ramsey Winch Company, each party to bearing his own costs.

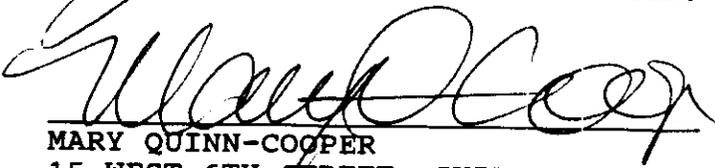
Dated this 17th day of December, 1993.

S/ THOMAS R. BRETT

THOMAS R. BRETT
JUDGE OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA



JACK CREWS, ATTORNEY FOR PLAINTIFF



MARY QUINN-COOPER
15 WEST 6TH STREET, SUITE 2800
TULSA, OK 74119-5430
(918) 582-1173

ATTORNEY FOR DEFENDANT

C:\WORD\RAMSEY\PLEADING\STIPULAT.ORD

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DEC 20 1993

FILED

DEC 17 1993

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

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

TRACY GOFF,)
)
 Plaintiff,)
)
 vs.)
)
 DOUBLETREE HOTELS, INC., et al.,)
)
 Defendants.)

Case No. 92-C-311 /

ORDER

The Complaint in this matter was filed April 14, 1992. The record reflects a Return of Service indicating service upon the defendants "c/o John Kennedy, Secretary of State." The record also includes a Memorandum Order entered October 15, 1992, by Magistrate Judge Wolfe, ordering Plaintiff to either file her amended complaint and issue summons by October 30, 1992; or, alternatively, move for entry of default judgment by October 30, 1992. Plaintiff has failed to follow this Order. According to the record before the Court, no action has been taken in this matter since the Court's Order of October 15, 1992.

For this reason, the Court concludes this matter should be and is hereby DISMISSED with prejudice for failure to prosecute.

IT IS SO ORDERED THIS 17th DAY OF DECEMBER, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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ENTERED ON DOCKET
DATE DEC 17 1993

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

FILED

DEC 16 1993

RESOLUTION TRUST CORPORATION, as
Conservator for Cimarron Federal
Savings Association,

Plaintiff,

vs.

ANTHAN D. FULLER and JANICE M.
FULLER, husband and wife;
VICTOR W. ADERHOLD; ANGELA B.
BRAUER; QUINTON R. DODD and
VICKIE E. DODD, husband and wife;
LAKELAND REAL ESTATE DEVELOPMENT,
INC.; JAMES M. HENRY and KAREIN
HENRY a/k/a KAREIN L. HENRY,
husband and wife,

Defendants.

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

Case No. 89-C-755-C

(Consolidated into and
with Case No. 89-C-753-C;
Case No. 89-C-754-C;
Case No. 89-C-756-C;
Case No. 89-C-758-C;
and Case No. 89-C-759-C)

ORDER ENTERING DEFICIENCY JUDGMENTS

Now on this 16 day of Dec, 1994, the Motion for
Entry of Deficiency Judgments filed herein by Resolution Trust
Corporation, as Receiver for Cimarron Federal Savings Association
("RTC/Receiver"), comes before the Court. The Court, having
reviewed the pleadings herein and being well advised in the
premises finds as follows:

1. Defendants Anthan D. Fuller and Janice M. Fuller (the
"Fullers"), Victor W. Aderhold ("Aderhold") and Angela B. Brauer
("Brauer") have been given notice of the Motion for Entry of
Deficiency Judgment by mailing a copy of the Motion for Entry of
Deficiency Judgments to such Defendants at their last known
addresses.
2. No objections have been filed.

NOTE: THIS ORDER IS TO BE MAILED
BY CLERK OF COURT AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

3. The Court finds that the fair market value of a 4/5 interest in the Mortgaged Property on or about September 15, 1993, the day of the Sheriff's sale herein, was not in excess of \$49,000.00, and therefore the value of the Fullers' undivided 1/5 interest in the Mortgaged Property was not in excess of \$12,250, and the value of Aderhold and Brauer's undivided 2/5 interest was not more than \$24,500.

4. The amount of the judgment of the RTC/Receiver against the Fullers, with interest through the date of sale, after being credited for application of certain receivership proceeds, amounted to \$26,205.16, resulting in a deficiency of \$13,955.16.

5. The amount of the judgment of the RTC/Receiver against Aderhold and Brauer, with interest through the date of sale, after being credited for application of certain receivership proceeds, amounted to \$59,310.56, resulting in a deficiency of \$34,810.56.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the RTC/Receiver should be and is hereby granted judgment in its favor against Anthan D. Fuller and Janice M. Fuller, and each of them, in the amount of \$13,955.16, plus interest thereon at an annual rate of 3.54% from and after September 15, 1993, until paid, plus attorney's fees and costs as are hereinafter determined by the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the RTC/Receiver should be and is hereby granted judgment in its favor against Victor W. Aderhold and Angela B. Brauer, and each

of them, in the amount of \$34,810.56, plus interest thereon at an annual rate of 3.54% from and after September 15, 1993, until paid, plus attorney's fees and costs as are hereinafter determined by the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the RTC/Receiver's Application for Attorney's Fees and Bill of Costs should be submitted within fifteen (15) days of the entry of this Order to be considered by the Court.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

Gary R. McSpadden, OBA # 6093
Dana L. Rasure, OBA # 7421
Barbara J. Eden, OBA # 14220
BAKER & HOSTER
800 Kennedy Building
321 South Boston
Tulsa, Oklahoma 74103
(918) 592-5555

Attorneys for Resolution Trust
Corporation, as Receiver for
Cimarron Federal Savings Association

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

Mountain States Fin.)
)
)
 Plaintiff(s),)
)
 vs.)
)
 Bartlesville Marine,)
)
)
 Defendants(s).)

92-C-928-C

FILED

DEC 16 1993

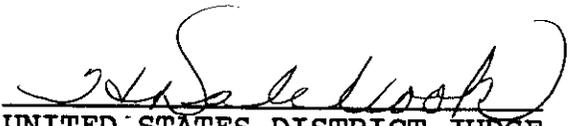
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ADMINISTRATIVE CLOSING ORDER

The Parties having entered into a settlement agreement, 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, by February 1, 1994, the Parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismisses with prejudice.

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


UNITED STATES DISTRICT JUDGE

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

RESOLUTION TRUST CORPORATION, as)
CONSERVATOR for CIMARRON FEDERAL)
SAVINGS ASSOCIATION,)
)
Plaintiff,)

vs.)

Case No. 91-C-0692-B

RANDY WALLIS and CONNIE WALLIS,)
husband and wife; JOHN C. FLUD,)
SR. and MARILYN FLUD, husband and)
wife; JOHN C. FLUD, JR. and)
JANTHA K. FLUD, husband and wife;)
RICHARD L. ATKINSON and ROBBIE L.)
ATKINSON, husband and wife; BETTY)
B. HESS; LAKELAND REAL ESTATE)
DEVELOPMENT, INC.; JAMES M. HENRY)
and KARIEN HENRY a/k/a KARIEN L.)
HENRY, husband and wife; QUINTON)
R. DODD and VICKIE E. DODD,)
husband and wife,)
)
Defendants.)

FILED
DEC 16 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER ENTERING DEFICIENCY JUDGMENTS

Now on this 16th day of December, 1993, the Motion for Entry of Deficiency Judgments filed herein by Resolution Trust Corporation, as Receiver for Cimarron Federal Savings Association ("RTC/Receiver"), comes before the Court. The Court, having reviewed the pleadings herein and being well advised in the premises finds as follows:

1. Defendants Randy Wallis ("Wallis"), John C. Flud, Sr. and Marilyn Flud (the "Fluds"), Richard L. Atkinson and Robbie L. Atkinson (the "Atkinsons") and Betty B. Hess ("Hess") have been given notice of the Motion for Entry of Deficiency Judgment by mailing a copy of the Motion for Entry of Deficiency Judgments to such Defendants at their last known addresses.

2. No objections have been filed.

3. The Court finds that the fair market value of the Mortgaged Property on or about September 15, 1993, the day of the Sheriff's sale herein, was not in excess of \$64,000.00 and therefore the value of Wallis' undivided 1/5 interest in the Mortgaged Property was not in excess of \$12,800, the value of the Fluds' undivided 1/5 interest was not more than \$12,800, the value of the Atkinsons' undivided 1/5 interest was not more than \$12,800 and the value of Hess' undivided 1/5 interest was not more than \$12,800.

4. The amount of the judgment of the RTC/Receiver against Wallis, with interest through the date of sale, after being credited for application of certain receivership proceeds, amounted to \$39,627.89, resulting in a deficiency of \$26,827.89.

5. The amount of the judgment of the RTC/Receiver against the Fluds, with interest through the date of sale, after being credited for application of certain receivership proceeds, amounted to \$39,627.89, resulting in a deficiency of \$26,827.89.

6. The amount of the judgment of the RTC/Receiver against the Atkinsons, with interest through the date of sale, after being credited for application of certain receivership proceeds, amounted to \$39,627.89, resulting in a deficiency of \$26,827.89.

7. The amount of the judgment of the RTC/Receiver against Hess, with interest through the date of sale, after being

credited for application of certain receivership proceeds, amounted to \$39,627.89, resulting in a deficiency of \$26,827.89.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the RTC/Receiver should be and is hereby granted judgment in its favor against Randy Wallis in the amount of \$26,827.89, plus interest thereon at an annual rate of 3.51% from and after September 15, 1993, until paid, plus attorney's fees and costs as are hereinafter determined by the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the RTC/Receiver should be and is hereby granted judgment in its favor against John C. Flud, Sr. and Marilyn Flud, and each of them, in the amount of \$26,827.89, plus interest thereon at an annual rate of 3.51% from and after September 15, 1993, until paid, plus attorney's fees and costs as are hereinafter determined by the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the RTC/Receiver should be and is hereby granted judgment in its favor against Richard L. Atkinson and Robbie L. Atkinson, and each of them, in the amount of \$26,827.89, plus interest thereon at an annual rate of 3.51% from and after September 15, 1993, until paid, plus attorney's fees and costs as are hereinafter determined by the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the RTC/Receiver should be and is hereby granted judgment in its favor against Betty B. Hess in the amount of \$26,827.89, plus interest thereon at an annual rate of 3.51% from and after

September 15, 1993, until paid, plus attorney's fees and costs as are hereinafter determined by the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the RTC/Receiver's Application for Attorney's Fees should be submitted within fifteen (15) days of the entry of this Order to be considered by the Court.

UNITED STATES DISTRICT JUDGE

Gary R. McSpadden, OBA # 6093
Dana L. Rasure, OBA # 7421
Barbara J. Eden, OBA # 14220
BAKER & HOSTER
800 Kennedy Building
321 South Boston
Tulsa, Oklahoma 74103
(918) 592-5555

Attorneys for Resolution Trust
Corporation, as Receiver for
Cimarron Federal Savings Association

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 16 1993

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

THE UNITED STATES OF AMERICA,)
Plaintiff,)
-vs.-)
STEVEN G. FERRELL;)
COUNTY TREASURER,)
Tulsa County, Oklahoma;)
and BOARD OF COUNTY)
COMMISSIONERS,)
Tulsa County, Oklahoma;)
Defendants.)

CASE NO. 93-C-327B

ORDER OF DISMISSAL

Upon the Motion of the United States of America, acting on behalf of the Secretary of Housing and Urban Development, by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Mikel K. Anderson, Special Assistant United States Attorney, and for good cause shown it is hereby **ORDERED** that this action shall be dismissed without prejudice.

Dated this 16th day of December 1993

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney



Mikel K. Anderson, OBA #12195
Special Asst. United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

ENTERED ON DOCKET

DATE 12-17-93

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MIRATECH, INC.,

Plaintiff

v.

JOHNSON MATTHEY INC.,

Defendant.

JOHNSON MATTHEY INC.,

Counterclaim-Plaintiff

v.

MIRATECH, INC.,
HUBBELL SYSTEMS, INC., and
DOUGLAS E. COX,

Counterclaim-Defendant
and
Third Party Defendants

Civil Action No.
93-C-0240-E

FILED

DEC 17 1993

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

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, the parties hereto stipulate to the dismissal of the complaint and of all the claims, counterclaims, crossclaims, and third-party claims pending in the above-captioned action.

Respectfully submitted,

Date: Dec. 17, 1993

By: 

Jack H. Santee, OBA #7903
Patrick O'Connor, OBA #6743
Terry M. Kollmorgen, OBA #13713
MOYERS, MARTIN, SANTEE,
IMEL & TETRICK
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(918) 582-5281

ATTORNEYS FOR
Miratech Corporation a/k/a
Miratech, Inc., Hubbell Systems,
Inc. and Douglas E. Cox

Date: December 17, 1993

By: 

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DANIEL & ANDERSON
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OF COUNSEL:

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Frederick S. Frei
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Washington, D.C. 20005-3918
(202) 861-3000

ATTORNEYS FOR
Johnson Matthey Inc.

DEC 17 1993

FILED

DATE

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

DEC 15 93

OR

ROBERT A. WARE, individually, and
as surviving spouse of PAULA A.
WARE, deceased,

Plaintiffs,

vs.

JOHN McCANTS, an individual,
JOE R. McKISICK, an individual,
and McKISICK DRILLING, INC.,
a suspended Oklahoma corporation,

Defendants.

ANGELA ROBINSON, individually, and
as parent and next friend of
ERIC ROBINSON, a minor,

Plaintiffs,

vs.

JOHN McCANTS, an individual,
JOE R. McKISICK, an individual,
and McKISICK DRILLING, INC.,
a suspended Oklahoma corporation,
and RANDY McKISICK and JEANETTE
McKISICK, individually and doing
business as McKISICK PIER
DRILLING, a partnership,

Defendants.

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

No. 93-C-0025-B ✓
(CONSOLIDATED)

O R D E R

Now before the Court are the motions for summary judgment of Defendant John McCants (McCants) (Docket #35), Defendants Joe McKisick, McKisick Drilling, Inc., Randy and Jeanette McKisick and McKisick Pier Drilling (Collectively, "the McKisicks") (Docket #43), and Plaintiff Angela Robinson (Robinson) (Docket #41) as to

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clm

the claims of Plaintiff Robert Ware (Ware). Each of these motions is based on a General Release executed by Plaintiff Ware.

Undisputed Facts

This action arises out of an accident between McCants and a vehicle being driven by Robinson on June 14, 1991. Robinson and her son were injured, and Paula Ware, Robinson's mother in law and a passenger in Robinson's vehicle, was fatally injured in the accident. Robert Ware (Ware), individually and as surviving spouse of Paula Ware, brought suit against McCants and the McKisicks. Robinson, individually and on behalf of her son, also filed suit against McCants and the McKisicks. McCants filed a counterclaim against Robinson for contribution and indemnity, alleging that the accident and death of Paula Ware was the proximate result of the negligence of Robinson. The two lawsuits were consolidated.

Plaintiffs allege that the drive shaft fell from underneath a 1970 International 2 ton drilling rig being driven by Joe McKisick and that Robinson hit the drive shaft and then veered into the vehicle being driven by McCants, an employee of McKisick, who had stopped to remove the drive shaft from the road. Plaintiffs assert that at the time of the accident it was dark, and that Robinson saw an object in the highway only a split second prior to hitting it.

Prior to filing suit, Ware settled his claim against Robinson and executed a Release of All Claims. The General Release states in pertinent part as follows:

For the sole consideration of \$25,000.00, the receipt and sufficiency whereof is hereby acknowledged, the undersigned hereby releases and forever discharges Dewayne Robinson and Angela Robinson, their heirs,

executors, administrators, agents and assigns, and all other persons, firms or corporations liable or, who might be claimed to be liable, none of whom admit any liability to the undersigned, but all expressly deny any liability, from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, and particularly on account of all injuries, known and unknown, both to person and property, which have resulted or may in the future develop from an accident which occurred on or about the 16th day of June, 1991, at or near Adair, Oklahoma.

Ware signed the release in consideration of the receipt of \$25,000.00, which represents the limits of the Robinsons' policy. There is no evidence that there were any other parties to the release or that Ware received any consideration for the release of "all other persons."

On October 22 and 27, 1993, Ware and the Robinsons executed a "Mutual Reformation Agreement" which provides:

2. The Robinsons and Ware acknowledge the Release contains at least three provisions which are incorrect and were included by mutual mistake. Those provisions and the corrections thereto are as follows:

1) The Release lists the date of the accident in question as June 16, 1991. The true date of the accident in question was June 14, 1991;

2) The signature by Ware is only in his individual capacity, and does not indicate that Ware signed also in his capacity as the representative of the Estate of Paula Ware. The intent of the parties was that the Robinsons were to be released from liability by both Ware individually and Ware as the representative of the Estate of Paula Ware;

3) The Release states in part that "...the undersigned hereby releases and forever discharges DeWayne Robinson and Angela Robinson their heirs, executors, administrators, agents and assigns, and all other persons, firms or corporations liable, or who might be claimed to be liable..." (Emphasis added). The phrase "and all other

persons, firms or corporations liable or, who might be claimed to be liable" was included in the Release by mutual mistake and does not reflect in any way the true intent of the parties. The Release was intended only to release the Robinsons, and the above quoted language is hereby deleted from the Release.

In support of the mutual reformation agreement, Ware provides the declaration of Jim Chumbley, a claim representative for State Farm. Chumbley states that on behalf of the Robinsons, he negotiated a settlement with Francis Floyd, attorney for the Wares, wherein State Farm would "pay the limits of Robinsons policy, which was the sum of \$25,000, in return for the release of liability to be executed on behalf of Robert Ware, individually, and Robert Ware as the personal representative of the Estate of Paula Ware." He further states that State Farm is the insurer of another vehicle involved in the accident, and that he discussed the claims against the McKisicks, the owners of that vehicle, with Mr. Floyd, but that the settlement did not include a release of any claims against the McKisicks or any other party involved in the accident.

McCants and the McKisicks move for summary judgment based on the language of the release wherein Ware releases "all other persons, firms or corporations liable or, who might be claimed to be liable...." Robinson moves for summary judgment on McCants' claim for contribution because she has been released from any liability by virtue of the release, regardless of whether or not it is reformed.

Legal Analysis

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate

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

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

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

It is undisputed that Ware signed a document that released "all other persons, firms or corporations liable, or who might be claimed to be liable...." Ware, however, claims that the release has been reformed, by mutual agreement of Ware and the Robinsons, the original parties to the agreement, because of the "mutual mistake" contained in the original release. Ware supports this "reformation" with the Affidavit of State Farm adjuster Jim Chumbley, who prepared the release, stating that "the intent of the parties at the time of State Farm's payment to Robert Ware was to release only DeWayne and Angela Robinson and no others."

McCants and the McKisicks object to Ware's attempts at

reformation because the intent of the parties to the unambiguous release must be determined from the actual words used in the contract, and because Ware has not met the burden of proof for reformation. However, the Court is not limited to the actual words of the contract in determining the intent of the parties. "In an action for reformation, parol evidence is admissible to show the parties' intent and mutual mistake." Griffin v. Griffin, 832 P.2d 810, 813 (Okla. 1992); see also Sabine Corporation v. ONG Western, Inc., 725 F.Supp. 1157, 1188 (W.D.Okla. 1989).

McCants and the McKisicks contend that before reformation is appropriate, Ware must show, by clear and convincing evidence:

- 1) An antecedent agreement to the terms of which a writing should be reformed;
- 2) A mutual mistake as a result of which the writing reflects something neither party intended; and
- 3) That the party seeking reformation was free of neglect.

Sabine Corporation, 725 F.Supp. at 1188-1189. Defendants argue that reformation is not appropriate because there was no mutual mistake and Ware was not "free of neglect". However, in Sabine and the other cases Defendants rely on, proof of these elements was necessary to accomplish the reformation, through the institution of a lawsuit, because a party to the agreement objected to reformation. Defendants do not cite any case wherein it was necessary to prove such elements when there was no suit for reformation, and in fact, the parties to the contract agreed that reformation was appropriate. Thus, the elements set out in Sabine are not applicable in the present case, where neither Ware nor the Robinsons object to reformation, and they have in fact presented

the court with a "mutual reformation agreement" supported by the declaration of Jim Chumbley, the State Farm adjuster who prepared the original form release.

The question is whether the "mutual reformation agreement" is effective to demonstrate the intent of the parties and justify reformation. Under Oklahoma law, a contract must be interpreted to give effect to the mutual intent of the parties. Okla.Stat.tit. 15, §152. The intent of the parties is the basis for contract interpretation even if the language of the contract does not express that intent. Okla.Stat.tit.15, §156 provides:

When through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded.

Okla.Stat.tit.15, §164 provides:

However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.

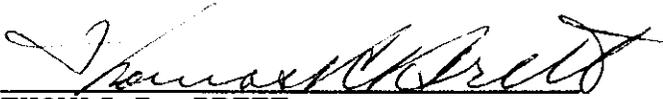
Both the evidence and Oklahoma law support a finding that the language of the contract does not express the intent of the parties and that reformation is appropriate.

Ware claims that it "was never their intention in execution of the original release, to release anyone other than Angela Robinson" and that the release "prepared by State Farm contained additional language which purported to release others." This claim is supported by the mutual reformation agreement and by the declaration of Jim Chumbley. There is also evidence that McCants and the McKisicks provided no consideration for being released and that an agreement was not reached to settle with McCants or the

McKisicks. The evidence before the Court is that Chumbley used a form release not intended by the parties. McCants and the McKisicks motions for summary judgment (Docket #35 & 43) should be and hereby are DENIED.

Summary judgment is, however, appropriate on McCants' claim for contribution against Robinson. A release "given in good faith to one of two or more persons liable for the same injury or the same wrongful death" discharges the released tort-feasor from "all liability for contribution to any other tort-feasor." Okla.Stat.tit. 12, § 832(H)(2). Thus, the release, even if reformed, given by Ware to Robinson is sufficient to release her from any claim for contribution by McCants. Robinson's motion for summary judgment on McCants' counterclaim for contribution (Docket #41) should be and hereby is GRANTED.

IT IS SO ORDERED THIS 15 DAY OF DECEMBER, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 12-16-93

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

FILED

DEC 15 1993

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

DALE WAYNE WILLIAMS,)
)
 Plaintiff,)
)
 vs.)
)
 STANLEY GLANZ, et al.,)
)
 Defendants.)

No. 93-C-1074-E ✓

ORDER

Plaintiff has filed a civil rights complaint pursuant to 42 U.S.C. § 1983, but has not submitted the proper \$120.00 filing fee or a motion for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

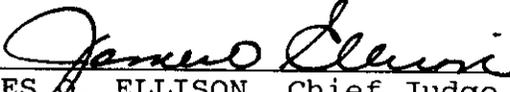
ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) Plaintiff's complaint is **dismissed without prejudice** for failure to pay the filing fee. See Local Rule 5.1(F). The court **may reopen** this action if Plaintiff submits either the proper filing fee or a motion for leave to proceed in forma pauperis within thirty (30) days from the date of entry of this order.
- (2) The Clerk shall **send** Plaintiff a blank motion for leave to proceed in forma pauperis.
- (3) The Clerk shall **return** to the Plaintiff his service papers. The Clerk shall also **return** to the Plaintiff his

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motion for discovery as the Court does not accept
discovery material for filing. See Local Rule 26.1(B).

SO ORDERED THIS 14th day of December, 1993.



JAMES G. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

DATE DEC 16 1993

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

BUSTER G. HANDLOS,)
)
 Plaintiff,)
)
 vs.)
)
 RON CHAMPION, et al.,)
)
 Defendants.)

No. 93-C-663-B

FILED

DEC 15 1993

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

ORDER

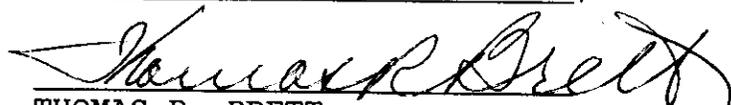
Before the Court are Defendants' motion to dismiss, and in the alternative for summary judgment filed on October 25, 1993, and Defendants' motion for protective order. Plaintiff has not responded.

Plaintiff's failure to respond to Defendants' motion to dismiss, and in the alternative for summary judgment, constitutes a waiver of objection to the motion, and a confession of the matters raised by the motion. See Local Rule 7.1(C).

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) Defendants' motion to dismiss, and in the alternative for summary judgment [docket #8] is **granted** and the above captioned case is **dismissed**.
- (2) Defendants' motion for protective order [docket #6] is **moot**.

SO ORDERED THIS 15 day of Dec, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DEC 16 1993

FILED

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

DEC 15 1993

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

VIRGINIA L. COOK,)
)
Plaintiff,)
)
v.)
)
CONTINENTAL PANHANDLE LINES,)
)
INC., a Texas corporation,)
)
A/K/A PANHANDLE TRAILWAYS,)
)
Defendant.)

No. 93-C-623-B

ORDER OF DISMISSAL WITH PREJUDICE

Upon Application of the parties and for good cause shown, the above styled and numbered cause of action is dismissed with prejudice.

S/ THOMAS R. BRETT

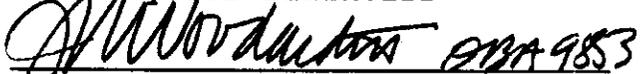
United States District Judge

Approved:



Brian Huddleston

Attorney for Plaintiff



John R. Woodard, III

Attorney for Defendant

ENTERED ON DOCKET

F I L E D

DEC 15 1993

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

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

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

ORDER FOR DISMISSAL WITHOUT PREJUDICE

Now on this 15 day of December, 1993, upon presentation of the Stipulation for Dismissal Without Prejudice executed by Plaintiff Atlantic Richfield Company and Defendant A.C. Eason, the Court finds and adjudges that all claims of Atlantic Richfield Company set forth herein against A.C. Eason should be and are hereby dismissed without prejudice to any future action upon such claims and that each of these parties shall bear and be responsible for its own costs and expenses incurred herein.

S/ THOMAS R. BRETT,

Judge

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

RENALDO WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 TULSA COUNTY PUBLIC)
 DEFENDER'S OFFICE, et al.,)
)
 Defendants.)

No. 93-C-1027-E

FILED

DEC 15 1993

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

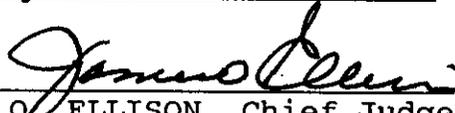
ORDER

Plaintiff has submitted his \$120.00 fee to reinstate this civil rights action.

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) The Clerk shall **reinstate** this civil rights action.
- (2) The Clerk shall **issue summons** and **return** them to the Plaintiff along with the copies of his complaint. The Plaintiff is responsible for perfecting service as he is not proceeding in forma pauperis. See Fed. R. Civ. P. 4.
- (3) Plaintiff's motion to consolidate habeas corpus and civil rights cases [docket #3] is **denied**.

SO ORDERED THIS 14th day of December, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

h

ENTERED ON DOCKET

DATE 12-15 93

FILED

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

DEC 15 1993

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNEY F. and COLLEEN MOORE,

Defendants.

Case No. 92-C-294E ✓

ORDER

This matter is before the court on the United States' Motion For Leave To Dismiss Without Prejudice. As it appears this action has become unnecessary due to administrative action taken by the Internal Revenue Service,

IT IS HEREBY ORDERED, that the complaint of the United States is hereby dismissed without prejudice.

Dated this 14th December, 1993.

UNITED STATES DISTRICT JUDGE

8

ENTERED ON DOCKET

DATE 12-15-93

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

F I L E D

DEC 15 1993

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

ECONOMY FIRE AND CASUALTY)
COMPANY,)

Plaintiff,)

vs.)

OWEN E. HINES and BERTHA MAE)
HINES,)

Defendants.)

No. 92-C-700-E ✓

JUDGMENT

This Court having entered an Order herein granting Plaintiff's
Motion for Summary Judgment

IT IS HEREBY ORDERED that Judgment be entered in favor of
Plaintiff and against the Defendants.

ORDERED this 14th day of December, 1993.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

DATE 12-15-93

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 THE SUM OF THIRTY-TWO)
 THOUSAND DOLLARS)
 (\$32,000.00), PLUS INTEREST,)
 HELD IN ACCOUNT NO.)
 0440030179 IN THE NAME OF)
 ALVIS, CARSSON, CUMMINGS,)
 HOFFNER, & BORTSFORD)
 P. C. MONEY MARKET, AT)
 BANK ONE, AUSTIN, TEXAS,)
)
 Defendant.)

CIVIL ACTION NO. 93-C-440-E

FILED

DEC 15 1993

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

**JUDGMENT OF FORFEITURE
BY DEFAULT AND BY STIPULATION**

This cause having come before this Court upon the plaintiff's Application for Judgment of Forfeiture by Default and by Stipulation against the defendant funds, the Court finds as follows:

The verified Complaint for Forfeiture In Rem was filed in this action on the 11th day of May 1993, alleging that the defendant funds were subject to forfeiture pursuant to 18 U.S.C. § 981, because they were involved in a transaction or attempted transaction(s) in violation of 18 U.S.C. § 215(a)(1) of the laws of the United States.

Warrants of Arrest and Notices In Rem were issued on the 11th day of May 1993, by Clerk of the United States District

Court for the Northern District of Oklahoma and to the United States Marshals for the Northern and Western Districts of Texas.

On the 21st day of June, 1993, the United States Marshals Service served a copy of the Complaint for Forfeiture In Rem and the Warrant of Arrest and Notice In Rem on the defendant funds, to-wit:

THE SUM OF THIRTY-TWO THOUSAND DOLLARS (\$32,000.00), PLUS INTEREST, DEPOSITED IN ACCOUNT NO. 0440030179 ON OR ABOUT OCTOBER 1, 1992, IN THE NAME OF ALVIS, CARSSON, CUMMINGS, HOFFNER, & BORTSFORD P.C. MONEY MARKET, AT BANK ONE, 221 WEST SIXTH STREET, AUSTIN, TEXAS 78701, THE TOTAL OF WHICH, WHEN SEIZED ON JUNE 21, 1993, WAS IN THE AMOUNT OF \$32,605.91.

The following individuals were determined to be potential claimants in this action with possible standing to file a claim herein, and the United States Marshal for the Northern District of Oklahoma personally served the following persons and entities having a potential interest in this action, to-wit:

MITCHELL MAYER GROSSMAN

Served June 24, 1993,
by serving Susan
Grossman, his wife.

ALVIS, CARSSON, CUMMINGS,
HOEFFNER & BORTSFORD,
Attorneys at Law

Served June 21, 1993,
by serving James Hoeffner

The amount of the defendant proceeds, plus interest accrued thereon to the date of seizure, was \$32,605.91, but an

additional \$1,364.48 was inadvertently turned over by the Bank to the Marshals Service from Account No. 0440030179 of Alvis, Carssow, Cummings, Hoeffner & Bortsford P. C. Money Market at Bank One, Austin, Texas. This additional \$1,365.81 was money belonging to the account of Alvis, Carssow, Cummings, Hoeffner & Bortsford, and said amount should be refunded to Alvis, Carssow, Cummings, Hoeffner & Bortsford.

United States Marshals 285s reflecting the services set forth above are on file herein.

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

The only Claim filed in this matter was that of Mitchell Mayer Grossman, which was erroneously filed in criminal case No. 93-CR-56-E on July 2, 1993, and Answer was thereafter filed in this forfeiture action on July 14, 1993.

Pursuant to Plea Agreement of Mitchell Mayer Grossman in Case No. 93-CR-56-E in the United States District Court for the Northern District of Oklahoma, defendant therein, Mitchell Mayer Grossman, agreed to the forfeiture of the defendant funds.

Thereafter, Mitchell Mayer Grossman entered into a Stipulation for Forfeiture with the plaintiff, United States of America, consenting to the forfeiture of all of the defendant funds. The Stipulation for Forfeiture was entered into on October 5, 1993, and was filed on December 10, 1993.

No other persons or entities upon whom personal service was effectuated more than thirty (30) days ago have filed a Claim, Answer, or other response or defense.

The United States Marshals Service gave public notice of this action and arrest to all persons and entities by advertisement in the Tulsa Daily Commerce and Legal News, a newspaper of general circulation in the district in which this action is pending, on July 29, August 5 and 12, 1993, and in the Austin American-Statesman, Austin, Texas, on August 8, 15, and 22, 1993, a newspaper of general circulation in the district in which the defendant funds were located. Proof of Publication was filed herein on September 14, 1993.

No other claims in respect to the defendant funds have been filed with the Clerk of the Court, and no other persons or entities have plead or otherwise defended in this suit as to said defendant funds, and the time for presenting claims and answers, or other pleadings, has expired; and, therefore, default exists as to the defendant funds and all persons and/or entities interested therein, except Mitchell Mayer Grossman, who has stipulated to forfeiture of the defendant funds.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that Judgment be entered against the following-described defendant funds:

THE SUM OF THIRTY-TWO THOUSAND DOLLARS (\$32,000.00), PLUS INTEREST, DEPOSITED IN ACCOUNT NO. 0440030179 ON OR ABOUT OCTOBER 1, 1992, IN THE NAME OF ALVIS, CARSSON, CUMMINGS, HOFFNER, & BORTSFORD P.C. MONEY MARKET, AT BANK ONE, 221 WEST SIXTH STREET, AUSTIN, TEXAS 78701, THE TOTAL OF WHICH, WHEN SEIZED ON JUNE 21, 1993, WAS IN THE AMOUNT OF \$32,605.91,

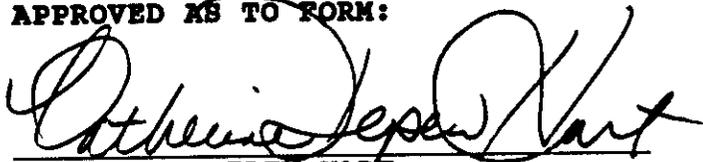
and that such properties be, and they are, hereby forfeited to the United States of America for disposition by the United States Marshals Service according to law.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that the additional sum of \$1,364.48 inadvertently turned over by the Bank to the United States Marshals Service from Account No. 0440030179 in the name of Alvis, Carssow, Cummings, Hoeffner, & Bortsford P. C. Money Market, at Bank One, Austin, Texas, be refunded to Alvis, Carssow, Cummings, Hoeffner & Bortsford, Attorneys at Law, by mailing to: James Hoeffner, 100 Congress Avenue, Austin, Texas.

S/ JAMES O. ELLISON

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

APPROVED AS TO FORM:

A handwritten signature in cursive script, appearing to read "Catherine Depeu Hart". The signature is written in black ink and is positioned above a horizontal line.

CATHERINE DEPEW HART
Assistant United States Attorney

N: \UDD\CHOOK\FC\GROSSMAN\03330

ENTERED ON DOCKET

DATE 12-15-93

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

NEWELL COACH CORPORATION,)
an Oklahoma corporation,)
)
Plaintiff,)

Court File No. 93-C-481-E

v.)

**STIPULATION OF DISMISSAL
WITH PREJUDICE**

JOHN ARLETH, individually and)
PRESTIGE ARABIANS, INC., a)
Minnesota corporation,)
)
Defendants.)

F I L E D

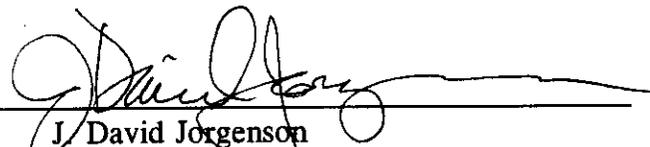
DEC 15 1993

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

Based upon the Settlement Agreement and Mutual Release, the parties hereto through their undersigned counsel, hereby stipulate and agree that the above matter shall be dismissed with prejudice without costs or attorney's fees to any party.

Dated: 12/10/93

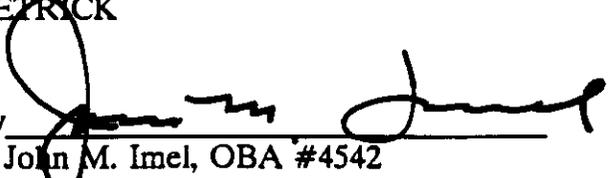
CONNER & WINTERS

By 
J. David Jorgenson
2400 First National Tower
15 East Fifth Street
Tulsa, OK 74103-4391
(918) 586-5711

ATTORNEYS FOR PLAINTIFF

Dated _____

MOYERS, MARTIN, SANTEE, IMEL &
TETRICK

By 

John M. Imel, OBA #4542
Frank V. Cooper, OBA #11795
320 South Boston, Suite 920
Tulsa, Oklahoma 74103
(918) 582-5281

ATTORNEYS FOR DEFENDANTS

IT IS SO ORDERED.

BY THE COURT:

BY JAMES O. ELSON

Dated: 12/14/93

ENTERED ON DOCKET

DATE 12-15-93

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

MARK YAGGY,)
)
Plaintiff(s),)
)
v.)
)
DEPARTMENT OF HEALTH AND HUMAN)
SERVICES,)
)
Defendant(s).)

92-C-1107-E ✓
 J

FILED
 DEC 15 1993
 Richard M. Lawrence, Clerk
 U. S. DISTRICT COURT
 NORTHERN DISTRICT OF OKLAHOMA

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed November 18, 1993 in which the Magistrate Judge recommended that the case be REMANDED. On remand, the Secretary must have Mr. Yaggy undergo a psychological examination concerning his alcoholism. In addition, the doctor who examines Mr. Yaggy must testify at a supplemental hearing. Furthermore, a vocational expert should also testify in light of the additional evidence submitted by the medical expert.

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

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

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

SO ORDERED THIS 14th day of December, 1993.


JAMES O. ELLISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

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

FILED

DEC 13 1993

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JACK R. MARTIN and)
 JUANITA C. MARTIN,)
)
 Defendants.)

Case No. 93-C-345-B

ON DOCKET

DEC 14 1993

STIPULATION OF DISMISSAL WITH PREJUDICE OF ALL CLAIMS

IT IS HEREBY STIPULATED AND AGREED by and between counsel for all parties, the parties have entered into a Settlement Agreement and that pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties stipulate that all claims and counterclaims filed herein shall be dismissed with prejudice.

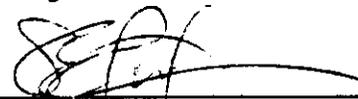
FOR THE DEFENDANTS:

FOR THE UNITED STATES:



Terry M. Kollmorgen
MOYERS, MARTIN, SANTEE,
IMEL & TETRICK
320 S. Boston, Suite 920
Tulsa, OK 74103-3722
(918) 582-5281

James P. Turner
Acting Assistant Attorney General



Paul F. Hancock
Brian F. Heffernan
S. E. Pietrafesa
Attorneys
Housing & Civil Enforcement
Civil Rights Division
U. S. Department of Justice
P. O. Box 65998
Washington, D.C. 20035
(202) 616-2217

DEC 14 1993

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

FREMONT FINANCIAL CORPORATION,)
an Illinois corporation,)
)
Plaintiff,)

v.)

Case No. 91-C-0231-C

MID-AMERICAS PROCESS SERVICES,)
INC., a corporation; MID-AMERICA)
CONTROLS, INC., an Oklahoma)
corporation; MAPS INTERNATIONAL,)
INC., an Oklahoma corporation;)
LINDELL WHITEFIELD a/k/a LYNN)
WHITEFIELD, an individual;)
MID-AMERICA ACQUISITION AND)
TRADING COMPANY, an Oklahoma)
corporation; MID-AMERICA)
MACHINERY ASSOCIATION, INC., an)
Oklahoma corporation; and BANK)
OF OKLAHOMA, N.A., a national)
banking association,)

Defendants.)

FILED
DEC 15 1993
Richard M. [unclear] Clerk
U.S. DISTRICT COURT

STIPULATION OF PARTIAL DISMISSAL WITH PREJUDICE

Pursuant to that certain Order Approving Settlement With and Fixing Claim of Fremont Financial Corporation filed on August 20, 1993 in Case No. 91-01254-C in the United States Bankruptcy Court for the Northern District of Oklahoma, Plaintiff Fremont Financial Corporation ("Fremont") and the Trustee entered into a compromise and settled a dispute whereby (i) the allowed amount of the claim of Fremont against Mid-Americas Process Services, Inc. ("MAPS") was reduced to \$746,327.28 as of May 1, 1993 together with interest from and after May 1, 1993 and costs and reasonable attorneys' fees accrued after May 1, 1993 and (ii) guarantees of MAPS, Mid-America Controls, Inc. ("MAC"), Mid-America Machinery

Association, Inc. ("MAMA") and Maps International, Inc. ("International") were released. Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, Fremont hereby dismisses the above-captioned cause with prejudice as to Fremont's right to assert claims made therein against the Defendants MAPS, MAC, International and MAMA with the understanding that the following obligations and/or claims remain in full force and effect:

(a) the guaranty of Lindell Whitefield of that portion of the indebtedness owed by MAPS to Fremont that exceeds the allowed amount of Fremont's claim pursuant to the compromise between Fremont and the Trustee and the security interests related to such guaranty;

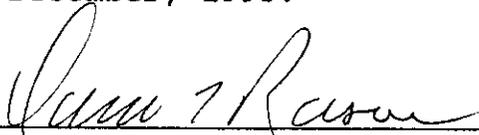
(b) Fremont's deficiency claim against Mid-America Acquisition and Trading Company ("MATCO");

(c) the guaranty of Lindell Whitefield of Fremont's deficiency claim against MATCO and the security interests related to such guaranty; and

(d) the guaranty of MATCO of that portion of the indebtedness owed by MAPS to Fremont that exceeds the allowed amount of Fremont's claim pursuant to the compromise between Fremont and the Trustee and the security interests related to such guaranty.

Fremont and MAPS, MAC, International and MAMA are each to bear their respective costs.

Dated this 13th day of December, 1993.



Dana L. Rasure, OBA #7421
BAKER & HOSTER
800 Kennedy Building
Tulsa, Oklahoma 74103
(918) 592-5555
Attorneys for Plaintiff
Fremont Financial Corporation



Sidney K. Swinson
HUFFMAN ARRINGTON KIHLE
GABERINO & DUNN, P.C.
100 W. 5th Street, Suite 1000
Tulsa, Oklahoma 74103-4219
(918) 585-8141

Attorney for Glen W. Taylor,
trustee of the bankruptcy estates
of the Defendants Mid-Americas
Process Services, Inc., Mid-
America Controls, Inc., Maps
International, Inc., Mid-America
Acquisition and Trading Company,
and Mid-America Machinery
Association, Inc.



Kenneth M. Smith
ROBINSON, LEWIS, ORBISON,
SMITH & COYLE
P.O. Box 1046
Tulsa, Oklahoma 74101
(918) 583-1232
Attorney for Defendant
Bank of Oklahoma, N.A.

DEC 14 1993

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

HOWARD HILL and BONNIE HILL,
husband and wife,

Plaintiffs,

v.

STEVEN R. BAILEY, an individual,
BILLY M. HOLLINGSWORTH, an
individual, SANTISI TRUCKING
COMPANY, a foreign corporation,
PIEDMONT OF MICHIGAN, INC., a
foreign corporation, RANGER
INSURANCE COMPANY, a foreign
insurance company, and AMERISURE
INSURANCE COMPANY, a foreign
insurance company,

Defendants,

and

BILLY HOLLINGSWORTH, SR., BILLY
HOLLINGSWORTH, JR., GINA M.
HOLLINGSWORTH, and GINA M.
HOLLINGSWORTH, as Natural Mother
and Next Friend of JOSHUA DAVID
HOLLINGSWORTH, a Minor,

Plaintiffs,

v.

STEVEN R. BAILEY and DONALD
SANTISI TRUCKING COMPANY,

Defendants.

FILED

DEC 13 1993

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

Consolidated Case No.:
92-C-975-C

Former Case No.:
92-C-1194-C

STIPULATION OF DISMISSAL

COMES NOW the Plaintiff, Rose M. Hollingsworth, by and through
her attorneys of record, Glenn R. Beustring and E. Diane Hinkle,
pursuant to Rule 41 of the Federal Rules of Civil Procedure, and
hereby dismisses her cause of action against the Defendants for
loss of consortium, without prejudice.

All parties stipulate to the dismissal of Rose M.

58 / 1000

Hollingsworth's claim, and she is no longer a Plaintiff in the above-captioned case. The caption of this action should so reflect.

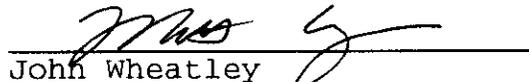
Respectfully submitted,



Glenn R. Beustring OBA #768
E. Diane Hinkle OBA #14744
GLENN R. BEUSTRING & ASSOCIATES
2624 E. 21st Street
Suite 1
Tulsa, Oklahoma 74114
(918) 747-1341

Attorneys for Plaintiffs

APPROVED:



John Wheatley
Matt Wheatley
WHEATLEY, SEGLER & WHEATLEY
P.O. Box 850126
Yukon, OK 73085
Attorneys for Defendants Santisi, Bailey,
and Ranger Insurance Company



Jay McAtee
MCGIVERN, SCOTT, GILLIARD, CURTHOYS & ROBINSON
P.O. Box 2619
Tulsa, OK 74101-2619
Attorney for Plaintiffs Hill



Richard Carpenter
CARPENTER, MASON & MCGOWAN
1516 S. Boston
Suite 205
Tulsa, OK 74119
Attorney for Defendants Hollingsworth,
Piedmont, and Amerisure Insurance Company

FILED

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

DEC 13 1993

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

RICHARD T. LIEBER,)
)
Plaintiff,)
)
vs.)
)
TRUCK CENTER OF TULSA, INC.,)
et al,)
)
Defendants.)

Case No. 92-C-404-B ✓

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

ON DOCKET
DEC 14 1993

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

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

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

IT IS SO ORDERED this 13th day of December, 1993.


 THOMAS R. BRETT
 UNITED STATES DISTRICT JUDGE

19

FILED

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

DEC 13 1993

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

LECRESHA D. MINNICK,
Plaintiff,
vs.
BURLINGTON NORTHERN RAILROAD
COMPANY,
Defendant.

Case No. 92-C-580-B

FILED ON BOOK AT
DEC 14 1993

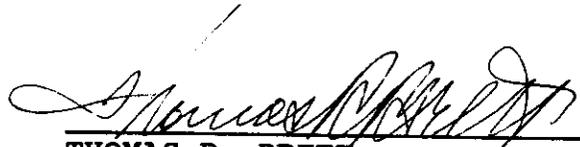
**JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT**

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

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

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

IT IS SO ORDERED this 13th day of December, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED ON DOCKET
DEC 14 1993

FILED

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

DEC 13 1993

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

RCB BANK,

Plaintiff,

vs.

RB MATON, INC., et al,

Defendants.

)
)
)
)
)
)
)
)
)
)
)

Case No. 92-C-191-B

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

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

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

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

IT IS SO ORDERED this 13th day of December, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

28

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

FILED

DEC 10 1993

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

LEONARD ARABIA, et al.,)
)
 Plaintiffs,)
)
 PRENTICE THOMAS, et al.,)
)
 Intervenors,)
)
 v.)
)
 GIANT PETROLEUM, INC., et al.,)
)
 Defendants.)

Case No. 89-C-91-B

ORDER

This matter comes on for consideration of the Motion To Vacate Order Or Reconsider Order (docket entry #210) filed by Defendants, NOCO Investment Co., Inc. and NBI Services, Inc., by their attorney Conrad J. Carson. These Defendants allege neither they nor their attorneys received notice of Plaintiffs Leonard Arabia, Carol Weiner, Arthur Arakelian, Marvin Basil and Marlen, Inc.'s (Movants) Motion To Enforce Settlement Agreement (docket entry #205) filed February 17, 1993.

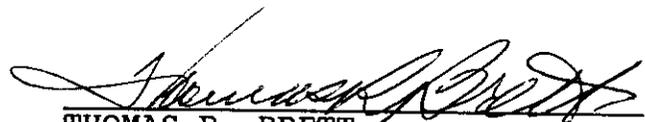
In opposition, Movants state to the Court that NOCO Investment Co., Inc., NBI Services, Inc. and Tulsa Energy, Inc. all have common ownership in the personages of Richard J. Nichols and Orville Nichols; that any actual notice to the Nichols is imputable to the corporations of which they are the principals; that certain proceedings before the Oklahoma Corporation Commission relating to

these same oil wells which are the subject matter of this case involved both Nichols, one of whom testified before the OCC, and also involved Lee Levinson, attorney for NOCO Investment Co., Inc.; that the pleadings filed February 22, 1993 with the OCC referred to the Movants' Motion To Enforce Settlement; that Movants' attorney made 633 photocopies of the Motion To Enforce and mailed same to all parties herein.

Movants have filed a supplement to their response to Defendants' Motion To Vacate, setting forth the application of attorney Grant E. Cheadle, attorney for bankruptcy debtor Tulsa Energy, Inc., showing that Cheadle billed for time spent reviewing Movants Motion To Enforce Settlement. This is directly contrary to Cheadle's affidavit in support of Defendants' Motion To Vacate wherein he stated that he had never received a copy of Movants' Motion To Enforce nor had he been advised of same. The billing copy shows Cheadle both received and reviewed the Motion To Enforce on February 17, 1993.

The Court concludes Defendants' Motion To Vacate should be and the same is hereby DENIED.

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


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 12-13-93

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ONE 1987 LINCOLN TOWN CAR,)
 VIN, ILNBM82F94Y703439, AND)
 THE TITLE AND KEYS THERETO;)
)
 and)
)
 ONE 1987 LINCOLN TOWN CAR,)
 VIN ILNBM83F2HY703443, AND)
 THE TITLE AND KEYS THERETO,)
)
 Defendants.)

CIVIL ACTION NO. 93-C-455-E

F I L E D

DEC 10 1993

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

JUDGMENT OF FORFEITURE

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

That the verified Complaint for Forfeiture In Rem was filed in this action on the 14th day of May 1993; the Complaint alleging that the following-described defendant vehicles:

ONE 1987 LINCOLN TOWN CAR,
VIN, ILNBM82F94Y703439, AND
THE TITLE AND KEYS THERETO;

and

ONE 1987 LINCOLN TOWN CAR,
VIN ILNBM83F2HY703443, AND
THE TITLE AND KEYS THERETO,

are subject to seizure and forfeiture pursuant to 18 U.S.C. § 1955, because they were used in violation of 18 U.S.C. § 1955(d)

and pursuant to 18 U.S.C. § 981, because they were involved in a transaction or attempted transaction, in violation of 18 U.S.C. § 1956 and/or are proceeds of such transactions; that Warrant of Arrest and Notice In Rem was issued by the Clerk of the United States District Court for the Northern District of Oklahoma, on the 18th day of May 1993, to the United States Marshal for the Northern District of Oklahoma. Because of an error in the VIN of both vehicles in the Complaint for Forfeiture In Rem, in the Affidavit of Internal Revenue Service Special Agent David W. Jansen, and in the Warrant of Arrest and Notice In Rem, an Amendment to Complaint for Forfeiture In Rem was filed on June 8, 1993, and an Amended Warrant of Arrest and Notice In Rem was issued on June 14, 1993. That the description of the defendant vehicles with their correct vehicle identification numbers is as follows:

**ONE 1987 LINCOLN TOWN CAR,
VIN, 1LNBM82F9HY703439, AND
THE TITLE AND KEYS THERETO;**

and

**ONE 1987 LINCOLN TOWN CAR,
VIN 1LNBM83F2HY703443, AND
THE TITLE AND KEYS THERETO.**

That pursuant to the Amended Warrant of Arrest and Notice In Rem, all persons and/or entities interested in the defendant vehicles were required to file their claim(s) with the Clerk of the Court within ten (10) days after service upon them of the Warrant of Arrest and Notice In Rem, publication of the

Notice of Arrest and Seizure, or actual notice of this action, whichever occurred first, and were required to file their answer(s) to the Complaint within twenty (20) days after filing their respective claim(s).

That Special Agent David W. Jansen, with the Internal Revenue Service, Criminal Investigation Division, personally served a copy of the Complaint for Forfeiture In Rem and Warrant of Arrest and Notice In Rem on the vehicle bearing VIN 1LNB82F9HY703439 on May 27, 1993, but inadvertently made the return of such service on the Receipt and Return Form (285) for the vehicle bearing VIN 1LNBM83F2HY703443; that thereafter on July 6, 1993, the United States Marshals Service served a copy of the Amended Complaint for Forfeiture In Rem and the Amended Warrant of Arrest and Notice In Rem upon the defendant vehicle bearing vehicle identification number 1LNBM82F9HY703439; that on August 19, 1993, Internal Revenue Service Special Agent David W. Jansen served the Complaint for Forfeiture, Warrant of Arrest and Notice In Rem, Amendment to Complaint for Forfeiture In Rem, and Amended Warrant of Arrest and Notice In Rem upon defendant vehicle bearing VIN 1LNBM83F2HY703443.

That the following individuals were determined to be potential claimants in this action with possible standing to file a claim herein, and were personally served in this action, as follows:

JOAN LOWE

Served May 27, 1993 and subsequently reserved on June 25, 1993, with Amendment to Complaint and Amended Warrant.

That the following individual, who was also determined to be a potential claimant in this action with possible standing to file a claim herein, last known to be residing outside the continental United States, was not located and was not served in this action:

RICHARD LOWE

Richard Lowe is out of the country, his whereabouts are unknown, and service could not be obtained on him.

That USMS 285s reflecting the services set forth above are on file herein.

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

That no persons or entities upon whom personal service was effected more than thirty (30) days ago have filed a Claim, Answer, or other response or defense herein.

That the United States Marshals Service gave public notice of this action and arrest to all persons and entities by advertisement in the Tulsa Daily Commerce and Legal News, a newspaper of general circulation in the district in which this action is pending and the district in which both defendant vehicles were seized and arrested, on September 30 and October 7 and 14, 1993, and that Proof of Publication was filed herein on October 29, 1993.

That no other claims in respect to the defendant vehicles have been filed with the Clerk of the Court, and no other persons or entities have plead or otherwise defended in this suit as to said defendant vehicles, and the time for presenting claims and answers, or other pleadings, has expired; and, therefore, upon information and belief, default exists as to the defendant vehicles, and all persons and/or entities interested therein.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED by the Court that Judgment be entered against the following-described defendant vehicles:

**ONE 1987 LINCOLN TOWN CAR,
VIN, 1LNBM82F9HY703439, AND
THE TITLE AND KEYS THERETO;**

and

**ONE 1987 LINCOLN TOWN CAR,
VIN 1LNBM83F2HY703443, AND
THE TITLE AND KEYS THERETO,**

and against all persons and/or entities having an interest in such properties, and that the defendant vehicles be, and the same are, hereby forfeited to the United States of America for disposition by the United States Marshal according to law, and that no right, title, or interest shall exist in any other party.

ENTERED this 10th day of December, 1993.

S/ JAMES O. ELLISON

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

APPROVED:



CATHERINE DEPEW HART
Assistant United States Attorney

N:\UDD\CHOOK\FC\LOWE1\03475

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

FILED

DEC 10 1993

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

LEONARD ARABIA, et al.,)
)
 Plaintiffs,)
)
 PRENTICE THOMAS, et al.,)
)
 Interveners,)
)
 v.)
)
 GIANT PETROLEUM, INC., et al.,)
)
 Defendants.)

Case No. 89-C-91-B

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

ORDER

This matter comes on for consideration of the Motion To Vacate Order Or Reconsider Order (docket entry #210) filed by Defendants, NOCO Investment Co., Inc. and NBI Services, Inc., by their attorney Conrad J. Carson. These Defendants allege neither they nor their attorneys received notice of Plaintiffs Leonard Arabia, Carol Weiner, Arthur Arakelian, Marvin Basil and Marlen, Inc.'s (Movants) Motion To Enforce Settlement Agreement (docket entry #205) filed February 17, 1993.

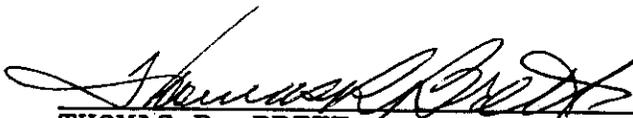
In opposition, Movants state to the Court that NOCO Investment Co., Inc., NBI Services, Inc. and Tulsa Energy, Inc. all have common ownership in the personages of Richard J. Nichols and Orville Nichols; that any actual notice to the Nichols is imputable to the corporations of which they are the principals; that certain proceedings before the Oklahoma Corporation Commission relating to

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The Court concludes Defendants' Motion To Vacate should be and the same is hereby DENIED.

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


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

DEC 13 1993

DATE

DEC 3 3 1993

FILED

DEC 10 1993

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

SAMMIE P. SAGER

Plaintiff,

vs.

GROUP HEALTH SERVICES OF
OKLAHOMA, INC., an Oklahoma
corporation,

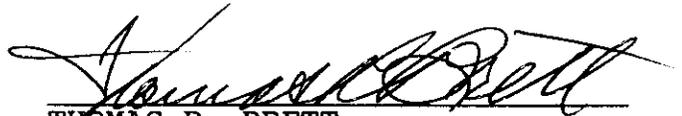
Defendant.

Case No. 93-C-422-B

JUDGMENT

In accord with the Order filed this date sustaining the Defendant's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendant, Group Health Services of Oklahoma, and against the Plaintiff Sammie P. Sager. Plaintiff shall take nothing of her claim. Costs are assessed against the plaintiff, if timely applied for under Local Rule 54.1, and each party is to pay its respective attorney's fees.

DATED THIS 10th DAY OF DECEMBER, 1993.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

20

ENTERED ON DOCKET
DEC 13 1993
DATE

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

FILED

DEC 10 1993

SAMMIE P. SAGER

Plaintiff,

vs.

GROUP HEALTH SERVICES OF
OKLAHOMA, INC., an Oklahoma
corporation

Defendant.

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

Case No. 93-C-422-B

FILED
DEC 10 1993
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

O R D E R

Now before the Court are the cross motions for summary judgment of Defendant Group Health Service of Oklahoma (Blue Cross and Blue Shield) (docket #5) and Plaintiff Sammie P. Sager (Sager) (docket #10).

Undisputed Facts

On August 18, 1991, Plaintiff shot herself in the chest. On the date of her injury, she was covered by a policy of insurance through Blue Cross and Blue Shield. The policy is governed by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §1001, et seq. The policy provides in pertinent part as follows:

Except as otherwise provided in this Contract, no Benefits will be provided for services, supplies or charges:

21. For injuries resulting from attempted suicide or which are otherwise intentionally self-inflicted;

* * *

The Board of Trustees of Blue Cross and Blue Shield is authorized to determine, and in its discretion, to alter the Benefits provided by this Contract or payment of dues

19

therefor. Any such changes shall not effect any Subscriber during the coverage periods for which dues have been paid. Any increase in dues shall be made only upon 31 days notice to the Group.

The Policy also provides in the "Endorsement For Benefits Eligibility And Utilization Review:"

The Plan, as claims administrator, is hereby granted authority to interpret the terms and conditions of this Contract/Agreement and to determine its Benefits. Such determination by the Plan as to whether care and services rendered to a Member/Subscriber are eligible for Benefits under this Contract/Agreement may be made by a panel of Physicians appointed by the Plan at its election.

Plaintiff wrote a note prior to shooting herself, and admits to having thoughts about suicide. She had previously contemplated committing suicide with a gun and had previously shot the same gun to determine how hard it was to shoot. Plaintiff claims that her medical care as a result of her gunshot wounds is covered by the terms of the Blue Cross and Blue Shield policy because she was not, by virtue of her depression, capable of forming the requisite intent which would bring the incident within the parameters of the exclusion. Defendant argues that Plaintiff's injuries were a result of her "attempted suicide," and that it is irrelevant whether she shot herself "intentionally."

Legal Analysis

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

at 317 (1986), it is stated:

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

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

Blue Cross and Blue Shield contends that the Administrator's denial of Sager's claim was a discretionary action under the plan which must be reviewed under an arbitrary and capricious standard. Sager contends that the Administrator did not have discretion under the plan and that the denial of benefits is subject to de novo review. The standard of review on a claim for improper denial of benefits under ERISA has been addressed by the Supreme Court;

Consistent with established principles of trust law, we hold that a denial of benefits challenged under §1132(a)(1)(B) is to be reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan.

Firestone Tire and Rubber Company v. Bruch, 489 U.S. 101, 115, 109 S.Ct. 948, 956 (1989).

Sager argues that a de novo standard is appropriate because the plan administrator in this plan does not have discretionary authority because the words "granting discretion" are not in the plan. It is well settled that a plan administrator may have

discretionary authority without an express grant of such authority. See Pratt v. Petroleum Management Employee Savings Plan, 920 F.2d 651, 658 (10th Cir. 1990); See also De Nobel v. Vitro Corporation, 885 F.2d 1180, 1187 (4th Cir. 1990) (holding that an administrator may have discretionary authority without an express grant of same: "We perceive no principled basis, however, on which we could engage in semantic hairsplitting of that sort. There are obviously no magic words required to trigger the application of one or another standard of judicial review.") In Pratt, an administrative committee with "power to construe and interpret the plan" and to "seek guidance from others" if necessary was held to have discretionary authority which justified an "arbitrary and capricious" standard of review. Pratt, 920 F.2d at 657-658. That court stated: "We are persuaded as a matter of law that the grant in this plan carries with it not only the authority, but also the discretion, to decide questions of plan interpretation." Id.¹

In the present case, the administrator has the authority to "interpret the terms and conditions" of the plan and to "determine its Benefits." The Court is persuaded that this grant carries not only authority, but also discretion, to interpret the plan in

¹ The plan in Pratt gave the administrator the power to:

- (a) construe and interpret the Plan in accordance with uniform rules and regulations consistently applied to all participants,
- (b) decide the eligibility of any persons to be covered under the Plan in accordance with the Plan,
- (c) determine the right of any person to a benefit, in accordance with the Plan,....

Pratt, at 657, n.7.

question. Thus, the appropriate standard of review is whether the decision of the administrator was "arbitrary and capricious."

Woolsey v. Marion Laboratories, Inc., 934 F.2d 1452, 1457 (10th Cir. 1991).

Under this standard, the administrator's decision, "need not be the only logical one nor even the best one. It need only be sufficiently supported by facts within their knowledge to counter a claim that it was arbitrary or capricious." Id. at 1460. The inquiry is whether the action of the Administrator is "grounded on any reasonable basis." Id. Blue Cross and Blue Shield argues that based on the evidence, Plaintiff's action in shooting herself was intentional, and that the language of the plan does not require an "intentional act," but merely requires "attempted suicide." Plaintiff does not argue that the action of the administrator in denying her claim was an abuse of discretion, but rather, argues that the de novo standard should be applied and that the administrator's decision was "incorrect," relying on Reinking v. Philadelphia American Life Insurance Co., 910 F.2d 1210 (4th Cir. 1990).²

It is undisputed that the Defendant shot herself. Plaintiff admits that she pointed the gun at her heart "because [she] thought it would kill [her]." (Deposition of Plaintiff, pages 49-50).

² Plaintiff asserts that Reinking is "controlling" and requires judgment in her favor. Reinking, a 4th Circuit case, is not controlling in this circuit, and is also distinguishable from the present case. In Reinking the decision of the plan administrator was reviewed de novo by the district court. In the present case, the determination is whether the administrator abused his discretion.

In finding that the insured was not capable of forming the intent to injure herself, the court in Reinking v. Philadelphia American Life Insurance Co., 910 F.2d 1210 (4th Cir. 1990), held:

An individual is relieved of responsibility for a given act if 'his reasoning faculties are so far impaired that he is not able to understand the moral character, the general nature, consequences and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse, which he has not the power to resist.'

Id. at 1215, citing Mutual Life Insurance Co. v. Terry, 82 U.S. 580, 591 (1873). Plaintiff relies on the testimony of her treating psychiatrist, Dr. Dominic Losacco, for her assertion that she was not capable of forming the requisite intent to come within the exclusion found in the plan. Dr. Losacco testified:

It is my opinion that on August 18, 1991, Mrs. Sager suffered from a mental disorder, major depression, single episode, severe without psychotic features. She was not capable of rational thought or formulating other intentional options at the time of her suicide attempt.

(Affidavit of Dominic Losacco, M.D.). However Plaintiff's testimony that she pointed the gun at her heart because she thought it would kill her supports a finding that she understood the "consequences and effect of the act." Thus, it cannot be said that the decision of the administrator is without any reasonable basis or is "arbitrary and capricious."

Defendant Blue Cross and Blue Shield's motion for summary judgment is granted and Plaintiff Sammie Sager's motion for summary judgment is denied.

IT IS SO ORDERED THIS 10th DAY OF DECEMBER, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED IN DOCKET
DATE 12-10-1993

FILED

DEC 10 1993

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

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

CHARLES EATON and CHARLES EATON)
and DEE EATON, as parents and)
next friends of SARAH EATON,)
a minor,)
Plaintiffs,)
v.)
ANTONE J. BUCHMANN,)
Defendant.)

No. 92-C-1078 B

ORDER

Comes before the Court, on the 3rd day of December, 1993, Defendant Antone J. Buchmann's Application For Attorney's Fees, Application being made pursuant to this Court's previous Order of November 9, 1993. The Plaintiff does not appear. The Defendant appears through counsel of record, William A. Fiasco.

The Court, being fully advised in the premises, and having reviewed the evidence, including the briefs of both Plaintiffs and Defendant, finds that Defendant's Application is well taken, and is sustained.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant Antone J. Buchmann have judgment against Plaintiff Charles Eaton in the total amount of \$1,011.50.

UPON THIS JUDGMENT LET EXECUTION ISSUE!

S/ THOMAS R. BRETT

Judge of the District Court